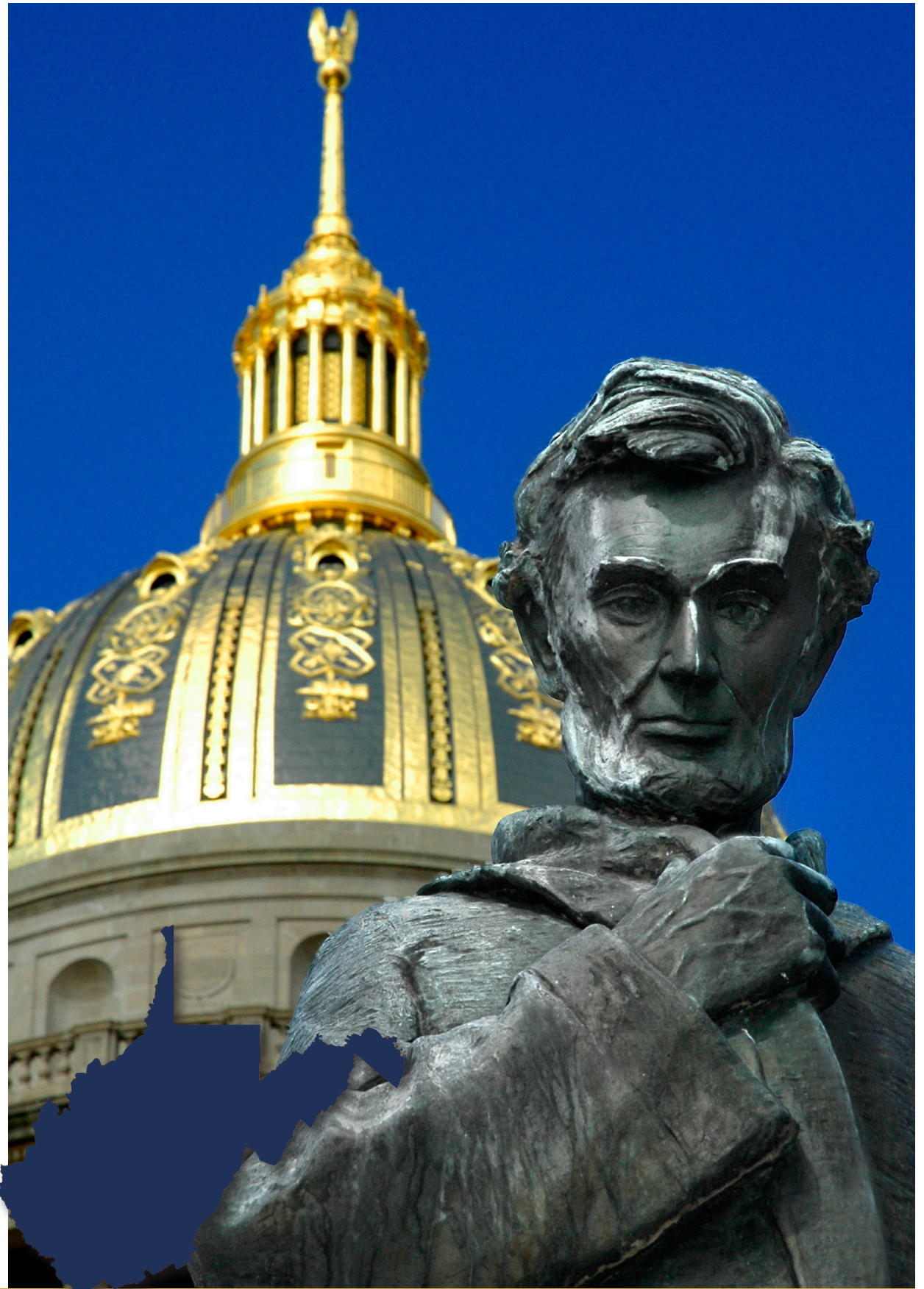


2023



West Virginia: The Easy Choice to Make

A Collection of Legislation from 2015-2023 to highlight how the Mountain State is the ideal place to live, work, and raise a family.

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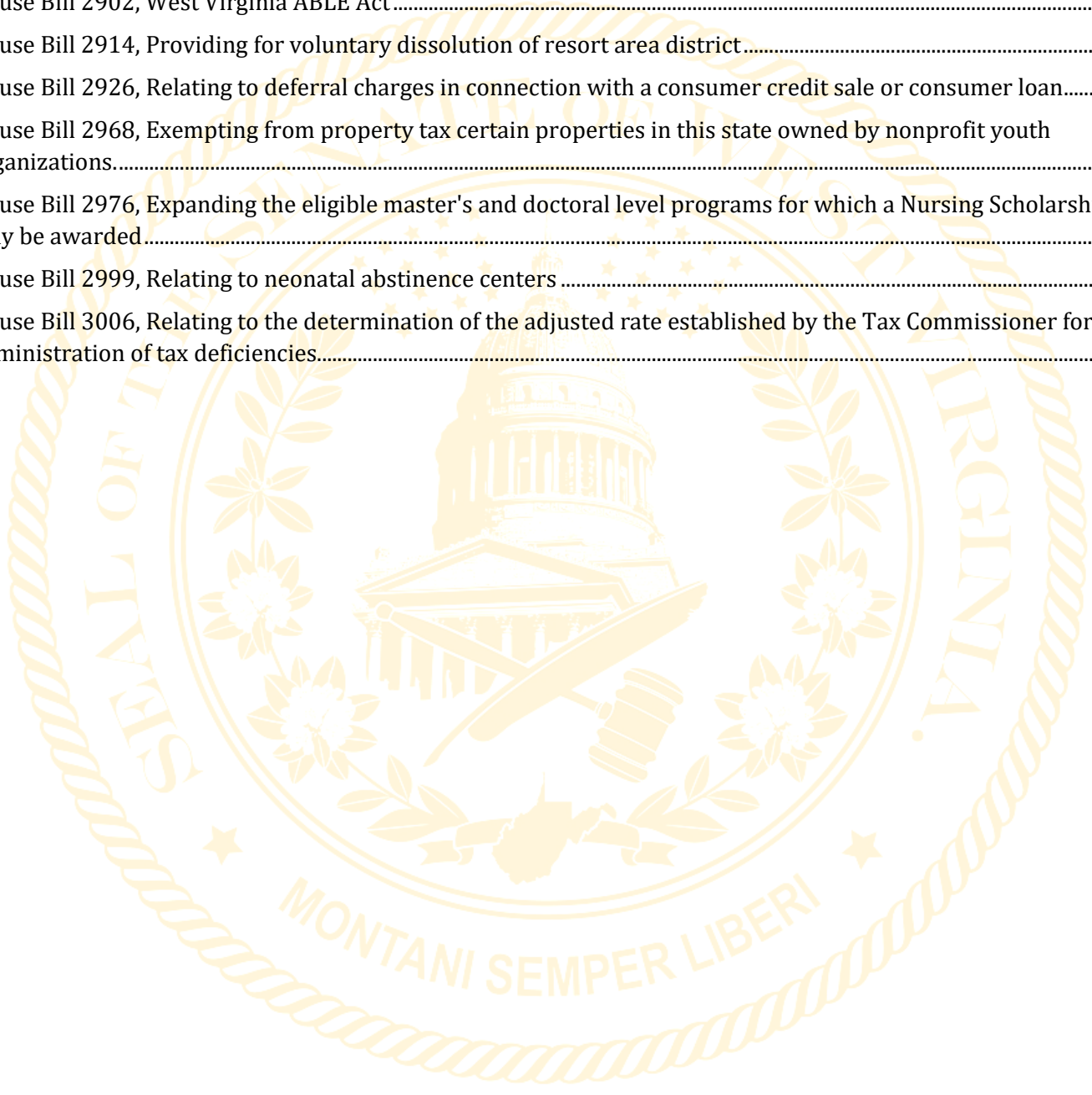
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Notes About This Publication

Produced by Jacque Bland, Communications Director – West Virginia Senate. Information was compiled and edited from available resources including Bill Summaries, bill abstracts, Conference Committee reports and bill titles. Details pertaining to a specific bill may have updated since the bill’s original passage. Electronic versions of this book and other publications are available for download at <https://www.wvlegislature.gov/Senate1/president.cfm>. For corrections, questions or additional information, please email jacque.bland@wvsenate.gov or call 304-357-7999.

2023 Regular Session



Senate Bill 47

Creating Charter Schools Stimulus Fund

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

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

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

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

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

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

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

DATE OF PASSAGE: March 10, 2023

EFFECTIVE DATE: June 8, 2023

ACTION BY GOVERNOR: Signed March 29, 2023

Senate Bill 89

Requiring hospitals to staff qualified personnel to perform sexual assault forensic exams

This bill requires hospitals in the State of West Virginia with an emergency department, excluding state facilities, to have an on-call or available healthcare provider that is a trained sexual assault forensic examination expert. It provides that the expert may utilize telehealth as a means of examination.

CODE REFERENCE: West Virginia Code §15-9B-1a and §15-9B-4 – amended

DATE OF PASSAGE: February 21, 2023

EFFECTIVE DATE: May 22, 2023

ACTION BY GOVERNOR: Signed March 1, 2023

Senate Bill 128

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

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

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

DATE OF PASSAGE: February 23, 2023

EFFECTIVE DATE: February 23, 2023

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

Senate Bill 142

Modifying procedures to settle estates of decedents

This bill amends the current law which requires the publication of a short form settlement of an estate before this estate may be closed. Accordingly, when a short form is filed, it means all administrative matters are concluded, all claims and taxes have been paid, and all heirs agree to the proposed settlement of the estate.

The current law provides for two probate systems. In counties that use a fiduciary commissioner probate system, a “short form settlement” may be filed with the county probate office by the personnel representative of an estate when all claims and taxes have been paid. When approved by a County Commission the estate may be closed. However, in counties that use a fiduciary supervisor probate system, when a short form settlement is filed, the estate cannot be closed until publication and expiration of a 30-day notice period as required by §44-3A-4a(e).

In order to make the two probate systems similar, the bill amends §44-3A-4a(e) to eliminate the publication requirement for short form settlements in fiduciary supervisor probate systems. This new process allows the fiduciary supervisor to record the short form, mail copies to each beneficiary, and hold the short form for 10 days to give any beneficiary the opportunity to object or request a referral to a Fiduciary Commissioner. If no objection or referral request is made, the county commission can confirm the settlement and close the estate. If an objection or referral request is made, the commission may either confirm the settlement or refer the estate to a fiduciary commissioner.

The final substantive amendment amends §44-4-9 to eliminate the publication requirement for short form settlement of estates. This same section is amended to allow for a Class I as opposed to a Class II legal advertising in regards to publishing requirements for fiduciary commissioners.

CODE REFERENCE: West Virginia Code §44-2-1, §44-2-29, §44-3A-4a, and §44-3A-19 – amended

DATE OF PASSAGE: March 7, 2023

EFFECTIVE DATE: June 5, 2023

ACTION BY GOVERNOR: Signed March 23, 2023

Senate Bill 146

Modifying regulations of peer-to-peer car sharing program

The bill amends several sections in the law governing the Peer-to-Peer (PTP) Car Sharing Program, which is a program or business platform which connects vehicle owners to individuals who want to rent the vehicles. The amendments section-by-section are as follows:

§17A-6F-1. Scope.: Current law regulates transactions involving PTP car services, required insurance coverage for vehicles in the PTP program, state and local taxation of PTP transactions, and the authority of airport and airport authorities to regulate PTP car services provided to airport customers. The bill amends this section by removing the ability of airports and airport authorities to regulate PTP car services provided to airport customers.

§17A-6F-2. Definitions.: The bill amends two definitions, “Car sharing program agreement” and “Car sharing termination time.”

Current law defines a “Car sharing program agreement” as the terms and conditions that govern the use of a vehicle in the PTP car sharing program. The bill clarifies that the definition does not apply to “master rental agreements or rental agreements” used by businesses that engage in daily passenger car rentals.

Regarding “car sharing termination time”, current law provides for three ways in which a car sharing agreement terminates. It is the earliest of (1) when the vehicle is returned to the location agreed to in the PTP car sharing agreement, (2) when the vehicle is returned to an alternative location agreed to by the car owner and the person renting the car, or (3) when the vehicle owner or designee takes possession and control of the vehicle. The amendment clarifies that the alternative location must be included in the car sharing agreement.

§17A-6F-3. Insurance coverage during car sharing period.: The bill amends several subsections in section 3.

In subsection (a), current law provides that the minimum amount of insurance coverage during a car sharing period must be at least \$750,000 to cover bodily injury and property damage to third parties, uninsured and underinsured motorists, and personal injury protection losses.

The bill reduces the minimum coverage amount from \$750,000 to \$25,000 for bodily injury or death for one person per accident, or \$50,000 for two or more persons per accident, and \$25,000 for damage to property of others per accident. This also applies to uninsured and underinsured vehicles. The amendment also removes the requirement for insurance coverage for personal injury protection losses.

In subsection (d), current law references the minimum amounts of insurance coverage and requires the PTP program to make sure that the policy provides coverage for a vehicle during each car sharing period and covers the vehicle owner and the person renting the vehicle and that the policy acknowledge that the vehicle is made available through the PTP program or that it does not exclude use of the vehicle by the driver renting the vehicle.

The bill amends subsection (d) to reference the new minimum amounts of insurance coverage required by subsection (a) and clarifies that the acknowledgment that the vehicle is made available through the PTP program or that it does not exclude the driver is an “either or” requirement.

Next, current subsection (f) provides that the insurance required by subsection (d) is the primary insurance during each car sharing period. The bill clarifies that the primary insurance requirement may

be satisfied by an insurance policy maintained by either (1) the vehicle owner, (2) the driver renting the vehicle, (3) a PTP car sharing program, or (4) a combination of the three as provided in subsection (e).

The amendment also seems to clarify that if a claim occurs during a car sharing period in another state that has minimum financial limits higher than those required by West Virginia, then the minimum insurance coverage required to be maintained in this state would have to increase to the other state's higher minimum limits.

In subsection (g), current law requires the PTP program to assume primary liability for a claim when it provides a part of or all the insurance required by this section and when a dispute exists regarding who was in control of the vehicle at the time of a loss and when the PTP program does not retain or fails to provide information relating to vehicle use to insurers and parties as required by section six.

The amendment here provides that the insurer(s) or the PTP program providing the coverage required by this section assumes primary liability for a claim when a dispute exists regarding control and failure by the PTP program to retain or provide the required vehicle information, or when a dispute exists regarding whether the shared vehicle was returned to the alternatively agreed to location.

The amendment to subsection (h) allows the insurer or the PTP program providing coverage under subsection (g) to seek indemnity from the vehicle owner if the vehicle owner did in fact operate the vehicle at the time of the loss.

Finally, the amendment to this section deletes current law, subsection (k), which requires the PTP program to provide primary coverage for a loss if a dispute arises regarding whether termination of car sharing time has occurred or expired.

§17A-6F-5. Exclusions for personal vehicle liability insurance policy.: In Section 5 current law provides that an insurance policy issued for a vehicle in the PTP car sharing program may exclude coverage for bodily injury and property damage, uninsured and underinsured motorist coverage, medical payments, comprehensive physical damage, collision physical damage, and personal injury protection.

The bill amends this section by removing personal injury protection from the list of coverages which may be excluded to match the amendment to section three which no longer requires insurance coverage for personal injury protection.

§17A-6F-7. Exemption; vicarious liability.: The amendment to this section is stylistic in nature. The section provides that the PTP car sharing program (the platform) and the shared vehicle owner are exempt from vicarious liability "in accordance with" federal law (49 U.S.C. §30106) and state or local law that imposes liability based upon vehicle ownership. The amendment deletes the term "in accordance with" and replaces it with "consistent with".

§17A-6F-13. Registration, notification, and automobile safety recalls.: The bill amends this section by eliminating the requirement that the PTP program must notify the owner of a vehicle in the program that the owner's personal insurance may exclude peer-to-peer car sharing activity.

CODE REFERENCE: West Virginia Code §17A-6F-1, §17A-6F-2, §17A-6F-3, §17A-6F-5, §17A-6F-7, §17A-6F-13 – amended

DATE OF PASSAGE: March 10, 2023

EFFECTIVE DATE: June 8, 2023

ACTION BY GOVERNOR: Signed March 28, 2023

Senate Bill 149

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

The bill exempts the following property from ad valorem taxation:

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

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

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

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

DATE OF PASSAGE: March 10, 2023

EFFECTIVE DATE: June 8, 2023

ACTION BY GOVERNOR: Signed March 28, 2023

Senate Bill 151

Levying tax on pass-through entity's income

Pass-through entities are such that the income “passes through” for tax purposes to the owners in relative shares of their ownership, so that the income is taxed on the individuals’ personal income taxes. This bill would allow entities to make an irrevocable (for the taxable year) election that all income be taxed at the entity level. A nonrefundable credit would be allowed to the individual owners for the tax on the income taxed at the entity level to avoid double taxation on those individuals’ personal income taxes. A similar credit is also available to individual owners based upon their proportion of tax paid to another state at the entity level.

This bill is largely in response to the recent cap on the deductibility of SALT taxes on income taxes at the federal level. Previously, there was no cap but now one is imposed at \$10,000 for individuals. However, if the taxes are paid at the entity level and the individual credited, the cap is avoided.

The House amended the Committee Substitute to clarify the Commissioner’s rulemaking authority.

CODE REFERENCE: West Virginia Code §11-21-3 and §11-21-20 – amended; §11-21-3a – new

DATE OF PASSAGE: March 10, 2023

EFFECTIVE DATE: June 8, 2023

ACTION BY GOVERNOR: Signed March 28, 2023

Senate Bill 161

Authorizing DNR to manage and dispose of property

This bill repealed language relating to the Public Land Corporation and to authorize DNR to directly dispose of property under the jurisdiction of the agency. The bill deleted requirements for DNR reporting property that is no longer needed to the Public Land Corporation for disposal. The bill authorized DNR to dispose of property of the Division with approval in writing by the Secretary of Commerce. The bill provided that the Director of DNR may convey property for money, security, or other property deemed suitable for DNR purposes.

CODE REFERENCE: West Virginia Code §20-1-10 – amended

DATE OF PASSAGE: January 20, 2023

EFFECTIVE DATE: January 20, 2023

ACTION BY GOVERNOR: Signed January 24, 2023

Senate Bill 162

Authorizing director of DNR to lease state-owned pore spaces in certain areas for carbon sequestration

This bill authorized the DNR Director to lease and develop pore spaces underlying state forests, natural and scenic areas, wildlife management areas, and other lands under DNR control for carbon sequestration. The bill requires written approval of the Secretary of Commerce to lease and develop pore spaces, and it applies to pore spaces underlying state forest, natural and scenic areas, wildlife management areas, and other lands under DNR control except lands underlying state parks. The bill requires a Class I legal advertisement in the affected county or counties and posting on the DNR main website for 14 days. The bill requires a bidding process with awards to the highest responsible bidder except in instances where the Secretary of Commerce and the Secretary of Economic Development certify that a lease is a necessary component of an economic development project, where the lease shall afford a market value or greater royalty.

CODE REFERENCE: West Virginia Code §20-1-22 – new

DATE OF PASSAGE: January 20, 2023

EFFECTIVE DATE: January 20, 2023

ACTION BY GOVERNOR: Signed January 24, 2023

Senate Bill 187

Making it felony offense for school employee or volunteer to engage in sexual contact with students

The bill makes it a felony offense for any public or private school employee to engage in sexual intercourse, sexual intrusion, or sexual contact with any student enrolled in the school where the employee is employed regardless of the student's age. It further provides that consent for the act, occurrence off school property, or occurrence at a time other than during a school function is not a defense.

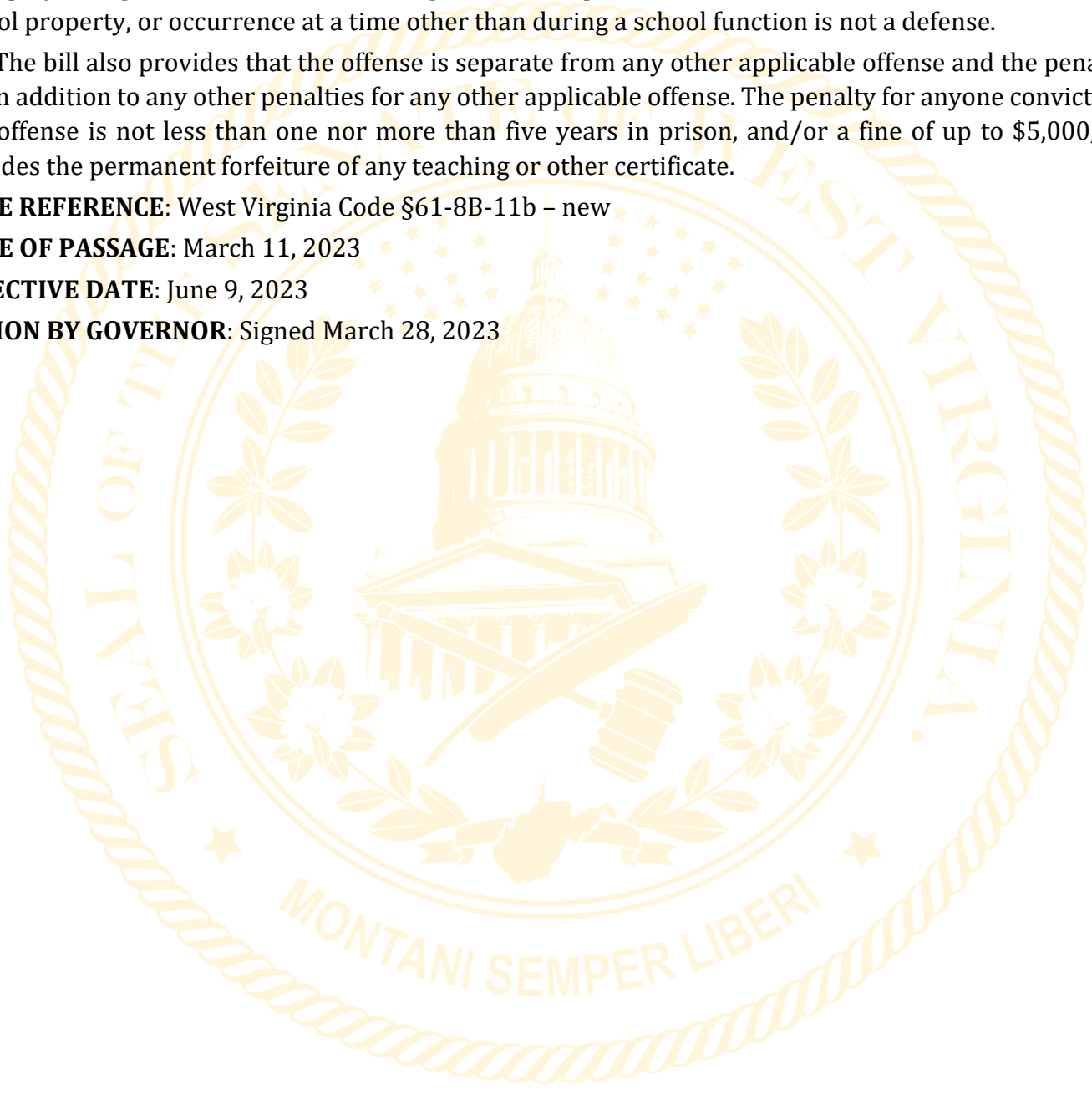
The bill also provides that the offense is separate from any other applicable offense and the penalties are in addition to any other penalties for any other applicable offense. The penalty for anyone convicted of this offense is not less than one nor more than five years in prison, and/or a fine of up to \$5,000, and includes the permanent forfeiture of any teaching or other certificate.

CODE REFERENCE: West Virginia Code §61-8B-11b – new

DATE OF PASSAGE: March 11, 2023

EFFECTIVE DATE: June 9, 2023

ACTION BY GOVERNOR: Signed March 28, 2023



Senate Bill 188

Grid Stabilization and Security Act of 2023

This bill creates the “Grid Stabilization and Security Act” (§5B-2N-1 through §5B-2N-4) and directs the Department of Economic Development (DED) to identify economically viable sites for the development of natural gas electric generation projects that are located near convenient and sufficient supplies of natural gas and are likely to create projects that provide economic benefits to local and state government and citizens of the state.

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

Criteria for identifying viable sites include locating sites:

- Near producing natural gas wells or pipelines that can provide a sufficient supply of gas for one or more natural gas electric general facilities for the economic life of the facilities;
- Near existing electric transmission infrastructure capable of transmitting generated electricity to wholesale markets;
- That satisfy air quality conditions imposed by the Department of Environmental Protection (DEP);
- And, that can demonstrate that emissions from the electric generation facilities will not cause or contribute to a violation of national or state ambient air quality standards or any allowable increase over baseline concentrations in any area.

After identifying a site, the Act directs the DED to notify the DEP and the Public Service Commission (PSC) that it has designated the site as a good location for the construction of an electric generation facility. Thereafter, if an application for a Siting Certificate for a facility is filed with the PSC, the Act directs the PSC to issue a final order within 270 days of the application. The bill also creates a new section (§22-5-11b) in the Air Pollution Control statute for permits for the construction and operation of natural gas electric generation facilities. It also directs the DEP secretary to expedite consideration of permit applications which would include a determination of whether the site is in compliance with applicable ambient air quality standards and an evaluation of whether there is sufficient data to model impacts from emissions and if the data are insufficient, to require DED to initiate measures to collect additional data at the site.

The section also directs the DEP to act on a permit application within 270 days for facilities classified as a major stationary source and within 90 days for those classified as a minor stationary source. The secretary is also required to determine whether an application is complete within 30 days of submission and to notify the permit applicant of the determination. Finally, administrative appeals of permitting decisions must be held within 60 days of the filing of an appeal, unless all parties to the appeal agree to a continuance, and a decision must be issued within 60 days of a final hearing. (§22B-1-7(f))

CODE REFERENCE: West Virginia Code §5B-2N-1 through §5B-2N-4 and §22-5-11b – new; §22B-1-7 – amended

DATE OF PASSAGE: March 6, 2023

EFFECTIVE DATE: June 4, 2023

ACTION BY GOVERNOR: Signed March 28, 2023

Senate Bill 191

Relating to liability for payment of court costs as condition of pretrial diversion agreement

This bill provides that persons whose cases are being dealt with through both “pretrial diversions” and “deferred adjudications” are liable for any applicable court costs. The payment shall be a condition of the deferred adjudication agreement once they are placed into community corrections.

The bill also adds that a court order or agreement may add restitution as a condition of a pretrial diversion or deferred adjudication. There is a proviso that financial inability to pay these costs may not be a basis for denying a person the ability to participate in a deferred adjudication.

CODE REFERENCE: West Virginia Code §62-11C-9 – amended

DATE OF PASSAGE: March 11, 2023

EFFECTIVE DATE: June 9, 2023

ACTION BY GOVERNOR: Signed March 28, 2023

Senate Bill 220

Industrial Hemp Development Act

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

This bill does the following:

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

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

DATE OF PASSAGE: March 11, 2023

EFFECTIVE DATE: June 9, 2023

ACTION BY GOVERNOR: Signed March 23, 2023

Senate Bill 237

Relating to Public Employees Retirement System and State Teachers Retirement System

The legislation creates four new code sections affecting certain retirants in both the Public Employee Retirement System (PERS) and the Teachers Retirement System (TRS).

The first two new sections in the respective chapters of each system allow for the issuance of a one-time bonus payment to all qualifying retirants of both systems, to be paid on or before December 31, 2023. To qualify for this “13th check,” the retirant must, by July 1, 2023:

- Be 70 years old;
- Have at least 20 years of service; and
- Currently receive a monthly annuity of less than \$1,000.

The one-time bonus payment is also payable pro rata to any beneficiary of a qualifying retirant who receives any annuity or other benefit payable by the retirant’s respective system.

The second two new sections in the respective chapters of each system raises the minimum benefit for qualifying retirants of both systems and would first occur on the bill’s effective date. To qualify for this “bump up” in annuity, the retirant must, by July 1, 2023:

- Be 70 years old;
- Have at least 25 years of service; and
- Currently receive a monthly annuity of less than \$1,000.

From the effective date of this legislation, qualifying retirants would receive a monthly benefit of \$1,000.

Specifically exempted from this raise in annuity is any year of service a retirant may have earned under PERS while an elected public official or a temporary legislative employee, or under TRS while an employee of an institution of higher education.

If the retirant with 25 or more years of service chose option B – 50% joint and survivor annuity and the beneficiary is at least 70 years old as of July 1, 2023 and currently receives less than \$500 monthly, the monthly retirement benefit will increase to \$500.

The raise in payment is explicitly stated to be in lieu of, and not in addition to, any other benefits provided by the retirant/beneficiary’s respective system.

The bill also states that any minimum benefit increase is not retroactive to the time of retirement and applies only to members who have retired/are beneficiaries of members who have retired prior to the bill’s effective date.

CODE REFERENCE: West Virginia Code §5-10-22m, §5-10-22n, §18-7A-26x, and §18-7A-26y – new

DATE OF PASSAGE: March 6, 2023

EFFECTIVE DATE: July 1, 2023

ACTION BY GOVERNOR: Signed March 13, 2023

Senate Bill 239

Requiring Commissioner of Bureau for Behavioral Health to engage certain providers and leaders to study homeless demographic

The bill requires the Commissioner of the Bureau for Behavioral Health to engage stakeholder to study a breakdown of homeless demographic information throughout the state. The stakeholders listed are behavioral health and substance use disorder providers and municipal leaders and county government leaders. The bill sets forth the data to be included in the study and includes but is not limited to the following: presenting a breakdown of the homeless demographic throughout WV; quantifying and inventorying the homeless resources by region; conducting an epidemiological analysis of the homeless population; and identifying key metrics across the state. The report shall be completed July 1, 2024.

CODE REFERENCE: West Virginia Code §9-5-31 – new

DATE OF PASSAGE: February 15, 2023

EFFECTIVE DATE: May 16, 2023

ACTION BY GOVERNOR: Signed February 24, 2023

Senate Bill 240

Requiring state board of examination or registration proceedings to be open to public inspection

Senate Bill 240 concerns chapter 30 boards. It modifies the requirements for making the register of applicants available to the public, requiring a written request for the register and giving the board to which the request is made discretion to deny the request.

The bill mandates that boards maintain a website and specifies certain information that is to be provided, including the names of board members and staff, contact information for staff, copies of minutes of board meetings, and notice of upcoming meetings. This information echoes the requirements for county commission and municipality websites in code now. See, e.g., §7-1-3rr.

Senate Bill 240 adds a new section to code generally prohibiting disclosure of sensitive PII. Current code in chapter 30 does not define PII nor does it prohibit its disclosure.

The bill also requires that the roster of practitioners be placed on the board website.

CODE REFERENCE: West Virginia Code §30-1-12, §30-1-13 – amended; §30-1-12a – new

DATE OF PASSAGE: March 11, 2023

EFFECTIVE DATE: June 9, 2023

ACTION BY GOVERNOR: Signed March 29, 2023

Senate Bill 241

Patient Brokering Act

This bill provides the Office of Health Facility Licensure and Certification (OHFLAC) shall have enforcement authority over the act. The Patient Brokering Act prohibits a person, including a health care provider or health care facility from offering, paying, soliciting, or receiving any incentive to encourage the referral, acceptance, or acknowledgement of treatment of a patient to or from a health care provider or health care facility. It requires OHFLAC to develop a tool that facilitates public complaints about all activity relating to the Patient Brokering Act.

CODE REFERENCE: West Virginia Code §16-62-2 – amended

DATE OF PASSAGE: February 9, 2023

EFFECTIVE DATE: February 9, 2023

ACTION BY GOVERNOR: Signed February 17, 2023

Senate Bill 244

Making rosters of individuals who obtain professional, occupational, and trade licenses, registrations, and certificates available to public

Senate Bill 244 would require any state entity that licenses, certifies, or otherwise authorizes an individual to practice a profession, trade, or occupation to make a roster of those authorized individuals available to the public and electronically if the entity has a website.

CODE REFERENCE: West Virginia Code §5-30-1 and §5-30-2 – new

DATE OF PASSAGE: March 9, 2023

EFFECTIVE DATE: June 7, 2023

ACTION BY GOVERNOR: Signed March 23, 2023

Senate Bill 247

Making administrative appeals and judicial review of board action subject to provisions of Administrative Procedures Act

Chapter 30 of the West Virginia Code establishes boards which govern the licensing and regulation of various professions and occupations (e.g., dentistry, accounting, and engineering). Among other things, a Chapter 30 board is statutorily authorized to suspend or revoke the licenses of members to practice in the field regulated by that board. The bill makes appeals of final board action (i.e., denial, suspension, or revocation of a license or registration, or disciplinary action) subject to the appellate provisions of the Administrative Procedures Act set forth in W. Va. Code §29A-5-1 et seq. As a result, appeals of final board decisions will be filed with the Intermediate Court of Appeals instead of a Circuit Court.

CODE REFERENCE: West Virginia Code §30-1-9 – amended

DATE OF PASSAGE: March 10, 2023

EFFECTIVE DATE: June 8, 2023

ACTION BY GOVERNOR: Signed March 23, 2023

Senate Bill 258

Eliminating ceiling on fair market value of consumer goods and permitting dealer to require security deposit

This bill amends two sections in Chapter 46B, which regulates rent-to-own transactions. The bill makes two straightforward changes. First, it removes the existing “fair market value” ceiling on rent-to-own transactions. Prior to enactment, it was unlawful to enter into a rent-to-own transaction for an item with a fair market value of greater than \$10,000; that cap has been removed. Second, the bill permits sellers offering a rent-to-own option to require the buyer to pay a security deposit. Under existing law, security deposits were not permitted.

CODE REFERENCE: West Virginia Code §46B-2-1 and §46B-3-8 – amended

DATE OF PASSAGE: March 10, 2023

EFFECTIVE DATE: June 8, 2023

ACTION BY GOVERNOR: Signed March 29, 2023

Senate Bill 267

Updating law regarding prior authorizations

The bill requires all prior authorization forms to be submitted via an electronic portal. This applies to the Public Employees Insurance Agency and the Bureau for Medical Services (Medicaid).

The bill provides that the portal shall provide electronic notification to the health care provider and the insured and deletes a requirement that the portal contain a list of items which are bundles together as part of the episode of care. The bill contains a requirement of conspicuous language for step therapy protocols. The committee substitute adds a requirement that the portal web address be included on the insured's insurance card. The bill deletes a requirement that PEIA, Medicaid, and the insurance companies accept prior authorizations electronically by 2020. Since this date is in the past, this language is deleted. An effective date of January 1, 2024, is inserted.

The bill inserts a requirement that PEIA, Medicaid and the insurance companies communicate electronically via the portal regarding the current status of the prior authorization request to the health care provider and the insured. Timeframes for responding to prior authorization requests has been reduced from 7 days to 5 days. The timeframe for emergency claims is moved from 2 days to 2 business days. The introduced bill places a time frame of within 2 business days after receipt for PEIA, Medicaid and the health insurers to render a decision when additional information has been submitted on a claim. The bill submits additional timeframe of within 5 business days for PEIA, Medicaid and the health insurers to transfer a claim to peer review. The bill strikes language stating that the timeframes in the section do not apply to prior authorization requests submitted through telephone, mail, and fax since all claims are required to be submitted via an electronic portal. The bill inserts a requirement that the peer-to-peer appeal of 5 days from the date of the request for the peer-to-peer. Time frames regarding the appeal of a decision on a prior authorization shall take no longer than 10 business days from the date of the adverse decision.

With respect to gold carding, the threshold is moved from 100 procedures to 90 procedures in a six-month timeframe. If the health care practitioner attains this threshold, then for at least 6 months or longer if allowed, the Public Employees Insurance Agency, BMS, and the insurers shall not require the health care practitioner to submit a prior authorization.

There is a provision in the health insurance sections of code requiring the Insurance Commissioner to oversee the article and to collect data quarterly or more often as needed to oversee compliance. The bill directs the variables that shall be collected. The bill states that the Insurance Commissioner shall assess a civil penalty. With respect to DHHR, the Inspector General has enforcement powers and shall collect data quarterly to verify compliance.

The completion date of the portal is July 1, 2024.

CODE REFERENCE: West Virginia Code §5-16-7f, §33-15-4s, §33-16-3dd, §33-24-7s, §33-25-8p, and §33-25A-8s – amended; §9-5-31 – new

DATE OF PASSAGE: March 8, 2023

EFFECTIVE DATE: June 6, 2023

ACTION BY GOVERNOR: Signed March 23, 2023

Senate Bill 268

Relating to PEIA

The bill would revise provisions of the West Virginia Public Employees Insurance (PEIA) Act. It makes technical corrections and improvements, such as moving definitions in to the definition section of Chapter 5, Article 16 known as the West Virginia Public Employees Insurance Act. The bill also deletes obsolete language and redundant reporting requirements.

The bill adds language requiring that all members of the PEIA Finance Board “shall have a fiduciary responsibility to protect plan assets for the benefit of plan participants” and “shall complete fiduciary training and timely complete any conflict-of-interest forms required to serve as a fiduciary.” Additionally, requirements are removed that the Finance Board’s actuary’s opinion on the financial plan for each fiscal year “shall allow for no more than thirty days of accounts payable to be carried over into the next fiscal year” and shall not include a requirement for establishment of a reserve fund.”

The bill also updates language relating to levels of reimbursements that PEIA makes to health care providers. As amended, each PEIA Board’s financial plan must establish a new provision:

“The minimum level of reimbursement at 110 percent of the Medicare amount for all providers: Provided, That the plan shall reimburse a West Virginia hospital that provides inpatient medical care to a beneficiary, covered by the state and non-state plans, at a minimum rate of 110 percent of the Medicare diagnosis-related group rate for the admission, or the Medicare per diem, per day rate applicable to a critical access hospital, as appropriate: Provided, however, That the rates established pursuant to this subdivision do not apply to any Medicare primary retiree health plan.”

The minimum number of public hearings required by the Finance Board to provide throughout the state on each year’s actuary opinion on the financial plan for the next plan year is increased from 3 to 4.

The bill provides that when the Governor provides the annual estimate of revenues available for each year of the plans to the Finance Board, the Director of PEIA and the Finance Board “may only use revenue estimates from the Governor as necessary to maintain an actuarially recommended reserve fund and to maintain premium cost-sharing percentages as required in this article” and “may not incorporate revenue sources into the finance board plan beyond the premium cost-sharing percentages as required in this article. The director shall provide the number of covered lives for the current fiscal year and a five-year analysis of the costs for covering paid claims to the finance board no later than October 15 for the preceding year.”

The is inserted a requirement that the Finance Board’s annual actuary opinion on each year’s financial plan must “include, but not be limited to, the aggregate premium cost-sharing percentages between employers and employees, including the amounts of any subsidization of retired employee benefits, at a level of 80 percent for the employer and 20 percent for employees.” This 80/20 ratio is required for FY 2024 elsewhere in the bill, so outdated language requiring PEIA to make “incremental adjustments” to get to that 80/20 ratio would be deleted.

Finally, there is new language that “[i]n the event the revenues in a given year exceed the expenses, the amount of revenues in excess of the expenses shall be retained by the Public Employees Insurance Agency to offset future premium increases.”

Section §5-16-5b is repealed, effectively terminating the “Post-July 1, 2010, Employee Trust Fund” which was created in 2012 “for the purposes set forth by the Legislature in furtherance of an incentive

contingent on future legislative directives for retirees who were hired on or after July 1, 2010, to be received upon their retirement.”

Limitations on benefits for certain services provided for autism spectrum disorder in those 18 months to 18 years and certain reporting requirements about those services have been removed.

Coverage requirements relating prescription insulin drugs was updated to limit cost sharing for insulin drugs to \$35.00 for a thirty-day supply and for covered devices not to exceed \$100.

The language relating to PEIA plan provisions of wellness programs has been modified to include health programs and allowing PEIA to explore, review, evaluate, and offer a variety of programs to meet the needs of plan members.

The powers and duties of the PEIA director have been modified to clarify that he or she has exclusive authority to execute any contract necessary to carry out the provisions of the Act. The requirement that quarterly reports be made to the Joint Committee on Government and Finance about pharmacy claims would be removed but the Joint Committee on Health would continue to receive those reports. PEIA is also required to use networks to provide care to its members out of state.

Significant changes relating to coverage of non-employee spouses of employees were made to provide that:

“If an employee’s spouse has health insurance available through an employer not defined in §5-16-2 of this code, then the employer may not cover any portion of premiums for the employee’s spouse coverage, unless the employee adds his or her spouse to his or her coverage by paying the cost of the actuarial value of the plan: Provided, That this does not apply to spouses of retired employees or voluntary employers as defined in §5-16-22 of this code.”

A new provision requires that PEIA “shall return to a level of 80 percent for the employer and 20 percent for employees during fiscal year 2024.” Additionally, PEIA is required to conduct an independent actuarial study of the financial solvency of the plan.

Finally, new language would provide that “[t]he amendments made to this article during the 2023 Regular Session of the Legislature shall be incorporated into the plan beginning with plan year 2024.”

CODE REFERENCE: West Virginia Code §5-16-5b, and §5-16-28. – repealed; §5-16-2, §5-16-3, §5-16-4, §5-16-5, §5-16-7, §5-16-7b, §5-16-7c, §5-16-7g, §5-16-8, §5-16-9, §5-16-10, §5-16-11, §5-16-13, §5-16-14, §5-16-15, §5-16-16-16, §5-16-18, §5-16-23, §5-16-25, and §5-16-26 – amended; §5-16-30, §5-16-31, and §5-16-32 – new

DATE OF PASSAGE: March 6, 2023

EFFECTIVE DATE: March 6, 2023

ACTION BY GOVERNOR: Signed March 17, 2023

Senate Bill 273

Relating to allocation of child protective workers in counties based upon population of county

The bill continues the Bureau of Social Services and charges it with providing care, support, and protective services to children including infant children of unmarried mother's committed to the custody of the current Department of Health and Human Recourses.

The crux of the bill is to reallocate existing child protective service workers throughout the state. This reallocation would be based upon the population of counties as listed in the United States Census, number of referrals, and size of the caseload. The relocation is required to be reported to the Legislative Oversight Commission on Health and Human Resources Accountability.

The bill also requires the Department to have a redundant system in the event of an outage for centralized intake to receive reports. The bill provides the system shall be transparent meaning that it shall allow for reporting in the same means as if the outage had not occurred and no time delay shall occur. The bill provides an operational date. It also requires that if the Department contends they currently have such a system they must demonstrate such to the Joint Committee on Government and Finance by July 1, 2023.

The bill exempts from the Division of Personnel child protective services, youth service workers, adult protective services workers, necessary casework support personnel, and managers at the county level. It requires the Commissioner of the Bureau of Social Services to create a merit-based system that would include compensation, retention incentives, and hiring procedures. It requires the new pay scale to be operational by January 1, 2024. New employees will be subject to the newly created system and existing employees may elect to enter. There is a provision that there is no requirement for uniform pay across the same pay grade to account for market rates and demand. Additionally, there is language that the difference in pay is not grievable. The Commissioner is granted rulemaking authority to effectuate this change.

The final provision of the bill is to modify the existing child welfare dashboard to report on system-level performance indicators, intake hotline performance indicators, field investigation performance, open case performance indicators, out-of-home placement performance indicators, and federally mandated performance indicators.

CODE REFERENCE: West Virginia Code §49-2-101 and §49-2-102 – amended; §49-10-101 through §49-10-103, §49-11-101, and §49-2-102 – new

DATE OF PASSAGE: March 11, 2023

EFFECTIVE DATE: March 11, 2023

ACTION BY GOVERNOR: Signed March 29, 2023

Senate Bill 335

Authorizing Department of Homeland Security to promulgate legislative rules

This bill contains 11 rules from the Department of Homeland Security and is known as Bundle 6.

Governor's Committee on Crime, Delinquency, and Corrections, Protocol for Law Enforcement Response to Domestic Violence, 149 CSR 03

The rule amends a current legislative rule by extending the existing Sunset Provision by five years changing the termination date from June 30, 2023, to August 1, 2028.

Emergency Management, National Flood Insurance Program, 170 CSR 07

The rule is new. It reflects passage of Engrossed Committee Substitute for House Bill 4295 in the 2022 Regular Session, which transferred the National Flood Insurance Program (NFIP) from the Office of the Insurance Commissioner to the Emergency Management Division within the Department of Homeland Security.

The rule establishes that the NFIP will be supervised by the Emergency Management Division and requires the Emergency Management Division to develop templates to be used to help communities comply with NFIP. The rule also requires state floodplain managers, Emergency Management, and NFIP to develop a strategic plan for development of shared goals and their implementation.

Finally, the rule provides that administration of the NFIP is the responsibility of the Division of Emergency Management.

Fire Commission, Hazardous Substance Emergency Response Training Programs, 87 CSR 03

The rule amends a current legislative rule to amend the sunset date from July 1, 2023, to August 1, 2028.

Fire Commission, Certification of Home Inspectors, 87 CSR 05

The rule repeals a current legislative rule. Certification of home inspectors is now under the purview of the State Fire Marshal so the provisions of the rule are being moved to 103 CSR 07.

Fire Commission, Volunteer Firefighters' Training, Equipment, and Operating Standards, 87 CSR 08

The rule amends a current legislative rule. The rule 1) adds a sunset provision; 2) updates authority of the rule; 3) includes the definition for "probationary firefighter"; 4) updates references to the West Virginia Division of Emergency management from the Department of Homeland Security; 5) includes the minimum training levels for probationary firefighters; 6) allows the Fire Commission to use the modular training program as an alternative to the Emergency Vehicle Operations Course to meet the training requirement for operators of fire vehicles; 7) updates the approved curriculum and authorizes the Commission to create a policy to specify further exclusions; 8) clarifies equivalencies; and 9) deletes Appendices 87-8 A - F.

Subdivision 4.1.9 allows the State Fire Commission to create a policy to specify further exclusions from the specified curriculum. This subdivision needs to be deleted as any further exclusions need to be made by amendment to the legislative rule.

Fire Marshal, Certification of Electrical Inspectors, 103 CSR 01

The rule amends a current legislative rule. It addresses the certification of electrical inspectors by: 1) adding a sunset provision; 2) including the definition for "Journeyman electrician" and adding reference to "Journeyman electrician" throughout the rule; 3) setting forth the requirements for reciprocity, including

a state law examination, if required by the Board; 4) setting forth the process for the denial, limitation, suspension, or revocation of electrical inspectors licenses and requiring State Fire Marshal to promulgate a procedural rule; and 5) clarifying the disposition of complaints by removing the Fire Commission from the process.

Fire Marshal, Supervision of Fire Protection Work, 103 CSR 03

The rule amends a current legislative rule. It 1) adds a sunset provision; 2) updates the definition for “Journeyman sprinkler fitter”; 3) removes the definition of “Sprinkler Fitter in Training”; 4) removes obsolete language relating to the minimum qualifications to obtain licensure and removes other requirements; 5) provides for reciprocity and requires a state law exam if required by the Board; 6) authorizes the State Fire Marshal to deny an application for initial licensure in certain instances where the applicant has a criminal conviction; 7) specifies the reasons for which the State Fire Marshal may deny, limit, suspend, or revoke a license; 8) sets forth penalties for a person performing or offering to perform fire protection work without a license; and 9) makes changes to the appeals and hearing processes.

Fire Marshal, Electrician Licensing, 103 CSR 05

The rule amends a current legislative rule. It 1) extends the sunset provision; 2) removes the Apprentice Electrician license and defines the term “Electrician’s Assistant/Helper” who replace Apprentice Electricians; 3) reduces the required work experience for Master and Journeyman electricians; 4) allows an applicant for licensure under the age of 18 who is enrolled in an approved electrical vocation program to take the exam and receive the license upon turning 18; 5) authorizes the State Fire Marshal to develop exams or contract with a private testing agent; 6) provides for reciprocity; 7) raises the penalty fee for renewing an expired license from \$15 to \$50; 8) rewrites the section on the State Fire Marshal’s ability to deny an application for licensure or limit, suspend, or revoke any license based on specific authority given in statute; and 9) makes changes to the appeals and hearing processes.

Fire Marshal, Certification of Home Inspectors, 103 CSR 07

The rule is new. Pursuant to Enrolled Committee Substitute for Senate Bill 586 which was passed during the 2020 Regular Session, this rule moves the “Certification of Home Inspectors” from the State Fire Commission series in 87 CSR 05 to the State Fire Marshal series in 103 CSR 07.

It defines home inspection, outlines what must be included in a home inspection, defines unethical conduct by home inspectors, and creates penalties for prohibited acts.

State Police, West Virginia State Police Professional Standards Investigations, Employee Rights, Early Identification System, Psychological Assessment and Progressive Discipline, 81 CSR 10

The rule amends a current legislative rule.

It 1) replaces the phrase use of force with the phrase response to resistance or aggression throughout the rule; 2) provides a statute of limitations of 12 months for the filing of complaints against WVSP employees; 3) provides for the use of real-time data in the Early Identification System; 4) addresses procedure for those facing disciplinary action; and 5) adds a waiver provision following notice of disciplinary action.

State Police, Modified Vehicle Inspections, 81 CSR 4

This rule is a current legislative rule which did not go through the rule-making process. The amendments remove requirements for fenders, the positioning of the outmost edge of a tire regarding the fender, fender well or other wheel enclosure, and the minimum width of fender flares.

Currently, vehicles with large tires are failing inspection. Owners are getting around the inspection by putting regulation tires on to pass inspection and then putting the large tires back on.

CODE REFERENCE: West Virginia Code §64-6-1 et seq. – amended

DATE OF PASSAGE: March 6, 2023

EFFECTIVE DATE: March 6, 2023

ACTION BY GOVERNOR: Signed March 23, 2023



Senate Bill 345

Authorizing Department of Revenue to promulgate legislative rules

This committee substitute contains 11 rules from the Department of Revenue and is known as Bundle 7.

Division of Financial Institutions, Rule Pertaining to Money Transmission Services, 106 CSR 23

This rule establishes permissible investments for cash (or cash equivalents), irrevocable letters of credit, and additional permissible investments that money transmission services may hold to satisfy the fiduciary duties. Finally, the rule adds new language that would be added requirements for compliance with West Virginia Code, examination by the Division of Financial Institutions, and penalties for failure to so comply.

Insurance Commission, Bail Bondsmen in Criminal Cases, 114 CSR 103

This rule removes a previous requirement that bail bondsmen be residents of West Virginia with a valid WV ID.

When this rule was taken up by the LRMRC, an amendment was offered and adopted which appears in this committee substitute. The amendment affects the different types of bondsmen. For professional bondsmen, it adds more types of security which a bondsman may pledge with the Insurance Commissioner to order to meet that definition. For surety bondsmen, the amendment includes insurance company underwriting agreements to meet that definition. The amendment avoids the issue of all bondsmen in the state being required to become licensed as an insurance agent, the deadline for which has already passed. The Insurance Commission has already amended its emergency rule to reflect this amendment.

Insurance Commission, Suitability in Annuity Transactions, 114 CSR 11B

This rule requires insurance agents (referred to as producers) that sell annuities to act in the best interest of the consumer when making a recommendation of an annuity and requires insurers to establish and maintain a system to supervise recommendations so that the insurance needs and financial objectives of consumers at the time of the transaction are effectively addressed. This rule is based on the NAIC's "Suitability in Annuity Transactions Model Regulation" (Model 275), as amended in 2020. The rule also includes provisions governing Exemptions (Section 3), Definitions (Section 4), Duties of Insurers and Insurance Producers (Section 5), Insurance Producer Training (Section 6), Compliance Mitigation, Penalties and Enforcement (Section 7) and Recordkeeping (Section 8).

An amendment was offered and adopted in the House that removed a proviso in the rule prohibiting a private cause of action for violations. The Senate concurred in the House amendment.

Insurance Commission, Pharmacy Auditing Entities and Pharmacy Benefit Managers, 114 CSR 348

This rule updates terminology, prohibits a pharmacy benefit manager from limiting a consumer's access to prescription drugs through the designation of specialty drugs, prohibits a pharmacy benefit manager from placing certain requirements or restrictions on a pharmacist or pharmacy, updates requirements for 340B (federal drug discount program) entities, clarifies how drug acquisition cost is calculated, requires pharmacy benefit managers to disclose any sub-networks for specialty drugs to the Insurance Commissioner, prohibits a pharmacy benefit manager from limiting network access, provides clarification regarding assessment of fees related to adjudication of claims, provides clarification regarding criteria for requirements of methodologies, and requires notice of contract changes.

Significantly, Section 10 is new and deals with specialty drug complaints, which are consumer complaints to the Commissioner when a pharmacy or an insured person believes the insurer is unreasonably designating the drug as a specialty drug. The Commissioner consults with the Board of Pharmacy to determine reasonableness of the designation and, if found unreasonable, requires the insurer to remove the specialty drug designation and allow for the drug to be prescribed normally and filled in any pharmacy.

The rule also includes provisions governing applicability of the rule (Section 1) definitions (Section 2), Registration of Auditing Entities (Section 3), Licensure of Pharmacy Benefit Managers (Section 4), Responsibilities and Prohibited Acts (Section 5), Network Adequacy and Reporting Requirements (Section 6), examinations of Pharmacy Benefit Managers (Section 7), penalties and reimbursement (Section 8), Consumer Choice for Pharmacy Benefits (Section 9), and Specialty Drug Complaints [new] (Section 10).

Lottery Commission, West Virginia Lottery Sports Wagering Rule, 179 CSR 09

This rule sets forth the regulations, qualifications, and requirements for sports wagering in West Virginia, which is regulated by the Lottery Commission. The rule closes a perceived gap in the regulation of Daily Fantasy Sports (DFS). Daily fantasy sports are not defined in our state code as sports wagering, which has given companies the opportunity to offer parlay sports wagers as part of their daily fantasy sports product and not have such be a “wager.” The rule defines Daily Fantasy Sports in line with a written opinion of the WV Attorney General. It allows persons playing fantasy games to play against another person and not the company offering the game or the house. The definition provides that fantasy sports are between two or more participants who manage imaginary teams for a predetermined prize. Winning the game is determined by the skill and knowledge of the participant and is determined in large part by statistical data not on the score, point spread, or performance of a single team.

The rule also contains new definitions regarding confidentiality in account information and affiliate companies. Daily fantasy sports are still generally excluded.

There are additional definitions of “Confidential Player Account Information” which is player account balances and personally identifiable information – which is also defined in the rule as data which is used to uniquely identify a person such as name, SS#, etc. A definition of “Registrant” is also included. This means affiliate companies such a sports wagering marketing affiliate companies which have the purpose of offering a link in the form of a click on ad to redirect a participant to a sports wagering site.

The General Requirements section has been updated and now includes identical language to that set forth in West Virginia Code §29-22D-1 et seq. This includes the general exclusion of daily fantasy sports.

Finally, a new section pertains to Licensing and Registration and makes the rule consistent with the Interactive Wagering Rule. The change allows market affiliates to act as a registrant of wagering services, not a supplier, which also changes the fee from \$1000 per year to \$100 per year.

Tax Division, Municipal Sales and Use Tax Administration, 110 CSR 28

This rule implements the provisions of W. Va. Code §11-10-27, amended in House Bill 4461 from the 2022 Regular Session, that provide that the Tax Commissioner’s administrative fees for collecting municipal sales and use taxes be deposited into the Tax Administration Services Fund instead of the Local Sales Tax and Excise Tax Administration Fund, and fixes those fees at 1% of collections. The amendments also remove language relating to computing the fee under the provisions of law before the passage of House Bill 4461.

Tax Division, Valuation of Producing and Reserve Oil, Natural Gas Liquids, and Natural Gas for Ad Valorem Property Tax Purposes, 110 CSR 01J

This rule lists the estates subject to property taxation under the rule. Natural gas liquids were added throughout this section as a separate substance. Oil, natural gas liquids, and natural gas are separately and specifically listed.

The modified rule adds and changes definitions of many key terms, including actual annual operating costs, gross receipts, natural gas liquids, and total production.

Specific sections detailing the methods of valuing the different types of property (e.g., oil producing, natural gas producing, home-use only wells, etc.) are either added or revised.

Values for oil and/or natural gas producing property will be determined through the process of applying a yield capitalization model to net receipts. Net receipts are the gross receipts, less royalties paid, and less actual annual operating costs for the working interest. A yield capitalization model is applied to the gross royalty payments for the royalty interest.

The rule contemplates valuation when ownership of the property is split by lease or agreement.

The rule then describes the valuation determination for oil and natural gas wells, as well as the valuation of a royalty interest.

The different models for valuation are then described, including the yield capitalization model, the working interest model, and the royalty interest model. A decline rate adjustment is also contemplated and described. The capitalization rate is stated to be state-wide and determined annually. The rule also states that depletion of the asset must be considered. Also considered by the Commissioner is the proportion of equity and debt used by the industry to support ongoing activities. Certain factors regarding this consideration are laid out in the rule.

The rule states that gross proceeds are determined at the point of sale of the output of a well in an arm's length transaction. There are also calculations contemplated for when the lessee's contract sets the sales price of natural gas as a percentage of the purchaser's gross proceeds after processing the gas.

Valuations regarding sale to market affiliates, related parties, and times when a purchaser provides services typically the responsibility of the lessee are also considered.

Retention of relevant data for audit purposes must be retained. The rule describes various costs and how they must be allocated as well as a distinction between allowable and non-allowable costs.

The rule then describes a default method of valuation for when the producer does not file a complete return by the August 1 due date. The return to be filed is then described.

The rule states that the Commissioner will publish an annual summary of the variables used to determine the value of oil or natural gas property. The published variables will include information about the capitalization rates and the safe harbor rates.

The rule concludes with provisions concerning confidentiality of records and data.

Tax Division, Farm-To-Food Bank Tax Credit, 110 CSR 13DD

The rule amends the sunset date to August 1, 2028.

Tax Division, West Virginia Film Industry Investment Act, 110 CSR 13X

This rule implements changes made to WV Code §11-13X-1, et seq., enacted in House Bill 2096 in the 2022 Regular Session that reinstated a tax credit for companies engaged in the business of producing film industry productions, which had ended in 2018. In addition to removing the \$5 million aggregate maximum amount of credit that can be taken each year, administration of the program is moved to the Department of Economic Development and the minimum qualifying expenditure threshold was changed from \$25,000 per project to \$50,000 per year, among other changes, including changes to definitions (section 2), the amount of the tax credit (section 3), requirements for the credit and the application for the credit (section 4), review by the Department of Economic Development (section 5), forfeiture of the credit (section 6), uses and transferability of the credit; (section 7), confidentiality (section 8), requirements to claim the tax credit, applicability of various tax laws, and maintenance of records (section 9), and effective dates, sunset date, and preservation of film tax credits earned prior to the sunset date (section 10).

There is a newly added amendment to the application section of the rule. That section mentions the requirements of the application for “commercials,” which are explicitly deemed not to be “qualified projects” in section 2, subsection 2.1 of the rule. The amendment merely removes the word “commercials,” but leaves all other language intact.

Tax Division, Property Transfer Tax, 110 CSR 22

This rule amends the sunset date to August 1, 2028.

Tax Division, Personnel Rule for the Tax Division, 110 CSR 42

Amends the sunset date to August 1, 2028.

CODE REFERENCE: West Virginia Code §64-7-1 et seq. – amended

DATE OF PASSAGE: March 10, 2023

EFFECTIVE DATE: March 10, 2023

ACTION BY GOVERNOR: Signed March 23, 2023

Senate Bill 356

Authorizing DOT to promulgate legislative rules

This committee substitute contains 6 rules relating to the Department of Transportation and is known as Bundle 8.

Division of Motor Vehicles, Administrative Due Process, 91 CSR 01

This rule amends a current legislative rule. It eliminates references to administrative hearings for DUI offenses and to the Office of Administrative Hearings. These amendments are a result of the passage of Committee Substitute for Senate Bill 130 during the 2020 Regular Session, which terminated the Office effective July 1, 2020, and transferred DUI hearings to the courts.

This rule also updates the administrative process for other types of hearings, allowing electronic or telephonic hearings to be conducted, and electronic requests for hearings to be made. It increases docket fees and fees and mileage paid to witnesses at administrative hearings and modifies the hearing transcript fee provisions.

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

This rule amends a current legislative rule. As a result of the passage of House Bill 4535 during the 2022 Regular Session, the rule deletes the requirement for a school eligibility certificate to be presented before a driver's license may be issued to an applicant under the age of 18.

The rule also allows issuance of an identification card without a photo for religious reasons. The amendment is the result of passage of Enrolled Committee Substitute for House Bill 2177 during the 2022 Regular Session.

It also allows an applicant for a license to return to take the road skills examination without waiting the otherwise mandatory seven days if the applicant failed because of a mechanical defect in his or her vehicle and the defect is corrected. First-time applicants for a CDL, for a school bus or passenger endorsement or for a hazardous material endorsement to a CDL must successfully complete a Federal Motor Carriers Safety Administration Entry Level Driver's Training Course before they may take the road skills or endorsement examination under the rule.

Division of Motor Vehicles, Denial, suspension, revocation, disqualification, restriction, nonrenewal, cancellation, administrative appeals, and reinstatement of driving privileges, 91 CSR 05

This rule amends a current legislative rule. It amends the administrative process for adverse actions by DMV against an individual's operator's license. Currently, hearings contesting adverse actions are taken to circuit court. The rule provides for an administrative hearing by DMV with an appeal taken pursuant to the contested cases provisions of W. Va. Code, §29A-5-1 et seq. The amendment is the result of passage of House Bill 4535 during the 2022 Regular Session.

The rule amends the current rule regarding suspension of operators' licenses under the points system. It allows a licensee to pay a \$200 penalty fee in lieu of the suspension and any reinstatement fee, if he or she has not used that alternative in the preceding two years.

The rule modifies provisions relating to the effect of failure to comply with school attendance law on licensure. It lowers the age to 17 or below for which school attendance requirements apply, and no longer allows suspension or denial of a license. Instead, the license may be restricted to driving for work or medical purposes or for religious or educational pursuits.

The rule adds a new provision requiring the Division to take the same action against the license of an individual convicted in municipal or similar courts as would be required if the offense for which the conviction was entered is substantially similar to an offense defined in code. Where no mandatory sanction is specified by code, the DMV commissioner has discretion to enter the sanction entered by the court.

The section regarding the Alcohol and Drug Test and Lock Program has been amended to allow participation in the program of a person whose license has been revoked for driving under the influence of a controlled substance; and a person who has been convicted of driving on a suspended or revoked license, if the person serves the revocation or suspension period as additional participation time in the program. Additionally, language has been added providing for a temporary letter of authorization to operate a motor vehicle prior to receipt of a specially marked restricted license. The participant must apply for the restricted license immediately upon installation of the equipment. It now also provides that due consideration be given when lawfully prescribed medication yields a positive result in a drug test.

Finally, the rule adds a new section implementing W. Va. Code §17D-4-3, allowing the commissioner to suspend the license and related registration of individuals who have failed to timely satisfy a judgment. It establishes a procedure for determining the validity of the judgment and that the judgment falls within the scope of the relevant code section, provides for payment of certain fees set out in code, and authorizes reinstatement of the license and registration upon proof of satisfaction of the judgement, consent of the judgment creditor, discharge in bankruptcy, or expiration of the judgment.

Division of Highways, Disposal, Lease and Management of Real Property and Appurtenant Structures and Relocation Assistance, 157 CSR 02

This rule amends a current legislative rule. It gives the Commissioner the exclusive authority to designate excess real property and requires that all deeds transferring any interest owned by the Division be quitclaim deeds.

Department of Transportation, State Rail Authority Organizations and Meetings, 172 CSR 01

This rule is being repealed because the State Rail Authority no longer exists.

CODE REFERENCE: West Virginia Code §64-8-1 et seq. and §64-12-5 – amended

DATE OF PASSAGE: March 8, 2023

EFFECTIVE DATE: March 8, 2023

ACTION BY GOVERNOR: Signed March 23, 2023

Senate Bill 361

Authorizing miscellaneous boards and agencies to promulgate legislative rules

This bill contains 49 rules from Miscellaneous Agencies and Boards and is known as Bundle 9.

Board of Accountancy, Board Rules and Rules of Professional Conduct, 01 CSR 01

This rule amends a current legislative rule. It amends definitions and the certification process. Most significantly it amends the educational coursework which a candidate must complete to be eligible to sit for the Certified Public Accountants (CPA) exam. According to the Board, this reflects the changes to the Uniform CPA Exam published by the American Institute of Certified Public Accountants which will be implemented in January 2024. Finally, the timeframe for which passing test results remain valid was 18 months from the date of the test but is now being changed to 18 months from the time in which a candidate is notified of the passing score.

Board of Acupuncture, Advertising by Licensed Acupuncturists, 32 CSR 05

This rule amends a current legislative rule. It eliminates the following recognized titles of acupuncturists in this state: Master of Science in Oriental Medicine: Certified Acupuncturist: and Acupuncture Physician and modifies Doctorate of Acupuncture and Oriental Medicine. It requires that all titles be commensurate with education and training.

Board of Acupuncture, Standards of Practice of Acupuncture by Licensed Acupuncturists, 32 CSR 06

This rule amends a current legislative rule. It removes references to sterilization of equipment and instead requires use of a clean needle technique and standards of practice in accordance with the Council of Colleges of Acupuncture and Herbal Medicines.

The rule also references Injection therapy as opposed to point puncture (aquapuncture) and defines what is entailed in the therapy, sets forth permissible substances, and requires practitioners trained in injection therapy to comply with the ability to perform resuscitative procedures. The rule limits when a practitioner may use pointpuncture. The House amended the rule to include that the practitioner must wash his or her hands before examining patients or handling acupuncture needles and other instruments and between patients.

Board of Acupuncture, Continuing Education Requirements, 32 CSR 09

This rule amends a current legislative rule. It removes provisions relating to record maintenance by the provider, approval by the Board of continuing education courses offered by a provider, application for course approval, instructors, advertisement, and denial, withdrawal, and appeal of approval. The rule removes requirements on both providers and licensees regarding documentation of the CE credits. The number of required credit hours is reduced from 24 to 15 every two years, and the number of CE credit hours which may come from an alternative source such as administrative management, language training, or education methodology is reduced from 12 to 6.

Department of Agriculture, West Virginia Apiary Rule, 61 CSR 02

This rule amends a current legislative rule which establishes general operating rules and procedures for the inspection of apiaries, control of bee diseases, and limitation of liability for beekeepers. It requires a permit if bees are imported into West Virginia for any reason. Provisions regarding an educational bee registration exemption as well provisions requiring sterilization in instances of transmissible bee diseases

are deleted. The House added language requiring the Agriculture Commissioner to mail an application for registration to all persons known to keep bees from the previous year.

Department of Agriculture, Schedule of Charges for Inspection Services: Fruit, 61 CSR 8B

This rule amends a current legislative rule which establishes charges for federal-state inspection service for fruit. The rule updates the rate for GAP.GHP/Audits from a specified hourly rate to a general reference to the hourly rate established by USDA's Agricultural Marketing Service pursuant to WVDA/USDA cooperative agreement.

Department of Agriculture, Noxious Weeds Rule, 61 CSR 14A

This rule amends a current legislative rule which sets forth provisions governing noxious weeds, including definitions, cooperative suppression activities, prohibitions, and a list of noxious weeds. The rule amends Appendix A to update the federal noxious weed list to include 15 new terrestrial species.

Department of Agriculture, Grade A Pasteurized Milk, 61 CSR 15

This rule amends a current legislative rule which establishes minimum requirements governing Grade "A" pasteurized milk. The rule updates references to federal materials being incorporated by reference, including removal of one portion of the Appendix Q of the USDA Grade "A" Pasteurized Milk Ordinance and the addition of three USDA publications.

Department of Agriculture, Inspection of Nontraditional Domesticated Animals, 61 CSR 23D

This rule amends a current legislative rule which governs the inspection of nontraditional domestic animals (antelope, bison, etc.) and edible products derived from them by updating the sunset date.

Department of Agriculture, Hemp Products, 61 CSR 30

This rule amends a current legislative rule, which sets forth procedures and requirements for registration and regulation of hemp products sold within West Virginia. The rule clarifies the authority of the Department to deny product registrations considered potentially hazardous and/or which pose a threat to consumer safety, deletes the requirement to include list of items intended for sale in the application to sell and distribute hemp products, deletes language excluding tetrahydrocannabinols from the standard for misbranded labels, deletes language specifying maximum percentage of tetrahydrocannabinolic acid for the minimum age labeling requirement to apply, and adds language authorizing the minimum age on label to be more restrictive than 18 years old.

Livestock Care Standards, 61 CSR 31

This rule amends a current legislative rule which governs the care and well-being of livestock. The rule adds and defines the term "dispossess" and replaces reference to "euthanize" with "dispossess".

Department of Agriculture, Farm to Food Bank Tax Credit, 61 CSR 36

This rule amends a current legislative rule which sets forth procedures and requirements for the Department's administration of the farm-to-food bank tax credit. The current rule specifies that the Department must determine if the listed value of donated edible agricultural products is reasonable based on fair market value and clarifies that this value is to be compared with the value claimed on the receipt form to ensure the value claimed is not higher. This rule updates the protocol for the Department's review of the estimated value of edible agricultural products when the taxpaying farmer does not include an invoice or other statement identifying the price received for products of comparable grade or quality for a previous sale. New language provides the protocol for when the price of the donated product cannot be determined and authorizes the Department to request additional information from the taxpayer.

Department of Agriculture, Farmers Markets, 61 CSR 38

This rule amends a current legislative rule which establishes the framework for regulation of farmers markets and farmers markets market vendors. The definition of a farmers' market is amended to include an on-farm market. A requirement has been added for any vendor selling fresh uncut produce at a farmers' market to complete and submit an annual produce affidavit form to the Department, only while the Department receives Food Safety Modernization Act funding from the federal Department of Agriculture. It has also been amended to add freeze-dried foods as a potentially hazardous farm and food product requiring a vendor permit in order to be sold at a farmers' market.

The rule adds safe handling instructions and any required date or lot codes to labeling requirements. Lastly, it adds USDA-inspected or certified facilities to the list of sellers of potentially hazardous food which must obtain a vendor permit from the Department to sell at farmers market and waives the vendor permit fee for these facilities.

Athletic Commission, Regulation of Boxing, 177 CSR 01

This rule amends a current legislative rule. The current rule allows for one-night semi-professional match-style fighting (non-MMA) events in which bouts must be 3 rounds, 60 seconds per round with 60 second rest periods between rounds. This rule would allow the Commission to authorize promoters to hold a one-night championship match-style contest where the Commission selects the number of rounds and how long they last, as long as a match (excluding rest periods) does not exceed 10 total minutes. It also provides that a contestant can't be barred from participation in such a match-style contest based upon prior wins in semi-professional tournament style events.

Athletic Commission, Regulation of Mixed Martial Arts, 177 CSR 02

This rule amends a current legislative rule. The current rule mandates that an amateur MMA fighter's first 3 bouts must be limited to 2-minute rounds with a minute rest period in between with each subsequent bout the time increases to 3-minute rounds with a minute rest period in between. This rule allows the Commission to establish a policy which could modify the number and time of rounds of an amateur contestant's fourth and subsequent bouts as long as the total bout (excluding rest periods) does not exceed 15 minutes.

Auditor, Standards for Voluntary Payroll Deductions, 155 CSR 03

This rule amends a current legislative rule. It removes any previously allowable voluntary deductions for employee associations. This is in response to Committee Substitute for House Bill 2009 which passed during the 2021 Regular Session.

The rule removes language regarding 1st and 2nd pay periods in favor of the now-standard bi-weekly pay period methodology for voluntary deductions.

The rule also: sets forth the procedure for an employee or officer to request an allowable voluntary deduction; makes the Auditor's authorization and approval of voluntary deductions permissible rather than mandatory; allows the Auditor to approve a charitable or commercial organization that does not have at least 50 employees from at least 2 state agencies; and allows the Auditor to approve any deduction that is not prohibited by law.

Conservation Agency, Operation of West Virginia State Conservation Committee and Conservation Districts, 63 CSR 01

This rule amends a current legislative rule which establishes procedures for election and appointment of conservation district supervisors, expenditures of funds by the State Conservation Committee, and compliance with the Open Governmental Proceedings Act.

The rule sets forth the qualifications for elected or appointed conservation district supervisors; adds provisions regarding elections, terms of office for county district supervisor, applicability of W. Va. Code §6-1-1 et seq. regarding removal of conservation district supervisors, and procedures when no candidate seeks office. The requirement for county district supervisor to be a farmer with minimum 5 years of land management or related experience, strong working interest in natural resources, and knowledge of conservation best management practices has been deleted and a requirement has been added that county district supervisor have experience in agriculture, conservation, or natural resources.

Finally, the rule clarifies the applicability of fund expenditure requirements and sources of funding, clarifies restrictions on use and availability of (state) watershed improvement program funds, removes references to watershed improvement districts, and adds references to local government usage of funds.

Conservation Agency, Conservation District Accounting and Auditing Standards, 63 CSR 04

This rule is new. It prescribes accounting and auditing requirements and establishes the minimum system of account and auditing practices and procedures that are to be used by conservation districts, which will be supplemented by local policies and procedures developed by the conservation districts themselves. The rule: defines terms; sets forth general requirements regarding administration of the accounting and auditing standards; explains basis of accounting and requires accounting records to be maintained on an accrual basis; sets forth requirements for signatures on transactions; provides requirements for bank accounts and institutions to be used by conservation districts for receipt and maintenance of funds; contains requirements for reconciliation of bank accounts and certificates of deposit; sets forth procedures for receipts processing; sets forth procedures for expenditure processing (invoices and bills); sets forth procurement processes for all funds held in a conservation district except co-administered funds; provides procedures for handling of conservation district contracts for projects using co-administered funds; contains requirements regarding fixed assets; sets forth procedures relating to payroll; provides requirements pertaining to financial statements; contains requirements for records and record retention; provides requirements for annual audits of the conservation districts; sets forth procedures for handling suspected fraud, waste, and abuse of assets; and lists supplemental policies and procedures to be established by the State Conservation Committee and by the conservation districts, respectively.

Board of Dentistry, Dental Recovery Networks, 05 CSR 15

This rule amends a current legislative rule relating to West Virginia Dental Recovery Networks (WVDRN). The rule opens the program to applicants for licensure; provides that participation in the WVDRN will not be disclosed to the Board, as long as it is voluntary and in compliance with the terms of the agreement to participate; and provides personally identifiable information (PII) will not be included in statistical reporting to the Board regarding the WVDRN. Finally, the rule will allow the WVDRN to assess the costs of participation in the WVDRN to participants.

Board of Funeral Service Examiners, Funeral Director, Embalmer, Apprentice, Courtesy Card Holders and Funeral Establishment Requirements, 6 CSR 01

This rule amends a current legislative rule which governs licensing and conduct of embalmers, funeral directors, funeral establishments, and courtesy card holders. The rule: includes hydrolyzation process in the definition of cremation; updates apprenticeship requirements to refer to combined funeral director and embalmer license as a funeral service license; changes the supervision requirement for an apprentice funeral director from direct to general; provides requirements for an apprenticeship for a funeral director only license; adds hydrolyzation to provision governing care of bodies involved in a crime or suspected crime; exempts business cards from advertising provisions; adds a new provision requiring 2 years to complete requirements for licensee-in-charge and provides a deadline of July 1, 2024, for completion; adds a prohibition on a licensed funeral establishment performing services if it is unable to hire full licensee-in-charge within 30 days; increases 5-year apprenticeship renewal fee to \$125 and fee for 1-year extension of apprenticeship to \$100; and adds requirement that 1 of 3 general funeral service continuing education hours must be in ethics.

Board of Funeral Service Examiners, Crematory Requirements, 6 CSR 02

This rule amends a current legislative rule which governs licensing and conduct of embalmers, funeral directors, funeral establishments, and courtesy card holders. The rule: defines terms; requires crematory and hydrolyzation facilities to have a certificate of registration; provides a certification requirement for crematory facilities and authorizes the Board to regulate certificate holders; requires crematory operator requirements to encompass the hydrolysis process; specifies who may perform or arrange steps in funeral process; requires a funeral service licensee to remove objects from a body and deletes language authorizing removal of objects by crematory operators; adds continuing education requirements for crematory operators; and adds requirements for hydrolysis certification.

Board of Funeral Service Examiners, Fee Schedule, 6 CSR 07

This rule amends a current legislative rule which establishes a schedule for fees paid to the West Virginia Board of Funeral Services Examiners. The rule adds a \$200 initial license fee for funeral director only license and a \$250 biennial renewal fee for funeral director only license.

Board of Landscape Architects, Registration of Landscape Architects, 9 CSR 01

This rule amends a current legislative rule. The current rule requires applicants for licensure as a landscape architect provide four references upon application. This rule would lower this requirement to just three references, which reportedly reflects the national standard.

Board of Medicine, Licensing of Physicians and Podiatric Physicians and Disciplinary Procedures for Applicants, licensees, Credential Holders, 11 CSR 01A

This rule amends a current legislative rule. It is in response to Enrolled Committee Substitute for Senate Bill 585, which passed during the 2022 regular legislative session, and created a new code section W. Va. Code §30-3-11c, relating to administrative licenses. Specifically, physicians who seek to manage the integration of clinical medicine, strategy operations, and other business activities related to the delivery of health care services, advise both public and private organizations on health care matters; authorize and deny financial payments for care; organize and direct research programs; review are provided for quality purposes; and perform other similar duties that do not require or involve direct patient care may now apply for an administrative license.

This rule sets forth the qualification and application requirements for an administrative medicine license, establishes practice parameters pursuant to an administrative medicine license, including a prohibition on clinical practice; sets forth the process and limitations related to converting an unrestricted medicine license (including those granted via interstate compact) to an administrative medicine license and vice versa; and establishes that the professional conduct standards set forth in the Medical Practice Act and the Board's rules apply to administrative medicine licenses.

This rule provides that an administrative medicine license is valid for a period of two years and that an administrative medicine license is not eligible for inactive status, as inactive licenses relate to the ability to practice clinical medicine. An administrative medicine license is subject to the same denial, probation, limitation, discipline, suspension or revocation as other licensees and professional credential holders.

Board of Medicine, Licensing, Disciplinary and Complaint Procedures; Continuing Education, Physician Assistants, 11 CSR 01B

This rule amends a current legislative rule. It is in response to House Bill 214 enacted during the 2022 Second Extraordinary Legislative Session which modified the prescriptive authority for physicians and provided the Board with rulemaking authority. The rule provides for the regulatory framework for the licensure, regulation, and discipline of physician assistant practice in West Virginia. It authorizes a physician's assistant to practice at one or more additional locations not included on his or her activated practice notification on an occasional basis not to exceed two days per month per location; and provides that the only limits on prescriptive authority relate to controlled substances and narcotics.

Board of Medicine, Collaborative Pharmacy Practice, 11 CSR 08

This rule amends a current legislative rule. The rule is in response to Enrolled Committee Substitute for House Bill 4324, passed during the 2022 Regular Legislative Session, which modernized collaborative pharmacy practices and streamlined procedures relating to the registration of collaboration with the Boards of Pharmacy, Medicine, and Osteopathic Medicine. This rule is agreed upon by the Board of Medicine, the Board of Pharmacy, and the Board of Osteopathic Medicine.

The rule specifies the requirements for collaborative pharmacy practice. It establishes requirements for the development of a collaborative pharmacy agreement between collaborating pharmacists and physicians at the practice level and outlines the process and requirements of submission of a valid practice notification to the boards. It also establishes eligibility for participation in collaborative pharmacy practice agreements and sets forth the role of the Board of Pharmacy in verifying pharmacist eligibility. It requires that the boards maintain a list of all practice notifications for collaborative pharmacy practice.

Board of Medicine, Prohibiting Sexual Misconduct by Healthcare Practitioners, 11 CSR 16

This rule is new and is in response to Enrolled Committee Substitute for Senate Bill 606 which passed during the 2022 Regular Session. It provides that sexual misconduct, by either sexual contact or sexual interaction, constitutes gross misconduct. It also explicitly states that patient consent, or patient initiation, to any sexual contact/sexual interaction/sexual impropriety with a practitioner is not a defense to any charge that the practitioner engaged in sexual misconduct or a mitigating factor to any charge that the practitioner engaged in sexual misconduct.

This rule also prohibits a practitioner from committing sexual misconduct with a patient surrogate, establishes parameters by which a practitioner may have a romantic relationship with a former patient that is not categorized as sexual misconduct, addresses other types of sexual misconduct, including sexual harassment, that would constitute prohibited sexual misconduct by a practitioner, and provides that

practitioners who engage in sexual misconduct, or other violations of the professional conduct standards contained in this rule are subject to license/credential denial proceedings or disciplinary action.

Board of Optometry, Optometric Telehealth Practice, 14 CSR 12

This rule is new. It lays out the requirements for the practice of optometric telemedicine. It requires the optometrist performing telehealth to have received and reviewed the patient's records, performed some examination, provided the patient with information about services to be performed, and initiated any additional diagnostics or referrals as needed. The standard of care for providing optometric care in the State of West Virginia via telehealth services by a registrant or licensed optometrist is the same as for in-person care. This rule also states that nothing in this rule requires a practitioner to use telemedicine technologies to treat a patient if the practitioner, in his or her discretion determines that an in-person encounter is required. A telehealth optometrist may not prescribe Schedule II drugs.

The rule also sets forth the process for an optometrist wishing to participate in telemedicine to register with the Board and removes the exception to the prohibition on using any automated refractor or other automated or remote testing device to generate refractive data.

Board of Osteopathic Medicine, Osteopathic Physician Assistants, 24 CSR 02

This rule amends a current legislative rule in response to House Bill 214 which was passed during the 2022 Second Special Session of the WV Legislature. The rule regards osteopathic physician assistants and relates to their licensing, practice, prescribing limitations, professional discipline, and continuing education. The rule allows a physician assistant to practice on behalf of a health care facility at one or more additional locations, such as a health fair, that are not included on a practice notification on an occasional basis of 2 days per month per location. It also provides that a physician assistant may not prescribe a Schedule I controlled substance. A physician assistant can prescribe a 3-day supply of a Schedule II controlled substance and must comply with existent state laws regarding opioids and narcotics. Otherwise, there are no formulary limitations to a physician assistant's prescriptive authority.

Board of Pharmacy, Licensure and Practice of Pharmacy, 15 CSR 01

This rule amends a current legislative rule. Substantive changes were made to the rule with respect to the provisions for a pharmacist-in-charge and for a Pharmacist Consultant.

Locations that need a pharmacist consultant are specified. These include: a hospital or medical clinic without a pharmacy; a humane society; a weight loss clinic; an urgent care clinic; a long-term care facility; and an opioid treatment facility or medication assisted treatment facility. They do not include: a teaching institution/researcher; emergency services; law enforcement; or a veterinary hospital or clinic.

Requirements related to a pharmacist consultant no longer apply to the following facilities: a skilled nursing facility; intermediate nursing facilities; nursing homes; rest homes; personal care centers; governmental agencies; jails and correctional facilities; clinics and other places where a pharmacy permit is not held but a controlled substance permit is required; or any place where a pharmacist's expertise is needed to increase or improve patient care and safety in the use of drugs and devices or where expertise is needed to ensure proper storage conditions and safeguards.

Board of Pharmacy, Uniform Controlled Substances Act, 15 CSR 02

This rule amends a current legislative rule. The purpose of the rule is the registration and control of the manufacture and distribution of controlled substances in West Virginia. The only substantive amendment is to the section which requires a wholesale drug distributor to report suspicious orders. It now requires the reporting be on a Board supplied form.

Board of Pharmacy, Registration of Pharmacy Technicians 15 CSR 07

This rule amends a current legislative rule. It has been amended to increase the ratio of pharmacists-in-charge to pharmacy technicians and/or pharmacy technician trainees from one to four to one to six.

Board of Pharmacy, Regulations Governing Pharmacy Permits, 15 CSR 15

This rule amends a current legislative rule. The purpose of the rule is to govern the licensure and regulation of pharmacy permits.

New language regarding advertising has been which prohibits advertising that may jeopardize the health, safety, or welfare of patients. A pharmacy may not require a pharmacist to participate in advertising. Additional language provides for a working environment that protects the health, safety, or welfare of a patient, which includes adequate staff, appropriate opportunities for uninterrupted rest, and adequate time to complete professional duties. A new section adds a whistleblower protection clause. It provides that a permit or license holder in violation of federal or state whistleblower laws may be subject to disciplinary action by the Board.

Board of Pharmacy, Inspections, 15 CSR 19

This rule is new. It is in response to a report of the Post Audit Division that found that the Board of Pharmacy lacked formal, written policies, procedures, and processes for its inspection program.

The rule requires an inspector to meet minimum qualifications that include at least 10 years of pharmacy practice experience and completion of training offered by the Board, the National Investigator and Inspector Training Basic Course, and the National Association of Boards of Pharmacy Certification for Inspection Sterile Compounding Facilities.

The Board may parcel the state into regions each with approximately the same number of licensed facilities. Each inspector would be assigned a region in which they would be responsible for inspecting all facilities licensed by the Board.

The rule also has requirements regarding frequency of inspections, notice of inspections, unscheduled inspections, necessary requirements for inspections, and reports to the Board.

Board of Pharmacy, Donated Drug Repository Program, 15 CSR 20

The rule is new and is in response to the passage of Enrolled House Bill 2817 during the 2022 Regular Session of the Legislature which created the Donated Drug Repository Program.

The rule contains provisions relating to waivers for donors and eligible recipients from any provision of the rule related to this program if it is in the interest of public health; allows persons or entities to dispose of an eligible drug by donating it to an eligible recipient; defines an eligible recipient; requires drugs from a donor to be in tamper-resistant packaging or have a tamper evident seal; specifies who may donate legally obtained pharmaceuticals; specifies which drugs may or may not be donated; requires identifying information be removed; and sets forth requirements for storage and inventory. It requires donated drugs be kept separate from other inventory and provides for repackaging.

Eligible patients must meet income guidelines consistent with Medicaid eligibility, be uninsured or underinsured, or enrolled in a public assistance program. If a donated drug exceeds the need for indigent patients, that drug may be dispensed to other persons in need.

With respect to dispensing the drugs, it must be consistent with law. The drugs must be dispensed pursuant to a valid prescription. The patient must be provided appropriate counseling. Donated drugs may not be resold and are considered nonsalable.

The rule contains record keeping requirements and limits liability unless the conduct is willful or wanton misconduct.

Board of Psychologists, Code of Conduct, 17 CSR 06

This rule amends a current legislative rule by extending the sunset provision from July 1, 2023, until August 1, 2028.

Board of Registered Professional Nurses, Requirements for Registration and Licensure and Conduct Constituting Professional Misconduct, 19 CSR 03

This rule amends a current legislative rule in response to Senate Bill 518 passed during the 2022 Regular Legislative Session.

This rule governs applicants for licensure as a registered nurse that were educated in the United States or one of its territories, veterans, and applicants for licensure as a registered nurse that were educated outside the United States or one of its territories. It clarifies the process of completing the state and federal background check; clarifies what actions are necessary by the applicant to supplement his or her personal history as it relates to establishing good character and a clean professional credentialing history relates to paying required fees for licensure by examination; clarifies the amount of training that is required to make veteran training commensurate with civilian training; and specifies required examinations.

A new section has been added relating to a temporary permit for an exam applicant. This subsection increases the time for which an exam applicant can possess a permit from 90 to 180 days or until the licensing examination results are released. Temporary permits are non-renewable.

The rule also requires that an applicant for endorsement submit to a state and federal background check and increases the length of time a temporary permit is valid for an endorsement applicant from 90 days to 180 days.

The time frame for renewal of a license is changed from annual to biennial, specifically October 31 of each even numbered year.

Board of Registered Professional Nurses, Advanced Practice Registered Nurses Licensure Requirements, 19 CSR 07

This rule amends a current legislative rule in response to House Bill 214, which passed during the 2022 First Extraordinary Session, which expanded the prescriptive authority of W. Va. Code §30-7-15a.

A new section has been added which provides for standards relating to the scope of practice for Advanced Practice Registered Nurses. It allows Advanced Practice Registered Nurses to perform nursing acts consistent with their education, training, and experience and which they are competent to perform. There is an amendment included that clarifying the circumstances of national recertification.

Board of Registered Professional Nurses, Limited Prescriptive Authority for Nurses in Advanced Practice, 19 CSR 08

This rule amends a current legislative rule in response to House Bill 214, which passed during the 2022 First Extraordinary Session, which expanded the prescriptive authority for nurses in advanced practice. It strikes through the previously applicable restrictions on APRN prescriptive authority and replaces that language with language regarding their currently expanded prescriptive authority.

Board of Registered Professional Nurses, Continuing Education and Competence, 19 CSR 11

This rule amends a current legislative rule that has not been reviewed since 2007. Most of the amendments are technical in nature or remove obsolete language. It eliminates the “twelve-month”

reporting period for continuing education credits, thus, linking continuing education reporting to license renewal which is now biennial.

Board of Registered Professional Nurses, Fees for Services Rendered by the Board, 19 CSR 12

The rule amends a current legislative rule in response to Enrolled Committee Substitute for Senate Bill 518 passed during the 2022 Regular Legislative Session which affected several fees.

This Section addresses the schedule of fees assessed by the Board of Registered Nurses. The rule removes the separate fee for a temporary permit and incorporates this into the RN endorsement fee reduces the current fee from \$100.00 to \$25.00; increases the renewal fee from \$60.00 to \$95.00 based on an increase in the time a license is valid from one to two years; removes the fee for a duplicate license and name change; removes the fee for a frameable certificate reduced the fee for endorsement of advance practice registered nurses from \$50.00 to \$30.00; and adds the following new fees \$7.00 relating to an RN conversion to a multi-state license, \$10.00 relating to a name change, \$50.00 relating to a New Precicensure Nursing Education Program Application, and \$100.00 relating to an RN and APRN Telehealth Registration (Initial and Renewal).

Board of Registered Professional Nurses, Practitioner Requirements for Accessing the West Virginia Controlled Substances Monitoring Program Database, 19 CSR 14

This rule amends a current legislative rule by amending the scope of the rule to set forth the provisions of W. Va. Code §60A-9-5A (a) relating to registering with the Controlled Substances Monitoring Program.

Board of Registered Professional Nurses, Telehealth Practice Requirements; Definitions, 19 CSR 16

This rule amends a current legislative rule. It establishes procedures for the practice of telehealth for registered nurses and advanced practice registered nurses. The rule allows advance practice registered nurses to prescribe Schedule II controlled substances and clarifies the option that in-person treatment be available if the practitioner thinks that an in-person visit is required. It is amended to remove the requirement that a telehealth provider verify that a patient had visited an in-person health care practitioner within 12 months of an initial telehealth service by the provider.

Secretary of State, Early voting In-Person Satellite Precincts, 153 CSR 13

This rule amends a current legislative rule which governs criteria to assure neutrality and security in the selection process for early in-person satellite precincts and establishes processes and deadlines for establishing the precincts. The rule changes references from satellite precinct to community voting location throughout the rule. The rule: adds a requirement that a community voting location proposal to be in writing; authorizes the county executive committee chairs to nominate sites as early voting community voting locations and provides requirements for the nomination process; deletes language requiring early voting satellite precinct proposals to be approved on a per-election basis and replaces this provision with authority for an approved community voting location to be used in subsequent elections and provides requirements for continued use; adds a provision with process for handling an emergency community voting location change up to 60 days before election day; and specifies the process for handling a community voting location change within 60 days of election day.

Secretary of State, Combined Voter Registration and Driver Licensing Fund, 153 CSR 25

This rule amends a current legislative rule which establishes guidelines for the Combined Voter Registration and Driver Licensing Fund. The rule: specifies that the rule applies to the remainder of the Combined Voter Registration and Driver Licensing Fund; deletes and reserves entire section relating to

administration of the fund and deposit of \$0.50 DMV license issuance fee; and deletes the obsolete provision regarding payment for National Change Of Address service.

Secretary of State, Administrative Procedures for the Nonpublic Funding for Election Administration Fund, 153 CSR 54

This rule is new. It establishes administrative procedures and eligibility of West Virginia counties to apply and receive funding for election administration and related expenses from nonpublic funding sources, payable from the Nonpublic Funding for Election Administration Fund created by W. Va. Code §3-1A-9.

It specifies the public bodies and officials who are subject to this rule, requires a covered public body or official to apply to the State Election Commission (SEC) to receive funding from the Nonpublic Funding for Election Administration Fund and specifies information to be included in the application; outlines the process for application review, including applicable deadlines, public meeting protocol, deliberations on the application including factors for consideration, decision-making and communication of the decision to the applicant, steps following approval or denial, and the process for reconsideration of a rejected application; and outlines the process for donations made by a nonpublic funding source, including requirement for donations to be deposited into the Nonpublic Funding for Election Administration Fund and distributed by the SEC, handling of suggested recipients or purposes specified by a donor, protocols for partial or full revocation of a donation, and requirements for notice by the SOS to the nonpublic funding source.

Treasurer, Enforcement of the Uniform Unclaimed Property Act, 112 CSR 05

This rule amends a current legislative rule regarding the Uniform Unclaimed Property Act based on the passage of Enrolled Committee Substitute for House Bill 4511 during the 2022 Regular Session, which made substantive changes to that Act.

The amendment adds provisions relating to virtual currency, securities, and the termination of retirement plans. One of the key amendments to the rule allows the Treasurer to waive the requirement to file a claim for property having a value of less than \$5,000, that is not a tangible item, and that does not require a W-9 (a form used to obtain taxpayer information to assist the holder to provide informational reporting to the IRS) to be completed. The program implementing this change is called “West Virginia Cash Now”.

The rule also adds a section prohibiting the Treasurer from selling a military medal or award and prescribing how transfer of the medal or award is to be accomplished.

Treasurer, Hope Scholarship Program 112 CSR 18

This rule is new. It effectuates the funding mechanism of the Hope Scholarship Act found in §18-31-1 et seq. of the code.

This rule sets forth eligibility requirements to receive Hope Scholarship funds. To be eligible, a student must: be a resident of the state; have not successfully completed a secondary education program; be under 21 years old; and meet other enrollment criteria. Section 3 also provides criteria for participation, if on July 1, 2024, the participation rate in the program (made up of both participants and eligible applicants) during the previous school year is less than 5% of net public school enrollment adjusted for state aid purposes for the previous school year; provides for termination of an account if a student for any reason becomes ineligible during the academic year,

This rule sets forth the application process and sets forth the minimum information which the application must contain. To enroll, the application must be submitted by the designated account holder on the student's behalf. This section also requires renewal applications, to be submitted every year and empowers the Board to accept applications from eligible students who missed the application period on an ad hoc basis.

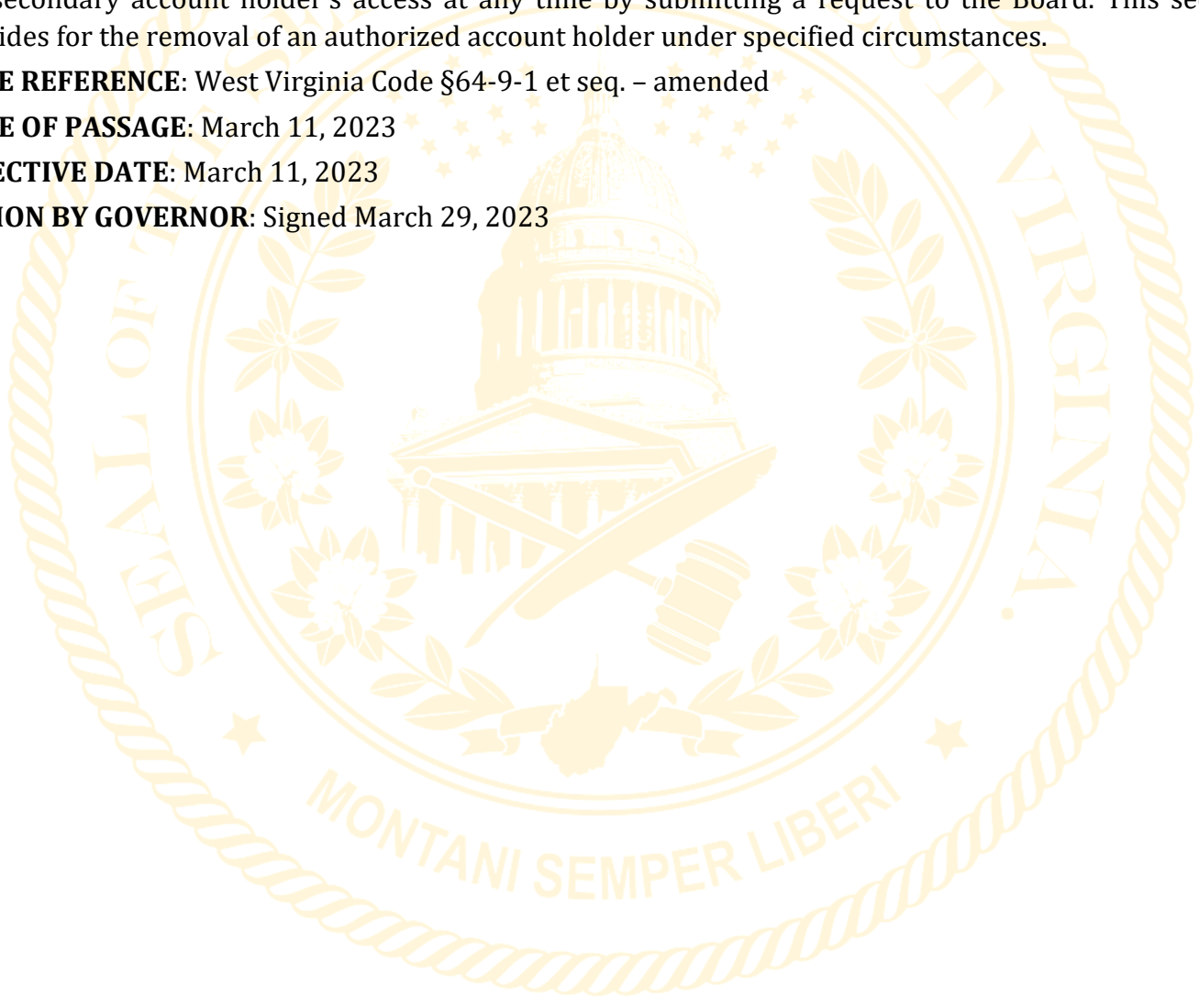
The rule also requires the authorized account holder, be only one eligible person authorized to manage the account on behalf of the student. Eligible persons are the student's parent, guardian, custodian, or other person with legal authority to act on behalf of the student, as determined by the Board; or the student, if he or she is 18 or older on or before the first day of the academic year. The rule allows a secondary account holder who meets the same eligibility requirements as the primary account holder and is limited in his or her authority to use the funds to purchases using the online portal. A primary account holder may remove the secondary account holder's access at any time by submitting a request to the Board. This section provides for the removal of an authorized account holder under specified circumstances.

CODE REFERENCE: West Virginia Code §64-9-1 et seq. – amended

DATE OF PASSAGE: March 11, 2023

EFFECTIVE DATE: March 11, 2023

ACTION BY GOVERNOR: Signed March 29, 2023



Senate Bill 409

Authorizing Department of Commerce to promulgate legislative rules

The Committee Substitute, which is the Department of Commerce Bundle, contains 10 rules. It is known as Bundle 10.

Development Office, Small Business Innovation Research and Small Business Technology Transfer Matching Funds Program, 145 CSR 15

This rule amends a current legislative rule, which governs the West Virginia Small Business Innovation Research and Small Business Technology Transfer Matching Funds Program (Matching Funds Program) that provides grants for West Virginia for-profit small businesses. The rule reduces from three to two the monthly periods per year during which applications for participation in the Matching Funds Program will be accepted by the Department of Commerce. Thus, applications would be accepted only during the periods of January 1 – 31 and July 1 – 31, rather than during the periods January 1 – 31, May 1 – 31 and September 1 – 30 each year. The agency advises that this is necessary because the history of recent Matching Funds Program revenues from the p-card rebate program have been insufficient for a full funding of awards three times a year.

Division of Labor, Board of Manufactured Housing Construction and Safety Rule, 42 CSR 19

This rule amends a current legislative rule. The Board of Manufactured Housing Construction and Safety has been approved by the federal Department of Housing and Urban Development (HUD) as the state administrative agency (SAA) with respect to enforcement of federal manufactured housing construction and safety standards. To maintain that designation, HUD conducts periodic reviews of the Board's programs and rules. This rule address concerns identified by HUD during its most recent review and will allow the Board to continue to be the SAA for manufactured housing in the state.

Most of the changes made by the amendments are technical. The rule authorizes the Board to provide private home inspections to help resolve consumer complaints. It also authorizes random inspections of private manufactured home installations to hold installers responsible for the work they perform. It provides an hourly inspection fee and allows the payment of reasonable expenses.

The rule amends the complaint handling procedures, making the process clearer and more specific. It adds a new section regarding cease-and-desist orders which authorizes the Board to order persons engaged in the manufactured housing business without a license to stop doing so immediately and to impose a penalty of not less than \$200 nor more than \$1,000.

Division of Labor, Supervision of Plumbing Work, 42 CSR 32

This rule amends a current legislative rule, relating to the licensing and regulation of plumbing work by the Division of Labor. The amendments implement changes resulting from the passage of Enrolled Committee Substitute for House Bill 2008 during the 2021 Regular Session and Enrolled Committee Substitute for House Bill 4634 during the 2022 Regular Session.

House Bill 2008 altered the requirements for licensure for all classifications of plumbers: plumbers-in-training, journeyman plumbers, and master plumbers, essentially requiring passage of a written examination for licensure as a journeyman, passage of a written examination plus at least one year as a journeyman for licensure as a master, and payment of a fee not to exceed \$25 for licensure as a plumber-in-training. The rule reflects those changes.

House Bill 4634 effected a form of universal licensure recognition, authorizing licensure for plumbers who are licensed in other states, or have work experience in other states that do not license plumbers. The rule reflects those requirements.

Division of Labor, Regulation of HVAC Work, 42 CSR 34

This rule amends a current legislative rule. Passage of Enrolled Committee Substitute for House Bill 2008 in 2021 Regular Session and Enrolled Committee Substitute for House Bill 4634 in 2022 Regular Session necessitated amendment of the existing rule relating to HVAC work.

House Bill 2008 modified the requirements for licensure for HVAC technicians. The rule reflects a reduction in the experience required for licensure as an HVAC tech from 8,000 hours (2,000 hours on HVAC systems plus 6,000 hours of HVAC-related work, including sheet metal industry work) to 2,000 hours. It also reflects the elimination of the 2,000 hours experience requirement for HVAC residential technician licensure.

The rule also adds provisions implementing the licensure recognition requirements of House Bill 4634 from the 2022 Regular Session relating to licensing based on work experience licensing when the applicant is licensed in another state.

Division of Labor, Registration of Service Persons and Service Agencies, 42 CSR 35

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

Division of Labor, Registration of Weighing and Measuring Devices Used by Businesses in Commercial Transactions, 42 CSR 36

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

Division of Natural Resources, Hunting, Fishing, and Other Outfitters and Guides, 58 CSR 11

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

Division of Natural Resources, Commercial Whitewater Outfitters, 58 CSR 12

This rule amends a current legislative rule. It reflects changes approved by the Whitewater Commission for flow rate changes that reduced the regulatory burden on some waters which had previously been designated as whitewater zones. The rule also adds some additional permitted rental zones.

Finally, the rule increases the cubic feet per second inner tube restriction on several parts of the New River; allows inner tube, canoes, inflatable kayaks, kayaks, standup paddle boards, and rafts from Teays Landing to the bridge at Hawks Nest State Park; and forbids rental of any vessel or watercraft at flows exceeding 10,000 cubic feet per second for the Thurmond location.

Division of Natural Resources, Special Motorboating Regulations, 58 CSR 27

This rule amends a current legislative rule. It reflects changes requested by the Pleasants County Commission and the City of Morgantown.

Each political subdivision solicited public comment on its proposed changes and then applied to DNR for a rule change based on the results. Pleasants County sought to extend a no wake zone on the Ohio River due to safety concerns in an adjacent swimming area.

Both Pleasants County and Morgantown requested the removal of buoy requirements to sync with US Coast Guard federal regulatory changes.

Division of Natural Resources, Miscellaneous Permits and Licenses, 58 CSR 64

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

CODE REFERENCE: West Virginia Code §64-10-1 et seq. – amended

DATE OF PASSAGE: March 10, 2023

EFFECTIVE DATE: March 10, 2023

ACTION BY GOVERNOR: Signed March 29, 2023



Senate Bill 422

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

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

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

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

DATE OF PASSAGE: March 11, 2023

EFFECTIVE DATE: June 9, 2023

ACTION BY GOVERNOR: Signed March 21, 2023

Senate Bill 430

Relating to State Treasurer's authority to contract with financial institutions for banking goods and services

The stated purpose of this agency bill from the Treasurer's office is to ensure that all spending units utilize the State Treasurer's contracts and agreements with financial institutions for banking goods and services. The bill creates a new section in code with definitions for chapter 12, which covers public moneys and securities. It creates definitions for the terms "banking goods or services," "financial institution," "spending unit," and "state funds."

The bill also amends a section of code concerning moneys accepted on behalf of the state. Under current law, the State Treasurer may review the procedures and methods used by officials and employees authorized to accept moneys due the state and change such procedures and methods, except that the State Treasurer may not review or amend the procedures by which the Department of Revenue accepts moneys due the state. The bill would modify this provision and state that absent an exemption granted by the State Treasurer, the Department of Revenue must utilize the State Treasurer's contracts or agreements for any banking goods and services required for said procedures.

CODE REFERENCE: West Virginia Code §12-2-2 – amended; §12-1-1A – new

DATE OF PASSAGE: March 3, 2023

EFFECTIVE DATE: June 1, 2023

ACTION BY GOVERNOR: Signed March 28, 2023

Senate Bill 439

Establishing design-build program for DEP

This bill creates the “Design-Build Pilot Program” (Program) which would be administered by the West Virginia Department of Environmental Protection (DEP). It would allow the DEP to expedite infrastructure projects utilizing federal funds by combining the design and construction elements of a proposed project into a single contract. The language in this bill is consistent with the authorization granted to other agencies that currently use design-build for their projects. Additionally, this Program would not replace the existing procedure for designing and constructing DEP infrastructure projects where time is not a critical factor. It gives the DEP an additional procedure for approving projects.

The federal government has disbursed millions of dollars to West Virginia for infrastructure-related projects. One condition attached to these funds is that they must be used within strict timelines established by the federal government. Timelines in current state law make it very difficult for the DEP to complete projects within federal timelines and, consequently, could result in losing federal funds disbursed to the DEP for infrastructure projects. This Program would ensure that West Virginia would not lose the funds.

The bill directs the DEP to promulgate a procedural rule setting forth minimum requirements to implement the Design-Build Program. It includes:

- An application process;
- Criteria for selecting the most qualified design-builder;
- A procedure for preparation and content of invitations for proposals;
- A process for preparing and submitting proposals;
- A negotiation process between the DEP and those submitting proposals;
- A procedure for awarding design-build contracts;
- A process responding to formal protests relating to solicitation or award; and
- Requirement that solicitation and award of contract must conform to procedural rule.

The bill also establishes a process setting forth minimum requirements for the DEP to solicit bids from prequalified design-builders and to award a contract. It includes:

- A procedure for submitting and awarding bids;
- General terms and conditions for the design-build contract;
- A description of drawings, specifications, or other information to be submitted with the bid;
- A proposed schedule for starting and completing a contract;
- Budget limits, if any;
- Requirements or restrictions governing subletting parts of a contract, if any; and
- Requirements for performance and payment bonds, liability insurance, and workers’ compensation coverage.

After receiving bids, the DEP would have the option to either award a design-build contract to the lowest qualified bidder or reject all bids and repeat the solicitation process.

The bill provides that only contracts awarded directly by the Department of Environmental Protection may utilize the design-build delivery method authorized pursuant to the provisions of this article, and design-build delivery projects awarded pursuant to the provisions of this bill may not exceed a total aggregate value of \$50 million.

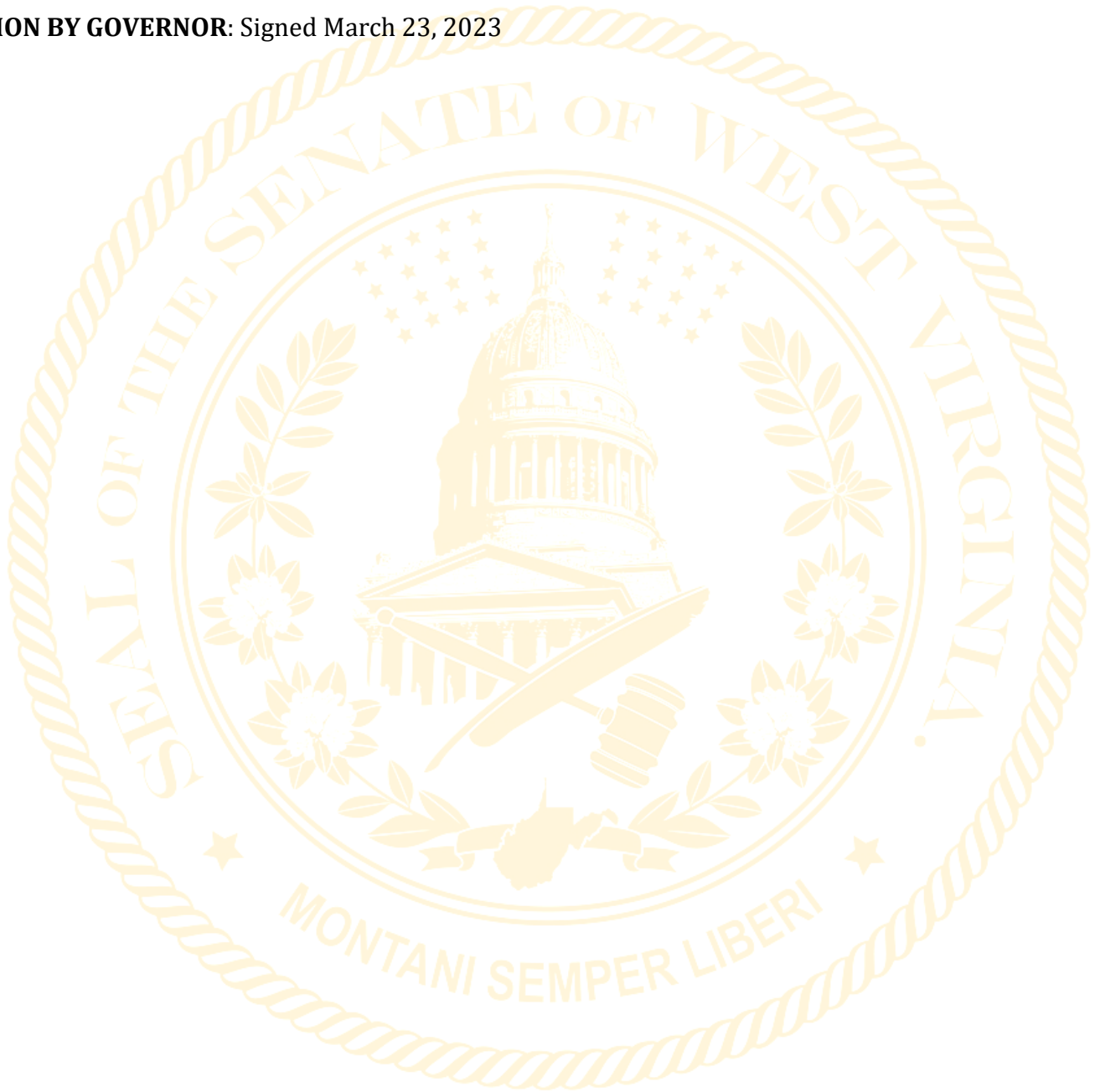
The DEP would also be required to submit an annual report to the Joint Committee on Government and Finance beginning January 2024 evaluating the effectiveness of the pilot program, which would sunset after December 31, 2025.

CODE REFERENCE: West Virginia Code §22-34-1 through §22-34-4 – new

DATE OF PASSAGE: March 7, 2023

EFFECTIVE DATE: March 7, 2023

ACTION BY GOVERNOR: Signed March 23, 2023



Senate Bill 446

Removing methanol and methanol fuel from definition of special fuel.

This is an agency bill introduced at the request of the Tax Commissioner. The bill removes from the definition of special fuel within the Motor Fuel Excise Tax the term “methanol”. Methanol is primarily used in manufacturing. Including it in the definition of special fuel and making it subject to sales tax precludes manufacturers from asserting an exemption for use in manufacturing. This bill would permit the use of that exemption.

CODE REFERENCE: West Virginia Code §11-14C-2 – amended

DATE OF PASSAGE: March 11, 2023

EFFECTIVE DATE: July 1, 2023

ACTION BY GOVERNOR: Signed March 29, 2023

Senate Bill 450

Defining medical examination for disability purposes in retirement plans administered by Consolidated Public Retirement Board

The bill amends provisions of the WV Code relating to medical examinations for disability determinations for the retirement plans administered by the Consolidated Public Retirement Board (CPRB). The bill defines the term “medical examination” to mean an in-person or virtual examination or, at the discretion of the CPRB, a medical record review of the member’s physical and/or mental health by a physician selected or approved by the CPRB. In addition, the bill would make clear that the CPRB’s determination of disability will be made based upon a medical examination.

CODE REFERENCE: West Virginia Code §5-10-2, §7-14D-2, §7-14D-14, §7-14D-15, §8-22A-2, §15-2A-2, §15-2A-9, §16-5V-2, §18-7A-3, §18-7A-25, §20-18-2, §20-18-21, and §20-18-22 – amended

DATE OF PASSAGE: March 7, 2023

EFFECTIVE DATE: June 5, 2023

ACTION BY GOVERNOR: Signed March 23, 2023

Senate Bill 475

Modifying examinations for disability pensions

This bill is like Senate Bill 450 which provides essentially the same changes to existing law, but for the retirement system under the direction of the Municipal Pensions Oversight Board, rather than the CPRB.

The amended language regards the MPOB's determination of disability awards and benefits determined by a medical examination. Such medical examination is described and may be "an in-person or virtual examination of a member's physical or mental health, or both, or at the discretion of the oversight board, a medical record review of the member's physical or mental health, or both." The bill gives the MPOB discretion in deciding the method.

CODE REFERENCE: West Virginia Code §8-22-23a – amended

DATE OF PASSAGE: March 6, 2023

EFFECTIVE DATE: July 1, 2023

ACTION BY GOVERNOR: Approved March 29, 2023

Senate Bill 487

Extending additional modification reducing federal adjusted gross income

Current law provides that a taxpayer who retires with benefits provided by an employer provided pension plan that terminates prior to or after his or her retirement and, the plan is governed by a guarantor whose maximum benefit is less than that which the taxpayer would have received had his or her plan not terminated may subtract from his or her federal adjusted gross income the difference. This adjustment terminated on January 1, 2023. This bill extends the modification to 2028.

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

DATE OF PASSAGE: March 8, 2023

EFFECTIVE DATE: June 6, 2023

ACTION BY GOVERNOR: Signed March 29, 2023

Senate Bill 488

Aligning state and federal accreditation rules

This bill requires the Community and Technical College Council, the Higher Education Policy Commission, and the governing boards of the exempted schools to regularly update their rules regarding accreditation to conform with changes by, and to take advantage of new flexibilities and data sources made available by the U.S. Department of Education and by the U.S. Congress. It also requires that by December 31, 2023, the council, commission, and governing boards promulgate rules that permit institutions to choose to pursue institutional accreditation with any accreditor recognized by the U.S. Department of Education.

The bill also requires that by December 31, 2023, the council, commission, and the governing boards of the exempted schools to amend their regulations regarding accreditation to ensure that every postsecondary institution in the state can freely choose to pursue accreditation by any accreditor recognized by the U.S. Department of Education for the kinds of programs offered by the institution. The bill also provides that to the extent that the regulations imply or state that institution default to, or normally would, should, or must be accredited by the Higher Learning Commission and/or the now-defunct North Central Association, the regulations are incorrect and are required to be amended.

CODE REFERENCE: West Virginia Code §18B-4-7 – amended; §18B-4-7a – new

DATE OF PASSAGE: March 11, 2023

EFFECTIVE DATE: June 9, 2023

ACTION BY GOVERNOR: Signed March 29, 2023

Senate Bill 508

Clarifying reporting and disclosure requirements for grassroots lobbying expenditures

This bill amends monetary thresholds under Chapter 6B (the Ethics Act) related to “grass roots lobbying campaigns.” Under prior law, after spending more than \$200 in one month or \$500 over a three-month period on a campaign aimed at the public and designed to influence legislation, (e.g., passing out flyers in support of a bill, holding a rally, or encouraging citizens to contact their representatives, an individual was required to register as the sponsor of a grass roots lobbying campaign). After registration, a sponsor was also required to disclose the names of any person who had donated more than \$25 dollars to that campaign.

The amended bill raises these monetary thresholds. Now, an individual must spend more than \$1,000 dollars in one month or more than \$5,000 over three months to trigger the registration requirement. Only donors who donate at least \$1,000 are required to be disclosed. The bill further clarifies that only donors whose donations are made “for the purpose of furthering” the grass roots lobbying campaign are required to be disclosed.

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

DATE OF PASSAGE: March 10, 2023

EFFECTIVE DATE: June 8, 2023

ACTION BY GOVERNOR: Signed March 29, 2023

Senate Bill 516

Relating to requirements for disclosure of donor contributions

This bill adds a new definition—“membership organization political action committee”—in the state code section regulating elections. This new definition clarifies the difference between a membership organization and a membership organization political action committee, the latter of which is organized for the primary purpose of influencing an election taking place in West Virginia. The committee substitute further clarifies that not every membership organization qualifies as a political action committee.

The bill also raises the minimum single donation amount that triggering the independent expenditure disclosure requirement from \$250 to \$1,000. Finally, the committee substitute adds language clarifying that disclosure is limited to those donations made for the purpose of furthering electioneering communications.

The Secretary of State has a policy and related rules that distinguish between membership organizations that are focused on influencing elections and those that are not. The new definition places that distinction expressly in the state code. The increase in the disclosure threshold is consistent with Supreme Court precedent permitting anonymous political speech and reduces the disclosure burden on individuals and entities that expend relatively low monetary amounts that qualify as independent expenditures.

CODE REFERENCE: West Virginia Code §3-8-1a, §3-8-2, and §3-8-2b – amended

DATE OF PASSAGE: March 10, 2023

EFFECTIVE DATE: June 8, 2023

ACTION BY GOVERNOR: Signed March 29, 2023

Senate Bill 523

Clarifying purpose and use of Economic Development Project Fund

The bill would modify the requirements for spending from the special revenue fund, designated the “Economic Development Project Fund,” through which the Economic Development Authority (EDA) may offer incentives for business formation or expansion and provide assistance with site development or other concerns to industrial development agencies or enterprises under existing EDA law, as long as at least \$200 million is used to finance “high impact development projects. For these purposes, the Project Fund received at least \$400 million last year when the fund was created.

The bill would remove the \$200 floor for financing “high impact development projects” and establish a cap of \$300 million, plus earnings or other returns on that principal and any additional legislative appropriations for that purpose. The bill would permit the EDA to “finance any high impact development project under this section by offering incentives for business formation or expansion to industrial development agencies or enterprises in this state in the form of loans, grants, or other offers of financial assistance or aid upon such terms as the Governor may request and the authority shall deem appropriate.”

The bill would create two new purposes for otherwise spending the moneys of the Project Fund:

“Traditional loans” through which the EDA may finance any economic development project under this section by offering incentives for business formation or expansion to industrial development agencies or enterprises in this state in the form of loans that may not exceed \$250 million dollars annually, on a rolling basis, plus earnings or other returns on that principal and any additional legislative appropriations for that purpose.

“Business retention projects” for which the EDA may finance any economic development project under this section by offering incentives for business development and expansion to industrial development agencies or enterprises already existing and operating in the State of West Virginia in the form of loans that may not exceed \$50 million on a rolling basis, plus earnings or other returns on that principal and any additional legislative appropriations for that purpose.

Note: A “high impact development project” is defined in this section §31-15-23a as “a project meeting the following criteria, according to a resolution adopted by the authority:

- The Governor has requested, in writing, that the project* be approved for financing by the authority in an amount of \$50 million or greater;
- The industrial development agency** or enterprise*** undertaking the project will privately invest an amount of \$50 million or greater in the project; and
- The project meets or exceeds the loan per job ratio criteria for high-impact development projects that may be established, in consultation with the Secretary of the Department of Economic Development, by the board of directors.”

§31-15-4 defines the following terms used in the above criteria:

- *“Project” means a commercial or industrial undertaking and all of the assets reasonably and necessarily required therefor, all as determined by the authority, which determination shall be conclusive, and shall include, without limiting the generality of the foregoing, industrial projects and commercial projects as presently defined in section three, article two-c, chapter thirteen. [The terms “commercial project” and “industrial project” are defined within the Industrial Development and Commercial Development Bond Act, through which the Economic Development Authority is

authorized to issue bonds and other means of financing industrial projects and commercial projects. See, e.g., §13-2C-3]

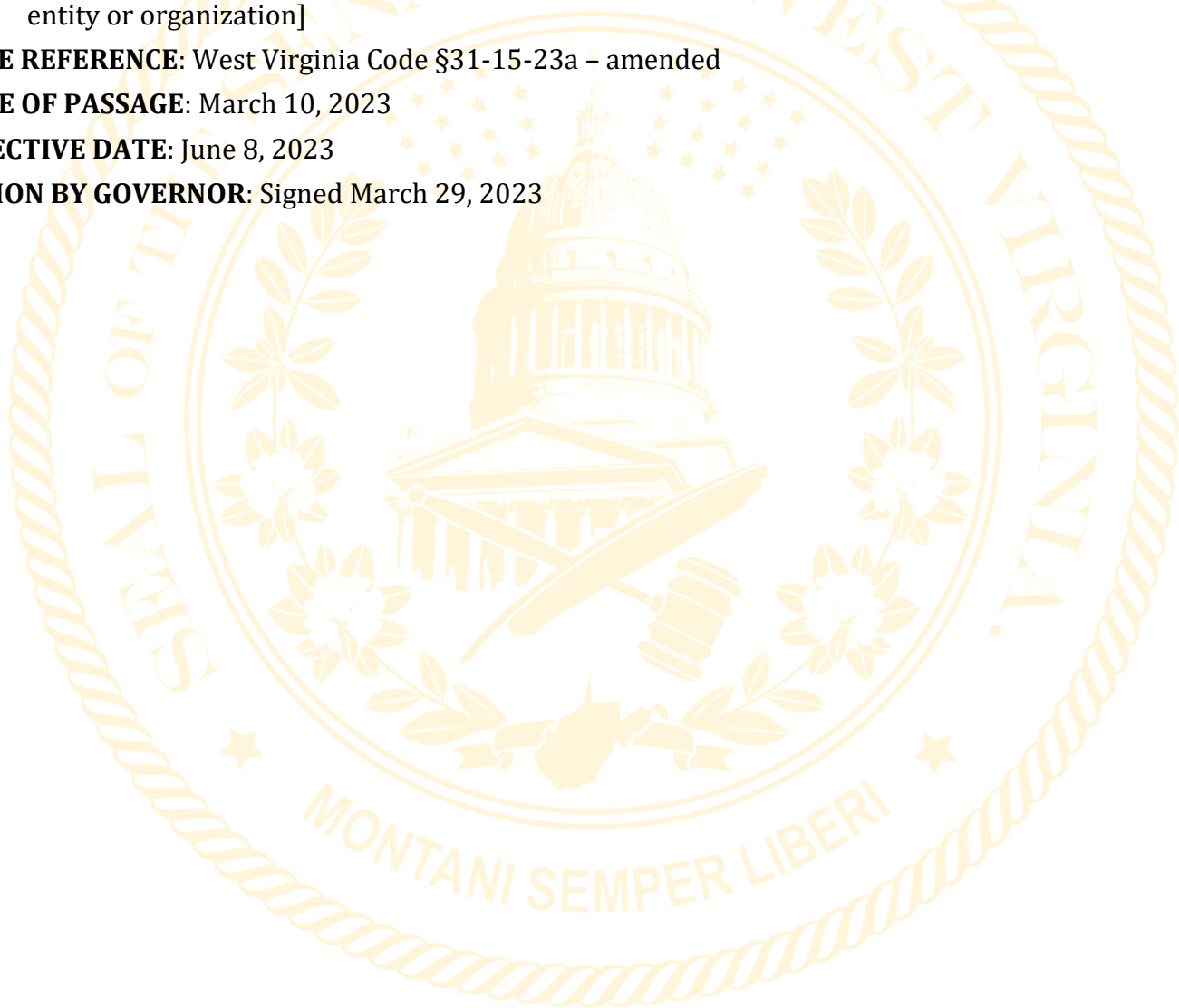
- **"Industrial development agency" means any incorporated organization, foundation, association or agency to whose members or shareholders no profit inures, which has as its primary function the promotion, encouragement and development of industrial, commercial, manufacturing and tourist enterprises or projects in this state.
- ***"Enterprise" means an entity which is or proposes to be engaged in this state in any business activity for profit. The entity may be owned, operated, controlled or under the management of a person, partnership, corporation, trust, community-based development organization or council, local commerce group, employee stock ownership plan, pension or profit-sharing plan, a group of participating employees who desire to own an entity which does not presently exist, or any similar entity or organization]

CODE REFERENCE: West Virginia Code §31-15-23a – amended

DATE OF PASSAGE: March 10, 2023

EFFECTIVE DATE: June 8, 2023

ACTION BY GOVERNOR: Signed March 29, 2023



Senate Bill 529

Allowing businesses to register as limited liability limited partnerships

This bill provides for recognition of limited liability limited partnerships and requires the use of “Registered Limited Liability Limited Partnership”, “L.L.L.P.”, or “LLLP” as the suffix of the entity name. Accordingly, business entities registered as LLLPs in other states can use that same suffix when doing business in West Virginia and are not required to register a new name with an LLP (Registered Limited Liability Partnership) designation.

CODE REFERENCE: West Virginia Code §47B-10-3 – amended

DATE OF PASSAGE: March 6, 2023

EFFECTIVE DATE: June 4, 2023

ACTION BY GOVERNOR: Signed March 29, 2023

Senate Bill 533

Relating to limitations on motor vehicle used by nonprofit cooperative recycling associations

The bill allows recycling cooperatives to own more than one vehicle to collect and transport recyclable material in the same area the recycling cooperative is located and provides a motor carrier with the ability to receive a certificate of need.

CODE REFERENCE: West Virginia Code §19-4-1 – amended

DATE OF PASSAGE: March 11, 2023

EFFECTIVE DATE: June 9, 2023

ACTION BY GOVERNOR: Signed March 29, 2023

Senate Bill 534

Relating to nonintoxicating beer, nonintoxicating craft beer, cider, wine, and liquor license requirements

The bill:

- Clarifies amendments made to code in House Bill 4848 from the Regular Session of 2022.
- In order to expand tourism opportunities, it grants manufacturing licensees a limited off-site retail privilege at private fairs and festivals when all parties agree to permit such activity.
- Authorizes municipalities to create private outdoor designated areas that are zoned for alcohol consumption in the area for alcohol drinks sold by qualified permit holders who are also Class A licenses.
- Allows beer slushies;
- Requires payment of taxes and fees;
- Removes time-limited gallonage cap on distilleries, mini-distilleries, and micro-distilleries;
- Clarifies that micro-distilleries are subject to some general provisions of code applicable to mini-distilleries and distilleries;
- Creates a private food court license and a private coliseum or center license;
- Clarifies dual licensing provisions so a fair and festival can dually operate at a private coliseum or center;
- Permits a private wine restaurant to operate a separately licensed but connected wine specialty shop.
- Modifies some on-site food requirements to offset food price measures for private club bars and private cigar shops.
- Updates some definitions and requirements.
- Allow manufacturers to substitute portable kitchen and food trucks to meet kitchen requirements, but such substitution only permits alcohol sales when the food truck is operating at the manufacturer's location.
- Permits free standing liquor retail outlets greater freedom for sampling liquor and increases the volume of the sample.
- Permits an exception to admission to dance hall requirements for a private coliseum center, private food court, and a private outdoor designated area.
- Prohibits municipalities from requiring at least one alcohol related license if the state already requires a license for the activity.

CODE REFERENCE: West Virginia Code §11-16-3, §11-16-6a, §11-16-6d, §11-16-6f, §11-16-8, §11-16-9, §60-3A-3a, §60-3A-8, §60-4-3a, §60-4-3b, §60-7-2, §60-7-6, §60-8A-5, and §60-8-27 – amended; §8-12-26, §60-7-2a, §60-7-8a, §60-7-8g, and §60-8-8g – new

DATE OF PASSAGE: March 11, 2023

EFFECTIVE DATE: June 9, 2023

ACTION BY GOVERNOR: Signed March 29, 2023

Senate Bill 543

Authorizing rule-making changes to terms, procedures and reporting duties in higher education

This bill makes changes to the manner in which higher education rules are processed by the Legislature. The changes would make the process more consistent with general rulemaking protocols.

The bill changes the definition of "Board" to "Agency." Additionally, it expands the term to include not only the Higher Education Policy Commission but would also not encompass the Council for Community and Technical College Education and the School Building authority. Amendments to conform to this terminology change are made throughout the bill.

The bill adds a new provision that requires that when an amendment to a rule is filed that all sections of the rule are required to be filed along with an explanation of the effect of the amendment. There are also provisions that require strikethroughs for any repeal and that a rule may not be repealed by reference in another rule.

The bill also provides that provisions related to procedural and interpretive rules also apply to legislative exempt rules. These types of rules may be repealed with a filing of a notice with the Secretary of State. The bill adds to the provisions for a public comment period a permissive public hearing. Public comments are now required to be responded to with an explanation of why the comment was not accounted for or why the comment was incorporated into the rule.

Proposed legislative rules require that a notice be filed either 90 following the close of the public comment period or the public hearing. Notice is filed in the State Register and with the Legislative Oversight Commission on Education Accountability (LOCEA). LOCEA has the authority to grant an extension with good cause. Any submission of an approved rule is required to be submitted electronically. Additional information is required to be included in the submission and requires LOCEA to make a determination of the rule overlaps, duplicates, or conflicts with any federal statute or regulation and whether the rule will impact federal funding. The bill adds to the powers of LOCEA the ability to reject a proposed rule and makes a similar amendment to the Legislature as a whole.

One of the powers of LOCEA is to provide for a continuing investigation and study into the practices of the agency as defined in the bill. Added to that is a continuing investigation of the State Board of Education.

The bill simplifies the date after which rules that are submitted to LOCEA can be withheld from its report to the clerk. Currently, LOCEA can withhold from its report any proposed legislative rule which was submitted to it fewer than 210 days before the end of the regular session. This bill would change the date to the last Friday in July of the previous calendar year or the last Friday in August of the previous year for every four years when sessions begin a month later.

Although any number of provisions may be included in the bill of authorization the single object of the bill shall be authorization of the rules. Should the Legislature disapprove all or part of any rule, this bill would allow the agency to resubmit the rule in a same or similar fashion to LOCEA. Now archaic language regarding calculating dates has been deleted.

Emergency rules would now be required to be filed in the State Register and include a listing of state institutions of higher education, agencies, professions, business, and other identifiable interest groups affected by the rule. The bill also provides that an emergency rule shall become effective upon the approval of the Secretary of State or upon the 42nd day post filing whichever comes first and reduces the number of days from 60 to 30 that the agency has to file a notice of public hearing on the emergency rule. The number of days the agency has to file a proposed emergency rule with LOCEA has been reduced in half from 180 to

90. Provisions for disapproval of any amendment to an emergency rule have been amended to mirror the provisions for disapproval of the emergency rule.

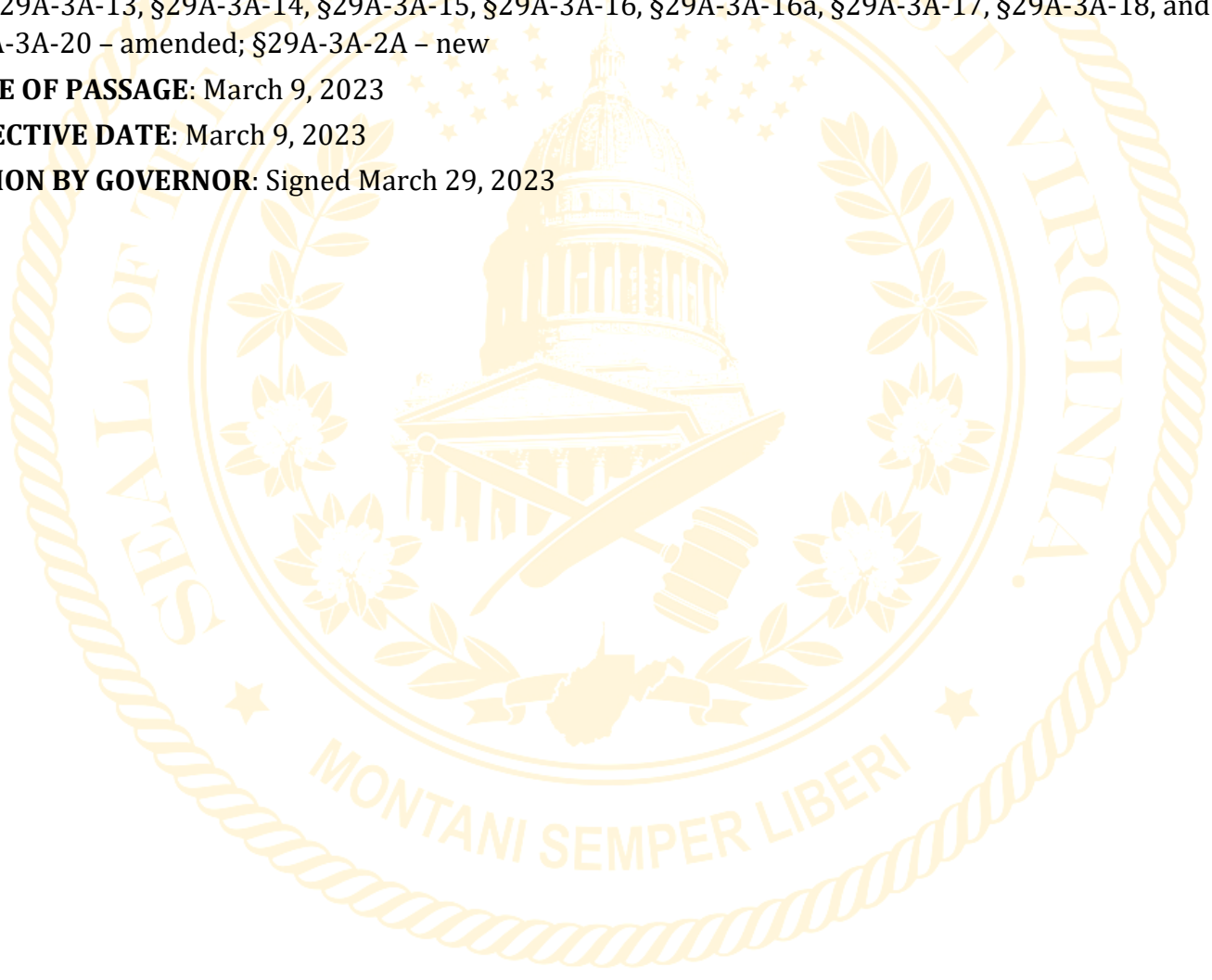
The remaining provisions of the rule all deal with sunset dates for the rule. Current law provides for a five (5) year sunset for rules. This bill would modify that to August 1st of the fifth year. The bill gives the agency 60 days after receipt of expiration notice from the Secretary of State to file the legislative rule with the Secretary of State and LOCEA seeking renewal of the rule. It provides that if the rule that is scheduled to sunset is not being amended, except for a new sunset date, the rule is not subject to the public comment period and allows, in cases where the sunset date is prior to May 1, the agency to file a technical amendment with the Secretary of State to change the sunset date to August 1. Finally, it requires the Secretary of State to file a notice of sunset in the State Register within 30 days following the expiration of a legislative rule.

CODE REFERENCE: West Virginia Code §29A-3A-1, §29A-3A-2, §29A-3A-3, §29A-3A-4, §29A-3A-5, §29A-3A-6, §29A-3A-7, §29A-3A-8, §29A-3A-9, §29A-3A-10, §29A-3A-11, §29A-3A-12, §29A-3A-11a, §29A-3A-12, §29A-3A-13, §29A-3A-14, §29A-3A-15, §29A-3A-16, §29A-3A-16a, §29A-3A-17, §29A-3A-18, and §29A-3A-20 – amended; §29A-3A-2A – new

DATE OF PASSAGE: March 9, 2023

EFFECTIVE DATE: March 9, 2023

ACTION BY GOVERNOR: Signed March 29, 2023



Senate Bill 544

Increasing power purchase agreement cap

Current code (§24-1-1c) encourages retail customers of utilities to enter into Power Purchase Agreements (PPAs), under which customers have solar photovoltaic energy facilities installed on their premises to meet their electrical needs. Such facilities do not constitute a public utility and are therefore not subject to the jurisdiction of the PSC, within certain limitations. One of those limitations is an individual cap on the output of such a facility. Senate Bill 544 increases the PPA cap for individual on-site generator facilities for commercial customers from 500 kW to 1000 kW. The bill also increases the cap for individual residential customers from 25kW to 50kW.

CODE REFERENCE: West Virginia Code §24-2-1 – amended

DATE OF PASSAGE: March 11, 2023

EFFECTIVE DATE: June 9, 2023

ACTION BY GOVERNOR: Signed March 29, 2023

Senate Bill 546

Adding and removing certain compounds from controlled substance list

At the recommendations of the Board of Pharmacy with the cooperation of the West Virginia State Police forensics lab, this bill updates the list of scheduled drugs and substances of the Controlled Substances Act. The bill updates the Schedules which have not been updated since 2017. The effect of scheduling is how a drug or substance is scheduled determines the criminal penalties for a violation of the act for unlawful possession, manufacture, or distribution. Under West Virginia law, only the legislature can amend the schedule and if a substance is not scheduled there is no criminal offense.

The bill, in addition to the recommendations of the Board of Pharmacy, also adds delta-8, and delta-10 tetrahydrocannabinols to Schedule I. Arguably delta-8 and 10 are already scheduled due to current language in §60A-2-204 which places tetrahydro-cannabinols, their synthetic equivalents, resinous extractives of cannabis, its immediate derivative and their isomers with similar chemical structure and pharmacological activity in schedule 1 currently. This also makes clear that all the tetrahydrocannabinols are included whether specifically listed or not. It also makes xylazine a schedule IV drug.

The bill removes Pregabalin from Schedule V. And finally, the bill exempts cannabis products lawfully manufactured, distributed, or possessed pursuant to the Industrial Hemp Act and the Medical Cannabis Act.

CODE REFERENCE: West Virginia Code §60A-2-204, §60A-2-206, §60A-2-210, and §60A-2-212 – amended

DATE OF PASSAGE: March 10, 2023

EFFECTIVE DATE: June 8, 2023

ACTION BY GOVERNOR: Signed March 29, 2023

Senate Bill 548

Clarifying what parties can redeem delinquent property and limiting those entitled to bid

Under current law, any person entitled to pay taxes on a delinquent property may redeem the property by payment of outstanding taxes and interest. The bill additionally authorizes redemption by the owner of delinquent property whose interest is not subject to separate assessment, and by a lienholder on the property or an undivided interest in the property.

The bill clarifies that the property will be sold to the highest eligible bidder at a public auction held by the Auditor. The bill requires bidders to pre-register with the Auditor's office or to complete and execute a notarized affidavit affirming that they meet the applicable requirements on the day of the sale, and provides that they cannot at the time of registration have failed to make a payment from a prior auction; be delinquent in the payment of real property taxes to any county; have a history of noncompliant with county or municipal code enforcement violations; be subject to legal proceedings involving real property code enforcement violations; or have failed to comply with a raze or repair order in the five years preceding the purchase. The bill requires companies that seek to bid to be registered with the Secretary of State and be authorized to conduct business in West Virginia. The bill provides rulemaking authority to the Auditor to effectuate these provisions.

Citizens of or entities with a connection to a "Country of Particular Concern" (as designed by the U.S. State Department) cannot participate in the Auditor auctions. The list of those countries is updated annually and, as November 2022, includes Burma, China, Cuba, Eritrea, Iran, North Korea, Nicaragua, Pakistan, Russia, Saudi Arabia, Tajikistan, and Turkmenistan.

With respect to properties going through the unsold land process, the Auditor is authorized to hire an attorney for a title examination on auctioned property and to require the purchaser reimburse the Auditor for that expense. Alternatively, the bill provides that a purchaser may hire an attorney to provide the title examination at his or her own cost.

The Auditor is further permitted to refuse to sell unsold lands if the buyer does not meet the previously specified pre-registration requirements or if the citizen or entity is connected to a "Country of Particular Concern."

The bill updates various notice provisions including the certification list, notice of auction, and post-sale redemption provisions to align with these changes.

CODE REFERENCE: West Virginia Code §11A-3-2, §11A-3-13, §11A-3-38, §11A-3-45, §11A-3-46, §11A-3-47, §11A-3-48, and §11A-3-56 – amended; §11A-3-45a and §11A-3-48a – new

DATE OF PASSAGE: March 11, 2023

EFFECTIVE DATE: June 9, 2023

ACTION BY GOVERNOR: Signed March 29, 2023

Senate Bill 561

Relating to administration of WV Drinking Water Treatment Revolving Fund Act

This bill transfers administration of the Drinking Water Treatment Revolving Fund (Water Treatment Fund) Act from the Department of Health and Human Resources (DHHR) to the Department of Environmental Protection (DEP).

The Fund is used to make loans or other financial assistance to projects for public water systems that collect, treat, and supply water for human consumption. It would continue to be managed by the Water Development Authority (Authority) (§22C-1-1 et seq.) but under the direction of the DEP instead of DHHR.

The bill also adds a provision to DEP's administration of the Water Treatment Fund that provides for reviewing each project funded by the Water Treatment Fund and to require projects receiving funds to prevent or mitigate adverse impacts to public health and the environment and also grants DEP rulemaking authority therefor.

The Committee Substitute to the Committee Substitute removed any changes to the makeup of the Water Development Authority. The House amended the bill to remove redundant language regarding the water construction grants program. The Senate concurred with the amendment.

CODE REFERENCE: West Virginia Code §16-13C-1 through §16-13C-6 – repealed; §22C-1-4, §22C-1-8, and §22C-2-2 – amended; §22-36-1 through §22-36-7 – new

DATE OF PASSAGE: March 11, 2023

EFFECTIVE DATE: July 1, 2023

ACTION BY GOVERNOR: Signed March 23, 2023

Senate Bill 577

Reducing copay cap on insulin and devices and permitting purchase of testing equipment without prescription

The bill limits cost sharing to \$35 for a 30-day supply of a covered prescription insulin and \$100 for devices. The bill includes the following instruments as “devices”: blood glucose strips, continuous glucose monitor, lancets, lancing devices, and insulin syringes. It further provides that a prescription is not required to obtain a blood testing kit for ketones for private insurance.

CODE REFERENCE: West Virginia Code §5-16-2, §5-16-7g, and §33-59-1 – amended

DATE OF PASSAGE: March 11, 2023

EFFECTIVE DATE: January 1, 2024

ACTION BY GOVERNOR: Signed March 23, 2023

Senate Bill 591

Allowing counties and municipalities to jointly undertake development projects

This bill amends current law relating to joint undertakings by county development authorities to allow counties and municipalities to develop economic projects together and to share proportionally in project costs and revenues generated from the project.

CODE REFERENCE: West Virginia Code §7-12-9a – amended

DATE OF PASSAGE: March 4, 2023

EFFECTIVE DATE: June 2, 2023

ACTION BY GOVERNOR: Signed March 8, 2023

Senate Bill 594

Specifying fairness in cost sharing calculations for certain high deductible health plans

This bill modifies sections in the insurance code, in articles on individual and group accident and sickness insurance; hospital medical and dental corporations; health care corporations, and health maintenance organizations, in sections on cost-sharing that were enacted in 2019 through HB 2770. Those sections currently require insurers and pharmacy benefits managers to include any cost sharing amounts paid by the insured, or on behalf of the insured by another person, when calculating an insured's contribution to a deductible. In simple terms, those sections require that savings are passed along to the insured.

The bill adds a provision to these sections that states that if application of these savings provisions would result in Health Savings Account (HSA) ineligibility under Section 223 of the Internal Revenue Code, then these savings provisions apply only for HSA-qualified High Deductible Health Plans with respect to the deductible of such a plan after the enrollee has satisfied the federal minimum deductible. The savings provisions would still apply to items or services that are preventive care pursuant to Section 223(c)(2)(C) of the Internal Revenue Code (items or services that would not cause HSA ineligibility).

The purpose of this bill is to ensure that West Virginians can pair high deductible health plans with Health Savings Accounts. HSA-qualified plans must follow specific federal rules regarding application of deductibles and other cost-sharing. The new provisions in the bill apply only to insureds with an HSA, to the extent the savings provisions in existing law violate HSA eligibility rules. The new provisions in this bill are meant to prevent HSA owners in West Virginia from inadvertently becoming ineligible for their HSA and be forced to withdraw contributions already made to their HSA and re-file both federal and state tax returns.

CODE REFERENCE: West Virginia Code §33-15-4t, §33-16-3ee, §33-24-7t, §33-25-8q, and §33-25A-8t – amended

DATE OF PASSAGE: March 3, 2023

EFFECTIVE DATE: March 3, 2023

ACTION BY GOVERNOR: Signed March 29, 2023

Senate Bill 609

Obtaining approval for decommissioning or deconstructing of existing power plant

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

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

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

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

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

DATE OF PASSAGE: March 6, 2023

EFFECTIVE DATE: March 6, 2023

ACTION BY GOVERNOR: Signed March 7, 2023

Senate Bill 613

Relating generally to certificates of need

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

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

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

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

DATE OF PASSAGE: March 10, 2023

EFFECTIVE DATE: March 10, 2023

ACTION BY GOVERNOR: Signed March 28, 2023

Senate Bill 661

Clarifying preferential recall rights for employees sustaining compensable injury

The purpose of Senate Bill 661 is to modify the preferential-recall rights of an employee who is off work due to a compensable injury. The bill provides that an employee's demand for reinstatement must be made in writing and transmitted to the employer's principal office. This change is applicable to all employers.

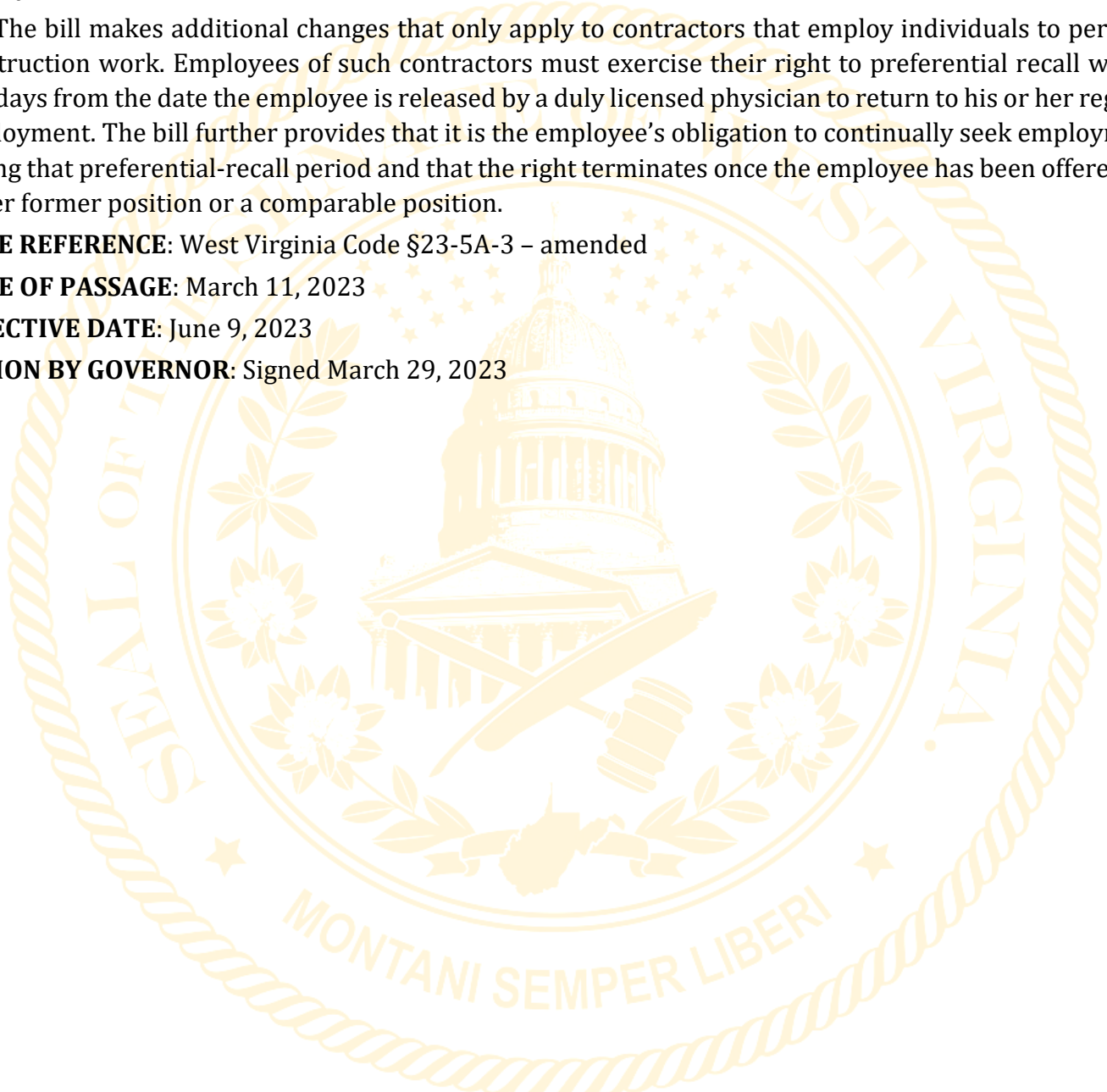
The bill makes additional changes that only apply to contractors that employ individuals to perform construction work. Employees of such contractors must exercise their right to preferential recall within 120 days from the date the employee is released by a duly licensed physician to return to his or her regular employment. The bill further provides that it is the employee's obligation to continually seek employment during that preferential-recall period and that the right terminates once the employee has been offered his or her former position or a comparable position.

CODE REFERENCE: West Virginia Code §23-5A-3 – amended

DATE OF PASSAGE: March 11, 2023

EFFECTIVE DATE: June 9, 2023

ACTION BY GOVERNOR: Signed March 29, 2023



Senate Bill 688

Allowing BOE to hire retired teachers to assist with tutoring

This bill allows county boards to contract with an independent contractor who is a retired teacher to provide tutoring services to students who necessitate additional one-on-one instruction in the core subjects of reading and math.

Before entering into a contract with the tutor, the county board must require an applicant to provide proof that he or she:

- Is a citizen of the US.
- Has retired from his or her employment as a teacher.
- Meets any other requirements imposed by the county board that apply to current teachers, which may include, but isn't limited to, a background check or training.
- Has appropriate liability insurance at his or her expense (imposition of requirement optional to the county board).

The bill also sets forth the following as disqualifying criminal offenses which preclude a county board from engaging the services of a tutor:

- Any sex offense.
- Crimes against persons, which includes, but is not limited to, manslaughter, murder, child abuse, domestic violence, stalking, kidnapping, or aggravated assault or battery.
- Unlawful manufacture, delivery, or possession with intent to deliver any controlled substance.
- Any other misdemeanor or felony conviction considered exclusionary for contracting with the independent contractor by the county board.

The bill also provides that a county board cannot be held civilly liable or be criminally prosecuted for any action of an independent contractor tutor acting within the scope of the duties for which their services were contracted unless the county board can be shown to be grossly negligent or committed willful misconduct.

The bill also provides that:

- County boards are not subject to Purchasing Division requirements when contracting for the tutoring services.
- Nothing requires a county board to contract for the tutoring services.
- An independent contractor tutor is not eligible for participation in PEIA, workers' compensation, additional state retirement credited to employment as a West Virginia Tutor, or any other state sponsored or offered state benefit plan.
- Participation in the tutoring program does not affect the retired teacher's retirement benefits.

CODE REFERENCE: West Virginia Code §18-5-50 – new

DATE OF PASSAGE: March 8, 2023

EFFECTIVE DATE: June 6, 2023

ACTION BY GOVERNOR: Signed March 29, 2023

Senate Bill 734

Requiring adoption of cloud computing services by state agencies

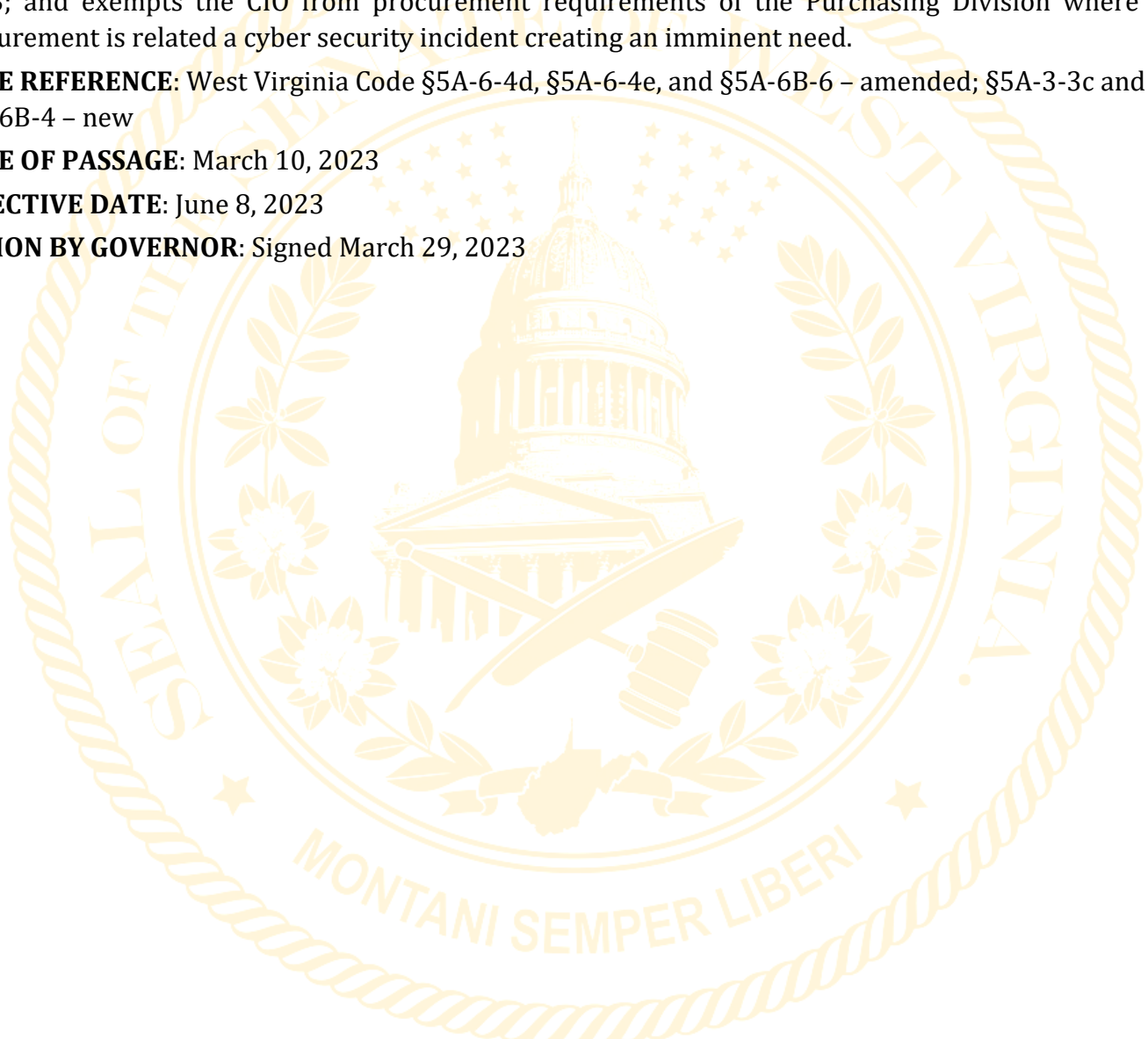
Establishes the requirement for the Chief Information Officer (CIO) to develop and implement an information technology modernization strategy for the procurement, adoption, and utilization of cloud computing services by the state and its agencies; requires the CIO to annually report on the status of the strategy to the Governor and the Joint Committee on Government and Finance beginning December 2023; requires the CIO to aid state agencies to explore digitizing all paper forms and applications by July 1, 2025; requires state agencies to report to the CIO on their cybersecurity readiness annually beginning November 2023; and exempts the CIO from procurement requirements of the Purchasing Division where such procurement is related a cyber security incident creating an imminent need.

CODE REFERENCE: West Virginia Code §5A-6-4d, §5A-6-4e, and §5A-6B-6 – amended; §5A-3-3c and §5A-6B-4 – new

DATE OF PASSAGE: March 10, 2023

EFFECTIVE DATE: June 8, 2023

ACTION BY GOVERNOR: Signed March 29, 2023



House Bill 2002

Relating to providing support for families

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

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

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

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

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

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

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

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

DATE OF PASSAGE: March 9, 2023

EFFECTIVE DATE: June 7, 2023

ACTION BY GOVERNOR: Signed March 28, 2023

House Bill 2004

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

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

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

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

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

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

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

DATE OF PASSAGE: March 10, 2023

EFFECTIVE DATE: June 8, 2023

ACTION BY GOVERNOR: Signed March 29, 2023

House Bill 2005

Establishing the dual enrollment pilot program to be administered by the Higher Education Policy Commission and the Council for Community and Technical College Education in conjunction with the State Board of Education

The House committee substitute establishes a four-year dual enrollment pilot program to be administered by the Higher Education Policy Commission and the Council for Community and Technical College Education in conjunction with the State Board of Education.

The program would require eligible institutions to offer dual enrollment courses that comprise individualized pathways for career and post-secondary educational opportunities for secondary school students. The program would provide the following designated career pathways:

- direct care health professions;
- information technology;
- science, technology, engineering, and math (STEM) fields;
- education;
- advanced manufacturing;
- welding and fabrication;
- construction;
- agriculture; and
- any other program that meets a workforce need in the state as determined by the Department of Commerce.

For the purposes of this program, the following definitions apply:

- "Dual credit course" means a credit-bearing college-level course offered by an eligible institution to secondary school students in which the students receive credit at both the secondary and post-secondary levels.
- "Dual enrollment" means the registration of an eligible secondary student in a post-secondary course creditable toward high school completion and a career technical certificate, associate degree, or baccalaureate degree. A student who is enrolled in post-secondary instruction that is not creditable toward a high school diploma may not be classified as a dual enrollment student.
- "Eligible course" means any class or program of instruction offered at an eligible institution for which the student receives credit toward both high school completion and a post-secondary certificate or degree. Applied academics for adult education instruction, developmental education, physical education courses, and recreation and leisure studies courses are not eligible courses for dual enrollment purposes.
- "Eligible institution" means a state institution of higher education as that term is defined in §18B-1-2 of this code.
- "Eligible student" means any secondary school student, including a homeschool, charter school, microschool, learning pod, or private school student, who meets minimum criteria established by the state school board and the commission or the council, as appropriate, for the purpose of enrolling in a dual credit course.

The program would be funded from appropriations to the commission and the council for the purposes of implementing and administering the dual enrollment pilot program. The commission or the council, as appropriate, shall then pay directly to the eligible institutions from such appropriations the cost of the

tuition and academic fees incurred by eligible students taking dual credit courses in accordance with the dual enrollment pilot program.

In consultation with the state board, the commission and council may propose legislative and emergency rules pursuant to §29A-3A-1 et seq. of this code to implement the provisions of this section.

Beginning December 1, 2024, and annually thereafter, for the duration of the pilot program, the chancellor is required to report to the Legislative Oversight Commission on Education Accountability (LOCEA) on:

- The number of students participating in the program;
- The number and type of credits and certifications or credentials earned by students who have participated in the program;
- The dollar amount expended associated with this program;
- Projected growth in the program and funding needs for the next year; • The job status of students who have participated in the program;
- Any issues with the program reported by students, parents, secondary schools, and institutions of higher education; how these issues are being addressed; and whether the issues require legislative action; and
- A recommendation from the chancellor and the state superintendent on whether the program should continue beyond its four-year pilot period.

CODE REFERENCE: West Virginia Code §18B-14-4 – new

DATE OF PASSAGE: March 10, 2023

EFFECTIVE DATE: March 10, 2023

ACTION BY GOVERNOR: Signed March 21, 2023

House Bill 2006

Reorganizing the Department of Health and Human Resources

The bill amends, repeals and creates statutes to divide the existing Department of Health and Human Resources (“DHHR”) into 3 new Departments of the executive branch on January 1, 2024, as follows:

- Department of Human Services
- Department of Health
- Department of Health Facilities

Those changes include:

Chapter 5F. Reorganization of the Executive Branch of State Government.

The new Department of Human Services (which will assume the powers and duties of DHHR’s Human Services responsibilities), the new Department of Health (which will assume the powers and duties of DHHR’s Health responsibilities), and the new Department of Health Facilities (which will assume the powers and duties of DHHR’s Health Facilities responsibilities) will all be created effective January 1, 2024, at which time the DHHR will be terminated.

The bill expresses the intent of the Legislature to devolve the functions of the DHHR into 3 new and separate departments of the executive branch over a period of transition and that the provisions of this bill be construed to achieve the restructuring and reallocation of the powers, duties and functions of the DHHR to the 3 new departments in an orderly manner designed to maintain the delivery of services that have heretofore been provided by the departments during the transition and beyond without disruption, and to streamline and, where possible, to share administrative and operative expenses where common to each of the new departments.

To that end, the Secretaries of DHHR and the 3 new departments must enter into a memorandum of understanding (MOU) to effect the provisions of this Act that shall, at a minimum, create a new Office of Shared Administration mutually administered by the secretaries that shall coordinate efforts with the Department of Administration to maximize efficiencies and function of services in an effort to contain expenses within the 3 new departments.

The bill assigns existing agencies or entities to the three new Departments in the new §5F-2-1a as follows:

- Department of Human Services
 - Bureau for Social Services
 - Bureau for Medical Services
 - Bureau for Child Support Enforcement
 - Bureau for Family Assistance
 - Bureau for Behavioral Health
 - And any other agency or entity hereinafter established within the Department of Human Services by an act of the Legislature
- Department of Health
 - Bureau for Public Health
 - Office of Emergency Medical Services
 - Office of the Chief Medical Examiner
 - Center for Threat Preparedness
 - Health Care Authority

- Office of the Inspector General, which shall include:
 - Office of Health Facility Licensure and Certification
 - Board of Review
 - Foster Care Ombudsman
 - Olmstead Office
 - Investigations and Fraud Management
 - Quality Control
 - Mental Health Ombudsman
 - WV Clearance for Access: Registry and Employment Screening
 - Human Rights Commission
 - And any other agency or entity hereinafter established within the Department of Health by an act of the Legislature
- Department of Health Facilities
 - Hopemont Hospital
 - Jackie Withrow Hospital
 - John Manchin, Sr. Health Care Center
 - Lakin Hospital
 - Mildred Mitchell-Bateman Hospital
 - Welch Community Hospital
 - William R. Sharpe Jr. Hospital
 - And any other agency or entity hereinafter established within the Department of Human Health Facilities by an act of the Legislature.

Before December 1, 2024, DHHR is required to create and present to the Legislative Oversight Commission on Health and Human Resources Accountability a long-term sustainability plan for each state health facility.

Provisions are included that preserve powers and existing programs, orders, rule, etc. that currently exist under DHHR upon creation of the 3 new departments.

Chapter 9. Human Service.

The new Secretary of the Department of Human Services (DHS) is the chief executive officer of that department and administers powers and duties under Chapter 9 of the Code. The Secretary is appointed by Governor with salary “not to exceed” \$175,000. The Governor may appoint the Secretary before January 1, 2024, and if so, the Secretary must commence such duties as determined by the Secretary to be necessary to prepare for the administration of this chapter.

Powers and duties of Secretary of DHS are set forth, including provisions for shared expenses with other new secretaries through the MOU. Please note that effective January 1, 2024, current law provisions regarding DHHR’s Inspector General and Board of Review are superseded by the new §16-1-22, described below. The Secretary must cooperate with the Inspector General.

The bill keeps current law: Any contract, agreement or memorandum of understanding between the secretary and West Virginia University, West Virginia School of Osteopathic Medicine or Marshall University for services is exempt from the provisions of §5A-3-1, but any contract entered into for the provision of certain Medicaid services by a risk-bearing entity is not exempt from those provisions.

Chapter 16. Public Health.

The new Secretary of the Department of Health (DOH) is the chief executive officer of that department and administers powers and duties under Chapter 16 of the Code. The Secretary is appointed by Governor with salary “not to exceed” \$175,000. The Governor may appoint the Secretary before January 1, 2024, and if so, the Secretary must commence such duties as determined by the Secretary to be necessary to prepare for the administration of this chapter.

Powers and duties of Secretary of DOH are set forth, including provisions for shared expenses with other new secretaries through the MOU. The Secretary must cooperate with the Inspector General.

Any contract, agreement or memorandum of understanding between the secretary and West Virginia University, West Virginia School of Osteopathic Medicine or Marshall University for services is exempt from the provisions of §5A-3-1 (purchasing).

Commissioner of the Bureau of Public Health (office within DOH) “may” be state health officer. If so, must be licensed physician.

Beginning January 1, 2024, the Office of the Inspector General (OIG) is continued within the new Department of Health, but the Inspector General (IG) is appointed by the Governor instead of the Secretary for a 5-year term and may be removed only for specific reasons. The IG is given expanded powers and duties. (Again, please note the component agencies and offices that are moved into the OIG as described above). The OIG will also be assigned the duty of creating a new Board of Review in lieu of the existing Board of Review created by the Secretary of DHHR. Provisions for proceedings before the Board of Review and the Bureau for Medical Services, and judicial review of their decisions, are set forth. Authority of the Investigations and Fraud Management Division is retained.

Chapter 26. State Health Facilities.

The new Department of Health Facilities is not subject to the requirements of §5A-3-1 (Purchasing) and §5A-10-1 (Real Estate Division). Employees hired on or after January 1, 2024, are not eligible for civil service.

The new Secretary of the Department of Health Facilities (DHF) is the chief executive officer of that department and administers powers and duties under Chapter 26 of the Code. The Secretary is appointed by the Governor with salary “not to exceed” \$175,000. The Governor may appoint the Secretary before January 1, 2024, and if so, the Secretary must commence such duties as determined by the Secretary to be necessary to prepare for the administration of this chapter.

Powers and duties of Secretary of DHF are set forth, including provisions for shared expenses with other new secretaries through the MOU, and authority to manage, direct, control and govern state owned health facilities. The Secretary must cooperate with the Inspector General.

Any contract, agreement or memorandum of understanding between the secretary and West Virginia University, West Virginia School of Osteopathic Medicine or Marshall University for services is exempt from the provisions of §5A-3-1.

The Secretary of DHF will be given the DHHR Secretary’s power to sell any state hospital or facility.

Chapter 48. Domestic Relations.

Language is provided to transition from DHHR to the new Department of Human Services January 1, 2024, relating to the law of child support enforcement.

Chapter 49. Child Welfare.

Language is provided to transition from DHHR to the new Department of Human Services January 1, 2024, relating to the law of child welfare services in the context of juvenile court proceedings.

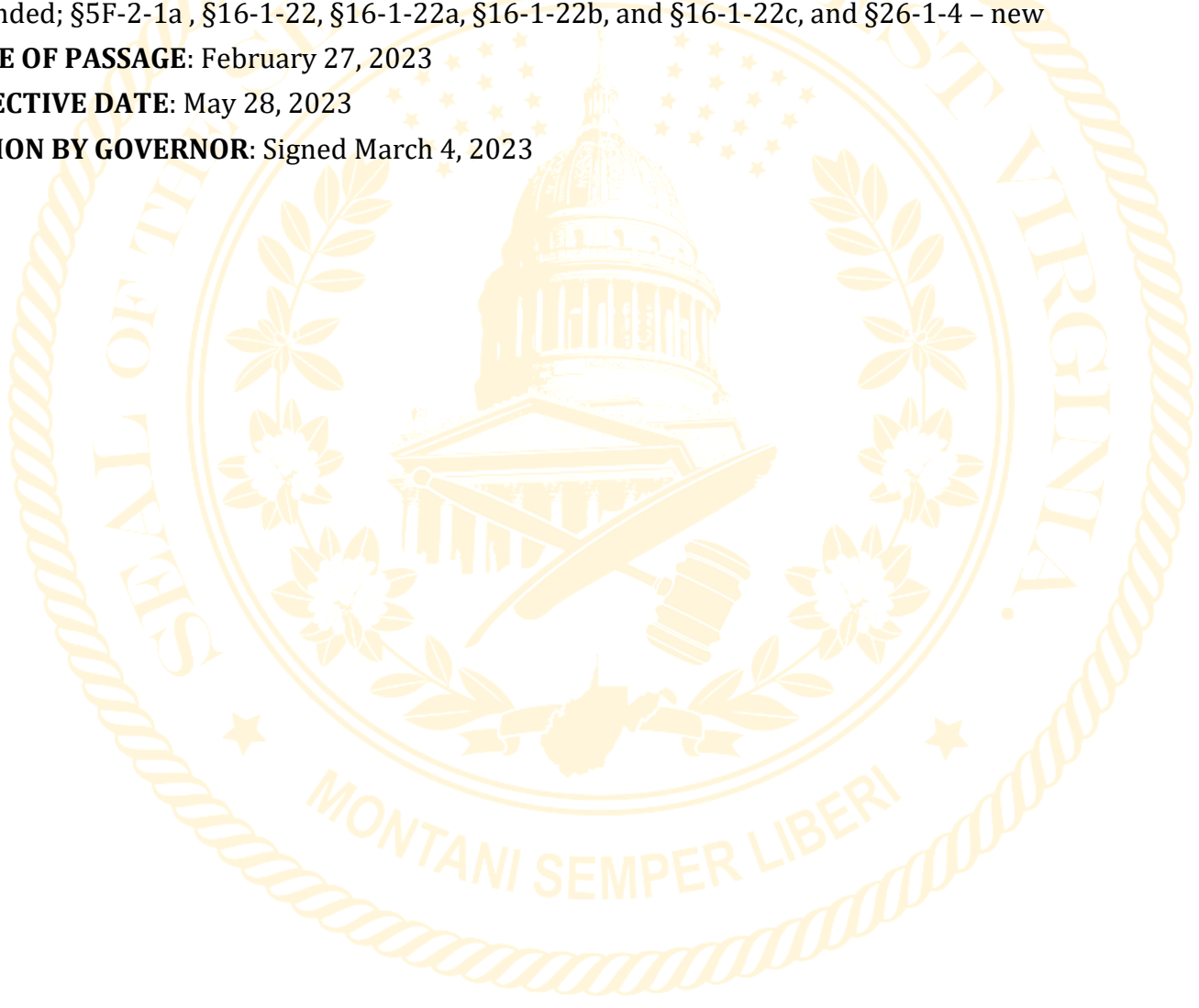
Note: The bill repeals a number of current sections of code, some of which were moved to other places in code, many of which were determined to be obsolete, outdated, antiquated, inoperative, surplus or superseded.

CODE REFERENCE: West Virginia Code §9-1-1, §9-2-1a, §9-2-9, §9-2-13, §9-5-8, §9-5-8a, and §9-5-8b, §26-3-1, §26-3-2, §26-3-3, §26-3-4, and §26-3-5, §26-5-1, §26-5A-5a, §26-8-1, §26-8-2, and §26-8-3, §26-9-1 and §26-9-2, §26-10-1, §26-11-1, §26-11-2, §26-11-3, and §26-11-4 – repealed; §5F-1-2, §5F-2-1 and §5F-2-2, §9-1-2, §9-2-1, §9-2-2, §9-2-5, and §9-2-6, §9-2-9a, §16-1-1, §16-1-2, §16-1-3, §16-1-4, §16-1-5, and §16-1-6, §16-29A-4, §26-1-1, §26-1-2, and §26-1-3, §48-14-401, §48-18-101, and §49-1-106 – amended; §5F-2-1a, §16-1-22, §16-1-22a, §16-1-22b, and §16-1-22c, and §26-1-4 – new

DATE OF PASSAGE: February 27, 2023

EFFECTIVE DATE: May 28, 2023

ACTION BY GOVERNOR: Signed March 4, 2023



House Bill 2221

Relating to bankruptcy

House Bill 2221 amends §38-10-4, the section which outlines the property and other things of value West Virginians are permitted to exempt from their bankruptcy estate if they declare bankruptcy. The bill updates the monetary thresholds for several existing exemptions—for household goods, jewelry, the debtor’s trade tools, and payments received as a result of personal bodily injury—which had not been adjusted in nearly 30 years. The adjusted amounts are now largely in line with amounts exempted under federal law and account for the impact of inflation.

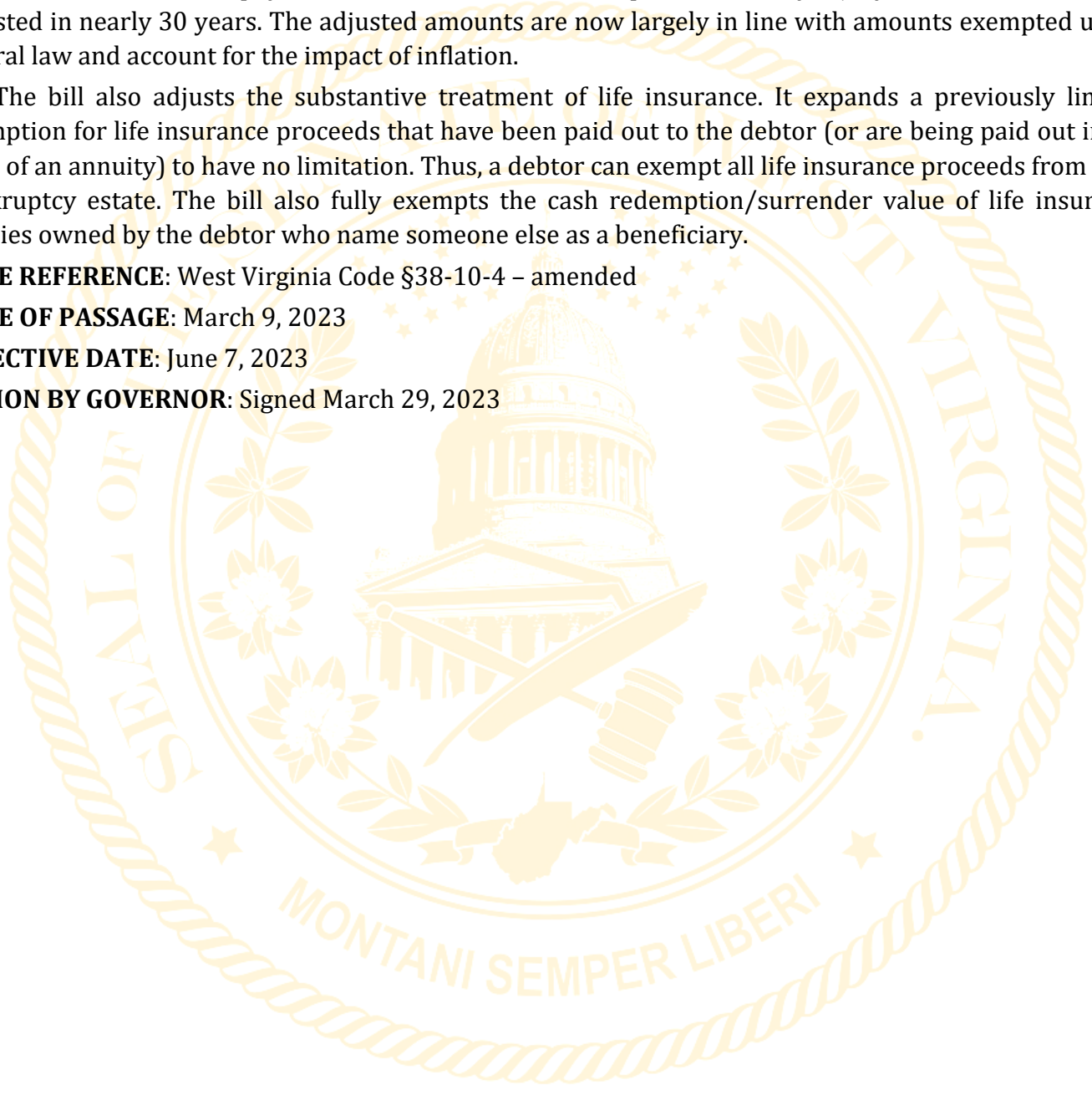
The bill also adjusts the substantive treatment of life insurance. It expands a previously limited exemption for life insurance proceeds that have been paid out to the debtor (or are being paid out in the form of an annuity) to have no limitation. Thus, a debtor can exempt all life insurance proceeds from their bankruptcy estate. The bill also fully exempts the cash redemption/surrender value of life insurance policies owned by the debtor who name someone else as a beneficiary.

CODE REFERENCE: West Virginia Code §38-10-4 – amended

DATE OF PASSAGE: March 9, 2023

EFFECTIVE DATE: June 7, 2023

ACTION BY GOVERNOR: Signed March 29, 2023



House Bill 2380

Relating to School Building Authority

The purpose of this bill is to repeal and revise outdated, antiquated, inoperative, surplus, or superseded provisions of code related to the School Building Authority (SBA).

§18-9A-10 strikes obsolete provisions requiring the Department of Education to pay not less than the amount required for debt service on bonds issued prior to January 1, 1994, into the SBA's School Building Capital Improvements Fund. All bonds have all matured and this Fund is closed.

The bill also strikes the language related to the Fund later in the bill in §18-9D-6. Also stricken is language requiring the State Board to deposit \$24 million annually into the SBA's School Construction Fund, also in §18-9D-6, which replaced the Capital Improvements Fund. The amendments to §18-9D-6 require the SBA include the \$24 million in its budget request annually for appropriation to the School Construction Fund.

Also, language is stricken which requires any project funded by the SBA to be in accordance with a comprehensive facilities plan approved by the authority and the state board. This same language is moved to §18-9D-15.

§18-9D-2 strikes a definition that includes RESAs and a reference to the School Building Capital Improvements Fund because RESAs no longer exist and the fund is closed.

§18-9D-3 strikes references to RESAs.

§18-9D-4 strikes language which authorizes the School Building Authority to issue general obligation bonds.

§18-9D-5 is repealed. It authorized the School Building Authority to offer individual higher education savings plans.

§18-9D-6 is modified to close the School Building Capital Improvements Fund and transfer that money, if any, to the School Construction Fund. Language prohibiting monies deposited into the School Building Debt Service Fund from being used for repayment of revenue bonds issued prior to 1994 is stricken. Language restricting excess lottery funds and certain appropriations, both of which only applied to the school year beginning July 1, 2004, is stricken. New language is added which requires the SBA to request the Governor to include an amount equal to \$24,000,000 in each budget bill as an appropriation to the agency's General Revenue Fund which are to be transferred to the School Construction Fund.

§18-9D-7 strikes a reference to the School Building Capital Improvements Fund and replaces it with a reference to the School Construction Fund.

§18-9D-8 strikes language which required revenue bonds issued between January 1, 1994 and January 1, 2008 have a maturity date within 10 years of issuance. Language making revenues subject to liens for revenue bonds issued before July 20, 1993 is also stricken.

§18-9D-9 strikes a reference to section 5 of this article, which is being repealed by this bill.

§18-9D-13 strikes language which requires the SBA to make periodic payments from the school building capital improvements fund to meet requirements for bonds issued prior to January 1, 1994 and detailing how such payments shall be used.

§18-9D-15 strikes references to the School Building Capital Improvements Fund and adds language which requires projects funded by the SBA to be in accordance with a comprehensive educational facility plan which must be approved by the state board and the SBA.

§18-9D-19 strikes legislative findings related to declining enrollment and comprehensive high schools but does not make any substantive changes to this section.

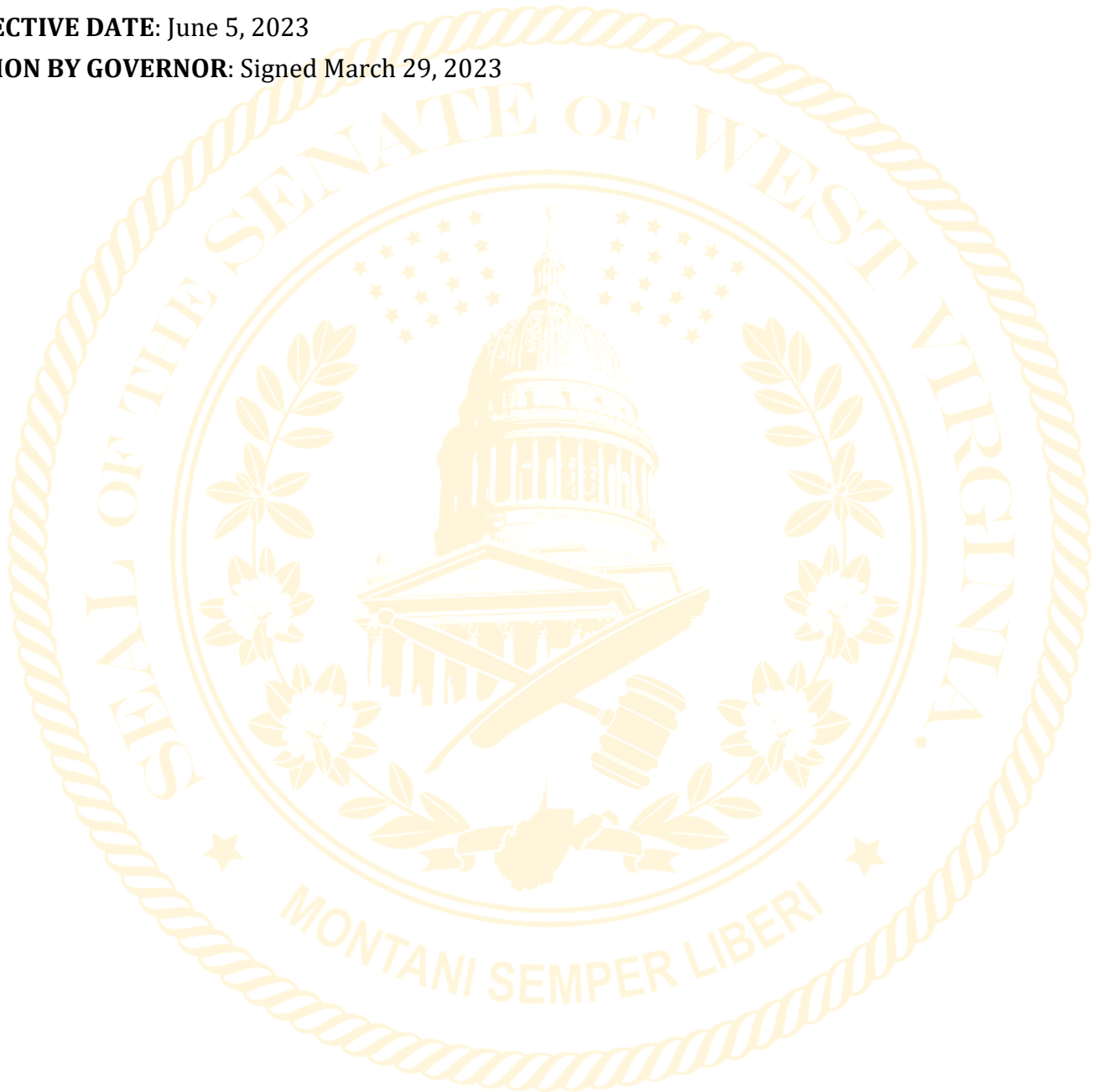
The bill also makes non-substantive changes to reflect current bill drafting standards throughout.

CODE REFERENCE: West Virginia Code §18-9D-5 – repealed; §18-9A-10, §18-9D-2, §18-9D-3, §18-9D-4, §18-9D-6, §18-9D-7, §18-9D-8, §18-9D-9, §18-9D-13, §18-9D-15, and §18-9D-19 – amended

DATE OF PASSAGE: March 7, 2023

EFFECTIVE DATE: June 5, 2023

ACTION BY GOVERNOR: Signed March 29, 2023



House Bill 2436

Relating to the implementation of an acuity-based patient classification system

The bill requires certain healthcare facilities to develop an “acuity-based patient classification system” by July 1, 2024, to be used to establish the staffing plan for each unit. The term “acuity-based patient classification system” is defined as a set of criteria based on scientific data that acts as a measurement instrument which predicts registered nurse care requirements for individual patients based on severity of patient illness, need for specialized equipment and technology, intensity of nursing interventions required, and the complexity of clinical nursing judgment needed to design implement and evaluate the patient’s nursing care plan.

The bill directs each unit nurse staffing committee to annually review the facility's current classification system and submit recommendations to the facility for changes based on current standards of practice; and to provide orientation, competency validation, education, and training programs in accordance with a nationally recognized accrediting body recognized by the Centers for Medicare and Medicaid Services or in accordance with the Office of Health Facility Licensure and Certification. The orientation must include providing for orientation of registered nursing staff to assigned clinical practice areas.

The bill includes legislative findings which specifically provides that the classification system and staffing plan are considered confidential records under W. Va. Code §30-3C-3 and are therefore not subject to discovery in any civil action or administrative proceeding.

The bill also provides for a new limitation on copayments, coinsurance, or office visit deductible amounts charged to an insured, subscriber, or member for services rendered for each date of service by certain licensed healthcare providers. Specifically, the amount charged for services by an occupational therapist, occupational therapist assistant, speech-language pathologist, speech-language pathologist assistant, physical therapist, or a physical therapist assistant may not exceed the amount charged for services of a primary care physician or osteopathic physician. The policy, provision, contract, plan, or agreement must clearly state the availability of occupational therapy, speech-language therapy, and physical therapy coverage and all related limitations, conditions, and exclusions.

CODE REFERENCE: West Virginia Code §16-5B-20, §33-15-23, §33-16-19, §33-24-7x, §33-25-8u, and §33-25A-8x – new

DATE OF PASSAGE: March 11, 2023

EFFECTIVE DATE: June 9, 2023

ACTION BY GOVERNOR: Signed March 28, 2023

House Bill 2506

Creating a title clearinghouse for non-resident businesses

This bill would create within the Division of Motor Vehicles a clearinghouse to expedite titles of motor vehicles for nonresident businesses. It provides that a nonresident business may apply to clearinghouse to provide a title. A fee for participation is permitted and may be set by the Division.

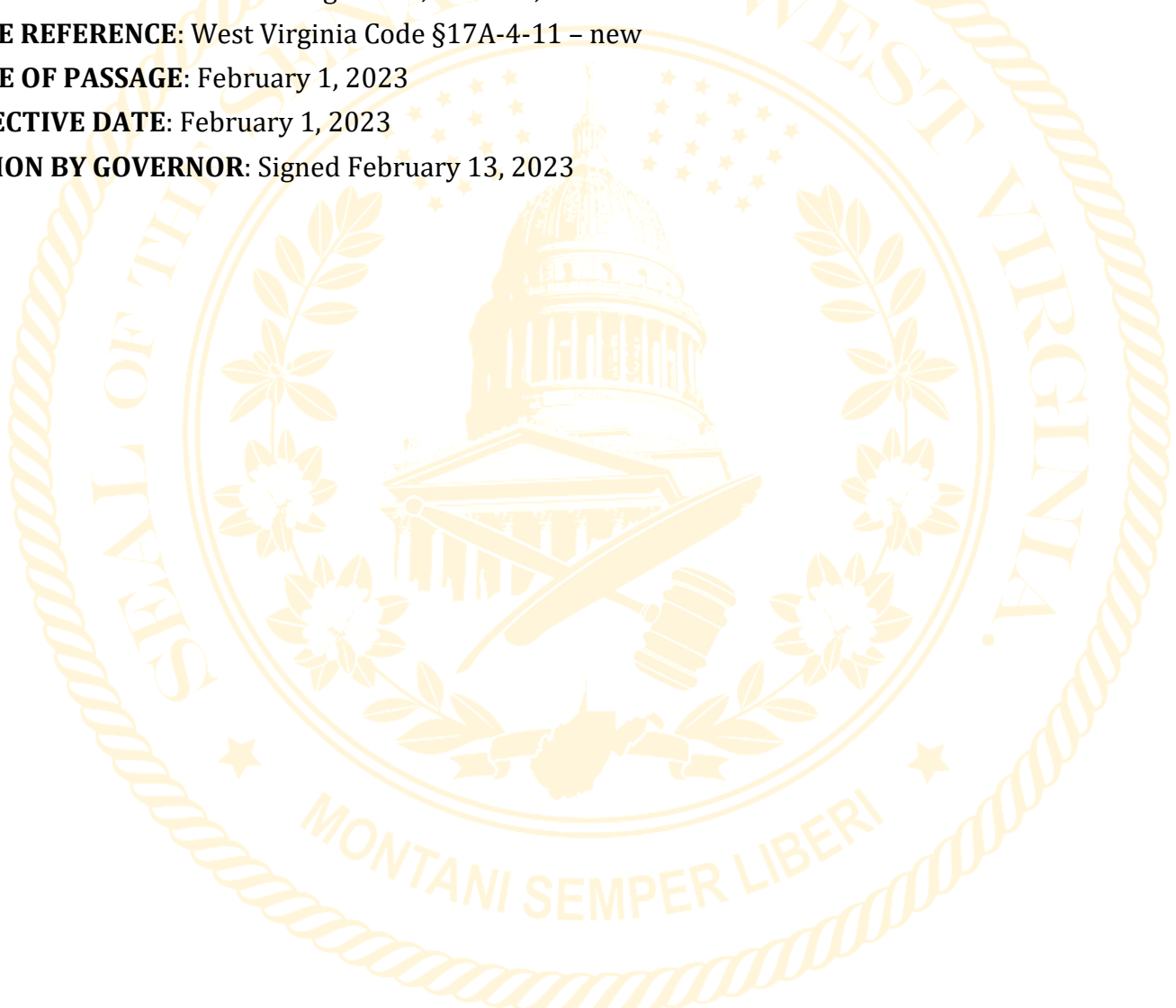
Prior to participation a penalty bond in the amount of \$250,000 is required by the Division conditioned on the participant not committing fraud. Per the legislation the clearinghouse is not intended to interfere with any reciprocal agreement with other states for title and registration. If a conflict exists, the reciprocal agreement will control. Finally, the Commissioner is permitted to develop a registration process for resident businesses maintaining a local, national, or international fleet of vehicles.

CODE REFERENCE: West Virginia Code §17A-4-11 – new

DATE OF PASSAGE: February 1, 2023

EFFECTIVE DATE: February 1, 2023

ACTION BY GOVERNOR: Signed February 13, 2023



House Bill 2509

Creating the Uniform Premarital Agreement Act

The bill creates the Uniform Premarital Agreement Act and applies to premarital agreements signed on or after July 1, 2023. The bill requires a premarital agreement to be in writing, be signed by both parties, and contain an acknowledgement that both parties have had an opportunity to consult with separate legal counsel.

The bill provides that a premarital agreement may be enforced without consideration and is effective upon marriage.

Parties are permitted to contract regarding property rights including the disposition of property upon the dissolution of marriage or death; modification or elimination of spousal support (subject to certain limitations); the making of a will or trust to carry out the terms of the premarital agreement; ownership rights and disposition of death benefits from life insurance proceeds; choice of law governing construction; and any other matter not in violation of public policy or statute.

The bill specifically prohibits any agreement whereby the right of a child to support is adversely affected.

After marriage, parties are permitted to amend or revoke the agreement only if the amendment or revocation is reduced to writing and signed by the parties.

The bill provides that a premarital agreement may not be enforced against a party if the party contending the agreement is unenforceable proves that he or she did not execute the agreement voluntarily; that either party was under the age of 18; and that the agreement was unconscionable when executed, and before the execution of the agreement if the party did not receive adequate financial disclosures; did not voluntarily and expressly waive, in writing, any right to disclosure of the property or financial obligations beyond what was provided; and did not know, and reasonably could not have known, of the property or obligations. The bill clarifies what constitutes adequate financial disclosure.

If a modification or elimination of spousal support causes a party to be eligible for public assistance at the time of separation, the family court, notwithstanding the terms of the agreement, may require the party to pay spousal support to the extent that spouse would no longer require public assistance.

The court may refuse to enforce a term of the premarital agreement that is unconscionable at the time of signing or would result in substantial hardship for a party because of a material change in circumstances arising after the agreement was signed. Issues regarding unconscionability and substantial hardship are to be resolved as a matter of law by the family court judge.

The bill provides that a term in an agreement is unenforceable if it adversely affects a child's right to support; limits or restricts a remedy available to a victim of domestic violence under West Virginia law; purports to modify the grounds for a court-decreed separation or marital dissolution available under West Virginia law; or penalizes a party for initiating a legal proceeding leading to a court-decreed separation or marital dissolution.

The bill clarifies that a term defining the rights or duties of the parties regarding custodial responsibility is not binding on a court.

If a marriage is determined to be void, an agreement that would have been a premarital agreement is enforceable only to the extent necessary to avoid an inequitable result.

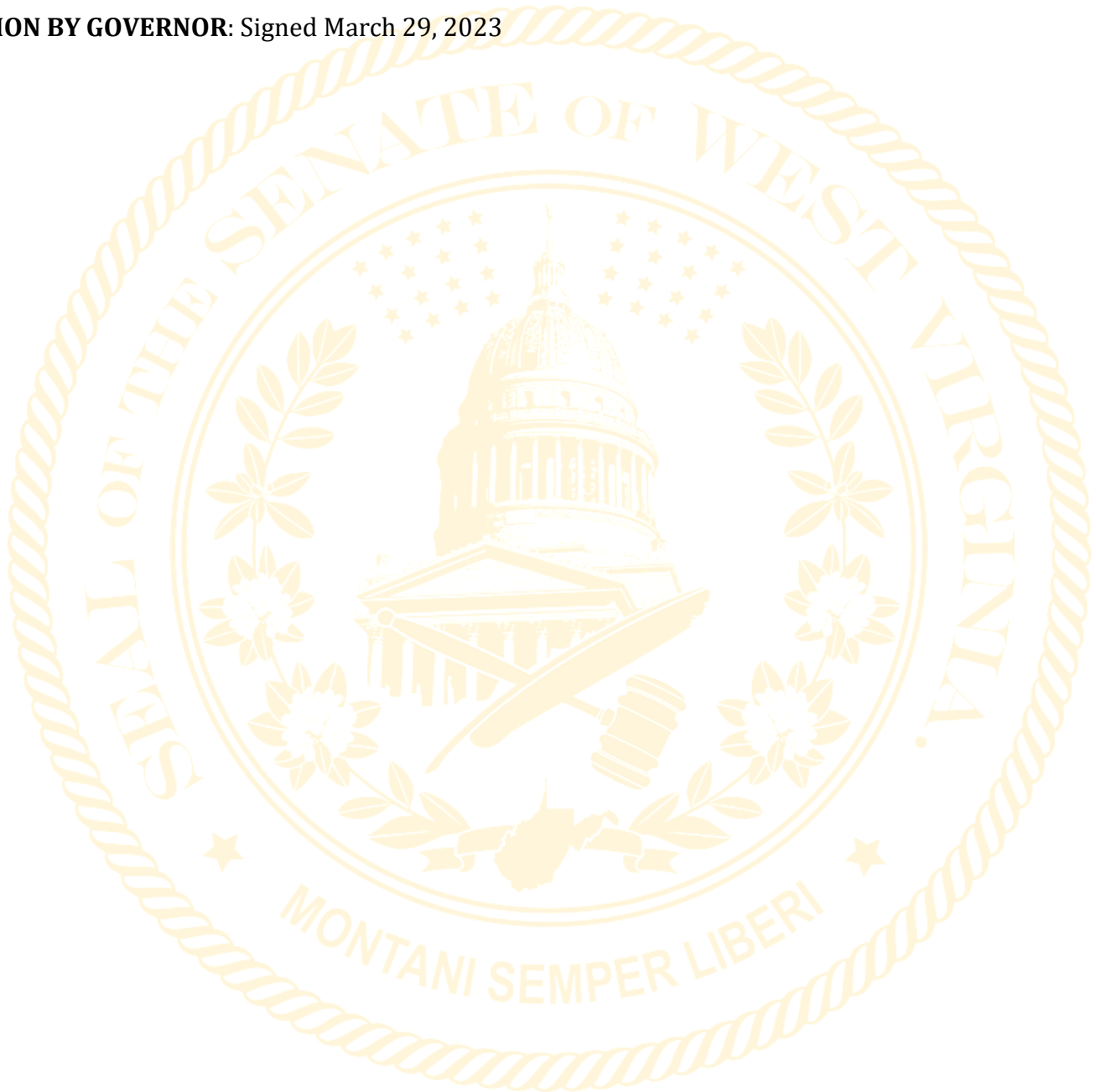
Finally, the bill provides that any applicable statute of limitations is tolled during the marriage, but other equitable defenses are available.

CODE REFERENCE: West Virginia Code §48-1A-101, §48-1A-201, §48-1A-301, §48-1A-401, §48-1A-501, §48-1A-601, §48-1A-701, §48-1A-801, §48-1A-901, §48-1A-1001, and §48-1A-1101 – new

DATE OF PASSAGE: March 9, 2023

EFFECTIVE DATE: June 7, 2023

ACTION BY GOVERNOR: Signed March 29, 2023



House Bill 2515

Require agencies to develop and maintain an inventory of available services for single parents wanting to obtain degrees, secure training or reenter the workforce

House Bill 2515 would require three agencies—the Bureau for Family Assistance, the Higher Education Policy Commission, and WorkForce West Virginia—to coordinate with one another to compile and maintain a list of services available to assist and support individuals qualified to receive federal, federal-state, or state assistance who want to further their education, receive workforce training, or reenter the workforce. The bill would also require the agencies to maintain a copy of the document on their respective websites and provide a hard copy upon request by first-class mail.

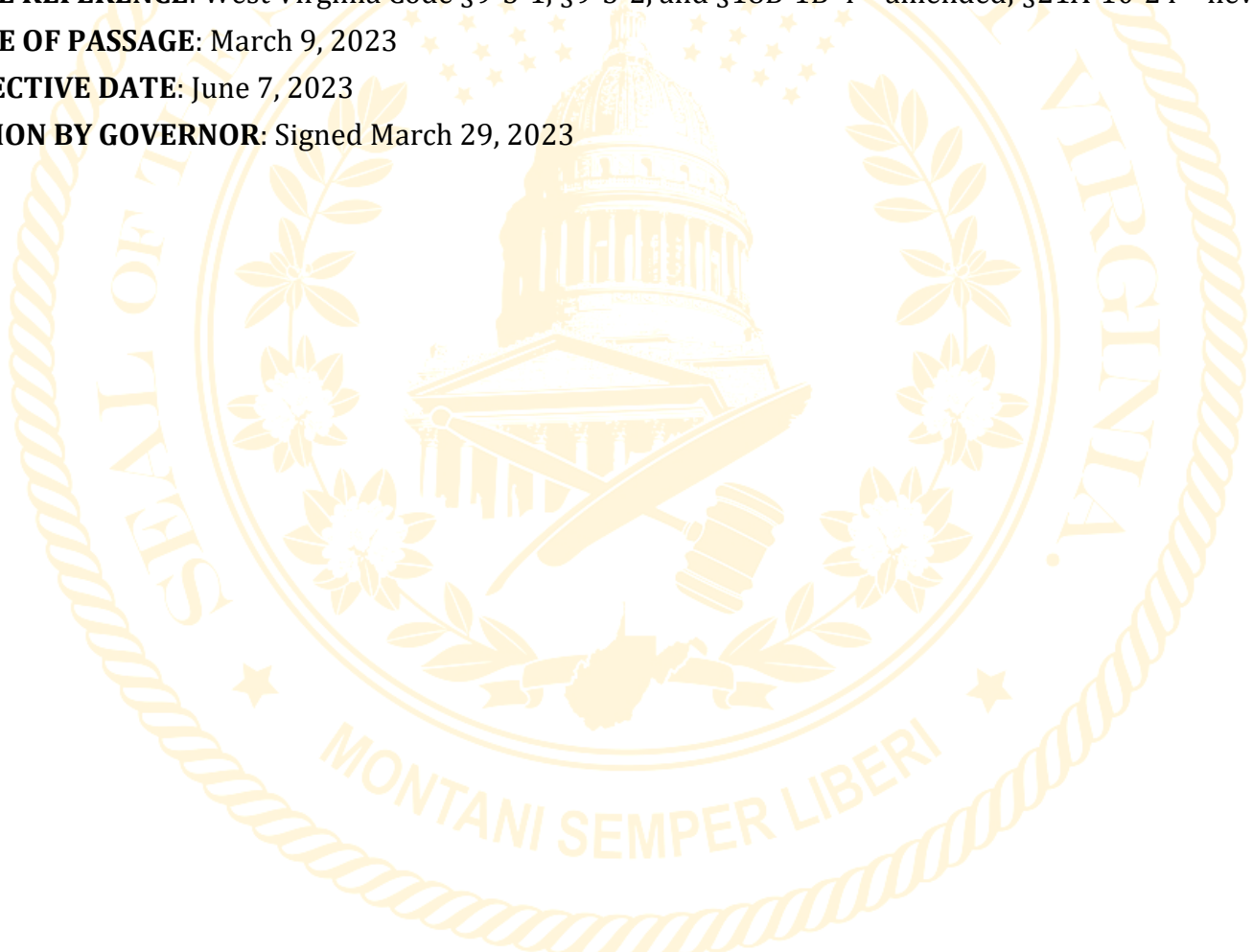
The bill also includes language in §18B-1B-4 of the code that prohibits HEPC from restricting a person who holds a license to carry a concealed deadly weapon from carrying a concealed handgun on campus. This language was included to resolve a code conflict with Senate Bill 10, the Campus Self-Defense Act.

CODE REFERENCE: West Virginia Code §9-3-1, §9-3-2, and §18B-1B-4 – amended; §21A-10-24 – new

DATE OF PASSAGE: March 9, 2023

EFFECTIVE DATE: June 7, 2023

ACTION BY GOVERNOR: Signed March 29, 2023



House Bill 2526

Relating to reducing the personal income tax

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

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

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

A small business credit was added to allow a 50% refundable tax credit against personal income tax or corporation net income tax for ad valorem property tax due and owing and timely paid. A small business is defined as a business with personal property located in West Virginia with an aggregate appraised value of \$1,000,000 or less. There is an exclusion that a small business does not include a person holding an interest in any oil, natural gas, or natural gas liquids. The Tax Commissioner is required to report annually to the Joint Committee on Government and Finance on the use of these tax credits.

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

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

DATE OF PASSAGE: February 1, 2023

EFFECTIVE DATE: February 1, 2023

ACTION BY GOVERNOR: Signed March 7, 2023

House Bill 2530

Relating to the extension of the expiration of temporary registration plates from sixty days to ninety days

This Division of Motor Vehicles agency bill extends the expiration of temporary registration plates from 60 days to 90 days.

CODE REFERENCE: West Virginia Code §17A-6-15, §17A-6B-10, and §17A-6C-11 – amended

DATE OF PASSAGE: February 6, 2023

EFFECTIVE DATE: May 7, 2023

ACTION BY GOVERNOR: Signed February 15, 2023

House Bill 2540

Travel Insurance Model Act

This bill repeals West Virginia’s existing law governing travel insurance, an earlier version of a model act, and replaces it with an updated version that is a synthesis of the virtually identical model acts produced by the National Conference of Insurance Legislators (NCOIL) and the National Association of Insurance Commissioners (NAIC).

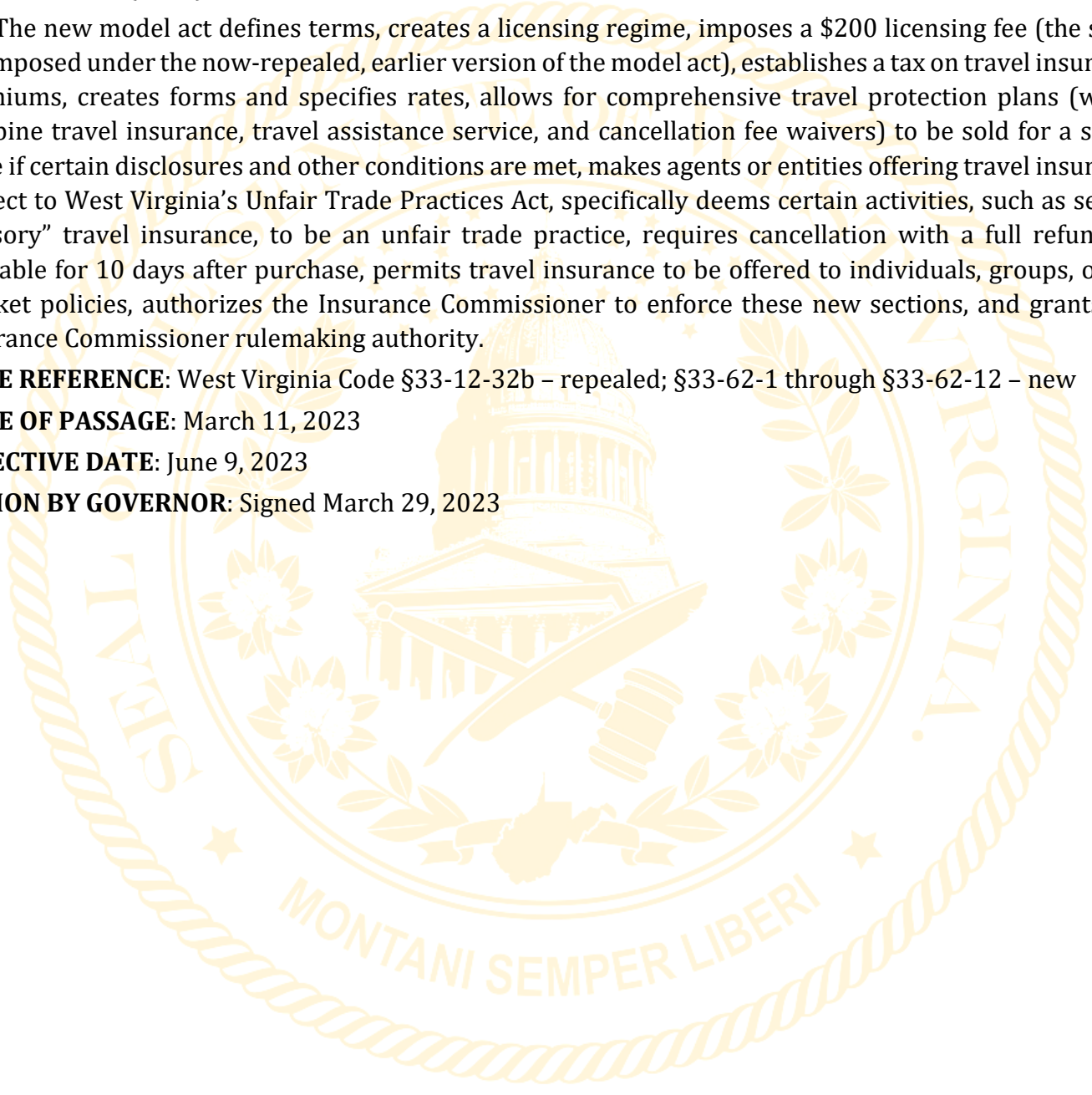
The new model act defines terms, creates a licensing regime, imposes a \$200 licensing fee (the same fee imposed under the now-repealed, earlier version of the model act), establishes a tax on travel insurance premiums, creates forms and specifies rates, allows for comprehensive travel protection plans (which combine travel insurance, travel assistance service, and cancellation fee waivers) to be sold for a single price if certain disclosures and other conditions are met, makes agents or entities offering travel insurance subject to West Virginia’s Unfair Trade Practices Act, specifically deems certain activities, such as selling “illusory” travel insurance, to be an unfair trade practice, requires cancellation with a full refund be available for 10 days after purchase, permits travel insurance to be offered to individuals, groups, or via blanket policies, authorizes the Insurance Commissioner to enforce these new sections, and grants the Insurance Commissioner rulemaking authority.

CODE REFERENCE: West Virginia Code §33-12-32b – repealed; §33-62-1 through §33-62-12 – new

DATE OF PASSAGE: March 11, 2023

EFFECTIVE DATE: June 9, 2023

ACTION BY GOVERNOR: Signed March 29, 2023



House Bill 2569

Establishing the Motorsport Responsibility Act

This bill provides clear protections for motorsports operators and participants who are not in violation of the provisions or duties of the Motorsport Responsibility Act. The bill is analogous to portions of the West Virginia Code for similar industries such as the Skiing Responsibility Act – §20-3A-5, the Whitewater Responsibility Act (§20-3B-2), the Equestrian Activities Responsibility Act (§20-4-1), and the ATV Responsibility Act (§20-15-1).

The bill identifies the purpose of the act and legislative findings, recognizing that motorsports services contribute significantly to the West Virginia economy but pose inherent risks for participants. The bill defines terms, and areas of responsibility, liabilities, and duties of motorsports and for participants.

It also sets forth the duties of operators of motorsports events, and the duties of persons participating in those events; further addressing the liability of motorsports operators and holding that a motorsport operator is liable for injury, loss, or damage if the operator fails to follow the duties set forth in this article and where the violation of duty proximately caused the injury, loss, or damage suffered. The operator is not liable for any injury, loss, or damage caused by the negligence of any person who is not an agent or employee of the motorsport operator, or any injury, loss, or damage caused by a participant’s violation of any duty described in this article.

The bill also establishes that a participant is liable for injury, loss, or damage resulting from violations of the duties established in this article if those violations proximately caused the injury, loss, or damage suffered. It also makes clear in the participants’ liability provision that motorsports is typically a “no-fault” activity when it comes to incidents between participants and a participant is liable for negligent and/or intentional violations of the duties in this article.

And finally, it provides that the Department of Economic Development shall promulgate rules setting forth (a) safety requirements for equipment; (b) safety requirements for the design of racing surfaces; (c) safety requirements for the provision of run-off areas; (d) requirements for fire and emergency services; and (e) requirements for signage.

CODE REFERENCE: West Virginia Code §20-19-1 through §20-19-8 – new

DATE OF PASSAGE: March 8, 2023

EFFECTIVE DATE: June 27, 2023

ACTION BY GOVERNOR: Signed March 29, 2023

House Bill 2611

To remove certain territorial limitations on a banking institution's ability to offer messenger services or mobile banking facilities

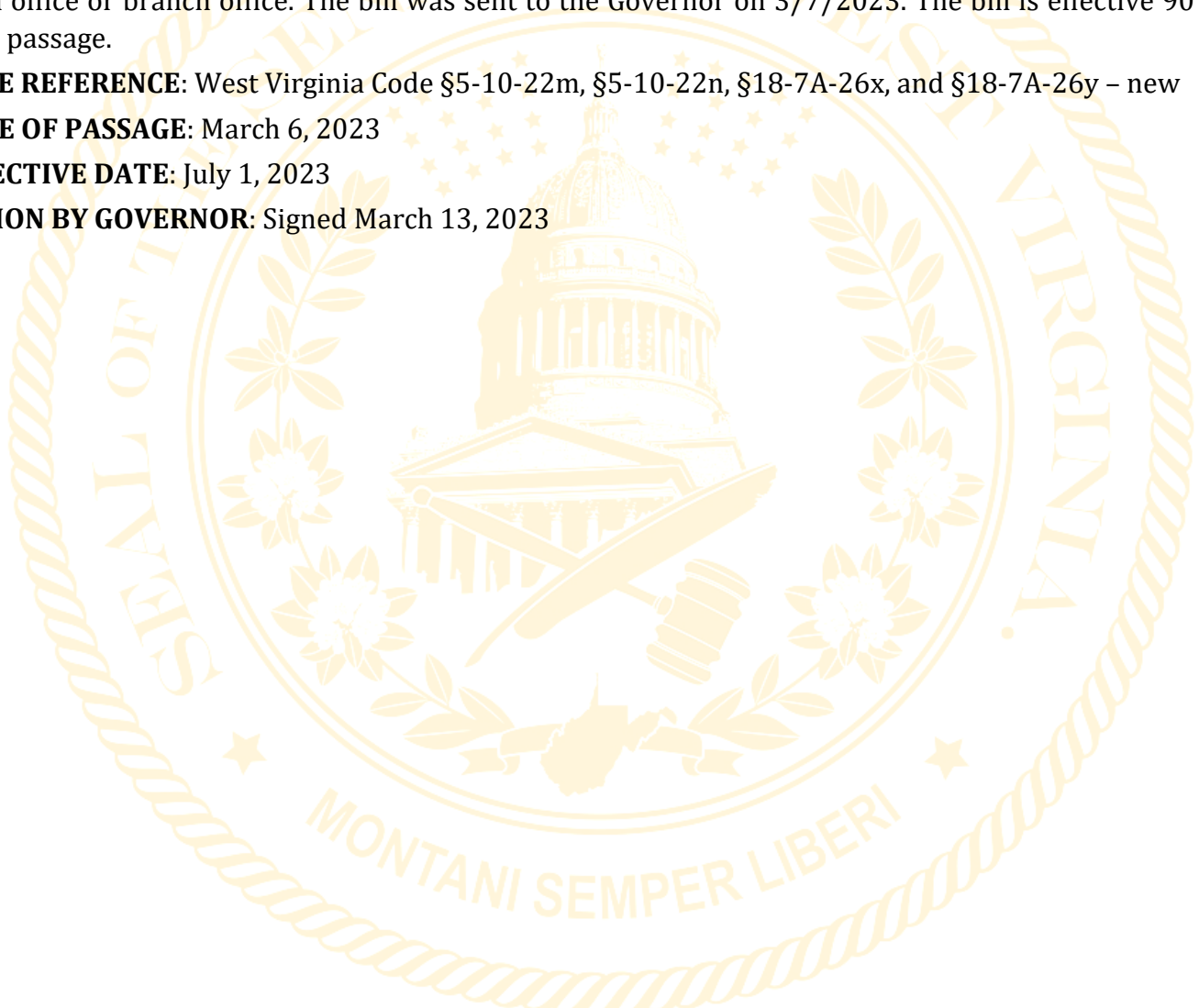
This agency bill from the Division of Financial Institutions repeals the requirement that all mobile facilities and messenger services by financial institutions be confined to the territorial boundaries of the county in which an office of such financial institution is located or within 30 (for mobile facilities) or 50 miles (for messenger services) of an office of such financial institution. Mobile facilities are facilities that provide banking services, such as accepting deposits or issuing cashier's checks. Messenger services include courier or delivery services for deposit or armored car services. The bill retains the existing prohibition that no mobile facility may be operated within 2,000 feet [approx. 0.38 miles] of another bank's main office or branch office. The bill was sent to the Governor on 3/7/2023. The bill is effective 90 days from passage.

CODE REFERENCE: West Virginia Code §5-10-22m, §5-10-22n, §18-7A-26x, and §18-7A-26y – new

DATE OF PASSAGE: March 6, 2023

EFFECTIVE DATE: July 1, 2023

ACTION BY GOVERNOR: Signed March 13, 2023



House Bill 2638

Authorizing the Department of Administration to promulgate a legislative rule relating to purchasing

This Committee Substitute contains 2 rules from the Department of Administration and is known as Bundle 2.

Department of Administration, Purchasing, 148 CSR 01

The rule amends a current legislative rule in response to Enrolled Committee Substitute for House Bill 4499, passed during the 2022 Regular Session.

Section 3 requires spending units formally exempted from this rule who could choose to follow it, to follow it unless they have established their own rules, The requirement that all spending units adhere to all automated systems prescribed by the Director of Purchasing has been deleted.

Section 4 regarding competitive bids in state purchases has been amended. It provides alternatives to competitive bids as provided in §5A-3-10c of the code, if that method is determined to be in the best interest of the spending unit and the state. Alternative procurement methods include:

- A direct award procurement described in W. Va. Code § 5A-3-10c and Section 7.5;
- An emergency procurement described in W. Va. Code § 5A-3-15 and Subsection 7.6.1;
- A purchase that falls below the agency's established no bid threshold described in W. Va. Code § 5A-3-11 and Subsection 7.2.1; and
- If the State conducts a request for quotation for a commodity or service, and all responsive bids received are higher than a publicly posted price for that same commodity or service, the State may cancel the solicitation and procure that commodity or service directly from the source of the publicly posted lower price but may only pay the publicly posted lower price or less. A publicly posted price in this context means pricing posted on a publicly accessible website, in a vendor catalogue, or some other advertising media, and expressly excludes verbal or unpublished pricing, or any pricing sourced directly from vendors after bids have opened.

Buyer qualifications are removed, except that the Purchasing Division may require qualifications if they are uniformly applied to each job title.

Section 6.6 adds three new subparts which allow the Purchasing Division to seek additional information from a bidder for clarification purposes, allows the Director to object to separable terms that, if agreed to by the bidder, get deleted from the bid, and allows the division to require the bidder sign additional documentation related to such things as contract terms, privacy requirements, etc., which weren't contemplated in the bidder's bid.

Section 6.9 is changed to make the bid bond process electronic.

Section 7 removes the former dollar caps in favor of delegated procurement thresholds which may be increased for any spending unit by the Director. The rule is amended to reflect the bidding process through wvOASIS. Section 7.6 sets forth the procedure for emergency procurements. Spending units are required to provide the Division documentation so that it may adhere to its requirement of public publishing.

Section 12 has been amended to allow the Director to recognize prequalification agreements established by other public entities for the purpose of conducting a delegated prequalification bid, but approval must be obtained prior to issuing the delegated prequalification bid and the delegated

prequalification bid must be directed to all entities within the prequalification group known to offer the commodity or service in question.

Department of Administration, Parking, 148 CSR 01

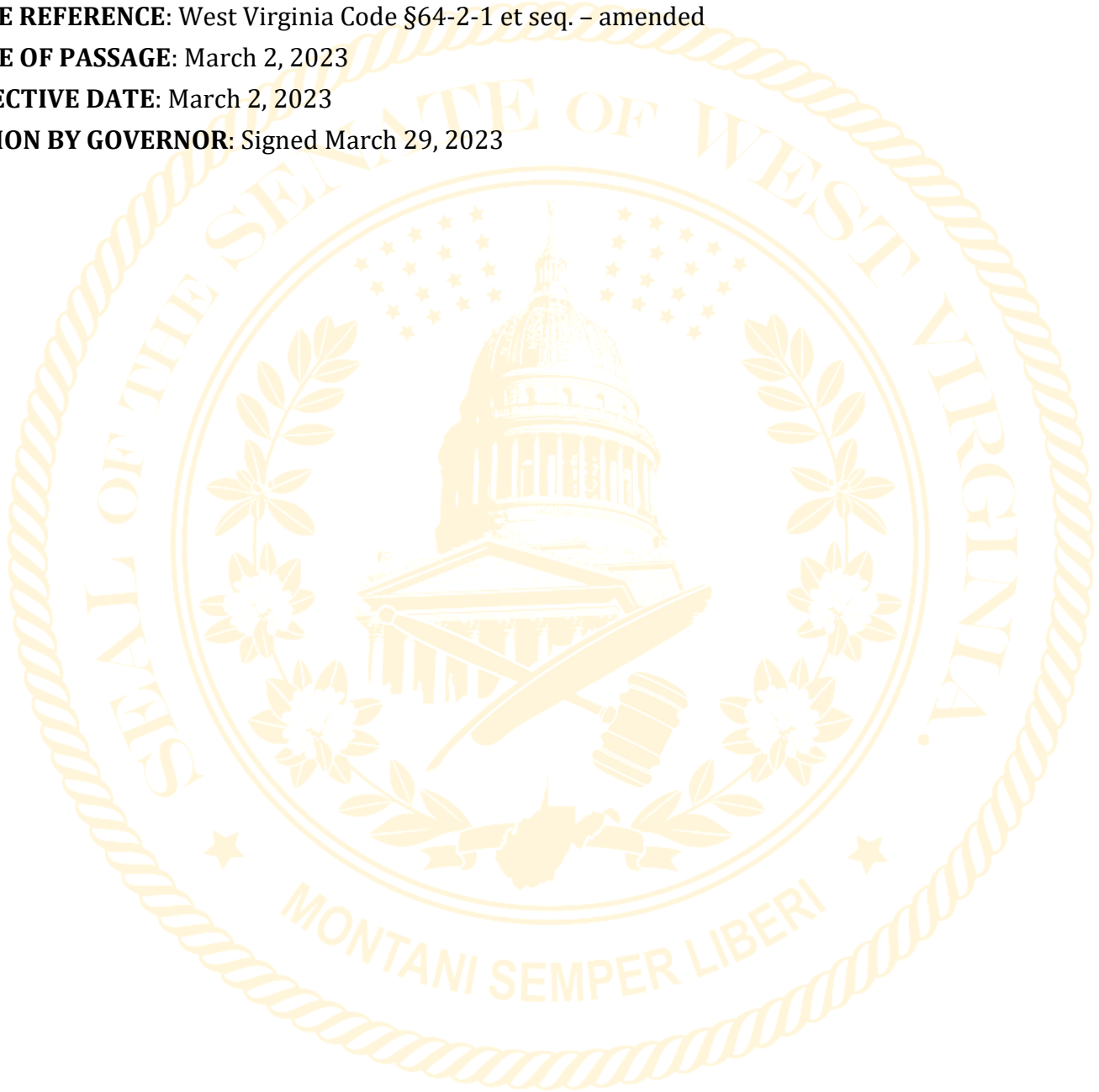
The rule amends a current legislative rule. The change extends the sunset date of rule to August 1, 2032. An amendment from the LRMRC was adopted that shifts the parking fee from the employees to the entity for which they work.

CODE REFERENCE: West Virginia Code §64-2-1 et seq. – amended

DATE OF PASSAGE: March 2, 2023

EFFECTIVE DATE: March 2, 2023

ACTION BY GOVERNOR: Signed March 29, 2023



House Bill 2640

Authorizing certain agencies of the Department of Environmental Protection to promulgate legislative rules

The Committee Substitute contains 8 rules relating to the Department of Environmental Protection and is known as Bundle 3.

Department of Environmental Protection, 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 rule adopts and incorporates by reference annual updates to the federal counterpart promulgated by EPA as of June 1, 2022. These modifications are necessary to maintain consistency with the federal counterpart and allow West Virginia to continue as the primary enforcement authority of federal new source performance standards in this State. Finally, the promulgation history of the rule is updated.

Department of Environmental Protection, Requirements for Operating Permits, 45 CSR 30

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).

This rule provides for the establishment of a comprehensive air quality permitting system consistent with the requirements of Title V of the CAA and the state operating permit program requirements of 40CFR Part 70. This rule establishes: (a) the obligation for a source to obtain a Title V operating permit; (b) applicability for other sources, including exemptions and deferred sources; (c) permit application, content, issuance, renewal, reopening, revision, review, suspension, modification, revocation, and reissuance requirements, and (d) Title V fee requirements. All fees collected pursuant to this rule shall be expended solely to cover all reasonable direct and indirect costs required to administer the Title V operating permit program and accounted for in accordance with this rule.

The fee structure is being revised as recommended by the U.S. EPA in its September 2021 Title V Program Evaluation Report, August 2019 Title V Permit Fee Evaluation Report, and May 2015 Title V Program Evaluation Report and other revisions were made to comport with Revisions to the Petition Provisions of the Title V Permitting Program [85 Fed. Reg. 6431, February 5, 2020] and Removal of Title V Emergency Affirmative Defense Provisions from State Operating Permit Programs and the Federal Operating Permit Program [87 Fed. Reg. 19042, April 1, 2022]. Obsolete transitional language was removed, and other clarifications were made.

These amendments are necessary to maintain consistency with the federal counterpart and allow West Virginia to continue as the primary enforcement authority of federal new source performance standards in this State. Finally, the promulgation history of the rule is updated.

Section 8 relating to fees has been completely rewritten. It:

- Replaced the annual emissions only fee to an annual fee that includes an emissions fee, base fee, and complexity fee components.

- The emissions fee factor is a calculation based on the 3-yr average of the DAQ Title V Fund expenses. The calculated emissions fee factor is now multiplied by the amount of actual emissions released by the specific source to determine the emissions fee component.
- The emissions fee cap was removed.
- The Certified Emissions Statement (CES) was eliminated. (Emission reporting requirements remain.)
- The Title V fee program does not reference the Rule 22 minor source fee program.

Table 45-30A Hazardous Air Pollutants - This table was struck in its entirety, consistent with the revised definition.

Table 45-30B - Class I and Class II Substances - This table was struck in its entirety, consistent with the revised definition.

LRMRC proposed the following clean-up amendment:

On page 39, subdivision 8.1.a.1, by striking the number "\$15,000" and inserting in lieu thereof the number "\$5,000".

The committee substitute contains several amendments which have already been included in the modified rule. There is a committee amendment to remove those amendments.

Department of Environmental Protection, Emission Standards for Hazardous Air Pollutants, 45 CSR 34

The 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 rule incorporates by reference annual updates to the federal counterpart promulgated by EPA as of June 1, 2022. Revisions to the rule include the annual incorporation by reference amendments of the NESHAPs promulgated by the EPA under 40 CFR Part 63 as of June 1, 2022, that include: (a) Carbon Black Production and Cyanide Chemicals Manufacturing Residual Risk and Technology Reviews, and Carbon Black Production Area Source Technology Review; (b) Flexible Polyurethane Foam Fabrication Operations Residual Risk and Technology Review and Flexible Polyurethane Foam Production and Fabrication Area Source Technology Review; (c) Clean Air Act Section 112 List of Hazardous Air Pollutant: Amendments to the List of Hazardous Air Pollutants (HAP); (d) Mercury Cell Chlor-Alkali Plants Residual Risk and Technology Review; (e) Municipal Solid Waste Landfills Residual Risk and Technology Review; Correction; (f) Refractory Products Manufacturing Residual Risk and Technology Review; (g) Stationary Combustion Turbines; Amendments; (h) Surface Coating of Automobiles and Light-Duty Trucks, Surface Coating of Metal Cans, Boat Manufacturing, i) Clay Ceramics Manufacturing; Technical Correction and (j) General Provisions Technical Correction.

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

Department of Environmental Protection, Control of Ozone Season Nitrogen Oxides Emissions, 45 CSR 40

This rule modifies an existing DEP 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 modifications incorporate by reference annual updates to the federal counterpart promulgated by EPA as of June 1, 2022.

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

Section 4 relating to applicability has been amended to update the classification of certain units as not being subject to this rule since they are already the subject of a Federal NO_x ozone season emissions trading program.

Department of Environmental Protection, Rules for Quarrying and Reclamation, 38 CSR 03

The rule amends a current legislative rule promulgated under the Quarry Reclamation Act which governs the extraction of non-coal minerals by quarrying.

Section 6.8 relating to blasting has been amended to require blasters to be approved by the Secretary, be current in their Blaster's Certification, and have the certification in their possession while conducting blasting activities. The Certified Blaster is in charge of and responsible for the design, loading, and firing of the blast.

Department of Environmental Protection, Recycling Assistance Grant Program, 33 CSR 10

The rule amends a current legislative rule and is promulgated under the A. James Manchin Rehabilitation Environmental Action Plan in W. Va. Code §22-15A-1 et. seq. The rule sets out guidelines and procedures for providing grants to local governments and other parties to plan, initiate, expand, or upgrade recycling programs, public education programs, and recycling market procurement efforts.

The rule has been in effect since 2008. Overall, the changes are needed to update the rule for current technology and marketplace circumstances. The rule adds language under multiple sections to add "source reduction programs" which are those programs that reuse waste materials to avoid using recycling centers and landfills. The rule adds additional flexibility to the department concerning the "Cure period", removes language prohibiting certain parties who do not participate in tax and fee collection from receiving grants, removes the 20-year minimum lease limitation for recycling facilities construction and improvements. Allows grant money to be used for a reasonable share of costs of audits required by West Virginia Code §12-4-14 up to a maximum of \$2,000 and increases the maximum grant size from \$20,000 to \$35,000 for Recycling Feasibility Study and Planning Grant, Local Government.

Section 12 relating to requirements for grant recipients has been amended to require that requests for changes in a grant budget be in writing and not significantly alter the original scope of the grant, requires a minimum of three verbal bids for recipient purchases between \$5,000 and \$10,000; allows electronic bids, requires written bids for all purchases estimated to be more than \$10,000, requires all bids be recorded in the required reports and retained in the recipient's file, prohibits any attempt to segregate a project into sections having an estimated value of less than \$10,000, sets forth notice to solicit bids and documentation requirements, allows feasibility studies to be procured using a Best Value Procurement method, and allows, the Department to waive or modify the bidding procedures to allow direct purchase of commodities and services under defined circumstances.

Department of Environmental Protection, Reclamation of Abandoned and Dilapidated Properties Grant Program, 33 CSR 13

The rule is new and is promulgated under the A. James Manchin Rehabilitation Environmental Action Plan in W. Va. Code §22-15A-1 et seq. The rule sets out guidelines and procedures to assist county commissions, municipalities, urban renewal authorities, land reuse agencies, and municipal land banks in the remediation of abandoned, blighted, and dilapidated structures or properties. Enrolled Committee Substitute for Senate Bill 552 which passed during the 2022 regular session is the basis for the rule.

Section 2 defines terms including “Abandoned” and “Dilapidated.”

Section 3 creates the Reclamation of Abandoned and Dilapidated Properties (RADP) Grant Program and sets forth the application process. Grants are available to county commissions and municipalities to remediate abandoned and dilapidated structures by demolition or deconstruction. The grants are awarded for a period of one year from the date of the grant agreement. One six-month extension may be granted for good cause if a request is submitted before the expiration of the grant period. Subsequent grants may be obtained by a grantee through submission of a new application, as long as all the objectives of the current grant have been completed.

Section 4 sets applicable conditions for funding under the program: The project must provide environmental improvement by decreasing imminent danger, risk to public health and welfare and negative visibility of structures. The project may provide for redevelopment of property or new development initiatives.

Section 5 relates to the authorized use of grants funds in an approved program. Uses may include asbestos testing; asbestos removal prior to demolition; demolition of the structure; costs associated with disposal at a permitted landfill or materials recovery center; site stabilization; legal costs associated with securing properties for demolition; and other costs approved by the department.

Section 6 relates to unauthorized uses of grants. A grantee may not use a grant to replace funds currently budgeted to demolish or deconstruct a structure or for expenditures not related to demolition or deconstruction of a structure. Also, grant funds may not be used for land acquisitions; environmental testing of soil conditions; administrative costs; beautification costs not related to site stabilization; office equipment; entertainment; alcoholic beverages, meals, and gratuities; lobbying expenses; or landfill operations or management.

Section 7 relates to the review of applications. The department may reject applications not meeting eligibility and submission requirements and may partially award or reject applications based on available funding. The department must submit those recommended for funding to the Secretary and the Governor for approval.

Section 8 relates to grant recipient requirements. Grant funding is disbursed at the time of receipt of invoices and all other required information for approved expenditures on at least a 30-day rolling basis. This section contains provisions on the maintenance of financial and other records, requires the grantee, and requires the grantee to submit a final report to the department within 30 days following the last day of the grant period and specifies information to be contained in the report.

Section 9 relates to site visits. It allows the department to periodically conduct site visits.

Section 10 requires all unexpended grant funding at the end of the grant period to remain within the program.

The House amended the rules to ensure the program gives priority to structures in “high traffic areas, tourism corridors, and/or common open spaces.”

Department of Environmental Protection, Reclamation of Solar and Wind Electricity Generation Facilities, 60 CSR 11

The rule is new and is promulgated under the West Virginia Wind and Solar Energy Facility Reclamation Act, W. Va. Code §22-32-1 et seq. created in Enrolled Committee Substitute for Senate Bill 492 which passed during the 2021 regular session. The rule establishes requirements and bonding for the decommissioning of solar and wind generation facilities to guarantee the decommissioning.

An owner of a solar or wind generation facility must decommission its facility and pay for the costs of decommissioning. Decommissioning activities must begin within 90 days after abandonment and be completed within 24 months unless the owner receives departmental approval of an alternative plan.

The owner of a facility which commenced operations on or before July 1, 2021, is to submit by July 1, 2022, the date that the generation facility commenced operations; a decommissioning plan; and identification of landowners.

An owner that commences commercial operation after July 1, 2021, is to submit certain information after commencing operation. Within 90 days, the department will notify the owner of any deficiencies in the decommissioning plan. Within 90 days after receiving a deficiency notice, an owner must address all deficiencies and resubmit the decommissioning plan.

New owners must confirm compliance with the decommissioning agreement of the prior owner or submit an alternative decommissioning agreement for approval.

Within one year of commencing operations, each non-exempt facility will pay a fee to the Wind and Solar Decommissioning Account of \$100 per megawatt of generation capacity, and \$50 per megawatt of generation for each subsequent modification.

The department may inspect solar or wind generation facilities to ensure compliance.

Unless exempt, the owner of a facility must prepare a decommissioning plan which includes a commitment to remove all aboveground equipment such as solar panels, turbines, foundations, and structures. The plans must include an estimate of the cost of decommissioning the facility with supporting calculations.

The facility is to be returned to the approximate original topography with grading, topsoil, and revegetation to prevent adverse hydrological effects.

In lieu of the decommissioning plan requirements, parties may reach an alternative decommissioning agreement. The alternative agreement must be provided to the department for review. The parties are required to grant the department and the Public Service Commission authority to enforce compliance with the alternative agreement. Decommissioning agreements, which legally bind exempt parties, are subject to review and comment by the department not approval.

The owner of facility is exempt from the decommissioning and bonding requirements of this rule if the facility has a nameplate capacity of less than 1.0 megawatts; is operated by regulated public utility who can demonstrate financial integrity; or if the facility is legally bound by a decommissioning agreement, based upon a qualified independent party and executed before July 9, 2021; or was granted authorization or waiver to construct by the Public Service Commission, conditioned upon the execution of the agreement before July 9, 2021.

A facility remains exempt unless it is found to be in breach of an agreement, the agreement is found to be unenforceable; a facility is transferred to a party not bound by the agreement; or expands its facility by 50% or more in total disturbed acreage.

Unless exempt, each solar and wind generation facility must provide a decommissioning bond conditioned on the faithful decommissioning of the facility. The department shall set the estimated bond amount for the department to perform the decommissioning work. The bond amount must be based on estimated costs submitted by the owner and acceptable to the department; estimated costs to the department that may arise to perform the work; and other cost information.

The value of the bond shall be based upon the total disturbed acreage, less salvage value, and shall not exceed the total projected future cost of decommissioning, less salvage value.

The department must notify the owner of the facility of any denial, approval, or modification to the decommissioning plan or the bond amount. Any person adversely affected by a decision of the department may appeal that decision to the Environmental Quality Board and thereafter to the appropriate court of law.

Unless exempt, an owner who is required to provide a bond payable to the state in a form acceptable to the department and the Attorney General in a sum determined by the department conditioned on the faithful decommissioning of the facility.

If the owner of a facility fails to submit a decommissioning bond or a properly executed and legally binding decommissioning agreement, the department must provide notice to the owner and may assess a penalty of not more than \$10,000.00 for the first day of violation and an additional penalty of not more than \$500.00 for each day the failure continues.

If the owner transfers ownership to a successor owner, the department must release the bond posted by the owner. The successor owner must provide a bond that meets the requirements.

An owner must receive approval from the department prior to replacing any bond. The department shall approve a replacement bond within 90 days of receipt of the request for replacement if it meets the requirements of these rules.

Once every five years, an owner may request a reduction of the required bond amount by submitting an amended decommissioning plan. If the department finds that the amended plan reduces the estimated cost to complete decommissioning, the department may approve reducing the bond.

The department is required to review each nonexempt decommissioning plan and bond amount every five years after a facility is bonded, or when a new owner submits a revised decommissioning plan. The department may increase the amount of the bond if the facility has expanded or the cost to decommission the facility has otherwise increased.

The owner must submit either a surety bond, collateral bond, letter of credit, or certificate of deposit in a form acceptable to the department and to the Attorney General.

An owner may satisfy the bonding requirements by submitting a surety bond that complies with the requirements of this section. The requirements concern amounts, powers of attorney, bankruptcy terms, and suspension or cancellation issues. An owner may satisfy the bonding requirements by submitting a letter of credit that complies with the requirements this section. The requirements concern the characteristics of the bank, irrevocability, ability to pay to the department upon demand, amount, and others.

An owner may satisfy the bonding requirements by submitting a certificate of deposit that complies with the requirements. The requirements concern the amount, FDIC, renewability, ability to pay, release terms, and certain waivers.

If an owner fails to decommission a facility as set forth in the decommissioning plan and did not commence action to rectify deficiencies within 90 days after notification, the department may cause the bond to be forfeited for the entire facility. The notification must include the reasons for the forfeiture, the amount to be forfeited, times for corrective action, and available appellate rights.

The department must release a bond if the department is satisfied that an owner has completed decommissioning of a facility in accordance with the decommissioning plan. The owner shall allow the department to inspect the facility to verify the adequacy of decommissioning for bond release.

Upon bond forfeiture for an abandoned facility, the department may take any necessary action to secure and decommission the facility.

Appendix A sets forth a list of solar and wind generation facilities that are exempt from the rule.

The following House amendments were adopted:

On page 5, subparagraph 4.1.d.iii after the word, ‘slabs’ by inserting the words “to a minimum depth of 36 inches below the surface”;

On page 5, subsection 4.4 after the word “receipt” by adding the following:

“The department shall only deny an alternative decommissioning agreement if they determine that it will not result in the restoration of the property to a condition in which it can be used towards the same or a similar use as its use prior to the onset of the alternative decommissioning agreement.”;

And,

On page 7, by striking out subdivision 6.2.a and inserting in lieu thereof subdivision 6.2.a to read as follows:

“6.2.a. Estimated costs of decommissioning and salvage value as submitted by the owner in the decommissioning plan and in accordance with these rules with such costs estimated by the department using current machinery production handbooks and publications or other documented or substantiated cost estimates acceptable to the department.”

CODE REFERENCE: West Virginia Code §64-3-1 et seq. – amended

DATE OF PASSAGE: March 6, 2023

EFFECTIVE DATE: March 6, 2023

ACTION BY GOVERNOR: Signed March 29, 2023

House Bill 2648

Authorizing certain agencies and boards of the DHHR to promulgate a legislative rule

The Committee Substitute contains 18 rules relating to the Department of Health and Human Resources and is known as Bundle 5.

Department of Health and Human Resources, Food Establishments, 64 CSR 17

The House, in the committee substitute, directed DHHR to add the following amendments to the current legislative rule:

On page 2, by striking out all of subdivision 3.1.h. and inserting in lieu thereof a new subdivision 3.1.h. to read as follows:

3.1.h. Chapter 6, section 6-501.115 is not applicable if the following conditions are met:

3.1.h.1. The dog is prohibited from entering any areas where food is being prepared

3.1.h.2. The dog owner will be asked to leave, if a dog creates a nuisance;

3.1.h.3. The establishment is licensed as a private club, restaurant, brew pub, or micro distillery;

3.1.h.4. The establishment has liability insurance for dog-related incidents;

3.1.h.5. Dog accidents are cleaned and sanitized. Dog waste stations are available. A written procedure shall be established and posted concerning dog accident cleanup; and

3.1.h.6. Signage is present indicating that the establishment is dog friendly.

Department of Health and Human Resources, Procedures Pertaining to the Dangerousness Assessment Advisory Board, 64 CSR 26

The rule is new. It explains the responsibilities and administration of the Dangerousness Assessment Advisory Board. The Board was created as an advisory board by statute pursuant to Enrolled Committee Substitute for Senate Bill 702 during to 2021 Regular Session.

The purpose of the board is to provide opinion, guidance, and informed objective expertise to circuit courts as to the appropriate level of custody or supervision necessary to ensure that forensic patients who have been judicially determined to be incompetent to stand trial and not restorable or not guilty by reason of mental illness are in the least restrictive environment available to protect the forensic patient, other persons, and the public generally.

The rule provides for the conduct of meetings, confidentiality, immunity of Board members and compensation.

Department of Health and Human Resources, Standards for Local Boards of Health, 64 CSR 73

The rule amends a current legislative rule. The rule establishes the standards for the provision of basic public health services by local boards of health. This rule is enforced by the Commissioner for the Bureau for Public Health and the Center for Local Health. The amendments were made necessary by the passage of House Bill 4113 during the 2022 Regular Session of the Legislature which changed the focus of local boards of health to the provision of basic health services.

Section 4 is completely rewritten. It addresses the distribution and monitoring the state aid formula, provides for the continuity of staff to support the provision of basic public health service and daily operations; requires the board to have liability insurance at least equivalent to that which is available to local boards through BRIM and provides for the maintenance of records.

Section 5 sets forth the basic public health services to be provided by a local board including and the standards for those services. The services include community health promotion, communicable and reportable disease service standards, environmental health protection, immunization, and threat preparedness.

Section 6 of the rule relates to reports and records. A requirement was added for the development of a data retention policy for medical records, laboratory results, and case reports.

Section 7 of the current rule relating to the general administration of the local health department has been deleted. Section 7 of the rule relates to performance-based evaluation, site visits, and plans of correction. The Center for Local Health is required to develop and facilitate bi-directional relationships with local health departments. A performance-based team appointed by the Commissioner is to conduct an on-site review at a minimum of every four years of all local public health department's basic public health service programs.

Section 8 of the current rule which addressed financial management was deleted. This section was replaced with a new section specifying the membership and duties of the 9 member WV Public Health Advisory Board which is to: collaborate with the Bureau to design and implement a performance-based evaluation system; collaborate with the Bureau to design and develop tools for assessment of local health departments; and provide training for local health departments and state appointees.

Section 9 of the current rule which related to physical facilities was deleted. It now contains the provisions of the current rule relating to penalties. It has been amended to require the approval of a local boards plan to correct deficiencies by the Commissioner, the Board of Health and the appointing authority.

Department of Health and Human Resources, Medical Examiner Requirements for Postmortem Inquiries, 64 CSR 84

The rule amends a current legislative rule. The amendments were by the passage of Enrolled Committee Substitute for House Bill No. 4340 that passed during the 2022 Regular Session of the Legislature. The rule regulates the conduct of medico-legal investigations of the cause of death, sets procedures for postmortem examination of deceased persons and the examination of substances collected as part of that process.

Section 8 relates to pronouncement, investigation, and certification of death. Technical changes were made to this section. Two new methods are added for the identification of a body. They are identification by obtaining the assistance of a law enforcement entity with the capacity to digitally capture and compare fingerprints and identification by serialized prosthetics, implants, or medical devices. This section also requires that a unique identifier to be assigned to an unidentified decedent.

Section 9 of the rule relates to obtaining blood, body fluids, and tissue material for examination. County medical examiners are only to help with determining the cause and manner of death and are no longer responsible for completion of a death certificate.

Section 10 sets forth the standards to transportation of the body. It has been amended to require that the transport company to have a transportation agreement on file with the Bureau.

Section 12 sets forth the standards for documentation of findings obtained by medico-legal death investigations by the county medical examiner, assistant county medical examiner, or county coroner. It has been amended to allow an alternative submission for death certificates if the Electronic Death Reporting System (DAVE) is unavailable for an extended period.

Section 13 sets forth the requirements of authorization for cremation by Office of Chief Medical Examiner, County Medical Examiner, Assistant County Medical Examiner, or County Coroner. It has been amended by deleting language referring to the “pronouncing physician’s” signature. It also specifies that only a medical examiner may determine a manner of death that is anything other than natural. Any death certificate with a manner of death other than natural must be certified by a medical examiner. If certified by any other provider, the death must be immediately referred to the Office of Chief Medical Examiner.

Section 14 sets forth the requirements for the death certificate. It requires that county medical examiners, provide investigatory findings to help establish the cause and manner of death. The Office of Chief Medical Examiner is then required to complete and certify the death certificate. This section also provides that under exigent circumstances county medical examiners may complete and certify a paper death certificate.

Section 16 of the rule sets forth the standards for performance of the forensic autopsy. It has been amended to remove the authority of the county medical examiner and the county coroner’s ability to authorize a forensic postmortem examination of a body. The deputy chief medical examiner now has that authority.

Section 17 of the rule sets forth the standards for specimen collection and testing and has been amended to add different types of tests that can be performed including but not limited to anthropological studies, neuropathological studies, forensic odontology review, or DNA analysis.

Section 18 sets forth the release of information and states that no preliminary information is released and that the Chief Administrator is the designated records custodian.

Section 20 sets forth the criteria for human remains and personal property. It has been amended to provide that prior to the release of custody of the remains to an organ procurement organization the Office of Chief Medical Examiner must receive verbal or written authorization from the organ procurement organization and that the decedent or legal next of kin has approved or authorized organ/tissue/cornea recovery.” This section has been amended to permit release of personal property to the funeral home/crematorium/transport agency authorized by the next of kin to accept custody of the decedent.

Section 24 is a new section relating to the temporary disposition or internment of unclaimed decedents in the custody of the OCME. It specifies the two types of unclaimed decedents that OCME has custody of are: Category 1 a decedent that is or has been the subject of an Office of Chief Medical Examiner medico-legal death investigation for which the Office of Chief Medical Examiner assumed custody of the remains directly from the place of death and Category 2 a decedent for whom the Office of Chief Medical Examiner did not conduct a medico-legal death investigation but whose remains are in the custody of the Office of Chief Medical Examiner. The Office of Chief Medical Examiner assumed custody of the decedent, at some point, because they remain unclaimed in the custody of a funeral home, crematorium, or other entity for an extended period of time. The Office of Chief Medical Examiner does not take custody of unclaimed decedents in Category 2 cases in the normal course of business. This section specifies the requirements for the disposition of each category.

Section 25, which is new, sets forth the standards for temporary disposition or internment of unidentified decedents in the custody of the office of the chief medical examiner.

The House adopted the following amendments to the rule:

On page 14, by striking out all of section 13.5. and inserting in lieu thereof a new section to read as follows:

“13.5. This section applies only to remains of persons whose death have been pronounced within the State of West Virginia or for remains of persons whose deaths have been pronounced in another state and does not have a prior authorization for cremation issued by the state in which the death occurred.” The amendment was adopted by the Senate.

Department of Health and Human Resources, Medical Cannabis Program – Growers/Processors, 64 CSR 110

The rule amends a current legislative rule that includes general provisions related to growers/processors pursuant to the WV Medical Cannabis Act. Pursuant to a statutory change in 2022, unless otherwise required for litigation or investigative purposes, the length of time surveillance video must be retained has been reduced from two years to 180 days.

Department of Health and Human Resources, Medical Cannabis Program – Dispensaries, 64 CSR 112

The rule amends a current legislative rule related to dispensaries pursuant to the WV Medical Cannabis Act. Pursuant to a statutory change in 2022, unless otherwise required for litigation or investigative purposes, the length of time surveillance video must be retained has been reduced from two years to 180 days.

Department of Health and Human Resources, Financial Disclosure Rule, 65 CSR 13

The rule amends a current legislative rule by changing the sunset date to August 1, 2028, from the previous date, March 14, 2023.

Department of Health and Human Resources, Uniform Bill Data Base, 65 CSR 34.

The rule is new. It establishes the procedures for the collection, retention, use, and disclosure of data from the uniform bill database, including provisions for the safeguards to protect the privacy, integrity, confidentiality, and availability of any data; procedures for the collection of data elements, required data format, code tables, edit specifications thresholds required for a submission to be considered complete, methods for submitting data, submission schedules, and fees for data requests payable by users.

Section 3, data collection and retention, this section states that DHHR may hire a data discharge vendor to collect and analyze UB data directly. The Hospital Data Submission System (HDSS) maintains the master data base and provides copies of the data to the DHHR on a quarterly basis in a data warehouse under the control of the DHHR.

Section 4 discusses data published on the Internet. This section states that generally data published on the Internet will be di-identified in accordance with HIPAA standards and requires the following variables to be omitted: name; all geographic subdivisions smaller than a state; all elements of dates (except year) for dates directly related to an individual including birth data, date of death etc.; telephone number, fax numbers, electronic mail address; social security numbers, medical record numbers, health plan beneficiary numbers, account numbers; certificate/license numbers; vehicle identifiers and serial numbers including license numbers; device identifiers and serial numbers; web universal locators; internet protocol address numbers; biometric identifiers; full fac photographic images and comparable images; and any other unique identifying numbers, characteristic, or code.

Section 5 discusses, data use and disclosures. This section states that the DHHR uses UB data for health surveillance, to inform health care policy, and to evaluate the effectiveness of programs. It sets forth the process a party must follow which requests more than a de-identified data set or a limited data set.

Section 6 sets forth a fee structure that has been established for certain types of reports and data.

Section 7 sets forth the procedure for requesting data. It provides that internal or external users may request a limited data set on specific request forms and provides the place for submission of the forms. This section states that requests may be approved as submitted or additional clarification or modifications may be required. External entities may be required to sign a data use agreement. If a request is approved, an encrypted report will be sent to the requestor.

Department of Health and Human Resources, Methodologies to Examine Needs for Substance Use Disorder Treatment Facilities Within the State, 69 CSR 13

The rule amends a current legislative rule that establishes procedures for the development of methodologies to examine the relative need for substance use disorder treatment facilities within the state.

The rule extends the sunset provision from March 22, 2023, to August 1, 2028.

Department of Health and Human Resources, Core Behavioral Health Crisis Services System, 69 CSR 19

The rule is new. It applies to any person, partnership, association, or corporation that operates a 988-crisis hotline center in the state and all other persons or entities engaging in services that assist individuals who use the 988-crisis hotline center. A 988-crisis hotline is a state-identified center participating in the National Suicide Prevention Lifeline Network to respond to statewide or regional 988 calls, chats, or texts. The network is a national network of local crisis centers that provide free and confidential emotional support to people in suicidal crisis or emotional distress 24 hours a day, seven days a week.

The rule sets forth the means for designating crisis hotline specifies and the duties of the crisis hotline center. It also specifies training for a center's staff, methods for sharing information and required reporting and data collection

The rule has a fiscal impact of \$1,863,984. This estimate was provided by Vibrant Health, the Substance Abuse Mental Health Services Administration national contractor for the Suicide Hotline. The 988-call center will be funded by the DHHR Bureau for Behavioral Health (BBH). Federal Funding will be used when available. After funding the call center for 2-3 years, BBH may need an appropriation to continue funding the 988-call center. The 988-call center will create 25 new jobs and provide a primary contact for crisis services for WV.

Department of Health and Human Resources, Child Care Centers Licensing, 78 CSR 01

The rule amends a current legislative rule which establishes standards and procedures for the licensure of child care centers under the provisions of W. Va. Code 49-2-101 et seq. and related federal and state code provisions.

The rule adds additional subjects to those required for pre-service training and adds a definition for the term "Serious Injury." It prohibits a care giver under the influence of any substance, including medical cannabis, that would impair their ability to care for children to be on the premises or have contact with the children.

The rule updates the WV Cares language. It adds a sex offender registry check requirement in staff member or volunteer's state of residency and out-of-state residency during the past five years, and adds an interstate background check requirement for providers, staff, and volunteers with out-of-state residency and out-of-state residency during the past five years. A new staff member must have documentation confirming a valid criminal background check has within the past 180 days as opposed to the current 12 months.

The rule also requires all staff to complete 15 hours of approved training annually, which may be used to complete other training requirements, requires certification in Pediatric CPR, adds an immunization grace period for children experiencing homelessness and children in foster care, permits a serious incident to be reported via email and revises nutrition plans to meet current USDA Child and Adult Care Food Program meal and snack pattern requirements.

Department of Health and Human Resources, Minimum Licensing Requirements for Residential Child Care and Treatment Facilities for Children and Transitioning Adults and Vulnerable and Transitioning Youth Group Homes and Programs in West Virginia, 78 CSR 03

The rule amends a current legislative rule which establishes standards and procedures for the licensure of residential child care and treatment facilities and vulnerable and transitioning youth group homes and programs.

The rule changes the employee-to-patient ratios for a psychiatric residential treatment facility from 1-to-3 to 1-to-4 during day and evening hours. During nighttime sleeping hours the ratio changes from 1-to-6 to 1-to-8.

Department of Health and Human Resources, Family Child Care Facility Licensing, 78 CSR 18

The rule amends a current legislative rule which establishes standards and procedures for the licensure of child care centers under the provisions of W. Va. Code 49-2-101 et seq. and related federal and state code provisions.

The rule adds additional subjects to those required for pre-service training and adds a definition for the term "Serious Injury". It provides that all children 12 and under are included in the calculation of children in the facility, adds requirements for field trips and water activities, adds an immunization grace period for children experiencing homelessness and children in foster care, adds additional training requirements for a family child care facility operator and the staff, and prohibits a care giver under the influence of any substance, including medical cannabis, that would impair their ability to care for children to be on the premises or have contact with the children.

The rule updates the WV Cares language. It adds a sex offender registry check requirement in staff member or volunteer's state of residency and out-of-state residency during the past five years, and adds an interstate background check requirement for providers, staff, and volunteers with out-of-state residency and out-of-state residency during the past five years. A new staff member must have documentation confirming a valid criminal background check has within the past 180 days as opposed to the current 12 months.

Department of Health and Human Resources, Family Child Care Home Registration, 78 CSR 19

The rule amends a current legislative rule to bring the rule into compliance with 45 CFR Part 98 Child Care and Development Fund; to include requirements with Bureau for Public Health and make any other necessary changes.

The rule adds additional subjects to those required for pre-service training and adds a definition for the term "Serious Injury". It prohibits a care giver under the influence of any substance, including medical cannabis, that would impair their ability to care for children to be on the premises or have contact with the children.

The rule also clarifies a child care home must be closed for a 6 hour period every 18 hours, requires the development and implementation of a safety plan that is practiced twice annually, requires notice be given to parents containing specified information if there are pets in the home and notice to parents if a

new pet is brought into the home, and adds an immunization grace period for children experiencing homelessness and children in foster care.

The rule updates the WV Cares language. It adds a sex offender registry check requirement in staff member or volunteer's state of residency and out-of-state residency during the past five years, and adds an interstate background check requirement for providers, staff, and volunteers with out-of-state residency and out-of-state residency during the past five years. A new staff member must have documentation confirming a valid criminal background check has within the past 180 days as opposed to the current 12 months.

Department of Health and Human Resources, Informal, and Relative Family Child Care Home Registration, 78 CSR 20

The rule amends a current legislative rule which establishes standards and procedures for the licensure of child care centers under the provisions of W. Va. Code 49-2-101 et seq. and related federal and state code provisions.

The rule adds additional subjects to those required for pre-service training and adds a definition for the term "Serious Injury". It prohibits a care giver under the influence of any substance, including medical cannabis, that would impair their ability to care for children to be on the premises or have contact with the children.

The rule updates the WV Cares language. It adds a sex offender registry check requirement in staff member or volunteer's state of residency and out-of-state residency during the past five years, and adds an interstate background check requirement for providers, staff, and volunteers with out-of-state residency and out-of-state residency during the past five years. A new staff member must have documentation confirming a valid criminal background check has within the past 180 days as opposed to the current 12 months.

The rule requires notice be given to parents containing specified information if there are pets in the home and notice to parents if a new pet is brought into the home, adds an immunization grace period for children experiencing homelessness and children in foster care, and requires the development and implementation of an evacuation plan and a safety plan that is practiced twice annually.

Department of Health and Human Resources, Out of School Time Child Care Center Licensing, 78 CSR 21

The rule amends a current legislative rule which establishes standards and procedures for the licensure of child care centers under the provisions of W. Va. Code 49-2-101 et seq. and related federal and state code provisions.

The rule adds additional subjects to those required for pre-service training and adds a definition for the term "Serious Injury". It prohibits a care giver under the influence of any substance, including medical cannabis, that would impair their ability to care for children to be on the premises or have contact with the children, adds an immunization grace period for children experiencing homelessness and children in foster care, and revises nutrition plans to meet current USDA Child and Adult Care Food Program meal and snack pattern requirements.

The rule updates the WV Cares language. It adds a sex offender registry check requirement in staff member or volunteer's state of residency and out-of-state residency during the past five years, and adds an interstate background check requirement for providers, staff, and volunteers with out-of-state residency and out-of-state residency during the past five years. A new staff member must have

documentation confirming a valid criminal background check has within the past 180 days as opposed to the current 12 months.

Department of Health and Human Resources, Goals for Foster Children, 78 CSR 25

The rule repeals an existing legislative rule because the authorizing statute was amended in 2020; House Bill 4092 struck the specific mandate for the rule. Since the former subsection (c) of W. Va. Code §49-126-2 no longer exists, the rule is technically void pursuant to W. Va. Code §29A-1-3b(b).

Department of Health and Human Resources, Deemed Head Start Child Care Center Licenses, 78 CSR 28

The rule is new and pursuant to Committee Substitute for House Bill No. 4662 which passed during the 2022 Regular Session. The rule establishes standards and procedures for the Head Start classrooms overseen by a Head Start Agency to be deemed a child care center licensed under the provisions of W. Va. Code §49-2-115a and related federal and state code. A deemed license allows the applicant access to WV Cares. The rule defines terms, sets forth an application process, authorizes the Department to investigate complaints, and provides for revocation of a license or the reversion to another license if the Office of Head Start is no longer funding the agency.

Department of Health and Human Resources, All-Payer Claims Database – Submission Manual, 114A CSR 03

The rule is new. The rule attaches a manual which contains the substantive content of the rule. The All-Payer Claims Database includes claims from public and private health plans, including private insurance plans, Medicare, and Medicaid. Claims data refers to administrative records created when health care providers require payment (bill) for services delivered to patients. Claims used for billing purposes contain coded information for diagnosis and procedures.

House Bill 2029 which passed this Session and has been signed by the Governor repealed the article of the Code that created the All-Payer Claims Database. The LRMRC recommended that the rule be disapproved.

All-Payer Claims Database – Data Submission Requirements

This rule was amended into the rules bundle due to the passage of House Bill 2029 which passed this legislative session and was signed by the Governor, repealing the section of code which authorizes the All-Payer Claims Database. The rule will be repealed by the agency.

CODE REFERENCE: West Virginia Code §64-5-1 et seq. and §64-12-2 et seq. – amended

DATE OF PASSAGE: March 6, 2023

EFFECTIVE DATE: March 6, 2023

ACTION BY GOVERNOR: Signed March 29, 2023

House Bill 2754

Relating to immunizations performed in a pharmacy

The proposed bill permits a pharmacy technician to administer immunizations. The bill adds “registered pharmacy technician” to the list of parties who may administer (1) influenza and pneumonia immunizations to adults over age 18 and (2) immunizations for which the Centers for Disease Control and Prevention (CDC) has recommended through its applicable recommended immunization schedule. The Board of Pharmacy (the “board”), the Board of Medicine, and the Board of Osteopathic Medicine shall propose legislative rules for their respective categories, but there must be complete legislative rules for CDC recommended schedule immunizations by July 1, 2023. A pharmacist may only delegate his or her authority to administer an immunization to such pharmacy technician when the pharmacist supervises the pharmacy technician, who must have successfully completed all board-required training. The bill also adds this administration ability, as provided by legislative rules, to a pharmacy technician’s scope of practice in the applicable code section. The bill further removes the need for a physician’s prescription for CDC recommended immunizations for children and lowers the age range to whom those immunizations may be administered from ages 11-17 to ages 3-17.

CODE REFERENCE: West Virginia Code §30-5-7 and §30-5-12 – amended

DATE OF PASSAGE: March 7, 2023

EFFECTIVE DATE: March 7, 2023

ACTION BY GOVERNOR: Signed March 23, 2023

House Bill 2757

Relating to expanding institutional eligibility for the WV Invests Grant Program

This bill expands eligibility for the WV Invests Grant Program by changing the definition of “eligible institution” to include a not-for-profit baccalaureate institution authorized by the Higher Education Policy Commission or a not-for-profit, hospital-based allied health program authorized by the Community and Technical College Council. The bill also provides for not-for-profit private baccalaureate institutions to enter into agreements with certain other entities to establish partnerships that provide for advanced career education programs which feature defined pathways that begin when a student is in secondary education and that ultimately lead to advanced certifications or associate degrees; and makes other changes to be consistent with including not-for-profit baccalaureate institutions authorized by the Higher Education Policy Commission in the definition of “eligible institution.”

CODE REFERENCE: West Virginia Code §18-2E-11, §18C-9-3, and §18C-9-4 – amended

DATE OF PASSAGE: March 3, 2023

EFFECTIVE DATE: March 3, 2023

ACTION BY GOVERNOR: Signed March 29, 2023

House Bill 2759

Relating to updating the health care provider tax

The purpose of this bill is to update the health care provider tax, changing it from 0.13% to 0.18%. Current law provides that providers of inpatient and outpatient hospital services pay an additional tax of .13% on gross receipts. This tax provides the state share of funding to enhance provider payments to the maximum amount allowed by the Center for Medicare and Medicaid Services. The bill would alter the means of calculating that percentage.

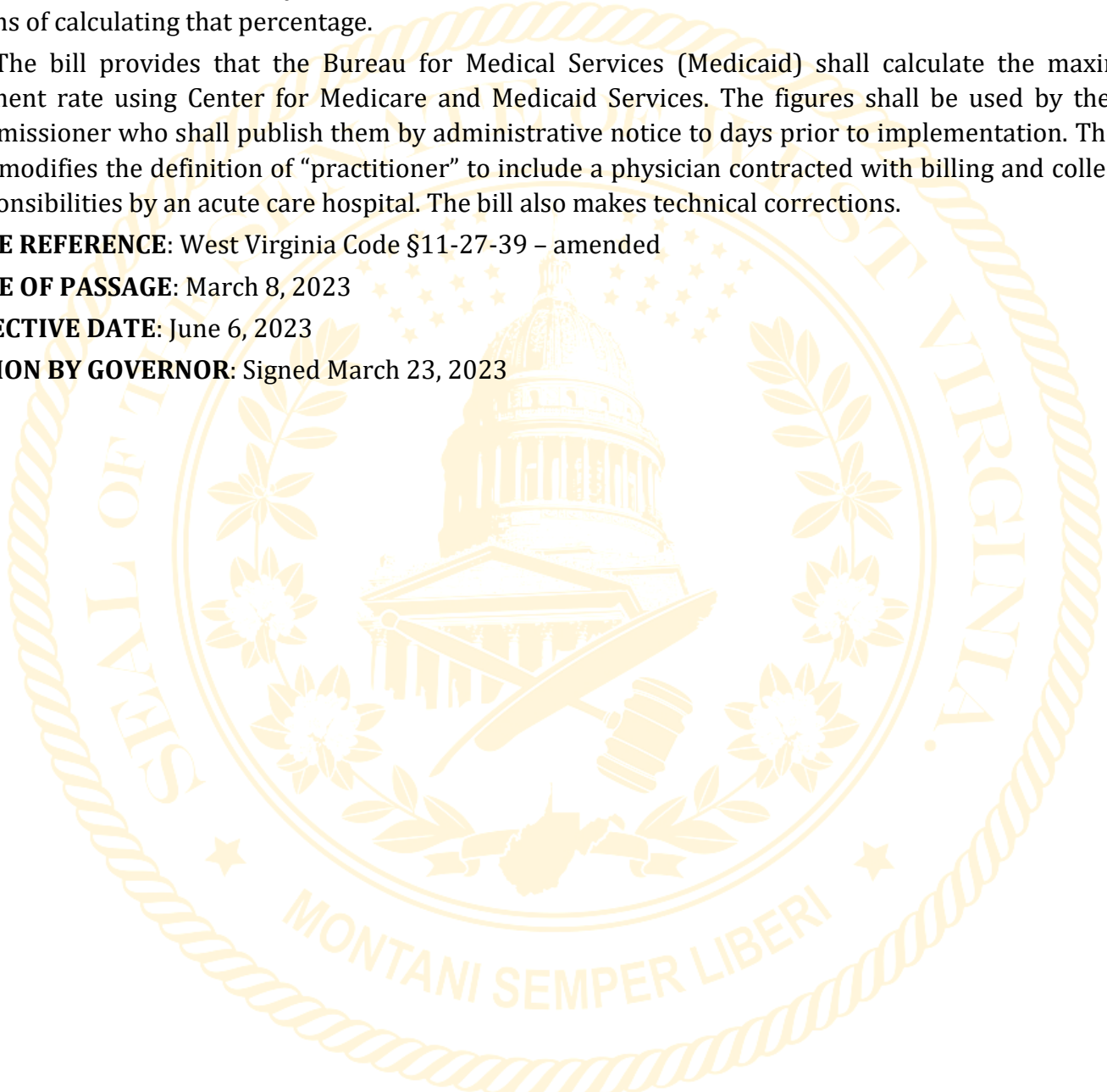
The bill provides that the Bureau for Medical Services (Medicaid) shall calculate the maximum payment rate using Center for Medicare and Medicaid Services. The figures shall be used by the Tax Commissioner who shall publish them by administrative notice to days prior to implementation. The bill also modifies the definition of “practitioner” to include a physician contracted with billing and collection responsibilities by an acute care hospital. The bill also makes technical corrections.

CODE REFERENCE: West Virginia Code §11-27-39 – amended

DATE OF PASSAGE: March 8, 2023

EFFECTIVE DATE: June 6, 2023

ACTION BY GOVERNOR: Signed March 23, 2023



House Bill 2800

All relating to authorizing legislative rules regarding higher education

This bill authorizes Higher Education Policy Commission (HEPC) and Community and Technical College Council (CTCC) legislative rules that have been reviewed and recommended by LOCEA.

The bill authorizes the following rules:

Series 2 – HEPC and CTCC – Performance-Based Funding Formula

Pursuant to the passage of HB4008 (2022), these rules define the parameters governing the establishment and administration of a performance-based funding formula to be used in the development of annual budget requests, beginning with the 2024 fiscal year budget cycle for the public institutions of higher education in WV. They require the Chancellor to develop the formula in consultation with a Funding Formula Advisory Committee and requires the formula, at a minimum to: Apply to 30% of each institution's base appropriation; exempt 70% of each institution's base appropriation from the outcomes-based funding calculations; hold institutions accountable for increasing educational attainment levels; acknowledge the unique mission of each institution; be based on a set of objective performance metrics that reflect and support the State's higher education goals and priorities; incorporate safeguards to ensure stability of the funding formula; and apply an annual inflation adjustment. The rules also specify the data metrics the funding calculations are to be based on; requirements for data collection; requirements for identification of state priority degree fields; and requirements for formula calculations.

Series 12 – HEPC and CTCC – Capital Project Management

The revisions to these rules extend the sunset date to five years from the effective date.

Series 32 – HEPC – Tuition and Fee Policy

This rule establishes the policy for the assessment of tuition and fees at West Virginia undergraduate public institutions of higher education. The revisions simplify the rule to align it more precisely with the statute and extend the sunset date to five years from the effective date.

Series 42 – HEPC – Higher Education Grant Program

The revisions to this rule extend the sunset date to five years from the effective date.

Series 52 – HEPC and CCTC – Annual Reauthorization of Degree-Granting Institutions

These rules establish the policy regarding annual reauthorization of degree-granting institutions. The rules revise the required documents for application and review process and add additional sanctions for institutions that do not comply with the provisions for reauthorization. The rules also remove the requirement for public institutions to apply for annual reauthorization and instead provides that they remain continuously authorized to operate unless the Legislature takes affirmative action to suspend an institution's operations. The CCTC version of the rule also clarifies that nothing in the rule limits any protections afforded to proprietary schools under §18B-2B-9 (requires permits for correspondence, business, occupational, and trade schools) or 135 C.S.R. 35 (the business, occupational, and trade school rule).

Series 55 – HEPC and CCTC – Human Resources Administration

The revisions to these rules extend the sunset date to five years from the effective date.

Series 27 – CCTC – Workforce Development Initiative Grant Program

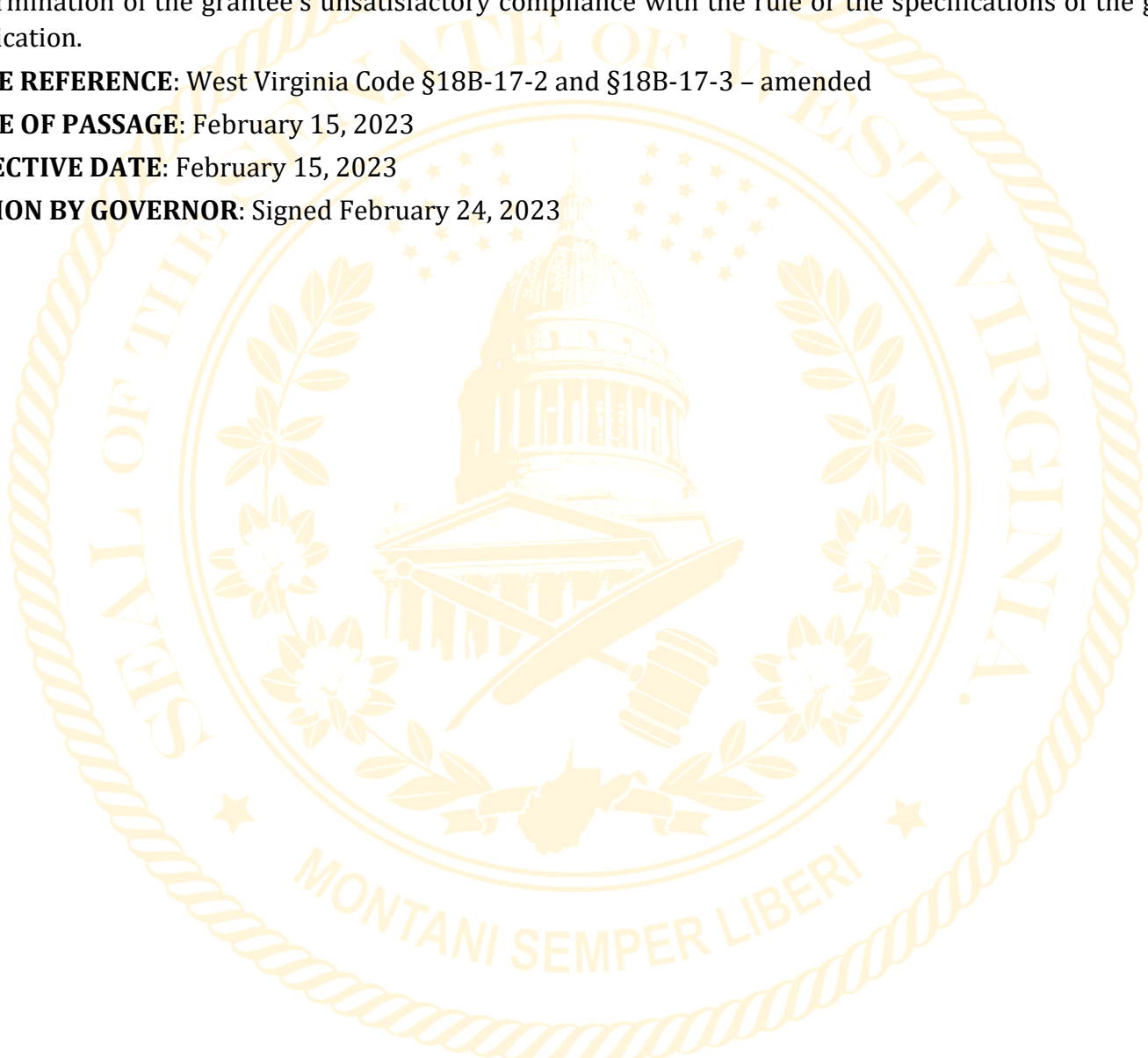
This rule adopts procedures and guidelines for the administration of the Workforce Development Programs: The Learn and Earn grant program, Technical Program Development grant program, and WV Advance Rapid Response grant program. The revisions to this rule add a definition section; allow the Council to limit the amount of a grant in accordance with the grant funds available; updates dollar wage amounts for participants in the Technical Program Development and the Learn and Earn grant programs; replaces the appointment of a committee to make funding recommendations and instead provides for the Council’s staff to make funding recommendations; and allows the Council to withdraw a grant upon determination of the grantee’s unsatisfactory compliance with the rule or the specifications of the grant application.

CODE REFERENCE: West Virginia Code §18B-17-2 and §18B-17-3 – amended

DATE OF PASSAGE: February 15, 2023

EFFECTIVE DATE: February 15, 2023

ACTION BY GOVERNOR: Signed February 24, 2023



House Bill 2814

To create a Hydrogen power task force

This bill creates a Hydrogen Power Task Force. The task force will study the potential for hydrogen energy in the state's economy and report to the Legislature and Executive.

The study will include: 1) A review of legislation and rules including state tax incentives and funding; 2) An examination of incentives in federal law; 3) An examination of the sources of hydrogen; and 4) recommendations for workforce development; infrastructure; and uses of hydrogen fuel.

The task force will consist of the 9 members including 4 from private organizations, the Chairperson of the Public Service Commission, three Cabinet Secretaries, and one representative from higher education.

The task force is to report its findings and recommendations not later than the sunset date of July 1, 2024.

CODE REFERENCE: West Virginia Code §24-2I-1 and §24-2I-2 – new

DATE OF PASSAGE: March 10, 2023

EFFECTIVE DATE: June 8, 2023

ACTION BY GOVERNOR: Signed March 28, 2023

House Bill 2820

To provide HOPE Scholarship recipients with the ability to play sports

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

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

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

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

DATE OF PASSAGE: March 11, 2023

EFFECTIVE DATE: June 9, 2023

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

House Bill 2821

Relating to taxation of gambling and lottery winnings

This allows a new decreasing modification against a West Virginia taxpayer's federal adjusted gross income in the amount of West Virginia gaming and gambling losses allowable as an itemized deduction under the United States Internal Revenue Code, not to exceed the amount of West Virginia gaming and gambling winnings, for the taxable year. This decreasing modification may not include costs and expenses incurred in connection with the gaming or gambling activity, and the following gaming and gambling losses are not subject to this decreasing modification: 1) Gaming and gambling losses that have been applied as a deduction in determining the taxpayer's federal adjusted gross income; and, 2) Gaming and gambling losses incurred in any unlawful gambling activity. This change would be effective for taxable years beginning January 1, 2023, and thereafter.

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

DATE OF PASSAGE: March 9, 2023

EFFECTIVE DATE: June 7, 2023

ACTION BY GOVERNOR: Signed March 29, 2023

House Bill 2827

Make public charter schools eligible for Safe Schools Funds

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

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

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

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

DATE OF PASSAGE: March 6, 2023

EFFECTIVE DATE: June 4, 2023

ACTION BY GOVERNOR: Signed March 29, 2023

House Bill 2848

Water and Sewer Operator licensing reciprocity

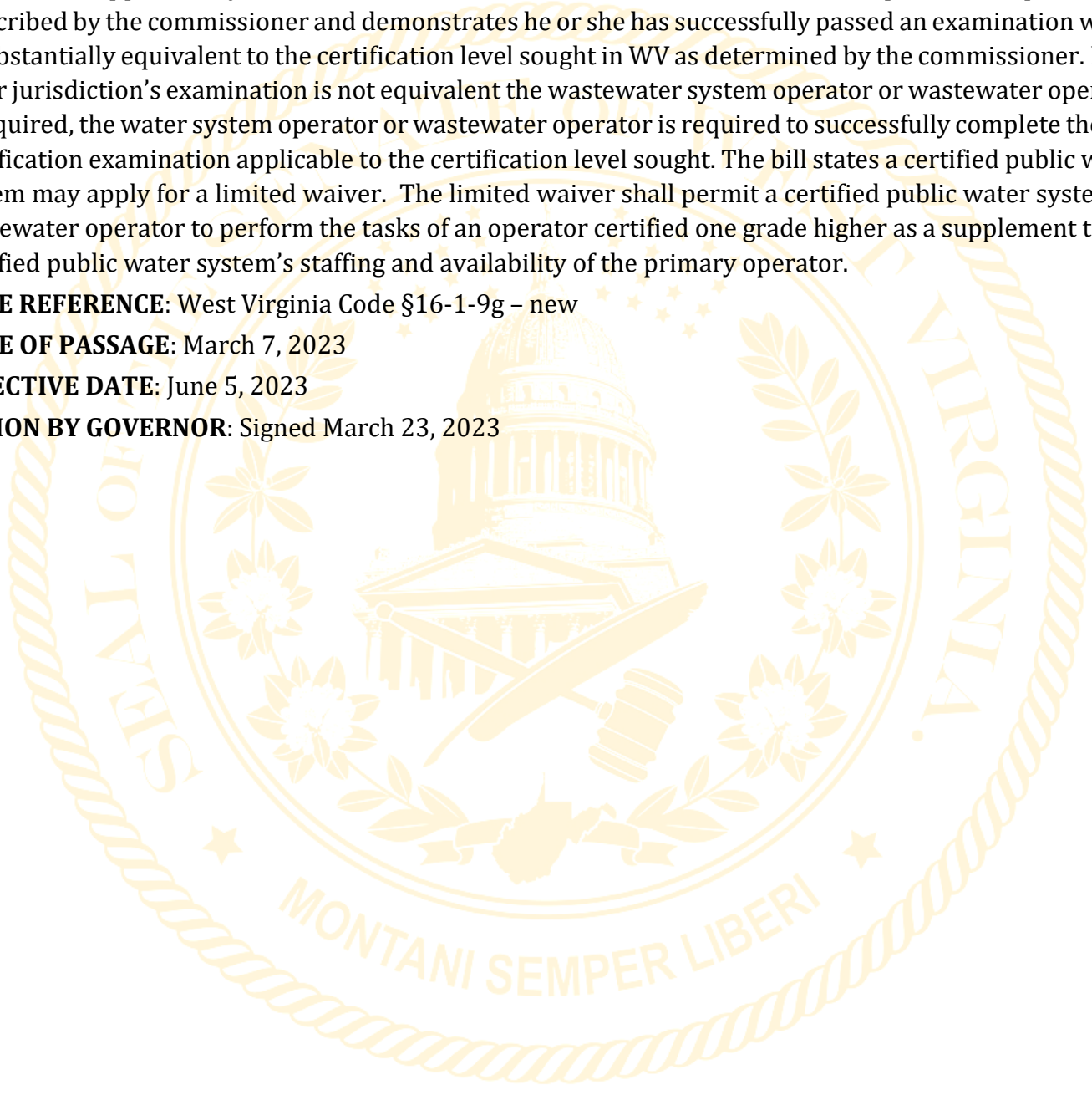
The bill requires the commissioner of the Bureau of Public Health to grant a public water systems or wastewater operator certified by another jurisdiction if the applicant is actively seeking, has been offered or has accepted employment which requires a certified operator in WV, submits a completed application in a manner approved by the commissioner, meets the educational and work experience requirements prescribed by the commissioner and demonstrates he or she has successfully passed an examination which is substantially equivalent to the certification level sought in WV as determined by the commissioner. If the other jurisdiction's examination is not equivalent the wastewater system operator or wastewater operator is required, the water system operator or wastewater operator is required to successfully complete the WV certification examination applicable to the certification level sought. The bill states a certified public water system may apply for a limited waiver. The limited waiver shall permit a certified public water system or wastewater operator to perform the tasks of an operator certified one grade higher as a supplement to the certified public water system's staffing and availability of the primary operator.

CODE REFERENCE: West Virginia Code §16-1-9g – new

DATE OF PASSAGE: March 7, 2023

EFFECTIVE DATE: June 5, 2023

ACTION BY GOVERNOR: Signed March 23, 2023



House Bill 2862

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

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

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

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

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

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

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

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

DATE OF PASSAGE: March 10, 2023

EFFECTIVE DATE: June 8, 2023

ACTION BY GOVERNOR: Signed March 28, 2023

House Bill 2955

Relating to the establishment and operation of regional water, wastewater and stormwater authorities

The bill amends various sections and adds a new section in Chapter 16 on public health, Article 13D, the Regional Water and Wastewater Authority Act. Article 13D currently enables municipalities, public service districts (PSDs), and others to cooperate with one another to establish various quasi-governmental public corporations, such as a regional water authority, a regional wastewater authority, or a regional water and wastewater authority. The code currently does not enable such collaboration with regard to the management of stormwater.

This bill enables municipalities and PSDs to collaborate and establish a regional stormwater authority. A regional stormwater authority may operate in combination with water and wastewater authorities. The majority of changes to existing law involve the insertion of language ensuring that all provisions applying to regional water and wastewater also apply to stormwater, including as to revenue bonds, sinking funds, collection of revenues, and liens. The bill defines stormwater-related terms. It sets forth requirements for the organizational document of an authority, which must be submitted to the Public Service Commission (PSC) and filed with the county commission. It provides timetables for the PSC's review of documents, approval of contracts, and rate increases.

The bill sets forth some membership requirements for the governing body of an authority. It provides the authority with the right to acquire stormwater-related infrastructure. The bill also requires that the authority maintain a working capital reserve, which is in addition to any repair and replacement fund and any other funds, of no less than 1/8th of all expenses incurred by the authority on an annual basis. The bill provides that rates, fees, and charges are subject to review and approval by the PSC. However, the bill provides that the PSC has no jurisdiction to regulate the rates charged for storm, flood, and surface water drainage management services. The bill renames the article the "Regional Water and Wastewater, and Stormwater Authority Act".

The bill creates §16-13D-22, which states that authorities created pursuant to this article have the power of eminent domain. [Article 16D authorities already possess the power of eminent domain via §16-13D-8(5)]. New §22 clarifies that the power of eminent domain does not extend to highways, road and drainage easements, or stormwater facilities constructed, owned, or operated by the West Virginia Division of Highways without the express agreement of the Commissioner of Highways.

CODE REFERENCE: West Virginia Code §16-13D-1 through §16-13D-6, §16-13D-8 through §16-13D-17, and §16-13D-21 – amended; §16-13D-22 – new

DATE OF PASSAGE: March 9, 2023

EFFECTIVE DATE: June 7, 2023

ACTION BY GOVERNOR: Signed March 28, 2023

House Bill 2967

Expediting License Applications for active military members and veterans, and their spouses

House Bill 2967 addresses the licensure of military-trained individuals and their spouses who have acquired academic, professional, and occupational training comparable to or exceeding that which is required in West Virginia.

The bill provides for faster licensure, certification, and/or registration for individuals with military experience upon their arrival or return to West Virginia, if the individuals satisfy certain conditions.

Those conditions are:

- An MOS in the occupation or trade for which licensure is sought;
- Completion of a military program of training in the MOS;
- Completion of testing or equivalent training and experience;
- Performance of the occupational specialty;
- Active practice of the occupation or trade for two of the five years preceding application in West Virginia; and
- Not having committed an act in another jurisdiction that would constitute grounds for discipline in West Virginia and not having any pending complaints in any other jurisdiction.

Similar requirements are set out for spouses of current military members.

The bill directs the board to issue a temporary practice permit to a military-trained applicant or military spouse licensed, certified, or registered in another jurisdiction while the applicant or spouse is satisfying the requirements for licensure no later than 15 days following receipt of an application, if the jurisdiction has licensure, certification, or registration standards substantially equivalent to the standards for licensure, certification, or registration of a board in West Virginia.

No fee for initial licensure may be charged a veteran or a spouse of a current member of the armed forces.

CODE REFERENCE: West Virginia Code §30-1B-5 and §30-1B-7 – repealed; §30-1B-1 through §30-1B-4 – amended

DATE OF PASSAGE: March 11, 2023

EFFECTIVE DATE: June 9, 2023

ACTION BY GOVERNOR: Signed March 28, 2023

House Bill 2993

Relating to rural emergency hospital licensure

The bill changes the definition of “Critical Access Hospital” (“CAH”) and creates a new hospital designation called a “Rural Emergency Hospital” (“REH”). The bill changes the definition of a CAH to mean a hospital which the Centers for Medicare & Medicaid Services (CMS) has designated as a CAH. Under the bill, for a hospital to become an REH, it would need to be a CAH for at least one year and would still need to be a CAH when it applies for licensure. The law requires an REH to (1) provide rural emergency hospital services through a staffed emergency department; (2) not provide acute care inpatient services; (3) treat all patients regardless of insurance status; and (4) have a transfer agreement with a Level I or Level II trauma center. The bill also allows an REH to provide outpatient services as specified by the secretary in legislative rule and would require an REH to include a facility unit licensed as a skilled nursing facility to furnish post-hospital extended care services. The language allows a hospital located in an urban area to be considered rural for a CAH designation if it meets certain criteria.

CODE REFERENCE: West Virginia Code §16-5B-14 – amended

DATE OF PASSAGE: March 2, 2023

EFFECTIVE DATE: May 31, 2023

ACTION BY GOVERNOR: Signed March 29, 2023

House Bill 3012

To encourage economic development regarding rare earth elements and critical minerals, as defined, by providing temporary severance tax relief

The purpose of this bill is to exempt rare earth elements and minerals from the severance tax for a period of nine (9) years. The bill defines rare earth elements to include: yttrium, lanthanum, cerium, praseodymium, neodymium, promethium, samarium, europium, gadolinium, terbium, dysprosium, holmium, erbium, thulium, ytterbium, lutetium, and scandium. There is also a definition of critical Minerals to include: aluminum, antimony, arsenic, barite, beryllium, bismuth, cesium, chromium, cobalt, fluorspar, gallium, germanium, graphite, hafnium, indium, iridium, lithium, magnesium, manganese, nickel, niobium, palladium, platinum, rhodium, rubidium, ruthenium, tantalum, tellurium, tin, titanium, tungsten, vanadium, zinc, zirconium, uranium, osmium, strontium, rhenium, potash, and bauxite.

The nine-year timeframe would begin July 1, 2023.

CODE REFERENCE: West Virginia Code §11-13A-3c – amended

DATE OF PASSAGE: March 8, 2023

EFFECTIVE DATE: June 6, 2023

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

House Bill 3013

Relating to authorizing the Jefferson County Commission to levy a special district excise tax

This bill would allow the development of an Economic Opportunity Development District in Jefferson County. The purpose would be to impose a special district excise tax. These taxes are only permitted to be levied by County Commission upon specific action of the Legislature. The tax would be levied upon the sale of tangible personal property and business locations within the economic opportunity development district. Currently, West Virginia has three (3) such districts in Ohio, Harrison, and Monongalia Counties. This bill would create a fourth.

The bill contains two (2) provisos. The first allows the creation of the district without the specific approval of the Executive Director of the Development Office. The second allows the County Commission to determine the base district tax, the base tax revenue amount, the gross annual district tax revenue amount, and the estimated net annual district tax revenue amount instead of these amounts being set by the Development Office. The current code provides that the Executive Director of the Development Office provide these figures in the certification of the project based upon the application of the County Economic Opportunity District. The District is required to request a certification from the Tax Commissioner of the base tax revenue amount who is required to respond within 30 days.

The final provision of the bill extends the existing Economic Opportunity Development District in Monongalia County as authorized in §7-22-9(b)(3) until December 31, 2053.

CODE REFERENCE: West Virginia Code §7-22-9 – amended

DATE OF PASSAGE: March 7, 2023

EFFECTIVE DATE: March 7, 2023

ACTION BY GOVERNOR: Signed March 29, 2023

House Bill 3035

Relating generally to high-quality education programs and school operations

This bill creates the Third Grade Success Act. It replaces the transformative system of support for early literacy with a multi-tiered system of support for early literacy and numeracy in kindergarten through grade three.

The bill adds the following to the components that are required to be in a state board rule:

- The provision of assistance to county boards with the training and implementation of the science of reading training for all K-3 educators, early childhood classroom assistant teachers (ECCATs), aides, paraprofessionals, and certain interventionists.
- Establishing an approved list of screeners and/or benchmark assessments in English language arts and mathematics for students in grades K-3 for the purpose of identifying students with a significant reading and/or mathematics deficiency. The screener and/or benchmark assessments are required to be given in the first 30 days of the school year and repeated at mid-year, and at the end of the school year.
- Establishing an approved list of dyslexia screeners to be administered to students no less than twice per year in grades K-3 and any time students with identified deficiencies are not responding to interventions.
- A requirement that a kindergarten, first, second, or third grade student who exhibits a deficiency in reading at any time, based on the screeners and/or benchmark assessments, and/or the comprehensive statewide student assessment, and any fourth-grade student promoted for good cause receive an individual reading improvement plan within 30 days of identification of the deficiency. The reading improvement plan is required to be completed by the teacher, principal, other pertinent school personnel, and the parent(s) or guardian(s), and is required to describe the research-based reading intervention services the student is to receive to remedy the reading deficit. Each student is to receive intensive reading intervention until the student no longer has a deficiency in reading.
- Certain specified details about what the required maximized family engagement is to include.
- The provision of professional development for administrators and K-3 teachers on the following:
 - The approved benchmark assessment and/or screener tools.
 - The science of reading and numeracy instruction.
 - The characteristics of dyslexia and dyscalculia in students, components of benchmarks and screeners that can indicate dyslexia or dyscalculia, and strategies for instruction.
 - Job-embedded, on-site teacher training on evidence-based reading and mathematics instruction and data-driven decision making that provides grades K-3 teachers with immediate feedback for improving instruction.
- Ensuring that educator preparation programs prepare candidates seeking licensure for elementary education with training and instruction to:
 - Include instruction in state adopted grade-level content standards, foundational reading and mathematics skills, and how to implement reading instruction using high-quality instructional materials.
 - Provide effective instruction and intervention for students with reading and math deficiencies, including students with characteristics of dyslexia or dyscalculia.
 - Understand and use student data to make instructional decisions.

The bill also requires county boards to adopt high-quality instructional materials grounded in scientifically-based reading research and aligned to state standards to be use as the core curriculum; and prohibits the instructional materials from including practices that are aligned with the Three-Cueing Systems Model of teaching reading.

The bill also requires county boards to provide in-service training:

- For ECCATs, aides, paraprofessionals, and certain interventionists specifically related to literacy, numeracy, and their responsibilities and appropriate measures for exercising authority and control over students.
- For classroom teachers in grades K-3 to help the classroom teachers gain a strong understanding of how to best use the ECCATs, aides, paraprofessionals, or in certain instances, interventionists.

The bill also provides that effective 7/1/26, a public school student who generally demonstrates a minimal understanding of, and ability to apply, grade level English language arts or mathematics knowledge, skills, and abilities, or both, as indicated on the WV General Summative Assessment relative to the WV College and Career Readiness Standards at the end of third grade, and upon the recommendation of the teacher and the student assistance team, be retained in the 3rd grade for the ensuing school year. The bill also sets forth numerous exceptions to this 3rd grade retention requirement.

This bill also requires that each first, second, and third grade classroom with more than 12 students have an ECCAT, aide, or paraprofessional and provides that the requirement becomes effective for the first grade for the school year beginning 7/1/23; effective for the second grade for the school year beginning 7/1/24; and effective for the third grade for the school year beginning 7/1/25. If all grade level classrooms are already being served by an ECCAT/aide/paraprofessional by the school year required, the county board can add the ECCATs/aides/paraprofessionals in first, second, and third grade classrooms of the greatest need beginning 7/1/23 and completing full implementation by 7/1/26. The bill also phases in increases in the service personnel ratios during each of those three years to ensure sufficient funding for county boards to hire the increased number of ECCATs, aides, and/or paraprofessionals necessary to comply with the requirement.

The bill also allows county boards to satisfy the ECCAT/aide/paraprofessional requirement by employing a full-time interventionist instead of an ECCAT, aide, or paraprofessional, but also provides that county boards are not required to employ an interventionist even if there are an insufficient number of ECCATs, aides, and paraprofessionals available to fill all the required positions. The bill also provides that if no full-time interventionist is available, a county board can satisfy the ECCAT/aide/paraprofessional requirement by employing a part-time interventionist.

The bill also removes a requirement for the Department of Education to survey the districts to determine where class overcrowding is impeding student achievement and report to the Legislature a plan for reducing the overcrowding.

The bill also modifies provisions pertaining primarily to dyslexia and dyscalculia. It replaced language specifying what the State Board is responsible for with language that requires the State Board to:

- Develop a list of appropriate screeners, early assessments, and professional development that address and ensure that all students receive the necessary and appropriate screenings, evaluations, and early assessments for specific learning disabilities, including dyslexia and dyscalculia. The bill also includes more specific information that the list is to include.

- Explore options to assist any local education agency (LEA) with acquiring approved literacy and/or numeracy screening tools if the LEA is unable to acquire its own literacy and/or screening tools that are consistent with state education agency recommendations.
- Adopt and make publicly available guidelines for including dyslexia diagnostic evaluation components in comprehensive assessments for special education and related services. The bill also sets forth more details about what the guidelines are to include.
- Adopt and make publicly available a list of approved diagnostic assessment components that can be used to help identify and diagnose dyslexia during comprehensive multidisciplinary evaluations.
- Adopt and make publicly available guidelines and a list of resources for dyslexia intervention practices that are evidence-based, including practices consistent with the Science of Reading and Structured Literacy, that are explicit, direct, sequential, systematic, and multisensory.
- Adopt and make publicly available a list of recommended accommodations and instructional practices to be used with students who exhibit signs of dyslexia or have been diagnosed with dyslexia.
- Adopt and make publicly available a list of available professional development resources that support evidence-based intervention for struggling readers, including the Science of Reading and Structured Literacy.
- Develop and make publicly available informational materials related to dyslexia for parents and guardians that include information about the multidisciplinary evaluation process, updated regularly.

The bill also imposes the following as requirements for LEAs:

- Develop a system for parents and guardians to annually receive digital and print informational materials related to dyslexia.
- Ensure at least one educator at each school is trained to administer, score, and interpret the data from the literacy screening instrument, and to recognize signs of dyslexia.
- Notify parents of the results of these literacy screeners while emphasizing that not all students who perform poorly on these screening instruments have dyslexia and that not all students with dyslexia will perform poorly on the screeners.
- Provide evidence-based reading intervention to students who exhibit academic risk in future reading performance, including indicators of dyslexia.
- Conduct comprehensive assessments to determine eligibility for special education services when a child does not respond or only minimally responds to intervention strategies and/or when there is a suspected disability of dyslexia, and if a determination is made through the evaluation process that a student needs assessed for dyslexia, provide assessment and diagnosis as necessary per WV Department of Education guidelines.
- Employ appropriate accommodations and instructional practices recommended by the WV Department of Education based on the students' needs.
- Require all elementary educators, special educators, reading interventionists or specialists, and other personnel determined appropriate by the LEA to receive professional development on the possible signs of dyslexia and the related classroom accommodations and instructional practices approved by the WV Department of Education.
- Administer a literacy screening instrument to students in grades 3-5 who transfer from a LEA where literacy screening instruments were not administered.

- Require appropriate personnel, as determined by the LEA, to annually receive professional development relating to the possible indicators for dyslexia and dyscalculia, accommodations and modifications in the classroom environment, proper instructional practices for educating students who exhibit possible indicators of risk for, or who have been, diagnosed with dyslexia, dyscalculia, and/or other specific learning disabilities.

The bill also requires the WV Board of Education to promulgate a rule to implement the provisions pertaining primarily to dyslexia and dyscalculia and requires that the rule at least include the following:

- If a student is reading substantially below grade level according to formal and/or informal assessments, including benchmark assessments, and has never been evaluated for special education, a request can be made by a school, parent, or teacher for the administration of an age- or grade-appropriate WV Department of Education-approved literacy screening instrument and these points of data can be used to either start intervention and progress monitoring per WV Department of Education guidance, or make a referral for a special education evaluation.
- Acknowledgement that each LEA can have one certified Literacy and Numeracy Specialist in each LEA, or another appropriate professional designated by relevant LEA leadership, to be appropriately trained, or be seeking appropriate training, in intervention, accommodations, and instructional strategies for students with dyslexia or a related disorder. The trained individuals are to serve as an advisor and trainer for dyslexia and related disorders for the LEA. The bill also sets forth in more detail what the reading specialist or other designated professional is to have a working knowledge of.

The bill also includes requirements for reporting to LOCEA relating to the provisions pertaining primarily to dyslexia and dyscalculia.

CODE REFERENCE: West Virginia Code §18-2E-10, §18-5-18a, §18-9A-5, and §18-20-10 – amended

DATE OF PASSAGE: March 11, 2023

EFFECTIVE DATE: June 9, 2023

ACTION BY GOVERNOR: Signed March 21, 2023

House Bill 3036

Increasing the number of districts and the limit on approved costs under the BUILD WV Act

This bill would modify provisions of the BUILD WV Act. That Act was passed during the 2022 Regular Session of the Legislature at the request of the Governor. The purpose of the act is to provide reasonably priced housing for graduate, post-graduate and professional job holders, technical workers and entrepreneurs for targeted businesses in key geographic areas.

Current law provides caps on BUILD WV districts which are capped at three (3). It also limited the annual amount of approved cost to \$40,000,000. This bill eliminates any caps on the number of certified BUILD WV district and leaves this to the joint discretion of the Secretaries of Commerce, Economic Development, and Tourism. The aggregate sum of approved costs would be increased from \$40,000,000 to \$150,000,000.

CODE REFERENCE: West Virginia Code §5B-2L-14 and §5B-2L-16 – amended.

DATE OF PASSAGE: March 9, 2023

EFFECTIVE DATE: June 7, 2023

ACTION BY GOVERNOR: Signed March 29, 2023

House Bill 3055

To create a vocational math class for students interested in careers in the trades

This bill establishes for all public-school curriculum a technical transition math class geared towards students interested in careers in the trades. This class will pertain to math curriculum in the fields of fractions, conversion from fractions to decimals, application of measurement, reading blueprints, geometry pertaining to workforce math, and other math skills needed to succeed in the trades.

The bill also requires that an instructor of the math class meet the same qualifications as needed to teach current trade classes and specific content in the public schools; provides that students are eligible for the class once entering high school; and allows the class to be taken as a personalized math credit to meet graduation requirements.

CODE REFERENCE: West Virginia Code §18-2E-13 – new

DATE OF PASSAGE: February 22, 2023

EFFECTIVE DATE: May 23, 2023

ACTION BY GOVERNOR: Signed March 4, 2023

House Bill 3061

Relating to updating the authority of the Foster Care Ombudsman

The purpose of the bill is to expand the duties of the foster care ombudsman. Currently, the foster care ombudsman can investigate complaints involving a foster child, foster parent, or kinship parent. The bill would expand the ombudsman's authority to investigate reported allegations of abuse and neglect, a child who has sustained a critical incident, or a child in the juvenile justice system. The bill also allows the foster care ombudsman to investigate complaints on his or her own initiative. The bill broadens the authority of the foster care ombudsman by removing a limitation about investigating incidents in the state. The bill requires the filing on an annual report and reports a requirement for quarterly data filings. The bill provides that the foster care ombudsman or his or her staff may not be compelled to testify or produce evidence in any judicial or administrative proceeding with respect to the identity of an individual providing information to the ombudsman as part of an official investigation. The proposed bill also protects memoranda, work product, notes or case files developed or maintained as part of an official investigation. The proposed bill provides the ombudsman may be compelled to provide testimony by a court or administrative body of competent jurisdiction to any action carried out by the office that is unrelated to the substance of a specific investigation or reports submitted to LOCHHRA.

CODE REFERENCE: West Virginia Code §49-9-101, §49-9-102 and §49-9-107 – amended

DATE OF PASSAGE: February 15, 2023

EFFECTIVE DATE: February 15, 2023

ACTION BY GOVERNOR: Signed February 24, 2023

House Bill 3077

Relating to making the use of the multi-state real time tracking system permanent

The bill repeals the section of code that sets an expiration date for the multi-state real time tracking system. The multi-state real time tracking system is the real time electronic logging system provided by the national association of drug diversion investigators to states that have legislation requiring real-time electronic monitoring of precursor purchases. This is used by pharmacies and law enforcement to track over-the-counter cold and allergy medications containing precursors to the illegal drug, methamphetamine. The tracking system is set to expire on June 30, 2023. The repeal of this section eliminates this expiration date.

CODE REFERENCE: West Virginia Code §60A-10-16 – repealed

DATE OF PASSAGE: March 10, 2023

EFFECTIVE DATE: March 10, 2023

ACTION BY GOVERNOR: Signed March 28, 2023

House Bill 3084

Relating to revising provisions related to public charter schools

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

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

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

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

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

The bill would amend the school aid formula provisions to include public charter schools. The State Board of Education is granted rulemaking authority to establish an “objective method for calculating the

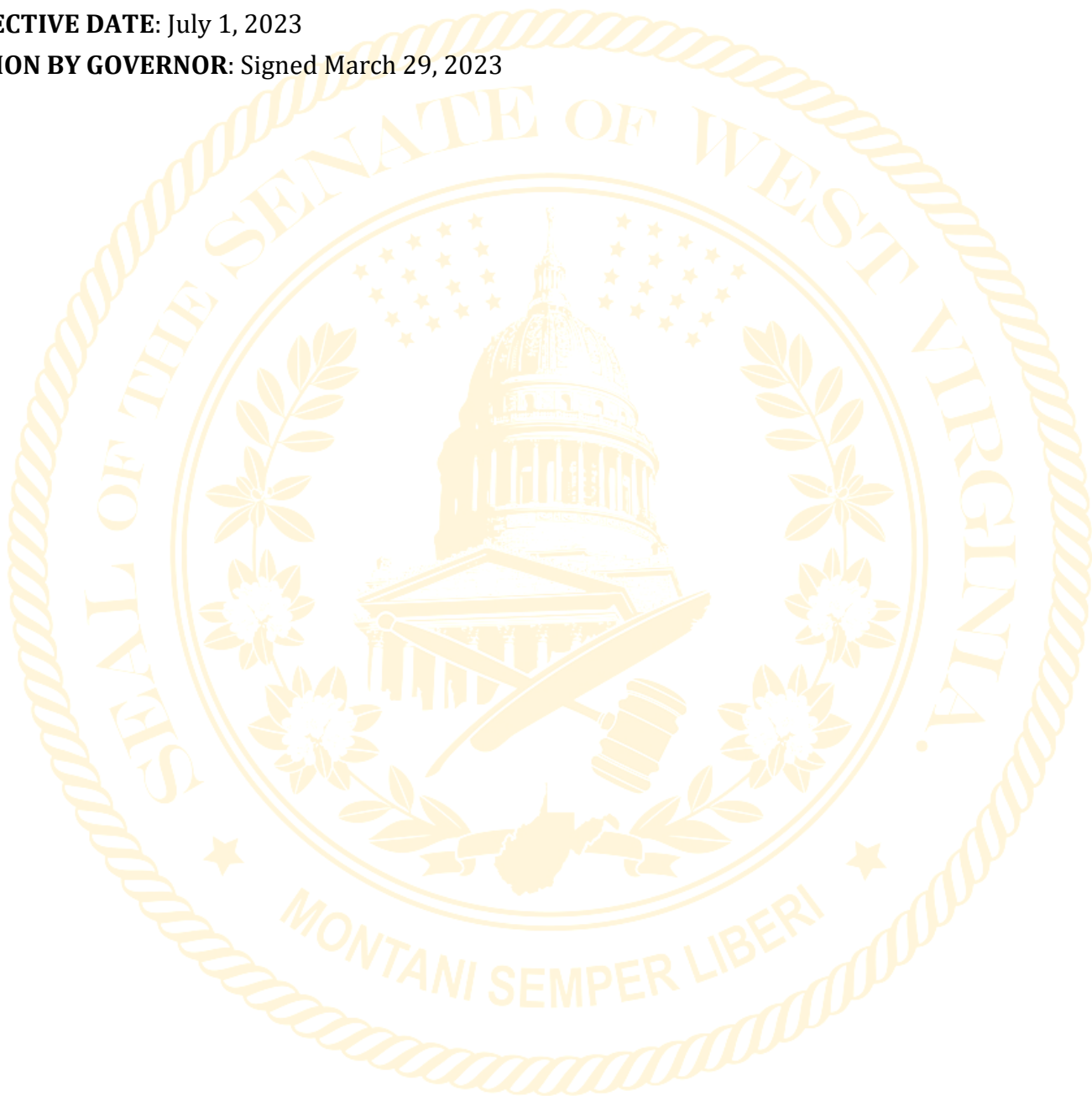
increase in net enrollment for each public charter school based on the school's net enrollment". Payment to the public charter school by the Department of Education is required to occur no later than December 31 of each year.

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

DATE OF PASSAGE: March 11, 2023

EFFECTIVE DATE: July 1, 2023

ACTION BY GOVERNOR: Signed March 29, 2023



House Bill 3092

Relating to in-state food service permit reciprocity

House Bill 3092 creates a new section of code that establishes intra-state reciprocity for mobile food establishments. A mobile food establishment vendor that has a mobile food establishment permit in his or her West Virginia county of residence may be issued a permit by reciprocity by the local or county health department. The reciprocal permit is valid for the same period as the initial permit. The health department issuing a permit by reciprocity may place conditions on the permit to ensure compliance with its own rules and standards for that type of permit but may not charge an additional fee for it. The vendor seeking the reciprocal permit must apply at least 14 days before operating in the reciprocal county and must post the permit visibly.

CODE REFERENCE: West Virginia Code §16-2-18 – new

DATE OF PASSAGE: March 9, 2023

EFFECTIVE DATE: June 7, 2023

ACTION BY GOVERNOR: Signed March 29, 2023

House Bill 3110

Relating to funding the Office of Oil and Gas in the Department of Environmental Protection

The purpose of this bill is to ensure the DEP Office of Oil and Gas has sufficient funds to inspect oil and gas wells in the state. Currently there are only 10 inspectors ensuring the integrity of about 75,000 total oil and gas wells. This bill adds three new revenue streams to fund the DEP's Office of Oil and Gas. This should result in more revenue and over 20 inspectors.

First, effective July 1, 2023, the bill dedicates 3/4 of 1% of the severance tax for oil and gas to the Office of Oil and Gas.

Second, there are three tiers of annual fees paid to DEP by operators:

- \$350 per well for an operator's first 400 unplugged wells which produce more than a daily average of 250,000 cubic feet of natural gas.
- \$75 per well for an operator's first 400 unplugged wells which produce a daily average of between 250,000 cubic feet of gas and 60,000 cubic feet of gas.
- \$25 per well for an operator's first 4,000 unplugged wells, which produce a daily average of 60,000 cubic feet or less of gas per day, but more than 10,000 cubic feet of gas per day. Those with 500 or fewer unplugged wells do not pay.

Third, the bill increases the expedited permit modification fees by \$2,500 and removes the \$1,000,000 cap on deposits to the operating permit fund.

The Senate Finance Committee amendment capped the severance tax revenue stream at \$1.2 million.

CODE REFERENCE: West Virginia Code §11-13A-5a, §22-6-2, §22-6-29, and §22-6A-7 – amended

DATE OF PASSAGE: March 11, 2023

EFFECTIVE DATE: June 9, 2023

ACTION BY GOVERNOR: Signed March 29, 2023

House Bill 3113

Requiring high school students to complete course of study in personal finance

This bill requires each high school student, beginning with the class of students entering 9th grade in the 2024-2025 school year and thereafter, to complete a one-half credit course of study in personal finance during their 11th or 12th grade year as a requirement for high school graduation; and requires the WV Board of Education to develop and issue implementation guidance to local school boards and other education agencies as to curriculum, content matter standards, eligible teacher certification(s), and graduation requirements the course fulfills before July 1, 2024.

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

DATE OF PASSAGE: March 3, 2003

EFFECTIVE DATE: June 1, 2023

ACTION BY GOVERNOR: Signed March 23, 2023

House Bill 3148

Financing municipal policemen's and firemen's pension and relief funds

The bill amends provisions of the WV Code relating to municipal firemen's and policemen's pension and relief funds.

Current law provides four methods of funding for municipal firemen's and policemen's pension and relief funds – Standard, Alternative, Optional and Conservation. The Alternative and Conservation methods of funding are not actuarially sound. The Standard and Optional methods of funding are actuarially sound. The Optional method of funding requires contributions sufficient to meet the normal cost of the pension and relief fund and amortize any actuarial deficiency over a period of not more than 40 years beginning January 1, 2010.

The bill provides a fifth method of funding - Optional II – which will require contributions sufficient to meet the normal cost of the fund and amortize any actuarial deficiency over a period of not more than 40 years beginning July 1, 2023.

The bill authorizes a municipality using either the Alternative or Conservation method of funding to convert to either the Optional or Optional II method of funding, beginning July 1, 2023. The municipality will have to close its current fund to new hires in order to be eligible to choose the Optional or Optional II method of funding.

The bill eliminates the authority of any municipality using the Alternative method of funding to choose to use the Conservation method of funding, as of July 1, 2023.

CODE REFERENCE: West Virginia Code §8-22-20 – amended

DATE OF PASSAGE: March 6, 2023

EFFECTIVE DATE: June 4, 2023

ACTION BY GOVERNOR: Signed March 23, 2023

House Bill 3156

Raising the compensation rates of panel attorneys

This bill increases the amount of compensation (from \$3,000 to \$4,500) and expenses (from \$1,500 to \$2,500) that panel attorneys can claim in their billing vouchers from. It also increases investigative services hourly rate of pay from \$30 to \$40. Lastly, it provides for payment for representation in expungement proceedings when cases have been dismissed or there is an acquittal.

CODE REFERENCE: West Virginia Code §29-21-13a – amended

DATE OF PASSAGE: March 11, 2023

EFFECTIVE DATE: June 9, 2023

ACTION BY GOVERNOR: Signed March 28, 2023

House Bill 3166

To permit a hospital to hold a patient experiencing a psychiatric emergency for up to 72 hours

The bill clarifies that in the absence of a mental hygiene commissioner, magistrate, or circuit judge, an authorized staff physician may order the involuntary hospitalization of a person presenting at the emergency room or a person already admitted to the hospital for 72 hours for emergency psychiatric treatment.

CODE REFERENCE: West Virginia Code §27-5-2a – amended

DATE OF PASSAGE: March 11, 2023

EFFECTIVE DATE: June 9, 2023

ACTION BY GOVERNOR: Signed March 28, 2023

House Bill 3168

Ensuring investment in WV Tourism is competitive with other states and accessible long term

The bill cleans up code reflecting the Development Office's transition to the Department of Economic Development. The bill regards the Tourism Development Act. It makes changes to certain definitions therein and removes language regarding the proximity of projects. It gives greater discretion to approve or disapprove projects to the Secretary of Economic Development. Finally, it increases the amount of time over which an approved project's developer may realize its resulting tax credit. Previously, this was 10% spread out over 10 years, forfeited in 13. Now it would be 10 years, with an additional 15 years if needed. A provision is added disallowing any carryback.

CODE REFERENCE: West Virginia Code §5B-2E-3, §5B-2E-5, §5B-2E-6, §5B-2E-7, §5B-2E-7a – amended

DATE OF PASSAGE: March 9, 2023

EFFECTIVE DATE: June 7, 2023

ACTION BY GOVERNOR: Signed March 29, 2023

House Bill 3189

The PFAS Protection Act

The bill creates the PFAS (perfluoroalkyl and polyfluoroalkyl substances) Act (§22-11C-1 et seq.) which directs the Department of Environmental Protection (DEP) to identify sources of PFAS in raw water sources of public drinking water systems and to prepare an action plan to ensure that the cost of addressing PFAS found in public drinking water systems is borne by the sources of PFAS and not community water systems or their customers.

Perfluoroalkyl and polyfluoroalkyl substances are a class of synthetic chemicals used throughout industry to make a variety of products, including cleaning products, cell phones, food packaging, pharmaceuticals, agricultural pesticides, and various household products. They accumulate in the environment, are highly water soluble, easily transfer from soil to groundwater, and are known to cause adverse health effects.

The bill requires the DEP to write an action plan by July 1, 2024, for certain raw water sources where PFAS were detected above certain quantitative limits and EPA's (U.S. Environmental Protection Agency) applicable drinking water human health advisory. For other raw water sources, the bill requires the DEP to sample treated water from related public water systems by December 31, 2023, and for those with PFAS levels exceeding certain limits and human health advisory in the treated water, the DEP would be required to write 50 action plans by December 31, 2025, and the remainder by December 31, 2026.

The action plans would identify the sources of PFAS in the raw water supply of each public water system and propose regulatory and non-regulatory options to address the sources discharging PFAS and to minimize impacts to public water systems. The DEP would also be required to consult with other governmental agencies and public drinking water systems that have knowledge related to PFAS, to make recommendations regarding the regulation of PFAS, and to report annually to the Joint Legislative Oversight Commission of State Water Resources.

The bill also requires facilities that have an NPDES permit and have manufactured or used PFAS since January 1, 2017, to report on any PFAS found in any raw water source used by a public water system to the DEP by December 31, 2023. The report would include the amount of PFAS used each year from 2017 through 2022, and any other information required by the DEP. Those facilities would also have to perform quarterly monitoring for each reported PFAS chemical and the DEP would be required to modify any applicable NPDES permit to require quarterly monitoring for each chemical. After EPA adopts water quality criteria for any PFAS, DEP is required to incorporate appropriate water quality criteria into state law by proposing amendments to the state water quality standards rule. The DEP criteria in West Virginia cannot be more stringent than those adopted by the EPA.

CODE REFERENCE: West Virginia Code §22-11C-1, §22-11C-2, §22-11C-3, and §22-11C-4 – new

DATE OF PASSAGE: March 10, 2023

EFFECTIVE DATE: June 8, 2023

ACTION BY GOVERNOR: Signed March 28, 2023

House Bill 3203

Relating generally to West Virginia Real Estate License Act

House Bill 3203 updates and revises the West Virginia Real Estate License Act located in §30-40-1 et seq. of the code. In addition to making numerous clarifying and technical changes throughout, it clarifies that a West Virginia license is required to practice real estate brokerage in the state, even if licensed in another state. The bill revises and adds several definitions. It requires that moneys received by the commission be deposited daily and not once a month and eliminates the requirement that an applicant for a license submit two personal recommendations vouching for the applicant's competence and good reputation.

The bill amends the experience requirement for licensure as a broker, adopting a requirement of involvement in a specified number of closed transactions instead of a two-year apprenticeship. It also adds a provision that a salesperson's license may not be issued in the name of an entity unless each member or officer who engages in the real estate business obtains a license. The bill removes the requirement of the posting of a \$2,000 bond for non-residents who wish to obtain a West Virginia license. It also modifies requirements relating to the curriculum that may be taken to satisfy the continuing education requirement. The bill requires complaints to be submitted on a form prescribed by the commission, and clarifies that criminal penalties are in addition to sanctions that the commission may otherwise impose. Finally, the bill repeals §30-40-27, which is an obsolete grandfather provision.

CODE REFERENCE: West Virginia Code §30-40-27 – repealed; §30-40-3, §30-40-4, §30-40-5, §30-40-9, §30-40-11, §30-40-12, §30-40-13, §30-40-14, §30-40-15, §30-40-16, §30-40-17, §30-40-18, §30-40-19, §30-40-20, §30-40-21, §30-40-22, §30-40-25, and §30-40-26 – amended

DATE OF PASSAGE: March 11, 2023

EFFECTIVE DATE: June 9, 2023

ACTION BY GOVERNOR: Signed March 28, 2023

House Bill 3214

To create the Road Optimization & Assessment Data (ROAD) Pilot Project

The bill creates a new section in chapter 17, on roads and highways, in Article 2A, on the Commissioner of Highways. It sets forth findings and purpose. The bill creates the Road Optimization and Assessment Data (ROAD) Pilot Program, which is to be implemented by the Commissioner of Highways.

The bill sets forth advanced methods of assessing the condition and maintenance needs of West Virginia roads, using Monongalia County and Preston County as test areas. Data capturing and processing must occur at least twice during the five-year pilot project. The data must compare the changes in road conditions, such as deterioration of roads from previous condition, average daily traffic, and heavy truck traffic if such information is available.

At the conclusion of year two, year four, and the termination of the pilot program, the Division of Highways has to report to the Joint Legislative Oversight Commission on Department of Transportation Accountability.

CODE REFERENCE: West Virginia Code §17-2A-25 – new

DATE OF PASSAGE: March 10, 2023

EFFECTIVE DATE: June 8, 2023

ACTION BY GOVERNOR: Signed March 28, 2023

House Bill 3215

Relating to land use

The purpose of the bill is to provide flexibility in timelines for planning commissions and boards of zoning to allow those bodies to promptly address applications. In addition, the bill allows planning commissions and county boards of zoning to delegate certain duties to qualified, authorized staff members.

The bill also modifies definitions, the required frequency of planning commission meetings, the content of subdivision and land development ordinances, the jurisdiction of planning commissions, the process for making minor land development proposals, the process for making major land development proposals, the qualifications for appeals to county boards of zoning, and the frequency of county board of zoning meetings.

CODE REFERENCE: West Virginia Code §8A-1-2, §8A-2-7, §8A-4-2, §8A-5-1, §8A-5-3, §8A-5-6, §8A-5-8, §8A-8-4, and §8A-8-5 – amended

DATE OF PASSAGE: March 2, 2023

EFFECTIVE DATE: May 31, 2023

ACTION BY GOVERNOR: Signed March 23, 2023

House Bill 3218

Relating to requiring suicide prevention resources be printed on student identification cards

This bill requires that all public schools serving students in grades 6 through 12, inclusive, and public or private institutions of higher education that issue student identification cards have printed on either side of the student identification cards the information for the Suicide & Crisis Lifeline and the Crisis Text Line.

CODE REFERENCE: West Virginia Code §18B-1B-7 – amended; §18-2-40b – new

DATE OF PASSAGE: March 1, 2023

EFFECTIVE DATE: May 30, 2023

ACTION BY GOVERNOR: Signed March 15, 2023

House Bill 3261

Relating to Social Workers Qualifications

This bill expands the eligibility of provisionally licensed social workers to become fully licensed social workers by creating an exception to the “continuously employed and supervised for four years” requirement: if a provisionally licensed social worker loses employment due to a reduction in force or is unable to work for medical reasons, the individual may ask the Board of Social Work to allow for a reasonable interruption in the continuous employment requirement and provide the individual additional time to complete the requirements for licensure.

In addition, the bill creates a pilot program that allows the Bureau of Social Services to employ persons who do not hold a social worker’s license in Hancock county, Clay county, and Braxton county provided that the person has an associate’s degree or higher in social work, human services, sociology, psychology, or social services from an accredited university or is an honorably retired law enforcement officer, parole officer, or federal or state probation officer.

CODE REFERENCE: West Virginia Code §30-30-16 – amended; §49-2-110a – new

DATE OF PASSAGE: March 11, 2023

EFFECTIVE DATE: June 9, 2023

ACTION BY GOVERNOR: Signed March 28, 2023

House Bill 3270

To amend the deliberate intent statute to limit noneconomic damages to \$500,000

Under current law, West Virginia employers who are covered under the workers compensation system enjoy immunity from employee suits for workplace injuries. However, an injured employee may bypass an employer's workers compensation immunity and bring a "deliberate intent" civil action (also sometimes referred to as a Mandolidis action) against the employer by establishing that an injury was caused because the employer deliberately exposed the employee to unsafe working conditions.

The bill imposes a new requirement for deliberate intent cases based on an employee suffering from occupation pneumoconiosis, such as black lung or silicosis. In those cases, the employee is required to prove that the employer fraudulently concealed or manipulated dust samples or air quality samples to be successful in a deliberate intent claim.

The bill also imposes a limit on compensatory damages for noneconomic loss, applicable to deliberate intent causes of action accruing on or after July 1, 2023. Such damages may not exceed the higher of two times the economic damages before the post-verdict offset or \$500,000. The bill links the cap to the Consumer Price Index and requires annual increases to account for inflation until the cap reaches \$750,000.

CODE REFERENCE: West Virginia Code §23-4-2 – amended; §23-4-2A – new

DATE OF PASSAGE: March 10, 2023

EFFECTIVE DATE: June 8, 2023

ACTION BY GOVERNOR: Became law without Governor's signature March 11, 2023

House Bill 3272

Relating to the operation of private trust companies in West Virginia

The bill creates a new chapter in code with a new article, the Private Trust Company Act. It declares findings and purposes. It finds that a private trust company would not have to be licensed, in which case the oversight role by the State Auditor's would be limited to ensuring that fiduciary services are restricted to family members and not to the general public. If a private trust company chooses to be licensed, the State Auditor would be responsible for regulating, supervising, and examining the company as provided in the new Act. The bill defines various terms in detail, including terms for investments and family relationships.

Private trust companies are limited to corporations or limited liability companies organized in WV. A minimum of \$250,000 capital account balance would be required. Before engaging in business, private trust companies would have to provide the State Auditor with notice of certain information, including its designated relative, location of principal office, operating plan, and other information the State Auditor may require. Private trust companies would have to certify legal compliance, that they are formed for no other reason than to engage in the private trust business, that family members have subscribed for capital stock, surplus, and a reserve for operation in an amount equal to or in excess of \$250,000 at all times, and that the private trust company or licensed private trust company is serving or will serve as trustee for one or more trusts having an aggregate of at least \$50,000,000 in trust assets. All of the capital stock, membership interests, or other equity interests of a private trust company or licensed private trust company would have to remain owned by, and under the voting control of, family members (including any spouses, trusts, stock corporations, limited partnerships, limited liability companies, or estates qualifying as defined under the definition of "family member").

Applicants for a license to operate as a licensed private trust company would apply to the State Auditor. A nonrefundable \$10,000 application fee would apply. The fee would have to be deposited into a special account in the State Treasury, which this bill creates, for the purpose of administering the Act. The bill also sets forth application content. The applicant would have to affirm certain statements under penalty of perjury, such as that the company is not currently transacting business with the general public and that none of the directors, officers, managers, or members has been convicted or pled guilty to a crime involving fraud.

The companies would have to operate in accordance with generally accepted fiduciary standards. The companies, when engaging in a private trust business, would have the same rights, powers, and privileges as a banking or trust institution (pursuant to §31A-4-14), including the power to act as executor under the last will and testament or administrator of the estate of any deceased family member. An office would have to be maintained in this state. Companies would have to be directed by a board of directors, if a corporation, or by managers of 5 to 25 persons if a limited liability company. At least one director or manager would be required to be a resident of this state.

The company would have a duty not to exercise any power in such a way as to deprive the estate, trust, or other entity for which it acts as a fiduciary of an otherwise available tax exemption, deduction, or credit for tax purposes or deprive a donor of trust assets of a tax exemption, deduction, or credit or operate to impose a tax upon a donor or other person as owner of any portion of the estate, trust, or otherwise. The bill also limits the authority to distribute income or principal of any trust in order to discharge a legal obligation of a family member or for a family member's pecuniary benefit.

Private trust companies would be prohibited from advertising their services to the public. Directors and managers of licensed companies would be required to procure and maintain fidelity bonds, as well as errors and omissions insurance coverage, on all active officers, directors, managers, members acting in a managerial capacity, and employees of the company, in order to indemnify the company against loss because of a dishonest, fraudulent, or criminal act or omission on their part, whether acting alone or in combination with other persons. In lieu of fidelity bonds, the licensed company could increase its capital account by \$1 million.

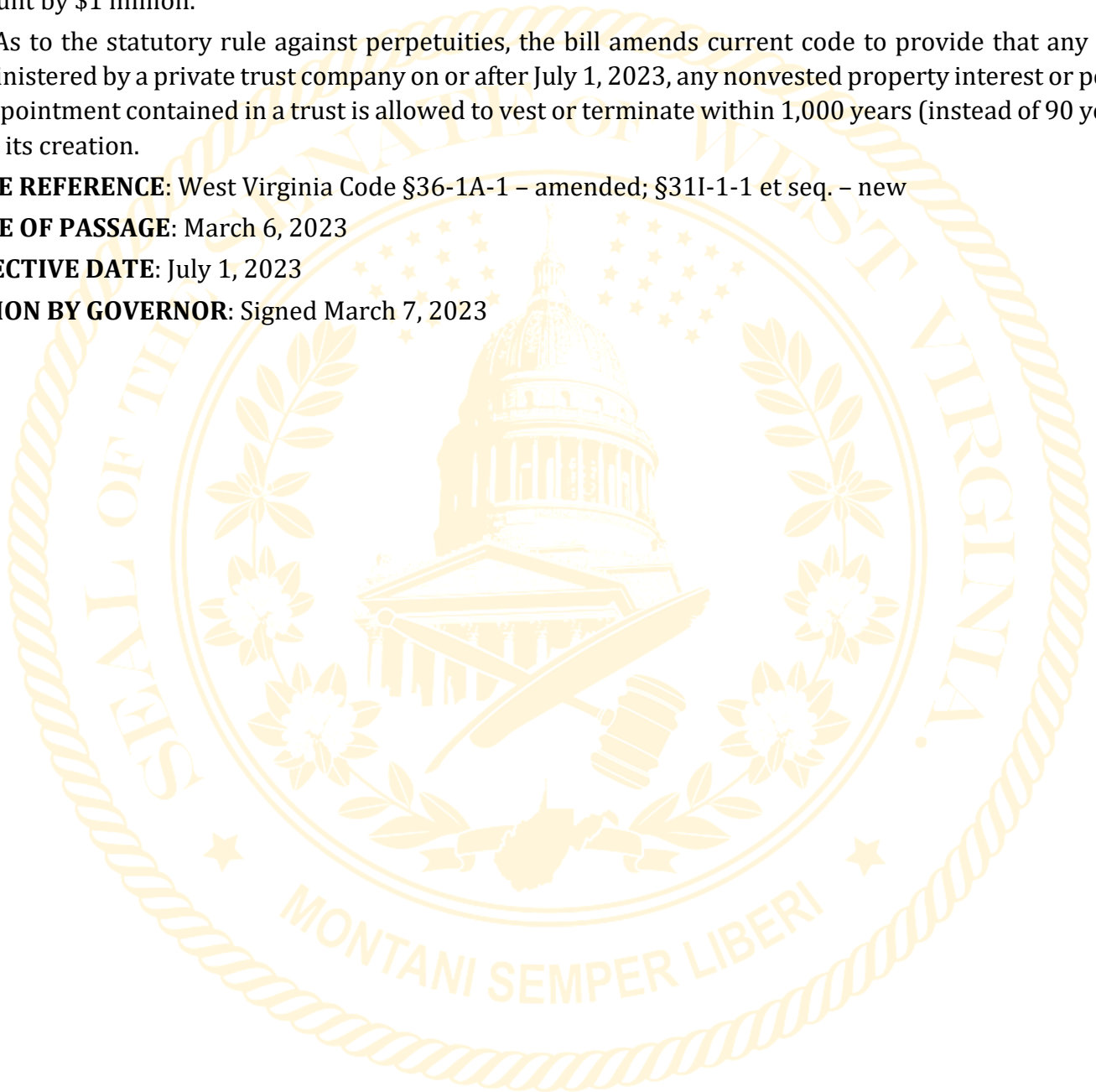
As to the statutory rule against perpetuities, the bill amends current code to provide that any trust administered by a private trust company on or after July 1, 2023, any nonvested property interest or power of appointment contained in a trust is allowed to vest or terminate within 1,000 years (instead of 90 years) after its creation.

CODE REFERENCE: West Virginia Code §36-1A-1 – amended; §31I-1-1 et seq. – new

DATE OF PASSAGE: March 6, 2023

EFFECTIVE DATE: July 1, 2023

ACTION BY GOVERNOR: Signed March 7, 2023



House Bill 3286

Relating to an additional modification decreasing federal taxable income

This bill would modify the changes to the apportionment of business income earned in more than one state that is taxable under personal income tax law in West Virginia made in HB 2026 (Regular Session 2021) that shifted West Virginia tax law from a three-factor apportionment formula (property, payroll and sales) to a single sales factor apportionment formula (i.e., only sales are considered), and also shifted to a market-based sourcing of sales. Under that change, companies with significant payroll or property in WV relative to sales would generally see a net tax reduction under this new system, while others with a smaller workforce and property holdings, but a large amount of sales, would see an increase.

The bill would allow additional modification decreasing federal taxable income for Corporation Net Income tax purposes to publicly traded companies, including affiliated corporations participating in the filing of a publicly traded company's financial statement, if the changes enacted in HB 2026 "results in an aggregate increase to the taxpayer's net deferred tax liability or an aggregate decrease to the taxpayer's net deferred tax asset, or an aggregate change from a net deferred tax asset to a net deferred tax liability." Essentially, if the company is going to pay more in taxes.

If that occurs, then this type of taxpayer would be allowed this new decreasing modification (referred to in the bill as a "subtraction").

This decreasing modification (referred to in the bill as a "subtraction") would be spread out over 10 years as follows:

This type of taxpayer would pay all taxes due under the provisions of HB 2026, but "[f]or the 10-year period beginning with the taxpayer's taxable year that begins on or after January 1, 2028, a taxpayer shall be entitled to a subtraction in computing West Virginia taxable income. The subtraction would be equal to one-tenth of the amount necessary to offset the increase in the net deferred tax liability or decrease in the net deferred tax asset, or the aggregate net change thereof, from a net deferred tax asset to a net deferred tax liability . . . as computed in accordance with generally accepted accounting principles, that resulted from the application of" the provisions of HB 2026. "If the subtraction under this section is greater than taxpayer's federal taxable income as adjusted by section six of this article, any excess subtraction shall be carried forward and applied as a subtraction to taxpayer's federal taxable income in determining taxpayer's West Virginia taxable income in future tax years until fully utilized." See, subsection (e).

Although the taxpayer may not claim this modification to its federal taxable income for state tax purposes before the tax year beginning in 2033, to claim it at that time, the taxpayer must first file a statement with the Tax Commissioner on or before July 1, 2024, specifying the total amount of the subtraction which the taxpayer claims.

An amendment was adopted by the Senate which pushed the beginning tax year in which the credit can be realized from 2028 to 2033.

CODE REFERENCE: West Virginia Code §11-24-6c – new

DATE OF PASSAGE: March 9, 2023

EFFECTIVE DATE: June 7, 2023

ACTION BY GOVERNOR: Signed March 29, 2023

House Bill 3307

Establishing the West Virginia-Ireland Trade Commission

This bill establishes the West Virginia-Ireland Trade Commission, consisting of 9 members: two from the Senate, two from the House. Each appointee is to have current or past involvement in or knowledge of organizations that promote Irish affairs or shall have interest in the well-being of trade relations between West Virginia and Ireland. The legislative members of the commission shall serve during the two-year legislative term in which the appointments are made.

Five will be appointed by the Governor and serve terms of four years. At least one representative of the Governor's appointments shall be from: a public institution of higher education; the West Virginia Chamber of Commerce (or its successor); and at least two public members shall represent Irish American communities or interest, neither of whom shall be members of the same political party.

All appointments are to be made no later than July 1, 2023. Any vacancies that may arise are filled in the same manner as original appointments.

CODE REFERENCE: West Virginia Code §29-36-1 through §29-36-7 – new

DATE OF PASSAGE: March 2, 2023

EFFECTIVE DATE: March 17, 2023

ACTION BY GOVERNOR: Signed March 17, 2023

House Bill 3308

Authorizing PSC consider and issue financing orders to certain utilities to permit the recovery of certain costs through securitization via consumer rate relief bonds

The bill amends provisions of the WV Code relating to the authority of the Public Service Commission (PSC). The bill would add a new section that would authorize the PSC to approve the issuance of consumer rate relief bonds as an alternative to the general rate-making mechanisms available to finance electric utilities. The PSC would be authorized to approve the issuance of consumer rate relief bonds for eligible costs related to environmental control costs, expanded net energy costs, storm recovery costs, and undepreciated generation utility plant balances.

“Undepreciated generation utility plant balances” are defined in the bill as “unrecovered capitalized costs of or undepreciated investments in one or more fossil-fired electric generating plants having nameplate capacity more than 1000 megawatts each, and related supply, transmission, equipment, and fixtures. Specifically excluded from the definition are 1) the costs of removing retired generating plant assets; 2) all capitalized costs and investments in fossil-fired electric generating plants and related supply, transmission, equipment, and fixtures incurred or made by a utility on or after 12/31/22; and, 3) all non-cash asset retirement obligation assets and related accumulated depreciation.

An electric utility would make application to the PSC and if approved the PSC would issue a financing order. In order for the PSC to approve the issuance of consumer rate relief bonds, it must find and include in its financing order that the issuance of the consumer rate relief bonds and the consumer rate relief charges authorized by the order are just and reasonable and are reasonably expected to achieve the lowest reasonably attainable cost in order to produce cost savings to customers and to mitigate rate impacts on customers, as compared to traditional financing mechanisms or traditional cost-recovery methods available to the utility. The financing order shall also contain the maximum amount and description of eligible costs to be securitized by consumer rate relief bonds; a description of the financing costs that may be recovered through consumer rate relief chargers and the period over which those costs may be recovered; a description of the methodology and calculation for allocating consumer rate relief charges between and within tariff schedules and to special contract customers; and the maximum term of the bonds. The bill also provides that a utility may not retire, abandon, close or otherwise permanently render incapable of operating, any electric generating plant or unit without the prior consent and approval of the PSC.

Approval of consumer rate relief bonds by electric generating plants already exists in code (§24-2-4e and f). This bill expands the eligible costs to be securitized. Section 24-2-4e limits eligibility to issue consumer environmental control bonds only to the construction/installation of emission control equipment; Section 24-2-4f limits eligibility only to issue consumer rate relief bonds only to the (re)financing of expanded net energy costs. This new section again would expand eligible costs to environmental control costs, expanded net energy costs, storm recovery costs, and undepreciated generation utility plant balances.

CODE REFERENCE: West Virginia Code §24-2-4h and §24-2-21a – amended

DATE OF PASSAGE: February 28, 2023

EFFECTIVE DATE: February 28, 2023

ACTION BY GOVERNOR: Signed March 11, 2023

House Bill 3332

Creating judicial circuits and assigning the number of circuit judges in each circuit to be elected in the 2024 election

The strike and insert, like its predecessor Senate Bill 482, would add 11 magistrates in the following counties:

- Kanawha (+ 3 Magistrates) – Goes from 10 to 13 Magistrates
- Wood (+ 2 Magistrates) – Goes from 4 to 6 Magistrates
- Monongalia (+ 2 Magistrates) – Goes from 4 to 6 Magistrates
- Berkley (+ 1 Magistrate) – Goes from 6 to 7 Magistrates
- Logan (+ 1 Magistrate) – Goes from 3 to 4 Magistrates
- Raleigh (+ 1 Magistrate) – Goes from 5 to 6 Magistrates
- Jefferson (+ 1 Magistrate) – Goes from 3 to 4 Magistrates

Those magistrates would be elected in 2024 and begin their service January 1, 2025. Of note, one of the new magistrates in Monongalia County would be appointed by the Chief Circuit Court Judge and take office effective July 1, 2023.

With respect to family court, the pending strike and insert provides for the following changes:

- One change to the county composition of the circuits: Braxton County would be removed from the 17th Circuit currently consisting of Lewis, Upshur, and Braxton Counties. It would be placed in the 27th circuit with Webster and Pocahontas County.
- The counties of Berkley and Jefferson, which comprise the 24th Circuit would gain an additional family court judge and would go from three to four family court judges.
- The newly added judge would run in the 2024 election and begin serving on January 1, 2025.
- The strike and insert amendment would further permit the Supreme Court of Appeals to increase number of family case coordinators. It also authorizes the Supreme Court of Appeals to create staff classifications and to appoint additional support staff to family court judges based on workload. Of note, the language regarding pay increases was changed to reflect the flat \$2,300 raise (previously 5% in SB 482).

Currently, there are 75 circuit court judges in the state serving in 31 judicial circuits. This changes the county composition in a number of circuits and re-numbers the majority of the judicial circuits. It also adds 6 judges and eliminates one judge for a net change of +5 judges. More specifically, the changes to county composition of the judicial circuits would be as follows (Current Circuits – Proposed Circuits)

- Wood & Wirt (4th Circuit/4 Judges) – Wood (sole county in 4th Circuit /4 Judges); Wirt, Doddridge, Pleasants, and Ritchie (3rd Circuit/2 Judges)
- McDowell (sole county in 8th Circuit/2 Judges); Wyoming (sole county in 27th Circuit/1 Judge) – McDowell and Wyoming (12th Circuit/2 Judges)
- Preston (sole county in 18th Circuit/1 Judge); Tucker, Grant, and Mineral (21st Circuit/2 Judges) – Preston and Tucker (22nd Circuit/2 Judges); Grant and Mineral (25th Circuit/2 Judges)
- Mingo (sole county in 30th Circuit/1 Judge); Logan (sole county in 7th Circuit/2 Judges) – Mingo and Logan (11th Circuit/3 Judges)
- Morgan, Berkley, and Jefferson (23rd Circuit/6 Judges) – Morgan and Berkley (27th Circuit/5 Judges); Jefferson (28th Circuit/2 Judges)

The proposed changes to number of circuit court judges would be as follows:

- Changes in Number of Circuit Court Judges (+ 6 Judges – 1 Judge = Net +5 Judges)
 - Kanawha (+ 1 Judge) – Goes from 7 to 8 Judges
 - Nicholas (+ 1 Judge) – Goes from 1 to 2 Judges
 - Preston and Tucker (+ 1 Judge) – Goes from 1 to 2 Judges (addition of Tucker County)
 - Wirt, Doddridge, Pleasants, and Ritchie (+ 1 Judge) – Goes from 1 to 2 Judges (addition of Wirt County)
 - Jefferson (+ 1 Judge New Circuit) – Newly created circuit (2 judges total)
 - Randolph County (+ 1 Judge) – Goes from 1 to 2 Judges
 - McDowell and Wyoming (- 1 Judges) – Goes from 3 to 2 Judges

The circuit court provisions of the previously considered SB 482 differ in a number of respects:

- The bill adds new language (differing from SB 482) regarding the divisions in McDowell and Wyoming County. Specifically providing that:
 - Division 1 in the twelfth circuit shall be for a judge who will reside at the time of his or her filing and during his or her service in McDowell County, and Division 2 in the twelfth circuit shall be for a judge who will reside at the time of his or her filing and during his or her service in Wyoming County.
- There is also new language regarding the three, four-county circuits. With respect to the counties of Calhoun, Jackson, Mason, and Roane in the proposed fifth circuit:
 - That Division 1 in the fifth circuit shall be for a judge who resides in Jackson County at the time of his or her filing and for the duration of his or her service, Division 2 in the fifth circuit shall be for a judge who resides in Mason County at the time of his or her filing and for the duration of his or her service, and Division 3 in the fifth circuit shall be for a judge who resides in either Calhoun County or Roane County at the time of his or her filing and for the duration of his or her service;
 - With respect to the remaining two four county circuits (3rd and 17th circuits), both of which would have two judges, the new language provides:
 - No more than one judge shall be a resident of any county comprising the third circuit; Provided, however, That if the highest vote recipients in both divisions are also both residents of the same county, then the candidate with the highest overall number of votes shall be declared the winner of the division in which he or she ran; Provided, further, That the candidate who has the highest number of votes in the other division who is not a resident of the same county as the highest overall vote recipient shall be declared the winner of the division in which he or she ran.
- Raleigh County (as opposed to Kanawha County) would have concurrent jurisdiction with the lone single judge circuit (Summers & Monroe).

The fiscal note remains the same for the strike and insert (approximately \$4 million annually).

CODE REFERENCE: West Virginia Code §50-1-2, §50-1-8, §50-1-9, §50-1-9a, §51-2-1, §51-2A-3, §51-2A-6 – amended; §50-1-9c – new

DATE OF PASSAGE: March 11, 2023

EFFECTIVE DATE: June 9, 2023

ACTION BY GOVERNOR: Signed March 29, 2023

House Bill 3340

To revise the West Virginia Tax Increment Financing Act

This bill would impact tax increment financing districts also known as TIFS. A TIF is a financial tool used by local governments to fund economic development. The bill makes changes to five sections of the code.

The bill first deletes language that following an extension beyond the scheduled termination of a TIF district, there is a restriction on the use of levies to finance projects to regular and excess property tax levies of county commissions and Class I, II, III, and IV, municipalities where a at least a portion of the municipality is situate within the boundaries of the district.

The second significant change removes restrictive language on a county or municipality from amending an order or ordinance which created the district to allow for a modification of the boundaries of the district or extend the district's existence without the approval of a Class I, II, III, and IV, municipalities where a at least a portion of the municipality is situate within the boundaries of the district. New language has been added that clearly indicates approval from other levying bodies is not necessary.

The section of current law requiring a project plan has been amended with respect to notice requirements. Current law provides a county commission or governing body is required to hold a public hearing on a proposed project plan. Notice of the hearing is by publication. At least 30 days prior to publication a copy of the notice and the proposed project plan are required to be sent to all other levying bodies within with the power to levy on property located with the proposed development or redevelopment district. This bill would eliminate the requirement to mail a copy of the proposed plan and make the thirty-day timeframe run from 30 days prior to the public hearing not the publication.

A similar amendment has been made to the portion of code related to amendments to the project plan. A timeframe for providing other levying bodies a copy of the notice of the amendment has been inserted. Current law provides that prior to publication of a notice of hearing should be sent to all other levying bodies. The amendments to this section would insert that at least 30 days prior to the public hearing, not publication, is required.

Finally, current law provides that no district may be existence for a period longer than 30 years. An amendment would allow two or more districts who have combined to exist longer than 30 years. Additionally, existing districts for which TIF obligations have been issued prior to December 31, 2020, may be extended for not more than five years or until December 31, 2050, whichever is earlier. This removes the December 31, 2050, day altogether but permits extensions for a period not more than 15 years. The section would also be amended to prohibit counties or municipalities from terminating a combined district before the date it was last scheduled for termination by order or ordinance if the district's tax increment financing obligations remain outstanding.

CODE REFERENCE: West Virginia Code §7-11B-3, §7-11B-7, §7-11B-8, §7-11B-9, and §7-11B-10 – amended

DATE OF PASSAGE: February 28, 2023

EFFECTIVE DATE: February 28, 2023

ACTION BY GOVERNOR: Became law without the Governor's signature March 8, 2023

House Bill 3354

To authorize municipalities to combine operations with other municipalities and counties to provide governmental services

Allows municipalities to combine with other municipalities or county commissions to provide governmental services; Removes municipalities' ability to regulate the keeping of gunpowder and other combustibles and to enforce federal gun laws.

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

DATE OF PASSAGE: March 11, 2023

EFFECTIVE DATE: June 9, 2023

ACTION BY GOVERNOR: Signed March 29, 2023

House Bill 3369

Creating a School Safety Unit within the Division of Protective Services

This bill requires the Division of Protective Services Director to establish a school safety unit, used primarily to make school safety inspections and recommendations to the appropriate county school personnel or other school administrators. Officers will have authority to respond to and investigate all school safety matters, and they will have statewide law-enforcement authority.

The bill amends the authority of the director to enter interagency agreements with the Secretaries of Department of Homeland Security and Administration with respect to security personnel from mandatory to discretionary.

The bill mandates the director to provide services to all public primary and secondary schools and authorizes the director to provide services to private primary and secondary schools upon request.

The bill revises certain language related to the Department of Military Affairs and Public Safety and revises certain language relating to security at the Capitol.

CODE REFERENCE: West Virginia Code §15-2D-1; §15-2D-2; and §15-2D-3 – amended

DATE OF PASSAGE: March 9, 2023

EFFECTIVE DATE: June 7, 2023

ACTION BY GOVERNOR: Signed March 21, 2023

House Bill 3391

Establishing filing deadlines for appeals of property tax valuations and issues involving property tax classification and taxability to the West Virginia Office of Tax Appeals

This bill alters the manner in which a taxpayer may appeal his or her assessment of property or the tax classification provided him by the County Assessor. It replaces the Circuit Court as a court of review with the newly enacted Intermediate Court of Appeals. The bill would require appeal of final decisions or orders of the Office of Tax Appeals to the Intermediate Court of Appeals within 30 days of entry of the final decision or order.

Other changes to the process include a new filing deadline with the Office of Tax Appeals of March 31 of the property tax year. If an appeal is not received by that date, it is dismissed as untimely. For appeals related to taxability or classification of property by the Tax Commissioner the petition of appeal must be filed within 30 days of the written notice from the Tax Commissioner. A hearing is required within 90 days of the due date of an answer in any appeal to the Office of Tax Appeals. This is extended from the current timeframe which is 45 days. Hearing before the Office of Tax Appeals are to be de novo.

The newly enacted provisions would be effective January 1, 2023.

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

DATE OF PASSAGE: March 3, 2023

EFFECTIVE DATE: March 3, 2023

ACTION BY GOVERNOR: Signed March 23, 2023

House Bill 3428

Relating to the West Virginia Business Ready Sites Program

This bill amends a section, §24-2-1n of the Code of West Virginia, governing the powers and duties of the Public Service Commission (PSC), relating to the development of industrial sites in the state with adequate and fully developed utility infrastructure.

The bill makes the West Virginia Business Ready Sites Program permanent. It is a program which promotes economic development in the state by facilitating construction of utility infrastructure to make sites in the state attractive for industrial development.

It also eliminates the cap (10) on the number of sites that may be designated by the PSC as industrial development sites under the program, and eliminates provisions requiring industrial development sites to be apportioned geographically amongst West Virginia's congressional districts.

CODE REFERENCE: West Virginia Code §24-2-1n – amended

DATE OF PASSAGE: March 2, 2023

EFFECTIVE DATE: March 2, 2023

ACTION BY GOVERNOR: Approved March 23, 2023

House Bill 3441

Revising the training requirements for members of the Higher Education Policy Commission, Council for Community and Technical College Education and the institutional governing boards

This bill revises the training requirements for members of the Higher Education Policy Commission (Commission), the Council for Community and Technical College Education (Council), and the institutional governing boards. The Chancellors for the Commission and Council, or their designees, are required to develop a comprehensive orientation and training program for new members of the Commission, the Council, and the institutional governing boards (governing bodies) and continuing education opportunities for all ongoing members of those governing bodies.

The bill requires that orientation and training offered to new members of the governing bodies comprise 6 hours of instruction time which can be broken up over the member's first year of service. The orientation and training is required to include, but not be limited to: Information concerning the roles of the governing bodies and their members; the state statutory goals for higher education; the higher education accountability system; the fiduciary duties and responsibilities of the governing bodies; legal considerations including statutory duties, authorities, and responsibilities of the governing bodies and open records and open meetings requirements; ethical considerations arising from membership on a governing body, including the provisions of the West Virginia Governmental Ethics Act; the removal and replacement provisions of members of governing bodies; the circumstances under which the Commission or the Council can withdraw specific powers from the institutional governing boards.

Beginning the second year of the member's service on a governing body, each member is required to complete at least 4 hours of training and development related to his or her duties each full fiscal year following his or her appointment. The bill also allows the chancellors to grant credit for training, professional development, or continuing education developed or delivered by an institution of higher education or a third-party training provider, and removes a requirement for an annual report to LOCEA on the training and development received by the governing body members.

CODE REFERENCE: West Virginia Code §18B-1D-9 – amended

DATE OF PASSAGE: March 9, 2023

EFFECTIVE DATE: June 7, 2023

ACTION BY GOVERNOR: Signed March 28, 2023

House Bill 3473

Creating a workgroup relating to Dig Once Policy

The bill creates a taskforce to review and report to the Legislature on how best to create a clearinghouse that can make available information needed for the deployment of underground infrastructure in public rights-of-way in this state (“infrastructure deployment”).

The taskforce will be led by the Commissioner of Highways, or his or her designee. Other members include representatives of the Division of Environmental Protection (DEP), the historic preservation section of the Department of Arts, Culture, and History, and any designees as may be selected by the Legislative Oversight Commission on Department of Transportation Accountability (DOTA). Miss Utility of West Virginia is also invited to send a representative.

The taskforce will report to the DOTA on issues such as regulatory hurdles affecting infrastructure deployment, the availability of information that may reduce regulatory hurdles, and recommendations on the creation of a clearinghouse. The clearinghouse would make information available that may be used to accelerate infrastructure deployment, such as on rights-of-way that are available and without environmental or historic value.

The taskforce reports to the DOTA, with written recommendations being due by the end of 2023. The bill includes a March 31, 2024, sunset date for the section.

CODE REFERENCE: West Virginia Code §17-2E-10 – new

DATE OF PASSAGE: March 11, 2023

EFFECTIVE DATE: July 1, 2023

ACTION BY GOVERNOR: Signed March 28, 2023

House Bill 3479

Creating requirements for use of unmanned aerial vehicles

This bill amends two sections in Chapter 61, Article 16, which regulates the use of unmanned aerial vehicles, more commonly called “drones,” in West Virginia. The bill refines this relatively new section of the Code and makes both substantive additions and technical cleanup.

Substantively, the bill imposes restrictions on the operation of drones over certain “targeted facilities”—defined via cross-reference to the “critical infrastructure” outlined in W. Va. Code §61-10-34—which includes industrial facilities (chemical plants, steel mills, railyards, oil or gas refineries & pipelines), military installations, critical facets of public infrastructure (dams, water treatment facilities, wireless/radio transmission towers, etc.), and commercial airports. The operation of drones over these facilities is prohibited when the purpose is to release a substance or other projectile, conduct surveillance with the intent to harm the facility or the public, obtain proprietary information or trade secrets, or to obtain protected governmental information.

The bill also clarifies that, in general, restrictions on drone use do not constrain law enforcement agencies so long as they comply generally with the provisions of this article and do not violate the protection against unreasonable search and seizure provided by the state and federal constitutions (the Fourth Amendment of the U. S. Constitution and West Virginia’s state-level analog, Art. III, §6 of the West Virginia Constitution).

It contains a proviso establishing that landowners who wish to operate, or hire third parties to operate, drones in the airspace over their own land, can do so without violating the regulations set forth in this article.

Finally, the bill provides an exception from these regulations for newsgathering activity conducted by a drone flying at an altitude of greater than 400 feet, the ceiling for most commercially available drones (400 feet is also the floor for manned aviation). Practically speaking, this exception permits newsgathering activity conducted by drones that are analogous/equivalent to manned helicopters and thus are subject to Federal Aviation Administration regulation.

CODE REFERENCE: West Virginia Code §61-16-1 and §61-16-2 – amended

DATE OF PASSAGE: March 9, 2023

EFFECTIVE DATE: June 7, 2023

ACTION BY GOVERNOR: Signed March 29, 2023

House Bill 3482

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

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

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

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

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

DATE OF PASSAGE: March 11, 2023

EFFECTIVE DATE: June 9, 2023

ACTION BY GOVERNOR: Signed March 22, 2023

House Bill 3499

To permit joint tenancy with rights of survivorship when transfer on death deeds specify a joint tenancy with right of survivorship

The bill makes several changes to West Virginia's codification of the Uniform Real Property Transfer on Death Act.

First, the bill provides clarification regarding what happens when the designated beneficiary of a transfer on death deed predeceases the transferor. Namely, when the sole beneficiary predeceases the transferor, the transfer on death deed lapses. that possessory interest.

The bill also permits transfer on death deeds to transfer an interest in real property with a right of survivorship. Prior to enactment, if multiple beneficiaries were named in a transfer on death deed, they could only receive "equal and undivided shares with no right of survivorship." The bill changes the law to permit (but does not require) the transferor to grant his or her interest to multiple beneficiaries with the right of survivorship.

The bill also clarifies that the interest conveyed by a transferor depends on his or her interest in the conveyed property. Thus, if the transferor is one of multiple owners and they share the right of survivorship, if the transferor predeceases the other owners with survivorship rights, the transfer on death deed is superseded by the survivorship rights of the other owners, and the deed conveys nothing. If the transferor is one of multiple owners as a tenant in common, the transfer on death deed is effective, but only conveys the portion of the tenancy that the transferor possessed to the beneficiaries named in the deed.

Finally, the bill provides that when real property that is the subject of a transfer on death deed is sold by the same transferor prior to the transferor's death, the inter vivos transfer operates to revoke the transfer on death deed even in the absence of specific revocation language.

CODE REFERENCE: West Virginia Code §36-12-11 and §36-12-13 – amended

DATE OF PASSAGE: March 10, 2023

EFFECTIVE DATE: June 8, 2023

ACTION BY GOVERNOR: Signed March 29, 2023

House Bill 3500

Allowing consumer lenders to permit employees to conduct certain business at locations other than the licensee's designated office

This bill creates one new section in Chapter 46A, the WV Consumer Credit and Protection Act, in Article 4, covering regulated consumer lenders. A regulated consumer lender is a West Virginia company licensed and authorized to make consumer loans in West Virginia from offices located in the state and may charge higher rates of interest based on a loan amount sliding scale found in West Virginia law. The companies and their lending activities are examined periodically by the Division of Financial Institutions for compliance with the enabling statute found at W. Va. Code §46A-4-101 et seq.

The new section allows the employees of a licensee to conduct the business of the regulated consumer lender licensee at any location other than the one designated by the licensee as the place of business. The bill also requires the licensee to ensure:

- No in-person customer interactions will be conducted at the other location;
- The licensee will not designate any other location as its business location;
- Safeguards for licensee and consumer data, information, and records;
- Risk-based monitoring and oversight processes of work performed at the other location;
- No consumer information and records are maintained at a location other than the principal place of business;
- Consumer and licensee information and records remain accessible and available for regulatory oversight and examinations; and
- Employees are trained to keep confidential all conversations about, and with, consumers.

The bill further includes certain consumer safeguards, to-wit:

- It allows employees to work at their residence, provided it is within 100 miles from the licensed location, and it clarifies that at-home activities would be considered, reported, and regulated as taking place at the location of the licensee. This language helps ensure ease of regulatory oversight and enforcement.
- It adds data security and privacy safeguards.
- It adds a requirement for risk-based monitoring and oversight processes of work performed by the employees of a licensee at the other location.
- It not only requires training, but that conversations involving consumers are kept confidential.
- It requires that the other location is a safe and secure workplace for employees.
- It requires the licensee to have written policies and procedures to ensure compliance with the requirements for remote work.
- It requires licensees to review and document compliance and certify such compliance annually to the commissioner.

CODE REFERENCE: West Virginia Code §46A-4-114 – new

DATE OF PASSAGE: March 10, 2023

EFFECTIVE DATE: June 8, 2023

ACTION BY GOVERNOR: Signed March 29, 2023

House Bill 3560

Relating to expanding the definitions of land and recreational purposes

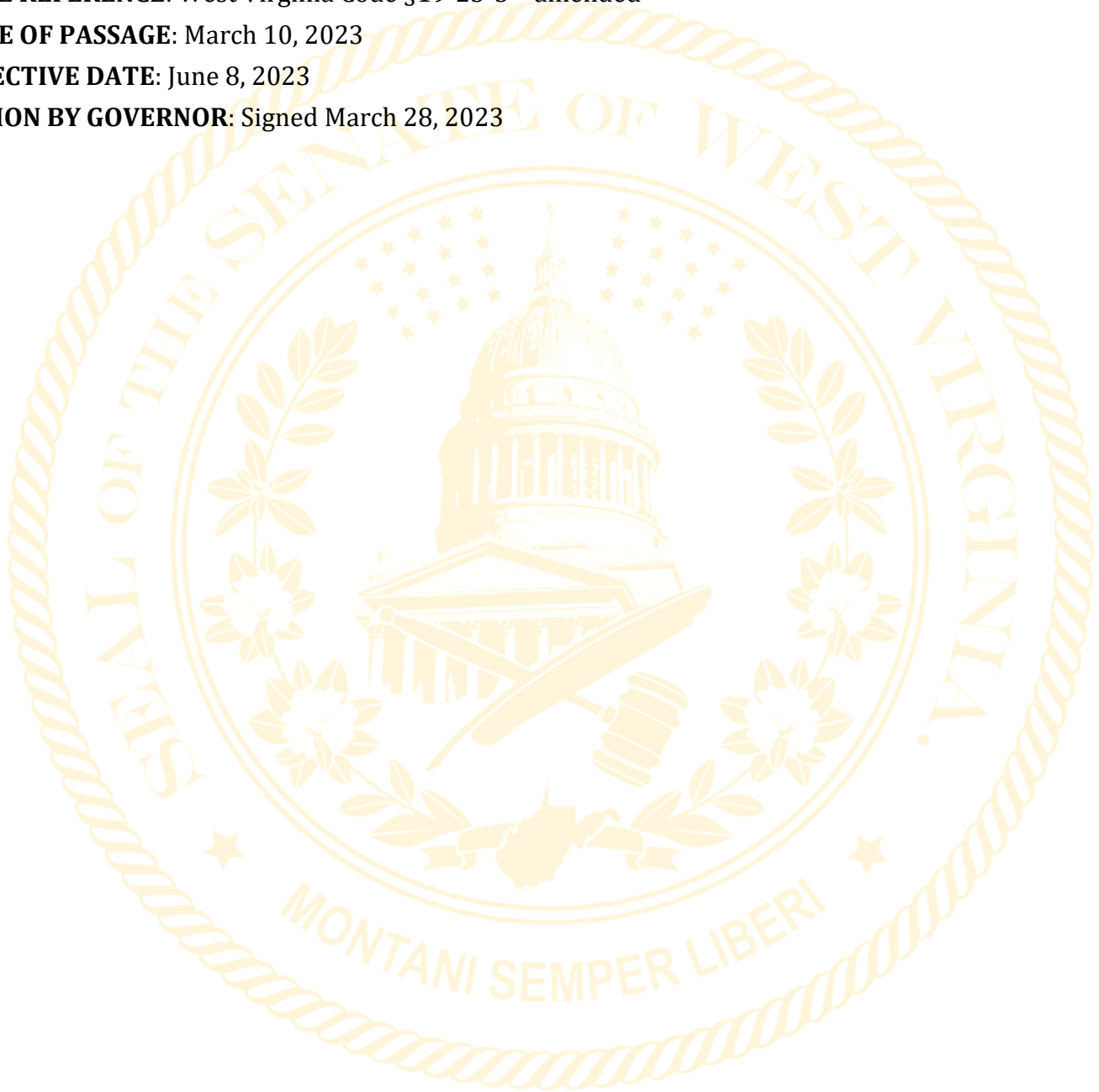
This bill expands the definitions of “land” and “recreational purposes” as they relate to limiting landowner liability. This bill adds rock climbing, bouldering, caving, rappelling, and slacklining to the list of recreational activities. The definition of land was expanded to include rocks, boulders, and caves.

CODE REFERENCE: West Virginia Code §19-25-5 – amended

DATE OF PASSAGE: March 10, 2023

EFFECTIVE DATE: June 8, 2023

ACTION BY GOVERNOR: Signed March 28, 2023



2022 Regular Session



Senate Bill 1

Creating Mining Mutual Insurance Company

This bill created the Mining Mutual Insurance Company. This provides a safety net to coal operators who have experienced difficult financial hardships to comply with the Surface Coal Mining Reclamation Act by giving them an option to obtain performance bonds to assure proper reclamation.

The bill has a short title and an extensive list of legislative findings. It also defines necessary terms. It creates a domestic, private, nonstock corporation owned by the policyholders. It is not a governmental entity and is responsible for its own debts and obligations and its funds are not part of the state's general revenue funds. Since it is not a governmental entity it is not subject to the open proceedings act or the Freedom of Information Act. It would be subject to premium taxes set out in Chapter 33 of the Code.

The bill provides for a board of directors to govern the operation of the company. There shall initially be a provisional board and the bill provides for their qualifications to serve and the manner in which they are appointed. Upon filing of the articles of incorporation the officers and directors shall be selected pursuant to the provisions of those articles. Terms of office are set forth in the bill.

The board of directors is given contracting authority to enter into contracts with licensed insurers, health service plans, insurance service organizations, third-party administrators, brokerage firms or other entities with suitable qualifications to administer the affairs of the company. Any such contract is subject to competitive bidding and must be filed with the Insurance Commissioner.

The company would be subject to regulation by the Insurance Commissioner. They must file their charter and bylaws and apply for a license. The Commissioner is required to act on these documents within 15 days. The Commissioner has the power and authority to:

- Determine the initial capital and surplus requirements;
- Monitor economic viability; and
- Waive other requirements imposed on mutual insurance companies.

The company has 40 months to comply with the capital and surplus requirements.

A special revenue account is created to receive moneys transferred from the Department of Environmental Protection. Within 30 days of the effective date of this act, the Treasurer with the cooperation of the Department of Environmental Protection shall transfer \$50,000,000 into the fund. Thirty days following this transfer these funds shall be transferred to the Mining Mutual as initial capital and surplus. This shall be seen as a noninterest loan and paid back as reclamation activities are completed. Additional funds may be transferred into the special revenue account from time to time with approval of the Insurance Commissioner when capital is needed by the Mutual Mining Company. These funds will be transferred to the company within 30 days and shall be considered a noninterest loan and paid back. Once approved to conduct business, the company may issue nonassessable policies of performance bonds. Participation is optional and the provisions of West Virginia Code related to corporations' law and insurance law are applicable if they are not in conflict with the provisions of this act.

CODE REFERENCE: West Virginia Code §33-61-1 through §33-61-10 – new

DATE OF PASSAGE: March 12, 2022

EFFECTIVE DATE: March 12, 2022

ACTION BY GOVERNOR: Signed March 28, 2022

Senate Bill 4

Repealing ban on construction of nuclear power plants

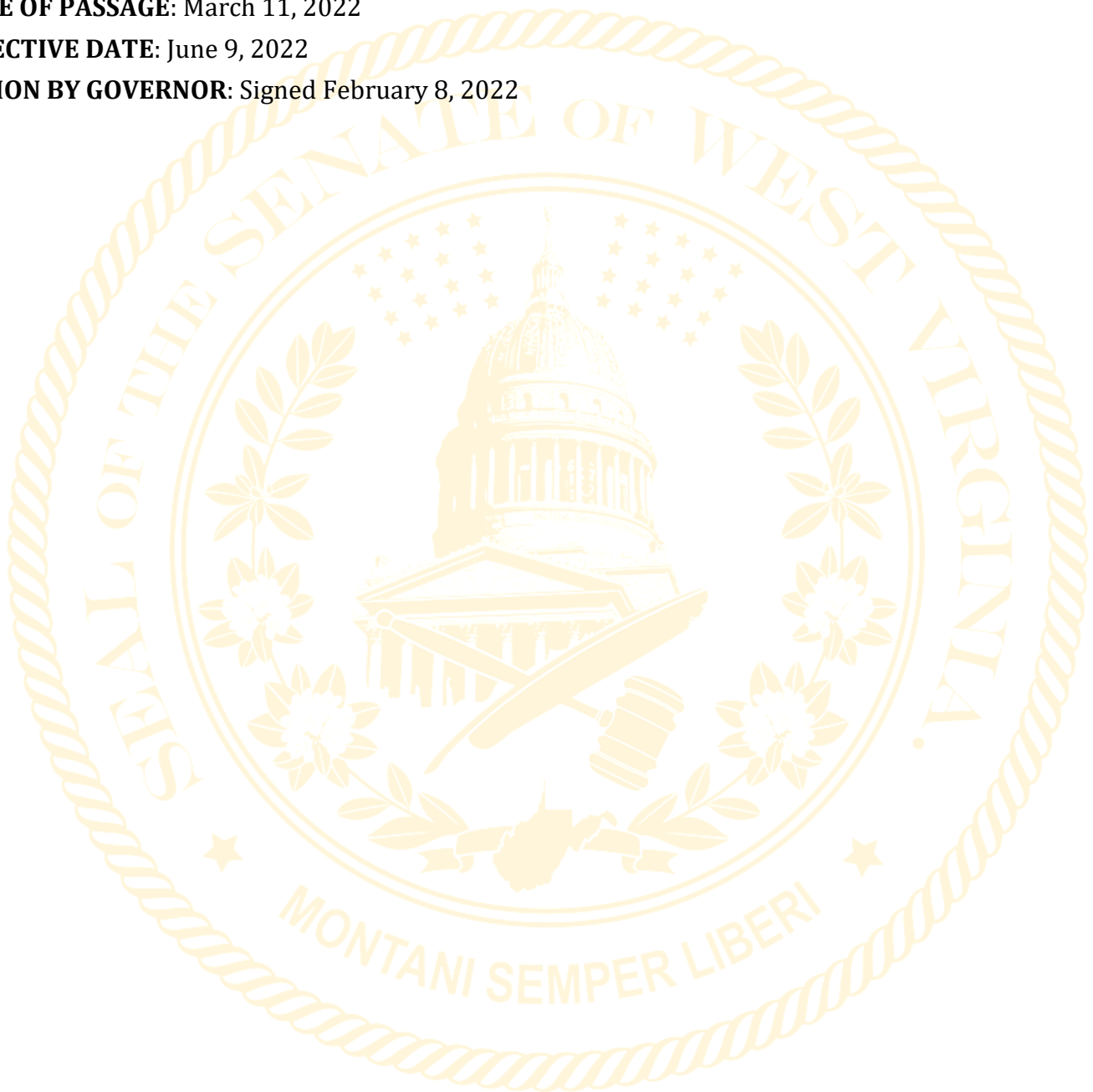
The proposed legislation repeals the entirety of Article 27A, Chapter 16, which bans construction on nuclear power plants in West Virginia.

CODE REFERENCE: West Virginia Code §16-27A-1, §16-27A-2 – repeal

DATE OF PASSAGE: March 11, 2022

EFFECTIVE DATE: June 9, 2022

ACTION BY GOVERNOR: Signed February 8, 2022



Senate Bill 6

Establishing common law “veil piercing” claims not be used to impose personal liability

Senate Bill 6 modifies the application of the “corporate veil piercing” analysis adopted by the Supreme Court of Appeals in *Joseph Kubican v. The Tavern, LLC*, 232 W.Va. 268 (2013) for the purpose of imposing personal liability on a member or manager of a limited liability company.

In subsection (a), the bill clarifies that a member or manager of an LLC is not personally liable for fines, fees, or penalties individually assessed against another member or manager for unrelated acts.

Prior to amendment, subsection (c) provided that members may be held liable in their capacity as members for debts, obligations, or liabilities of the company if a provision to that effect is contained in the articles of organization and the member has consented in writing to the adoption of the provision or to be bound by the provision. The bill adds the following as additional circumstances in which members may be held liable:

- The member against whom liability is asserted has personally guaranteed the liability obligation of the limited liability company in writing;
- There is any tax liability of the limited liability company which the law of the state or of the United States imposes liability upon the member; or
- The member commits actual or constructive fraud which causes injury to an individual or entity.

In new subsection (d), the bill authorizes courts to apply the Kubican “corporate veil piercing” analysis only if a company is not adequately capitalized for the reasonable risks of the corporate undertaking and the company does not carry certain minimum limits of liability insurance coverage for the primary risks of the business (\$100,000 or such higher amount as may be specifically required by law).

In new subsection (e), the bill authorizes non-human members of an LLC to be held liable under the doctrine of joint enterprise liability rather than veil piercing.

In new subsection (f), the bill confirms that a member may still be held liable as a tortfeasor, and that veil piercing does not apply under these circumstances.

In new subsection (g), the bill authorizes a judgment creditor of an LLC to “clawback” funds from a member to reimburse the LLC for the lesser of the amount of a judgment or amount transferred from the LLC to the member in bad faith, and specifies the following circumstances in which this may occur via primary liability rather than veil piercing: conflicted exchange, insolvency distribution, or siphoning of funds.

Lastly, in new subsection (h), the bill defines several new terms: “conflicted exchange”, “insolvency distribution”, “insolvent”, and “siphoning of funds”.

CODE REFERENCE: West Virginia Code – amended

DATE OF PASSAGE: March 12, 2022

EFFECTIVE DATE: June 10, 2022

ACTION BY GOVERNOR: Signed March 28, 2022

Senate Bill 25

Updating provisions of Medical Professional Liability Act

Senate Bill 25 addresses prerequisites for filing a lawsuit against a health care provider under the Medical Professional Liability Act.

In §55-7B-2(h), the bill adds “injury” as a defined term synonymous with the existing term “medical injury”.

In §55-7B-4, the bill includes references to the term “medical injury” and clarifies time limitations for bringing a cause of action under the statute. The bill adds a statement of legislative intent to subsection (b) confirming the applicability of the one-year limitations period for a cause of action for medical injury resulting in injury or death to a person alleging medical professional liability against a nursing home, assisted living facility, related entities or employees, or a distinct part of an acute care hospital providing intermediate or skilled nursing care or its employees.

In §55-7B-4(e), the bill shortens the time period in which a claimant must furnish the health care provider with a statement of intent to provide a screening certificate of merit from 180 days to 120 days of the date the provider receives the notice of claim with respect to this same category of actions. In subsection (i)(2), the bill also shortens the tolling period for any statute of limitations applicable to a cause of action against a provider upon whom notice was service for alleged malpractice from 180 days to 120 days.

CODE REFERENCE: West Virginia Code §55-7B-2, §55-7B-4, and §55-7B-6 – amended

DATE OF PASSAGE: March 10, 2022

EFFECTIVE DATE: June 8, 2022

ACTION BY GOVERNOR: Signed March 23, 2022

Senate Bill 135

Relating to acquisition and disposition of property by urban development authority

This bill authorizes an urban renewal authority, by any proper means, to acquire, in its name, real property, including from government entities, and expressly including tax-delinquent properties.

CODE REFERENCE: West Virginia Code §6-18-30 – new

DATE OF PASSAGE: March 9, 2022

EFFECTIVE DATE: June 7, 2022

ACTION BY GOVERNOR: Signed March 23, 2022

Senate Bill 181

Creating Core Behavioral Health Crisis Services System

This bill requires the Secretary of DHHR to designate a crisis hotline or centers to provide crisis intervention services and crisis care coordination to individuals accessing the 988-suicide prevention and behavioral health crisis hotline from any jurisdiction in the state 24 hours a day, 7 days a week. The centers shall have an active agreement with the National Suicide Prevention Lifeline (NSPL) and meet their requirements and best standards. The center shall utilize chat and text that is interoperable and across crisis and emergency response systems used throughout the state.

The center shall coordinate access to crisis receiving and stabilization for individuals accessing the 988-suicide prevention and behavioral health crisis hotline through appropriate sharing and provide follow up services. Designated hotline centers shall meet the requirements set forth by the NSPL for serving high risk and specialized populations as identified by the Substance Abuse and Mental Health Services Administration, including training requirements and policies for transferring such callers to appropriate specialized center or subnetworks within or external to the NSPL network.

Crisis receiving and stabilization services as related to the call shall be reimbursed by the department if the individual for whom services were provided meets the definition of an uninsured person or if the crisis stabilization service is not a covered service by the individual's health insurance. The Bureau of Medical Services shall work with the entity responsible for appropriate coding and paying for crisis management services.

The bill gives the Secretary of DHHR discretion to hire employees, fix compensation, define duties and grant authority to carry out the purposes of the article. There is legislative rulemaking and emergency rulemaking authority for the Secretary of DHHR. There is an annual report requirement.

CODE REFERENCE: West Virginia Code §16-42-1 through §16-42-9 – new

DATE OF PASSAGE: March 8, 2022

EFFECTIVE DATE: March 8, 2022

ACTION BY GOVERNOR: Signed March 23, 2022

Senate Bill 205

Expanding PEIA Finance Board membership

Senate Bill 205 increases the membership on the PEIA Finance Board, adding two appointed members. One of them is to represent the interests of hospitals; the other is to represent the interests of non-hospital health care providers.

CODE REFERENCE: West Virginia Code §5-16-4 – amended

DATE OF PASSAGE: March 11, 2022

EFFECTIVE DATE: June 9, 2022

ACTION BY GOVERNOR: Signed March 28, 2022

Senate Bill 213

Establishing licensed professional counseling compact

The bill creates an interstate compact for licensed professional counselors. The language of the bill is boilerplate language developed by the Counseling Compact. Once 10 states have authorized the compact, it authorizes both telehealth and in-person practice across state lines in counseling compact states. Counseling compact states communicate and exchange information including verification of licensure and disciplinary sanctions. Counseling compact states retain the ability to regulate practice in their states.

CODE REFERENCE: West Virginia Code §30-31A-1 through §30-31A-15 – new

DATE OF PASSAGE: March 8, 2022

EFFECTIVE DATE: June 6, 2022

ACTION BY GOVERNOR: Signed March 23, 2022

Senate Bill 221

Establishing occupational therapy compact

The bill creates an interstate compact for occupational therapists. The language of the bill is boilerplate language developed by the Occupational Therapy Licensure Compact. Under the compact, occupational therapists and occupational therapy assistants who are licensed in good standing in a compact member state may practice in other compact member states via a compact privilege which is equivalent to licensure.

The compact establishes a licensure data system for instant verification of licensure information. It establishes a compact commission, comprised of member state officials to carry out the compact purposes. The compact will take effect once enacted by 10 states. The OT Compact Commission will then convene to establish rules and implement the data system in order to begin issuing the compact privileges. This compact is a joint initiative between the American Occupational Therapy Association and the National Board for Certification in Occupational Therapy.

CODE REFERENCE: West Virginia Code §30-28A-1 through §30-28A-14 – new

DATE OF PASSAGE: February 25, 2022

EFFECTIVE DATE: May 26, 2022

ACTION BY GOVERNOR: Signed March 8, 2022

Senate Bill 228

Providing tuition and fee waivers at state higher education institutions for volunteers who have completed service in AmeriCorps programs in WV

This Act requires the governing board of each state institution of higher education to make provisions for their respective institution to award tuition and fee waivers for undergraduate and graduate courses to any student who has completed service in an AmeriCorps State, National, VISTA, or Senior Corps program in West Virginia, in accordance with the following:

The student must:

- Complete a FAFSA and accept all offers of financial assistance except student loans and work study;
- Accept the Segal AmeriCorps Education Award;
- Complete a term of service in West Virginia and provide an AmeriCorps Certification of Service Letter to the institution; and
- Meet the academic progress standards established by the institution;
- The Act further provides that:
 - The student earns a tuition and fee waiver for 1 semester for at least 600 hours of service and 2 semesters for at least 1,200 hours of service;
 - A student may successfully complete additional terms of service while enrolled or between semesters;
 - The total number of tuition and fee waivers that may be granted to a student is limited to 8 semesters at the undergraduate or graduate levels combined; and
 - The nominal value of a tuition and fee waiver is the remaining cost of tuition and fees after state and federal financial assistance has been applied and it may be further reduced if application of the student's Segal AmeriCorps Education Award causes the total to exceed the student's cost of attendance.

In addition:

- The award of tuition and fee waivers granted pursuant to this Act is in addition to the tuition and fee waivers otherwise permitted in this article of code.
- The institutional governing boards may establish any limitations on the provisions of the section as they consider proper.
- If necessary, the Higher Education Policy Commission and the Council for Community and Technical College Education may propose rules for legislative approval.

CODE REFERENCE: West Virginia Code §18B-10-7d – new

DATE OF PASSAGE: March 11, 2022

EFFECTIVE DATE: June 9, 2022

ACTION BY GOVERNOR: Signed March 28, 2022

Senate Bill 231

Relating generally to broadband connectivity

This bill amends two sections of Chapter 31G, Article 4 dealing with broadband and, specifically, pole access for carriers and providers. §31G-4-1 is amended to include definitions some of which are relevant to the added language in the new section, §31G-4-7 (“telecommunications carrier” and “poles”), and some of which clarify and define language which exists within this Article but is not being amended.

This legislation creates §31G-4-7 to add new language which would require a pole owner or manager to inform the Department of Economic Development within 30 days when one of its poles has been made ready for telecommunication fibers to be added, and what the additional available capacity is for that pole. The department would then notify other telecommunication carriers within 15 days, who then have 30 days to notify the pole owner or manager that they, too, will make use of the available capacity on the pole(s). Any telecommunication carrier intending to use the pole(s) are to share in the cost of the engineering work required. The bill exempts from the initial requirement to inform the department any pole owner which has an electronic permitting and notification software system for processing pole attachment applications.

CODE REFERENCE: West Virginia Code §31G-4-1 – amended; §31G-4-7 – new

DATE OF PASSAGE: March 12, 2022

EFFECTIVE DATE: June 10, 2022

ACTION BY GOVERNOR: Signed March 28, 2022

Senate Bill 242

Restricting authority to prevent or limit owner's use of natural resources or real property in certain agricultural operations

The purpose of this bill is to limit the authority of counties and municipalities to prevent or limit an owner’s complete use of natural resources or real property for farm or agricultural operations. Current law provides that an ordinance, rule or regulation may not prevent a landowner’s complete use of natural resources outside of urban areas. The bill expands this to include an ordinance, rule or regulation preventing or “limiting” an owner’s complete use of natural resources outside of “municipalities” or urban areas, or an owner’s complete use “of a tract or contiguous tracts of land of any size for a farm or agricultural operation” outside of municipalities or urban areas.

CODE REFERENCE: West Virginia Code §8A-7-10 – amended

DATE OF PASSAGE: March 11, 2022

EFFECTIVE DATE: June 9, 2022

ACTION BY GOVERNOR: Signed March 28, 2022

Senate Bill 244

Relating to appointment of judges to Intermediate Court of Appeals

Senate Bill 244 corrects a typographical error in a provision of the West Virginia Appellate Reorganization Act which sets forth the initial terms of office of the first three judges to serve on the Intermediate Court of Appeals.

In subsection (b)(3), the bill replaces the word “elected” with the word “selected” to bring it into conformity the other two instances of this word and clarify that all three initial judges are appointed by the Governor.

The bill creates a new subsection (g) providing for retroactive application of this amendment to December 27, 2021.

CODE REFERENCE: West Virginia Code §51-11-6 – amended

DATE OF PASSAGE: February 1, 2022

EFFECTIVE DATE: February 1, 2022

ACTION BY GOVERNOR: Signed February 9, 2022

Senate Bill 245

Revising wage payment and collection

This bill allows an employer to elect the form of payment to an employee. An employer may choose to pay their employee via lawful money of the United States, check or money order, payroll card, or direct deposit.

Should an employer make payment using the payroll card option, an employer is required to provide a written disclosure of any fees associated with the payroll card and ensure that the employee has the ability to make at least one withdrawal or transfer from the payroll card per pay period without cost to the employee. The employer must also make an alternate method of payment via direct deposit available to employees should the employer elect to pay an employee via a payroll card.

CODE REFERENCE: West Virginia Code §21-5-3 and §21-5-4 – amended

DATE OF PASSAGE: March 11, 2022

EFFECTIVE DATE: June 9, 2022

ACTION BY GOVERNOR: Signed March 23, 2022

Senate Bill 247

Relating to certified community behavioral health clinics

The bill requires the Bureau for Medical Services (BMS) to develop, seek approval of, and implement a Medicaid state plan amendment to effectuate a system of certified community behavioral health clinics (CCBHCs).

The bill provides that BMS, in conjunction with the DHHR's Bureau for Behavioral Health shall establish a state certification system for CCBHC's in accordance with the following requirements:

- The CCBHC system shall be consistent with Section 223 of the Protecting Access to Medicare Act of 2014 PAMA, as amended
- Standards and methodologies for a prospective payment system shall be established to reimburse each CCBHC under the state Medicaid program on a predetermined, fixed amount per day for covered services rendered to each covered Medicaid beneficiary.
- A quality incentive payment system shall be established for those CCBHC's which achieve specific thresholds on performance metrics identified by BMS. Such quality income payments shall be in addition to the bundled prospective daily rate.
- The prospective payment rate for each CCBHC shall be adjusted tri-annually by the Medicare economic Index. Additionally, the rate shall allow for modifications based upon a change in scope for individual CCBHC. Rate adjustments can be upon request of the provider.
- Criteria shall be established to certify a facility as a CCBHC which at a minimum shall require each directly, or indirectly through referral relationships the following services:
- Crisis mental health services, including 24, hour mobile crisis teams, emergency crisis intervention services and crisis stabilization;
- Screening, assessment, and diagnosis, including risk assessment;
- Patient-centered treatment planning or similar processes, including risk assessment and crisis planning;
- Outpatient clinic primary care screening and monitoring of key health indicators and health risk
- Targeted case management;
- Peer support and counselor services
- Family support services; and
- Community-based mental health services, including mental health services for members of the armed forces and veterans

All non-profit comprehensive community mental health centers and comprehensive intellectual disability facilities shall be eligible to apply for certification.

The certification is strictly voluntary.

CODE REFERENCE: West Virginia Code §9-5-29 – new

DATE OF PASSAGE: March 12, 2022

EFFECTIVE DATE: June 10, 2022

ACTION BY GOVERNOR: Signed March 28, 2022

Senate Bill 261

Requiring video cameras in certain special education classrooms

This bill amends the section of code requiring video cameras in certain special education classrooms. Specifically, the bill does the following:

- Allows the principal of the school to designate another school administrator as the custodian of the video camera, all recordings of the camera, and access to those recordings.
- Provides for an extension of the 3-month time period in which the recording must be retained if the time period overlaps summer break.
- For any school-based camera system that is installed or replaced after April 1, 2022, requires the video to be retained for at least 365 days and strikes through the requirement for the video to be deleted after the applicable time period has elapsed.
- Increases the amount of time a person requesting to view a recording has to view a recording from 30-60 days and declares that the section does not require the principal or other designated school administrator to view the video recording absent an authorized request or suspicion of an incident except as otherwise provided in section. It also deletes language prohibiting a school from allowing regular, continuous, or continual monitoring of the video.
- Allows the video recording to be viewed by the school principal, other school administration designee, or county designee if the principal or other school administration designee is unable to view the video. It also requires the school principal, other school administration designee, or county designee to view no less than 15 minutes of the video of each self-contained classroom no less than every 90 days; and provides for the authorized state board rule to include requirements for documentation of compliance with the video viewing requirements.
- Requires a school to allow viewing of a video recording and comply with all subsequent requests for viewing or release of the video recording when requested by:
 - A law enforcement officer or DHHR employee as part of an investigation into an alleged incident that is documented by the video recording and has been reported to the agency.
 - A judge, counsel, or other legal entity that is charged with deciding or representing either the school board, students, or employees in any matters related to legal issues arising from an incident but only if released pursuant to an appropriate protective order or under seal.
- Replaces language requiring FERPA compliance with language providing that if a release of a video recording is requested by law enforcement or DHHR, the agency will maintain strict confidentiality of the video and not further release the video without authorization from the public school district through its superintendent.
- Requires that if an incident is discovered while initially viewing camera footage that requires a report to be made under the section of code mandating that certain persons report child abuse and neglect (§49-2-801), that report be made by the viewer within 24-hours of viewing the incident. The bill also provides that the video cameras in special education classrooms section of code only applies to cameras installed pursuant to that section.

CODE REFERENCE: West Virginia Code §18-20-11 – amended

DATE OF PASSAGE: March 12, 2022

EFFECTIVE DATE: March 12, 2022

ACTION BY GOVERNOR: Signed March 25, 2022

Senate Bill 262

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

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

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

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

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

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

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

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

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

DATE OF PASSAGE: March 12, 2022

EFFECTIVE DATE: June 10, 2022

ACTION BY GOVERNOR: Became Law Without Governor’s Signature

Senate Bill 264

Relating to conservation districts law of WV

Senate Bill 264 amends several sections of code pertaining to conservation districts in West Virginia.

§19-21A-1. Title of article; legislative determinations and declaration of policy.

The amendment proposed by the bill to this section retains the essence of the legislative determinations and declaration of policy in current law but eliminates excess language and awkward phrasing to provide a clear and concise statement of the determinations and policy. The bill also amends this section to provide a short title for the article to be known as the “Conservation Districts Law of West Virginia” and to rename the section heading.

§19-21A-2. Legislative determinations and declaration of policy.

The bill repeals this section because it is a duplication of the legislative determinations and declaration of policy in §19-21A-1.

§19-21A-3. Definitions.

The bill amends this section to add a definition for “Urban Agriculture” to mean the cultivation, processing and distribution of agricultural products grown in urban and suburban settings and would include vertical production, warehouse farms, community gardens, rooftop farms, hydroponic, aeroponic and aquaponic facilities, and other innovations. The bill also adds a definition for “agriculture” that is identical to the definition of that term in §19-19-2(a) of the code.

§19-21A-4. State Conservation Committee; continuation

The bill amends this section to give the State Conservation Committee (SCC) four additional powers and duties. First, it authorizes the SCC to review and provide advice on agreements, or forms of agreements, proposed by conservation districts (districts) with other districts or any state, federal, interstate, or other public agency or any private agency, organization, or individual.

Second, it authorizes the SCC to administer funds appropriated by the Legislature for expenditures for activities conducted by districts. The SCC will also have the authority to distribute funds, property, and services to districts in accordance with any applicable state or federal law or local ordinance and to promulgate rules establishing guidelines for the same. The SCC will also have the authority to review and advise districts regarding their budgets, administrative procedures, and operations for compliance with applicable laws and rules.

Third, the bill authorizes the SCC to develop forms for annual reports and would require districts to submit the reports to the SCC.

Fourth, the bill authorizes the SCC to promulgate rules for uniform accounting and auditing procedures to be followed by districts.

§19-21A-6. Election of Supervisors for each district; filling vacancies.

The bill retains and restructures most of the current law for the election of district supervisors but amends provisions relating to the qualifications for a candidate for district supervisor, when a term of office begins, how an office is filled if no candidate files for election, and how an office vacancy is filled.

Current law provides that a candidate for district supervisor must be a landowner and an active farmer with at least five years of experience, or a retired farmer with at least five years of experience, and the education, training, and experience as established by rule of the SCC to perform the duties of a supervisor. The bill amends this provision to provide that a candidate just needs experience in agriculture,

conservation, or natural resources to qualify for district supervisor. The bill clarifies that “agriculture”, as used in this section means the same as in §19-21A-3 of the bill.

Regarding when a term of office begins, the bill clarifies that it begins on July 1, immediately following the primary election in which a supervisor is elected.

Current law does not address how to fill an office if no candidate files. Therefore, the bill adds a provision that directs a district to advertise the vacancy and select a candidate and then submit the name to the SCC for appointment.

Finally, current law provides that when a vacancy occurs, a district must submit a list of qualified candidates for supervisor within 15 days after the vacancy occurs for appointment by the SCC. The bill directs the district to advertise the vacancy, select a candidate, and then submit the name to the SCC for appointment within 90 days after the vacancy occurs.

§19-21A-8. Powers of districts; additional powers of supervisors.

The bill amends this section to give districts and supervisors the following additional powers and duties:

- The authority to hold public meetings.
- The authority to accept donations, gifts, contributions, grants, and appropriations from the United States or its agencies, from the State of West Virginia, or from other sources to accomplish the policies and functions of conservation districts; and
- The requirement to keep the public, agencies, and those who occupy land within a district informed about activities and work planned and administered by the district and the results achieved annually through public meetings, publications, or other means.

CODE REFERENCE: West Virginia Code §19-21A-2 – repealed; §19-21A-1, §19-21A-3, §19-21A-4, §19-21A-6, and §19-21A-8 – amended

DATE OF PASSAGE: March 11, 2022

EFFECTIVE DATE: June 9, 2022

ACTION BY GOVERNOR: Signed March 28, 2022

Senate Bill 268

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

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

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

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

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

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

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

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

DATE OF PASSAGE: March 12, 2022

EFFECTIVE DATE: June 10, 2022

ACTION BY GOVERNOR: Signed March 30, 2022

Senate Bill 279

Authorizing the Department of Environmental Protection to promulgate legislative rules

This bill is the Department of Environmental Protection bundle. It contains 8 rules.

Department of Environmental Protection – Ambient Air Quality Standards, 45 CSR 08

The 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, and incorporates by reference the national primary and secondary ambient air quality standards, as promulgated by the United States Environmental Protection Agency (EPA).

The changes to the rule adopt and incorporate by reference annual updates to the federal counterpart promulgated by EPA as of June 1, 2021.

The updates to the rule maintain consistency with the federal counterpart and allow West Virginia to continue as the primary enforcement authority of federal new source performance standards in this State.

Department of Environmental Protection – 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 EPA as of June 1, 2021. These amendments maintain consistency with the federal counterpart and allow West Virginia to continue as the primary enforcement authority of federal new source performance standards in this State.

Department of Environmental Protection – Control of Air Pollution from Combustion of Solid Waste, 45 CSR 18

This rule amends an existing DEP rule which establishes and adopts national standards of performance and other requirements for air pollution caused by the combustion of solid waste, as promulgated by the United States Environmental Protection Agency (EPA) pursuant to the federal Clean Air Act (CAA).

The modifications adopt and incorporate by reference annual updates to the federal counterpart promulgated by EPA as of June 1, 2021. These modifications maintain consistency with the federal counterpart and allow West Virginia to continue as the primary enforcement authority of federal new source performance standards in this State.

Department of Environmental Protection – Emission Standards for Hazardous Air Pollutants, 45 CSR 34

The 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 EPA as of June 1, 2021.

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

Department of Environmental Protection – Requirements for the Management of Coal Combustion Residuals, 33 CSR 1B

This rule is new and is promulgated under the Solid Waste Management Act which governs solid waste management and disposal. Specifically, this rule governs Coal Combustion Residuals, such as bottom ash and fly ash, produced when coal is burned for electric power generation.

The rule simply adopts by reference the Federal Regulation, 40 CFR Part 257, Subpart D, Standards for the Disposal of Coal Combustion Residuals in Landfills and Surface Impoundments. This is necessary to obtain and maintain closure and permitting primacy. DEP already regulates operations, and the rule will provide DEP with jurisdiction over cleanup and closure also.

The rule applies to owners and operators of new and existing landfills and surface impoundments, including any lateral expansions, who engage in solid waste management of residuals generated from the combustion of coal at electric utilities and independent power producers. These requirements also apply to disposal located off-site of the power producer.

The rule establishes minimum national criteria to determine which solid waste disposal facilities and solid waste management practices do not pose a reasonable probability of adverse effects on health or the environment under the Resource Conservation and Recovery Act.

Department of Environmental Protection – Requirements Governing Water Quality Standards, 47 CSR 02

The rule is the result of the Water Pollution Control Act found in W.Va. Code §22-11-1, et seq, which provides rule-making authority to the DEP to establish rules necessary to carry out the requirements of the Act.

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

New Subsection 8.2.c was added to the rule for the evaluation of factors related to human health on a case-by-case basis as part of the NPDES permitting process. CWA 303(c) is the water quality standards. The process begins with a regulated party investing in an environmental study. This study will be reviewed for proper protocols and water quality standards first by DEP and then by the EPA. Once approved by both the state and federal regulators, a permit may be issued with different criteria. This permit is not subject to legislative review.

Subsection 8.6. in the rule which required DEP to create a work group to analyze and recommend updates to human health criteria is being deleted from the rule because it is no longer necessary.

The most significant amendments are to the Requirements Governing Water Quality Standards to adhere to the federal requirement for Triennial Review of Water Quality Standards, as required by the Clean Water Act, Section 303(c)(1). This will be the third rule change in the last few years. These updates match West Virginia with the US EPA 2015 updates for nationally recommended criteria.

The rule includes changes to the human health criteria in Appendix E recommended by the Human Health Criteria Work Group. In this rule, the DEP is revising 31 substances and adding 4 substances to the

human health criteria. Once authorized, 28 criteria will become more stringent and 7 will become less stringent. If authorized, these 35 criteria will then be consistent with nationally recommended criteria. The units of measure for the substances in the table are also being revised to have the same units of measure for the various substances. The legislature has now updated or added in total 59 of the EPA's 96 recommended criteria.

Finally, the rule is amended in Appendix A, Category B-2 – Trout Waters by adding language regarding the Summersville tailwaters above Collision Creek which states that the water temperature is limited to no more than 5 degrees above the natural temperature, not to exceed 72 degrees any time during the year. This change effectively increases the allowable water discharge temperature from the dam.

Department of Environmental Protection – Underground Injection Rule, 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 five classes of wells. The rule updates these five classes and adds a sixth classification for carbon capture and sequestration wells.

The rule sets forth criteria and standards which apply to the UIC program. All owners and operators of these wells must be authorized by DEP to make injections. The classes are as follows:

- Class 1 wells are for disposal of hazardous wastes below the water table;
- Class 2 wells are for injection fluids associated with oil and gas production such as brine water;
- Class 3 wells are used to inject fluids to dissolve and extract minerals such as salt mining;
- Class 4 wells cover radioactive materials that do not meet the Class 1 criteria. Note: Class 4 wells are no longer allowed under the federal rule, but nationally some are grandfathered for long term closure; and
- Class 5 wells are shallow wells above the water table, which are not Class 1 through 4 or Class 6. These include wells such as commercial sewage leach fields.
- The new Class 6 wells are for carbon capture and sequestration.

West Virginia currently has primary enforcement authority for the first five classes of wells, but the rule must be updated to maintain this primacy. Currently, federal rules apply to Class 6 wells. Once the rule is updated and approved, DEP intends to seek primacy over Class 6 wells.

Subsection 4.6 describing Class 6 wells is new. Subsection 5.4 is new and describes the area of review for Class 6 wells. Paragraph 6.2.c.5. is new and relates to the mechanical integrity of Class 6 wells.

Section 8 relating to criteria and standards applicable to Class 1 wells has been amended regarding construction requirements, monitoring and closure requirements, and post-closure care.

Section 9 relating to criteria and standards applicable to Class 2 wells has amendments relating to construction, abandonment, operating, monitoring and reporting requirements and information to be considered by the Director prior to issuing a permit.

New Section 13 contains the criteria and standards for Class 6 wells. It contains minimum criteria for siting; construction requirements; abandonment; logging, sampling and testing prior to injection well operation; operating, monitoring and reporting requirements; emergency and remedial response; required permit information; and post injection site care and site closure.

Section 14 relating to the injection well permitting program has been amended to contain requirements relating to loss of mechanical integrity, release of infected wastes into an unauthorized zone, plugging and abandonment, financial responsibility, waiver of requirements by the Director, corrective actions regarding Class 6 wells, and applications for Class 6 permits.

Department of Environmental Protection – Administrative Proceedings and Civil Penalty Assessment, 47 CSR 30B

The rule amends a current legislative rule which was 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, the rule governs the Administrative Proceedings and Civil Penalty Assessment for operators who may not be in compliance with their permits. This rule establishes the procedure for the resolution of enforcement actions and the assessment of civil penalties in lieu of the institution of civil actions as provided in the code.

The rule addresses these issues to make the West Virginia rule more comparable to the Clean Water Act by addressing the Court’s concerns. The rule requires an administrative hearing whether the operator chooses to participate or not, empowers the secretary to unilaterally assess a civil penalty even if an operator does not resolve the issue by voluntary agreement, and deletes the provision allowing an operator to terminate a proceeding at any time for any reason. Finally, the rule also deletes the provision allowing an operator to reject a modification of a proposed consent order made by the secretary which is based on public comments or other information received during a public hearing.

CODE REFERENCE: West Virginia Code §64-3-1 et seq. – amended

DATE OF PASSAGE: February 11, 2022

EFFECTIVE DATE: February 11, 2022

ACTION BY GOVERNOR: Signed February 21, 2022

Senate Bill 312

Authorization for Department of Revenue to promulgate legislative rules

This Committee Substitute contains the Department of Revenue rules. It is known as Bundle 7 and contains 17 rules.

Alcohol Beverage Control Commission – Private Club Licensing, 175 CSR 02

The rule amends a current legislative rule to comply with House Bill 2025 which passed during the 2021 Regular Legislative Session. The rule expands on definitions for new licenses, including craft cocktail growler sales, private club delivery, third party delivery, curbside pickup, and creating other private club licenses, such as a private wedding venue, a private caterer, a private farmers market facility, a private multi-vendor fair and festival, private outdoor dining and private outdoor street dining and other new concepts.

The rule sets forth definitions for each of its new licenses to better clarify what will and will not qualify within the definition for a license. The rule also sets forth mechanisms to apply and be eligible for the various licenses that have been created. Most of the fees for new licenses were established in code but some have also been added to the rule for clarity. For areas that require municipal or county approval, like private outdoor dining or private outdoor street dining, the ABCC will assist in making a form available to standardize and streamline approval.

The bill makes several amendments to better consolidate the rules and remove unnecessary duplication with code and makes other technical corrections to add in previously agreed to modifications as passed by the Legislative Rule-Making Review Committee that were mistakenly left out of the filed version. The bill also makes amendments to better define terms like “suitable person” and “good moral character” in line with *R.W.B. of Riverview, Inc. v. Stemple* (stating, These are just the sort of “boundless terms” and manipulable “malleable concepts” our Court of Appeals found constitutionally unacceptable because they clothe a decisionmaker with unfettered discretion.) Finally, the bill amends the entertainment portion relating to outdoor dining or outdoor street dining to permit the Commissioner to authorize entertainment and in the event entertainment is denied, to require a written explanation for the denial.

Alcohol Beverage Control Commission, Bailment Policies and Procedures, 175 CSR 06

Currently, this rule explains and clarifies the bailment procedures and policies to be utilized by the ABCC in the operation of the ABCC warehouse and the provision of alcoholic liquor to licensed retail stores. Currently the fees can be updated by administrative notice on the behalf of the ABCC. This amendment requires fee updates or any changes to the rule to go through Legislative Rule-Making Review Committee and be authorized prior to becoming effective.

Alcohol Beverage Control Commission – Nonintoxicating Beer Licensing and Operations Procedures, 176 CSR 01

The rule amends a current legislative rule to comply with House Bill 2025 which passed during the 2021 Regular Legislative Session. The rule expands on definitions for new licenses, including growler sales for Class A and Class B licensees, private club delivery, third party delivery, curbside pickup, creates other licenses, such as private outdoor dining and private outdoor street dining, alters the permitted operating hours, authorizes certain floor plan extensions, removes bonding requirements, and permits direct shipping under certain circumstances. The rule sets forth definitions for each of its new licenses to better clarify what will and will not qualify within the definition for a license. The rule also sets forth mechanisms to apply and be eligible for the various licenses that have been created. Most of the fees for new licenses

were established in code, but some have also been added to the rule for clarity. For areas that require municipal or county approval, like private outdoor dining or private outdoor street dining, the ABCA will assist in making a form available to standardize and streamline approval.

Another key feature permits businesses to hire additional employees when they are supervised to sell and serve nonintoxicating beer to customers. This was primarily contemplated in grocery stores where the sale is completed without any open containers. However, all licensees must comply with supervision requirements which require a person at least 21 years of age to supervise any transaction.

The bill makes several amendments to better consolidate the rules and remove unnecessary duplication with code and makes other technical corrections to add in previously agreed to modifications as passed by the Legislative Rule-Making Review Committee that were mistakenly left out of the filed version. The bill also makes amendments to better define terms like “suitable person” and “good moral character” in line with *R.W.B. of Riverview, Inc. v. Stemple* (stating, These are just the sort of “boundless terms” and manipulable “malleable concepts” our Court of Appeals found constitutionally unacceptable because they clothe a decisionmaker with unfettered discretion.) Finally, the bill amends the entertainment portion relating to outdoor dining or outdoor street dining to permit the Commissioner to authorize entertainment and in the event entertainment is denied, to require a written explanation for the denial.

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

The rule amends a current legislative rule. The amendment provides for updates to the continuing education requirements for individual insurance producers and adjusters. The bill incorporates changes made by the passage of House Bill 2682 passed during the 2021 Regular Session of the Legislature.

House Bill 2682 was an agency bill and made minor stylistic and technical modifications. More substantively, the bill removed the requirement that individual insurance producers and adjusters receive notice of their license suspension for their failure to timely complete their continuing education requirements by certified mail, return receipt. The new requirements provide for notice via electronic mail or by regular mail if requested by the individual insurance producer or adjuster.

Insurance Commission – Adoption of Evaluation Manual, 114 CSR 98

This rule amends a current legislative rule to extend the sunset date for five years from the effective date of the rule.

Insurance Commission – Pharmacy Auditing Entities and Pharmacy Benefit Managers, 114 CSR 99

The rule amends a current legislative rule that provides a process for licensing and regulating pharmacy benefit managers (PBMs) and pharmacy auditing entities. The changes to the rule are required because of the passage of House Bill 2263 during the 2021 Regular Legislative Session.

Subsection 1.6 has been amended to clarify which PBMs are subject to this rule which includes PBMs in Employment Retirement Income Security Act (ERISA) plans and workers' compensation insurers and self-insured employers.

Subdivision 4.2.17 is new. It requires PBMs to file all methodologies used in connection with reimbursement at initial licensure. If a PBM was initially licensed prior to the time methodologies were required to be filed, it must file them at its first renewal after January 1, 2022.

Subsection 5.7 has been amended to include a definition of the term “other adjustment”.

Section 5.8 adds that it is a discriminatory act if a PBM interferes with a patient's choice to receive drugs at a 340B entity. This includes adding additional requirements, restrictions, or unnecessary burdens that result in administrative costs and fees to 340B entities that are not placed upon other pharmacies that do not participate in the 340B program.

Sections 5.9 through 5.15 are new. They stipulate how much a PBM is required to reimburse pharmacies and pharmacists, require payment parity, prohibit discrimination in reimbursement, set forth prohibitive practices, require that a health care plan be offered the option of pass-through pricing, specify the method of calculating a person's defined cost sharing for each prescription drug, and specify the method for calculating rebates.

Subsections 6.1 through 6.5 set forth additional reporting requirements.

Section 8 sets forth a formal restitution and reimbursement process.

Section 9 provides for consumer choice when selecting pharmacy benefits and services.

Insurance Commission – Term and Universal Life Insurance Reserve Financing, 114 CSR 102

This rule is new. It codifies the provisions of National Association of Insurance Commissioners' (NAIC) Term and Universal Life Insurance Reserve Financing Model Regulation No. 787 pursuant to amendments made to WV Code 33-4-15a by HB4146 (2020 RS), to ensure continued NAIC accreditation of this state's Office of Insurance Commissioner and to preclude possible federal preemption of regulation of these reserve financing matters under a certain agreement between the United States, the European Union and the United Kingdom that governs reserve financing term and universal life insurance.

The rule establishes uniform, national standards governing reserve financing arrangements pertaining to term life insurance policies and universal life insurance policies with secondary guarantees. The primary focus of the bill is providing alternate means for the states to ensure the financial strength of secondary insurers when primary insurers use them to reinsure the term and universal life policies they have issued in this state, even when the secondary insurer is not domiciled in this state.

Insurance Commission – Bail Bondsmen in Criminal Cases, 114 CSR 103

The rule is new pursuant to the passage of House Bill 2758 which passed during the 2021 Regular Legislative Session and transferred licensing authority for bondsmen from the West Virginia Supreme Court to the Insurance Commissioner effective July 1, 2022.

Section 2 defines key terms.

Section 3 sets out licensing requirements for bondsmen or bail bondsmen. It requires submission of an application containing certain specified information and a criminal background check.

This section sets out specific requirements if the applicant is a licensed insurance producer with a property and casualty line of authority, including required deposits to secure the bondsman's obligations. Deposits may be in cash, securities, bond, letter of credit, annuity, or real estate. There are specific requirements for using real estate as the deposit. Applicants that are corporations are also required to provide additional information.

The Commissioner may request any additional necessary data and conduct reasonable inquiries or investigations relative to the determination of the fitness of an applicant. All information is confidential. It sets forth the statutory biennial \$200 licensing fee.

Section 5 sets forth responsibilities and prohibited activities, including: limitations on the bonding fee; a prohibition against accepting money or other things of value from a person for whom he or she posted a

bond; a prohibition against giving anything of value in exchange for securing employment for the bondsman; a prohibition against involvement in settlement, dismissal, etc. of a person's case for whom they have executed a bond; a prohibition against securing legal representation for a someone for whom they have executed a bond; a prohibition against a personal relationship with someone for whom they have executed a bond, including a consensual relationship; solicitation of a person with a pending arrest warrant; a prohibition against entering a police precinct, jail, court, etc. for without first being contacted for bonding services; taking a bond that exceeds on-half of the bondsman's maximum amount of bonding authority; a prohibition against impersonation of a law enforcement officer; a limitation on law enforcement officers, attorneys, or court personnel from being surety on a bond; and a prohibition against signing a blank bail bond.

Section 6 relating to qualifications of securities on bail requires that all surety for release of a person on bail be qualified as a professional bondsman or an insurer.

Section 7 requires a bondsman to provide a written receipt for collateral or security received by a bail bondsman. It specifies the information that must be included on the receipt.

Section 8 relates to the financial responsibility of a bondsman. A deposit with the Commissioner is required of at least one-tenth of the value of all bonds undertaken and written is required unless the security is real estate. In no event is the deposit to be less than \$10,000. If real estate is the security the aggregate amount of the bonds written cannot exceed five times the assessed value of the real estate. There are provisions to apply to the Commissioner to increase the limit. The Commissioner also has the authority to decrease the limit if the bondsman has demonstrated financial irresponsibility. Additional provisions provide for joint writing of bonds, a power or attorney to allow the sale or transfer of the security, notice requirements to the Commissioner should the value of the security decrease, a provision to deny a license renewal if a bondsman has not complied with or cured a deficiency, and provisions for return of a license if the bondsman discontinues writing bonds.

Section 9 requires all cash securities be held in trust by the Commissioner in a separate account with the State Treasurer. The Commissioner may use the security to satisfy the liabilities of a professional bondsman on bail bonds.

Section 10 sets out provisions for discontinuance of writing bonds and the ability to provide for a substitute bondsman to perform the duties on outstanding bond obligations. The rule sets out the information that is required in a contract for transfer of the business should a substitute bondsman be retained.

Section 11 provides that a license issued by the Commissioner may be suspended or revoked following notice and a hearing for certain specified circumstances. If a license is suspended or revoked, the bondsman remains liable for any bond outstanding at the time of the suspension or revocation. The Commissioner also has the authority to impose a civil penalty of not more than \$100 per occurrence.

Section 12 requires a bondsman who files for bankruptcy protection to place the Commissioner on notice within five working days. Failure to do so results in an automatic suspension of a license pending an investigation and hearing.

Section 13 states that the Commissioner may visit any bondsman and examine his or her relevant records.

Section 15 requires reporting to the Commissioner on the financial responsibility of a bondsman. An insurer is required to file an annual report listing all surety bondmen. The Commissioner is required to be notified of an insurer who appoints a surety bondsman, as well of any termination of a surety bondsman.

Lottery Commission – West Virginia Lottery State Lottery Rules, 179 CSR 01

This rule amends a current legislative rule through which the State Lottery Commission (“Commission”) and the Lottery Director (“Director”) administer lottery games, such as instant tickets, draw games, Powerball, etc. Many of the amendments in the rule implement the new system of “iLottery” through which the Commission will offer and administer the playing of lottery games over the internet.

Section 2 revises definitions by adding definitions for “Dormant account,” “iLottery,” “Mutli-factor authentication,” “Personally identifiable information,” “Special Licensed Retailer,” and “Vendor of record.” Several other definitions are deleted as no longer necessary.

Section 3 updates the manner in which the bank accounts of agents and retailers that sell lottery products may be swept to include ACH transfers and provides for the payment of lottery prizes by EFT or ACH transfer.

Section 4 permits Special Licensed Retailers providing iLottery sales to engage in business solely as a licensed lottery retailer, removes conviction of a crime “involving moral turpitude” as a disqualifying event for licensees, removes the prohibition against the credit card sale of lottery tickets, requires the recordation of the transfer of lottery tickets between individual stores in the same chain, allows agents and retailers to set a minimum amount for debit or credit card transactions, but does not allow a single transaction for the purchase of lottery tickets to exceed \$200, and increases license renewal fees from \$5 to \$25.

Section 5, relating to instant games, increases the maximum price of an instant lottery game from \$20 to \$50, allows selected retailers approved by the commission to redeem instant lottery tickets for a prize of \$600 to \$5,000 (other retailers may only redeem instant tickets for \$600 or less), and allows all retailer redemptions to be made by fund transfer or by credit to an established iLottery account, and revises certain validation requirements for a lottery ticket.

Section 6, related to draw games, allows all redemptions of draw game lottery tickets to be made by fund transfer or by credit to an established iLottery account. It removes the requirement that all draw game drawings be broadcast live on television if facilities for the broadcasts are available and operational, removes the requirement that following an error in drawing, the winning combination must be provided to the media for dissemination to the public. It also allows a lottery sales agent to pay prizes not only by check or money order, but also by bank issued credit or debit card or in another manner approved by the Commission.

Section 7 allows winners to claim the prize using their mobile devices.

Section 10 is new and includes provisions that require that gaming systems used by Special Licensed Retailers include a geolocation system in order to prevent unauthorized use of iLottery when a patron is not within the boundaries of the State of West Virginia. It also provides that any amounts in an iLottery account are subject to the Unclaimed Property Act if there is no patron initiated activity for a period of sixteen months.

An additional change to the rule removes the use of the terms keno, travel, instant ticket, on-line ticket, on-line game, on-line terminal – all these concepts are now subsumed into the concept of “draw games.” The rule also clarifies throughout the rule that all tickets are “lottery tickets.”

Lottery Commission – West Virginia Lottery Limited Video Lottery Rules, 179 CSR 05

The rule amends a current legislative rule through which the State Commission and the Director administer the operation and playing of video lottery games in adult-restricted facilities or rooms, known as “Limited Video Lottery.” Many of them implement recent statutory changes enacted since these rules were last amended in 2017, and update the rule to match industry standards.

Section 2 revises definitions by authorizing social media as an approved platform for advertising. It eliminates the definition of the term “Filed timely personal income tax returns” which was used for purposes of determining a state resident. A state’s requirement that a licensee meet certain minimum period of state residency to qualify for licensure (“duration of state residency”) was ruled unconstitutional by the US Supreme Court in a case involving licensure in Tennessee. The requirement was removed from West Virginia’s statute by Senate Bill 610 from the 2020 Regular Legislative Session. Finally, the definition of “licensed limited video lottery location approved by the commission” in accordance with statutory changes made by House Bill 4760 in the 2020 Regular Legislative Session to make the standard distance required between video lottery retailer locations consistent with the standard distance between private club licensees and clarifies that authorized truck stops may be authorized locations.

Subsection 3.2, which requires that each operator and licensee must meet certain minimum period of state residency to qualify for licensure has been deleted.

Section 11 increases the maximum single game wager from \$2 to \$5 in accordance with statutory changes made by House Bill 2191 during the 2019 Regular Legislative Session.

Section 16 increases the maximum allowable video lottery terminals per location to ten for all video lottery retailer applicants in accordance with statutory changes made by House Bill 3308 during the 2021 Regular Legislative Session.

Section 17 eliminates requirements that includes the State Auditor in the State Lottery Commission’s permit bidding processes in accordance with statutory changes made by House Bill 4410 during the 2018 Regular Legislative Session. These bidding processes will continue to be administered by the Purchasing Division of the Department of Administration. It also increases the maximum allowable video lottery terminals per location to ten for all video lottery retailer applicants in accordance with statutory changes made by House Bill 3308 during the 2021 Regular Legislative Session.

Section 18 requires the Commission to give a priority preference to allow current permit holders, for all bids conducted after June 30, 2011, to acquire permits which are held by those permit holders at the minimum stated bid price before those permits are made available for bid to other applicants in accordance with statutory changes made by House Bill 4647 during the 2020 Regular Legislative Session.

Section 33 removes the prohibition on conducting advertising by a video lottery terminal operator and modifies limitations on advertising by video lottery retailers, in accordance with House Bill 2507 during the 2021 Regular Legislative Session.

Section 36 provides new language governing permits that are issued prior to, but expire before, July 1, 2031.

Racing Commission – Thoroughbred Racing, 178 CSR 01

The rule amends a current legislative rule that regulates all aspects of thoroughbred racing in West Virginia. Subdivision 10.3.c. has been amended to allow for purse release agreements which provide for purse distribution after the official end of each race and before post-race tests have cleared with the laboratory or laboratories under certain circumstances and conditions.

Racing Commission – Pari-Mutuel Wagering, 178 CSR 05

The rule adds a 5-year sunset provision.

State Tax Department – Valuation of Producing and Reserve Oil, Natural Gas Liquids, and Natural Gas for Ad Valorem Property Tax Purposes, 110-01J

This rule was not authorized by the Legislative Rule-Making Review Committee. It set the method and process for how the Tax Department calculates the property taxes for producing and reserve oil, natural gas liquids, and natural gas.

State Tax Department – West Virginia Tax Credit for Federal Excise Tax Imposed Upon Small Arms and Ammunition Manufacturers, 110 CSR 13KK

This a new rule that implements the provisions of House Bill 2499 which passed during the 2021 Regular Legislative Session.

The rule establishes the amount of the credit pursuant to the limits set forth in the authorizing statute. The credit is permitted to a taxpayer against a portion of state taxes attributable to investing in a new or expanded small arms and ammunition manufacturing facility in West Virginia. That investment must equal or exceed \$2,000,000. This credit must be continuously maintained in every operational year for a 10-year period. The credit amount is capped at 100% of the federal excise tax amount payable to the United State Government.

The credit is first applied to corporate net income taxes. If the corporate net income due by a taxpayer is not solely attributable to an investment in small arms and ammunition manufacturing, then the rule sets out a formula to determine the amount of the credit.

If the taxpayer is a small business corporation, a partnership, a limited liability company treated as a partnership for federal taxation purposes, or a sole proprietorship, then any unused portion of the credit may be applied toward personal income taxes. The credit is allocated among partners and members in the same manner as profits and losses for a taxable year. If the personal income due by a taxpayer is not solely attributable to an investment in small arms and ammunition manufacturing, then the rule sets out a formula to determine the amount of the credit.

If the formulas set out in the rule do not fairly represent the taxes attributable to a qualified investment, then the Tax Commissioner has the ability to request additional information.

Any unused portion of the credit may be carried forward until the expiration of the tenth year. If any credit remains after the tenth year, it is forfeited.

To determine a qualified investment, the rule tracks the statute. It is set as a percentage of the cost of each property purchased or leased of the new, or expansion or an existing, small arms and ammunition manufacturing facility. The percentage is determined by a table set out in the rule.

Useful life is determined as of the date the property is first placed into service. The cost of each property is determined by examining trade-ins, damaged, destroyed, or stolen property, rental property, self-constructed property; and transferred property.

If the property is disposed of or ceases to be used as a small arms and ammunition manufacturing facility or if there is a cessation of operation of a small arms and ammunition manufacturing facility, then any unused portion of the credit is forfeited. There is an exception if the property is damaged or destroyed by fire, flood, storm or other casualty, or is stolen. A change in the form of the business or a transfer or sale to a successor are permissible as long the property continues to operate as a small arms and ammunition manufacturing facility. A successor business or new owner may claim any unused portion of the credit.

There are record keeping requirements with specific data elements that a taxpayer must retain to establish that a property qualifies for the credit. The rule provides consequences for not keeping proper records impacting the taxpayer's ability to claim the credit and in which tax year the credit is applicable. There is also a process that places the burden of proof on the taxpayer to prove an investment qualifies for the credit. No credit is allowed until the taxpayers makes a written application for allowance of the credit to the Commissioner.

The Tax Commissioner is required, every five years beginning February 1, 2026, to file a report with the Governor and the presiding officer of both houses of the Legislature to evaluate the cost effectiveness of the credit.

A second report is required from the Department of Commerce in consultation with the Tax Commissioner, the Department of Transportation, the Department of Environmental Protection on the economic impact of the credit.

Final provisions of the rule provide for administration of the credit by the West Virginia Tax Procedure and Administration Act and crimes and penalties set out in the West Virginia Tax Crimes and Penalties Act are applicable to this credit. There is a severability clause that tracks the statute and an effective date of property placed into service after July 1, 2021.

State Tax Department – Sales Tax Holiday, 110 CSR 15F

This new rule implements the provisions of WV Code §11-15A-9s, newly created in House Bill 206 during the 2019 1st Extraordinary Session, that established a four-day sales tax holiday each August after July 1, 2021, consisting of “the first Sunday of August, the previous Friday and Saturday and the following Monday.” The act establishes that purchases during these four days of certain clothing with a purchase price of \$125 or less; certain school supplies with a purchase price of \$50 or less; certain school instruction material with a purchase price of \$20 or less; certain laptop and tablet computers that are not purchased for use in a trade or business and with a purchase price of \$500 or less; and certain sports equipment that is not purchased for use in a trade or business and with a purchase price of \$150 or less are exempt from the sales tax.

The first sales tax holiday occurred this year under the guidance of the State Tax Division's Emergency Rule authorized by the Act. The legislative rule is not substantively different from the emergency rule in effect since June 7, 2021. The rule provides: definitions; language governing items normally sold as a unit; language governing sales of “buy one, get one free or for a reduced price”; language governing exchanges and returns; coupons and discounts; gift certificates; layaway sales; mail, telephone, e-mail, and internet orders and custom orders; rain checks; rebates; repairs and alternations; refunds; shipping and handling charges; record keeping and reporting; and exceptions.

State Tax Department – Exemption for Repair, Remodeling and Maintenance of an Aircraft, 110 CSR 15L

This rule is new. The rule is promulgated to comply with the provisions of Senate Bill 305 which passed during the 2021 Regular Session of the Legislature. That bill authorized both an emergency and a legislative rule. It creates a tax exemption from the Consumer Sales and Service Tax for:

- Services including aircraft repair, remodeling, and maintenance services for an aircraft;
- Services including repair, remodeling, and maintenance services for an engine or other component of an aircraft;
- Sales of tangible personal property that, as part of a repair, remodel, or maintenance, is permanently affixed or attached as a component part of an aircraft; and
- Sales of machinery or tools used or consumed directly and exclusively for repair, remodeling, and maintenance services for an aircraft or engine or other component of an aircraft.

The rule provides that the Consumer Sales and Service tax and the Use Tax exemption applies to:

- Machinery, tools, or equipment directly used or consumed exclusively of the repair, remodel, or maintenance of an aircraft, its engine, or other aircraft component.
- Machinery, tools, or equipment physically incorporated into the finished aircraft, its engine or component parts.
- Machinery, tools, or equipment used exclusively for repairing, remodeling, or maintaining aircraft.
- Machinery, tools, equipment used exclusively for repairing, remodeling, or maintaining aircraft that also qualifies for the exemption under West Virginia Code §11-15-9(a)(33). That section contains a similar exemption for aircraft operated by a certified or licensed carrier or a government entity.

There is a process for claiming the exemption set forth in the rule. A taxpayer may pay the vendor and then apply for a refund. The taxpayer would then file a claim for refund or credit on a form provided by the Commissioner. Alternatively, the taxpayer may provide the vendor his or her direct pay permit. The third and final option is for the taxpayer to file a claim and execute a certificate of exemption on a form provided by the Commissioner and deliver this to the vendor. A taxpayer using an exemption certificate must have a valid Business Registration Certificate and complete an exemption certificate.

The rule has provisions for the Commissioner to render an exemption void due to fraud, error, deficient or incomplete records or documentation, failure to retain records, or acceptance or use of an exemption certificate in bad faith. The Commissioner also has investigative powers pursuant to the Procedures and Administration Act set forth in West Virginia Code §11-10-1 et seq.

Finally, the rule has record keeping requirements allowing the Commissioner the ability to verify a vendor or retailer's taxable and nontaxable sales in the case of an audit.

State Tax Department – Vendor Absorption or Assumption of Sales and Use Tax, 110 CSR 15M

This rule is new and implements the provisions of Senate Bill 661 during the 2021 Regular Legislative Session. The rule allows retailers to advertise or state to their customers that the sales or use tax or any part of such tax due on a purchase made by the customer will be assumed or absorbed by the retailer, or will not be added to the sales price, or if added, that it will be refunded, if the vendor: (1) separately states the selling price and the full amount of the tax imposed on the sale; and (2) remits the full amount of the tax with the return that covers the period when the sale occurred.

The rule provides requirements for absorbing or assuming the tax during and following a sales transaction; identifies the taxpayers in the transaction; outlines who may apply for refunds of a remitted

tax; applies these provisions to the municipal sales and use tax; and the special district excise tax (sales tax increment financing); and does not allow absorbing or assuming the sales tax on motor vehicles or motor fuel.

State Tax Department – On-line Bingo and Raffles, 110 CSR 16A

The rule is new and implements the provisions of Senate Bill 263 during the 2021 Regular Legislative Session. The rule allows state-regulated games of charitable bingo and charitable raffles to be offered over the Internet. Charitable bingo and charitable raffles are otherwise regulated through 110 CSR 16 and 110 CSR 35, respectively, which are not proposed for amendment. This rule addresses the playing of those games over the Internet, including: definitions, including but not limited to, definitions for “on-line bingo” and “on-line raffle”; licenses for on-line bingo and raffles; requiring any licensee conducting on-line bingo or on-line raffle to use a geolocation system in order to prevent unauthorized use of an on-line gaming system when a patron is not within the boundaries of the State of West Virginia; requiring licensees to have a positive age-verification system to ensure that no individual under the age of eighteen may participate in the playing of any bingo game; addressing sales of bingo cards and raffle tickets; limiting the frequency and duration of bingo occasions; providing restrictions on use of bingo and raffle equipment and on expenses for the conduct of on-line games; limiting the value of bingo prizes awarded, and the types of bingo or raffle prizes; and imposing statutory penalties for violations upon violations of the rule.

State Tax Department – Corporation Net Income Tax, 110 CSR 24

This is a new rule that implements the provisions of House Bill 2026 passed during the 2021 Regular Legislative Session. That bill changes existing law that determines the apportionment of business income earned in more than one state under state corporate net income tax law, all beginning January 1, 2022. Popular descriptions of the specific areas of change proposed by the bill related to this rule are (1) Sales Factor and Elimination of the Throw-Out Rule; and (2) Market-Based Sourcing, each more specifically summarized as follows:

- **Single Sales Factor: §11-24-7.** This section was amended so that when determining how much of a corporation’s total business activity in all states will be subject to West Virginia corporate net income tax, the corporation’s property and payroll will no longer be considered and the corporation’s sales will no longer be double-weighted. The bill provides that only a portion of a corporation’s sales will be taxed. That portion will be determined using a single-sales ratio of sales in this state over sales in all states, multiplied by the corporation’s federal adjusted taxable income.
- **Throw-Out Rule Elimination.** When determining the portion of the corporation’s sales that will be taxed using a single-sales ratio of sales in this state over sales in all states, multiplied by the corporation’s federal adjusted taxable income, the bill’s elimination of the “throw-out” rule will allow corporations to include in the denominator of the single-sales ratio the corporation’s sales that were not taxed in other states. Current West Virginia law “throws out” these sales that are not taxed in other states, but the bill will reduce the corporation’s taxes by eliminating what is popularly known as the “throw-out” rule.
- **Market-Based Sourcing.** Taxation of a corporation’s sales of services and intangible personal property will be attributed to income derived from where the service or property was delivered, not where the activity that generated the sale occurred, when determining the proportion of the corporation’s sales to be taxed by West Virginia.

The changes amend the existing rule administering corporate income taxation in this state to incorporate the changes made by House Bill 2026. The primary amendments are made in the following sections:

Section 6 provides a new section for “Allocation And Apportionment for Tax Years beginning on and after January 1, 2022.”

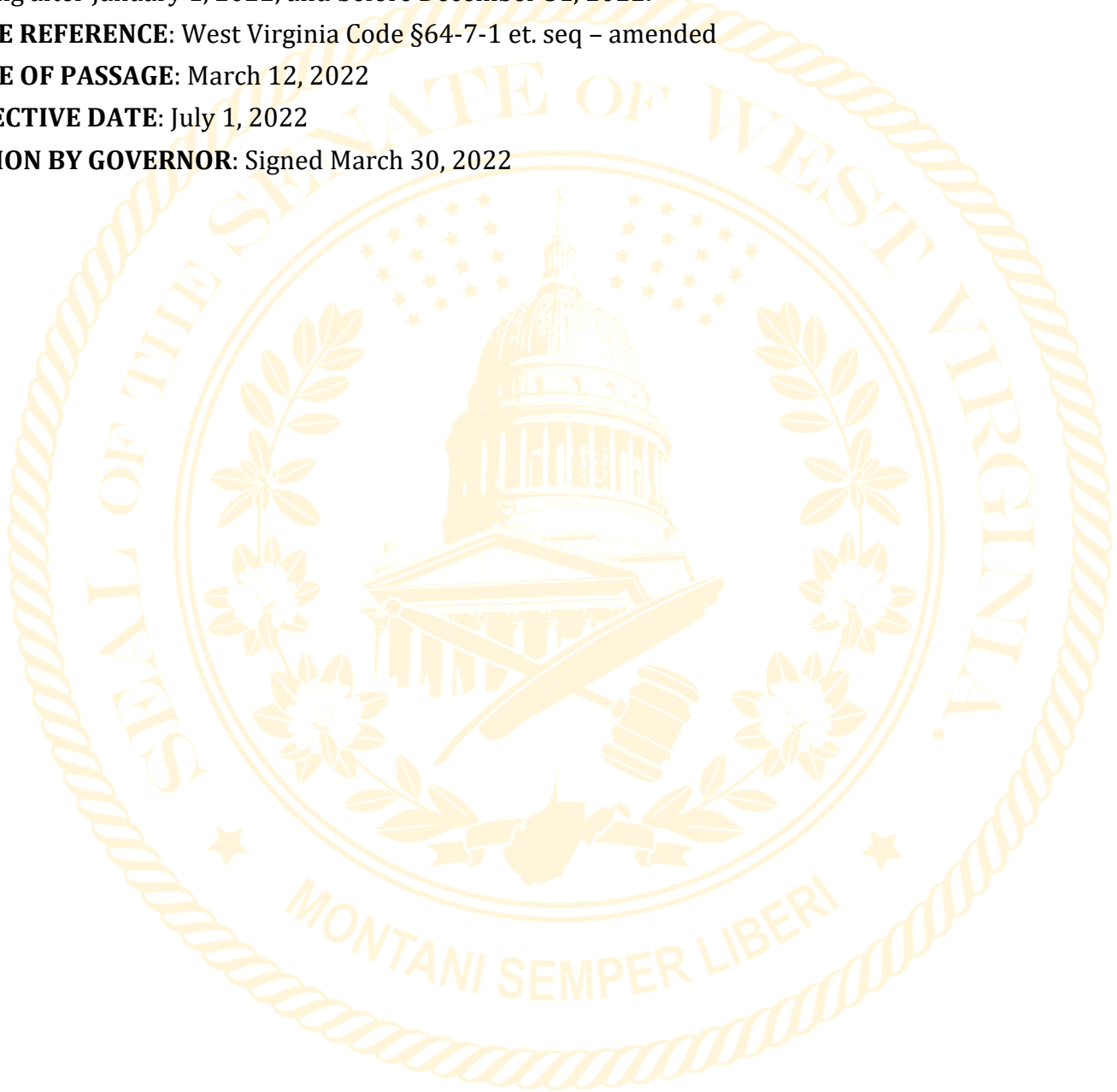
Section 6a provides a new section for “Transition Rules for C corporations having a fiscal tax year ending after January 1, 2022, and before December 31, 2022.”

CODE REFERENCE: West Virginia Code §64-7-1 et. seq – amended

DATE OF PASSAGE: March 12, 2022

EFFECTIVE DATE: July 1, 2022

ACTION BY GOVERNOR: Signed March 30, 2022



Senate Bill 334

Authorizing miscellaneous agencies and boards to promulgate rules

The strike and insert amendment for the committee substitute for Senate Bill 334 contains 75 rules and is known as bundle 9, the miscellaneous bundle.

Commissioner of Agriculture – Feeding of Untreated Garbage to Swine, 61CSR 01A

The rule removes the \$5 fee for a swine garbage feeding permit. The fee which was in the statute was removed in Enrolled Committee Substitute for House Bill 2633, which passed during the 2021 Regular Legislative Session.

Commissioner of Agriculture – Commercial Feed, 61 CSR 05

The rule amends a current legislative rule. The following is a synopsis of the substantive amendments:

- §61-5-2. Incorporation by Reference.

This section has been amended to update references to federal regulations that are incorporated by reference into the rule.

- §61-5-5. Permits; Registration.

A new subsection 5.3 relating to a commercial feed guarantor permit requires any person whose name appears on the label of commercial feed or customer-formula feed, except for a person who has a Commercial Feed Manufacturing Permit, to complete an application for each manufacturing facility or location distributing feed in or into the state. It specifies information which must be contained in the application.

Subsection 5.4 has been amended to relate specifically to the annual registration of pet food and pet food products as opposed to commercial feed.

- §61-5-7. Labeling.

A new paragraph 7.1.b.10. sets forth labeling requirements for commercial feed which consists of raw milk. Neutral Detergent Fiber has been added to the sequence of ingredients listed in the nutritional guarantee.

- §61-5-8. Expression of Guarantees.

A new subdivision 8.3.h. allows products labeled with a quantity statement to state vitamin guarantees in milligrams per unit consistent with the quantity statements and direction for use.

Subsection 8.9 is new. It contains requirements for guarantees for dietary starch, sugars, and fructans.

- §61-5-10. Ingredients.

A new subsection 10.8 requires that each ingredient be listed in the ingredient statement on the label unless it meets the criteria for an incidental ingredient.

- §61-5-11. Directions for Use and Precautionary statements.

A new subsection 11.4. requires raw milk distributed as commercial feed to contain a statement warning that it is not for human consumption, has not been pasteurized, and may contain harmful bacteria.

- §61-5-12. Non-Protein Nitrogen.

A new subsection 12.4. provides that feeding or use directions for those feeds in which more than 50% of the protein content is derived from non-protein nitrogen sources should include recommendations regarding adequate supplies of drinking water, sources of energy, forages being fed, minerals, adaptation periods and stress conditions when necessary.

- §61-5-14. Adulteration.

This section defines “poisonous” or “deleterious” substances. Raw leather residue from tanning or leather manufacturing is included within this definition.

- §61-5-17. Enforcement Policy.

The rule removes language allowing the Commissioner, for a first or second violation, where a commercial feed sample does not conform to the requirements of the law and the rule, to issue an embargo order for the lot of commercial feed to the custodian of the lot sampled. Language has also been deleted which required the Commissioner to take additional samples from a different lot.

- §61-5-20. Penalties for Violative Samples.

This new section requires the Commissioner to assess a penalty each time a lot of commercial feed is found to be violative in the amount of 10% of the retail value of the lot of commercial feed with the minimum amount of the penalty being \$25. If after 15 days, the penalty has not been paid, the Commissioner is required to assess a late penalty of 10% of the violative penalty fee in addition to that fee.

Department of Agriculture – Enrichment of Flour and Bread Laws Regulations, 61 CSR 07

This rule is repealed. It has not been amended since 1946 and the provisions of the rule have been superseded.

Department of Agriculture – Fruits and Vegetables: Certification of Potatoes for Seedling Purposes, 61 CSR 08C

This rule is repealed. It has not been amended since 1946 and the language of the rule is out of date and has been superseded by multiple amendments to West Virginia seed law.

Department of Agriculture – Fresh Food Act, 61 CSR 10

The rule amends a current legislative rule regarding the Fresh Food Act, which was enacted in 2019. The Act requires state-funded institutions to purchase a minimum of five percent of their food from in-state producers.

The rule modifies definitions of certain terms for consistency and adds a definition of “processing.” It also makes several technical changes.

The rule makes three substantive changes to the existing rule. First, it clarifies that the requirements of the Act may not be satisfied by reselling foods produced or grown out of state that have been minimally processed in West Virginia. Second, it provides the Commissioner of Agriculture with guidance in exercising his or her authority to decide whether specific foods qualify as West Virginia foods under the Act. Finally, the rule expressly allows both state institutions and vendors of food products to seek guidance or assistance from the Department of Agriculture concerning whether certain foods qualify as West Virginia foods, without relieving either of the duty to comply with the Act.

Department of Agriculture - Auctioneers, 61 CSR 11B

The rule amends a current legislative rule. It adds a requirement that licensed auctioneers maintain updated contact information with the department. The rule also mandates that continuing education providers obtain approval of their courses in advance. Prior approval was previously recommended, but not required. It eliminates an exemption from continuing education requirements for auctioneers who have not conducted any auctions in the preceding 12 months.

The rule raises the fee for initial licensure, licensure by reciprocity, and renewal from \$50 to \$100 annually. It also shortens the grace period before a late fee of \$50 applies from 120 days to 60 days, reduces from 180 to 90 days the period before an enhanced late fee of \$75 applies, and adds an additional late fee of \$100 if the renewal is received more than 120 days after license expiration.

Department of Agriculture - Hemp Products, 61 CSR 30

The rule amends a current legislative rule. The rule adds and modifies definitions of terms and alters the registration process for hemp products and for the sale of those products. All hemp products must be registered with the department annually, by January 1. Beginning January 1, 2022, the registration fee will be reduced to \$100 (from \$200) for hemp products grown, harvested, and manufactured in West Virginia. On that same date, the cap on the product registration fee per registrant drops from \$1,000 to \$500 for West Virginia products. The rule also slightly modifies the requirements for registration to sell hemp products in the state, by exempting retailers who sell only GRAS products.

The rule modifies labeling requirements, most significantly by requiring that any product containing more than 0.3 percent tetrahydrocannabinols declare on the label that the product is not intended for sale to persons under the age of 18.

Specific containment limits for pesticides, toxic metals, and foreign materials are established in the rule. The rule also amends the scope of second and subsequent offense penalties by reducing the window for those offenses to within one year rather than within five years as stated in the current rule.

Department of Agriculture - Livestock Care Standards, 61 CSR 31

The rule is new. The previous rule was repealed by Committee Substitute for House Bill 2219 during the 2017 Regular Legislative Session when it was determined the Commissioner did not have the authority to promulgate the rule. The authority rested with the Livestock Care Standards Board. Committee Substitute for House Bill 2633 which passed during the 2021 Regular Legislative Session gives the Commissioner the authority, in consultation with the Board, to establish the standards through legislative rule. The following is a section-by-section synopsis of the rule.

- §61-31-1. General.

This is the standard general section.

- §61-31-2. Definitions.

This section defines the following terms: ambulatory disabled; best management practices; biologicals; bio-security; body condition score; captive cervid farming facility; cattle; cervid; Coggins; Commissioner; Department; distress; emergency situation; Equine; euthanasia; general quarantine; handling; Henneke body score; herd or flock; licensed and accredited veterinarian; livestock; non-ambulatory disabled; pharmaceuticals; poultry; quarantine; responsible party; responsible law enforcement officer; shelter; small ruminants; soring; swine; vaccination; vaccine; valid veterinarian; and veal.

- §61-31-3. Addressing complaints regarding inhumane treatment of livestock.

The county sheriff, humane officer, county commission, or other designated county authority is responsible for investigating and taking action in response to a complaint of inhuman treatment of animals or livestock. It allows any law enforcement officer to request assistance from the Department and an opinion from the Commissioner on the application of this rule. Any documentation or communication regarding a complaint or investigation is confidential and exempt from disclosure under the West Virginia Freedom of Information Act.

- §61-31-4. Feed, water and ventilation.

This section requires a responsible party to provide its livestock with adequate feed, water, and ventilation appropriate for the age, use, and stage of production of the livestock, and weather conditions. Feed and water may be withheld under specified conditions.

- §61-31-5. Space.

A responsible party must have sufficient space for its livestock whether in an enclosure, an outdoor lot or pasture or an indoor facility.

- §61-31-6. Health care.

The responsible party is required to maintain healthy livestock through immunizations, vaccinations, pharmaceuticals, biologicals and prescriptions and extra-label medications.

- §61-31-7. Preparing animals for exhibition.

This section requires the responsible party to train, fit, and restrain livestock for exhibition in a manner that minimizes the risk of injury.

- §61-31-8. Livestock handling.

Under this section, the responsible party is required to handle livestock and load or unload livestock in a manner that minimizes the risk to injury to the livestock.

- §61-31-9. Transportation.

This section requires that livestock be able to stand in their natural position or resting position and poultry must have sufficient floor space to rest or perch. The livestock must be reasonably protected from the weather. Transporters are required to stop every 28 hours to unload and provide food, water, and rest for at least five consecutive hours, unless the transportation vehicle allows the livestock to lay down and rest and have access to feed and water.

- §61-31-10. Handling of disabled livestock.

Under this section the responsible party is required to protect ambulatory disabled, non-ambulatory disabled, and distressed livestock from other animals, predators, and weather extremes. It provides feeding, watering, and handling requirements. It requires a responsible party to euthanize livestock in severe distress with an irreversible condition.

- §61-31-11. Bio-security.

This section allows a responsible party to enforce bio-security protocols and limit public access to farms, as well as use animal, devices, or fencing for animal control.

- §61-31-12. Exemptions.

This section states that the rule does not apply during emergencies or limit or prevent a veterinarian from providing necessary care to an animal.

- §61-31-13. Standards of care for beef cattle, bison and veal.

This section contains requirements for feeding veal calves, body scoring evaluations, space for calving, sheltering systems, and authorized practices.

- §61-31-14. Standards of care for dairy cattle.

This section contains requirements for facilities, body scoring, feeding and authorized practices.

- §61-31-15. Standards of care for equine.

This section contains requirements for water, feed, weight and body condition, space, and authorized practices. Soring is prohibited.

- §61-31-16. Standards of care for small ruminants.

This section contains requirements for body scoring and authorized practices for Ovine, Caprine, and camelids.

- §61-31-17. Standards of care concerning swine.

This section contains requirements for body scoring, transportation, and authorized practices.

- §61-31-18. Standards of care concerning poultry.

This section contains requirements for stocking densities euthanasia or depopulation, and authorized practices.

- §61-31-19. Standards of care concerning captive cervids.

This section references the Department's rule on captive cervid farming and contains body scoring requirements.

- §61-31-20. Animal morbidity and mortality data.

This section states that animal morbidity and mortality data is referenced in the USDA FSA West Virginia Livestock Mortality Rates.

- §61-31-21. Penalties.

Persons violating this rule are subject to the penalties in the statute.

Department of Agriculture – Rural Rehabilitation Program, 61 CSR 33

The rule amends a current legislative rule relating to the Rural Rehabilitation Loan Program, which is a loan program administered by the Department of Agriculture to promote the investment in the State's agricultural industry, primarily assisting farmers.

The rule largely clarifies that the authority to administer the program rests with the commissioner, and not the loan committee. The rule also allows the commissioner to waive the five-year requirement before refinancing a loan in situations where a declared state of emergency has impacted or will likely impact the loan holder's ability to stay in good standing on the loan.

Department of Agriculture – Farm to Food Bank Tax Credit, 61 CSR 36

The rule amends a current legislative rule that relates to the Farm to Food Bank Tax Credit program. In brief, the program allocates tax credits to farmers who donate edible agricultural products to qualified food banks. The sole amendment to the existing rule is to increase the amount of the tax credit from 10 percent of the value of the donated products to 30 percent of that value. The rule limits the total value of the tax credits allowed to a single taxpayer to no more than \$2,500 during a taxable year. The program itself is capped at \$200,000 in tax credits in a fiscal year.

Department of Agriculture – Farmers Markets, 61 CSR 38

The rule amends a current legislative rule concerning farmers’ markets. The amendments reflect passage of the Farm Bill, House Bill 2633, during 2021 Regular Legislative Session. The amendments to the existing rule mirror the provisions of the Farm Bill relating to farmers’ markets. They update, simplify, and consolidate terms, including eliminating use of the term “cottage foods”. The amendments also reorganize requirements for registration of farmers’ markets, vendor permits, and existing provisions regarding the role of local health departments in regulating farmers’ markets. One of the primary goals of the Farm Bill was to shift regulation of farmers markets to the department rather than to local health departments. To that end, the rule exempts farmers’ markets, except for consignment farmers’ markets, and all farmers’ market vendors from local health department food establishment permitting requirements. Farmers’ markets must instead register with the department and vendors, depending on the type of food they sell, must obtain permits from the department. The rule requires vendors of potentially hazardous foods to obtain a permit from the department; vendors of non-potentially hazardous foods are exempt from the permit requirement.

Local health department inspection and testing is limited by the rule, and even where authorized, is to be made jointly or the results shared with the department. Enforcement of federal regulations concerning farm and food products sold at farmers’ markets lies solely with the department.

Finally, the rule extensively revises the labeling requirements applicable to food products sold directly to consumers.

Department of Agriculture – Seed Certification, 61 CSR 39

The rule amends a current legislative rule. Section 38 related to certification fees has been amended to remove the table setting forth fees specifically related to hemp. Instead, it sets forth the following general fees: Application fee for seed certification - \$35, with a \$50 late fee; inspection and sampling fee - \$35 per hour plus mileage; and a production fee, including tagging - \$0.15 per tag with a \$15 minimum. A fee has been added for the winter test for seed potatoes of \$50 per lot.

Section 45 which currently relates to certification standards for all other crops has been amended to relate to seed potato certification standards. It defines terms and provides for seed classification. It sets forth requirements for seed stock eligibility, land field isolation, field inspection, post-harvesting testing, Potato Virus X testing, Bacterial Ring Rot testing, pre-nuclear class production, nuclear class production, storage facilities, and grade.

State Auditor – Procedure for Local Levying Bodies to Apply for Permission to Extend Time to Meet as Levying Body, 155 CSR 08

The rule extends its sunset date to August 1, 2027.

State Auditor – Accountability Requirements for State Funds and Grants, 155 CSR 09

The rule is new. It implements the provisions of Enrolled Committee Substitute for House Bill 2573, which passed April 10, 2021. The following is a synopsis of the substantive amendments in the rule.

- §155-9-2. Definitions.

For the most part, this section contains the definitions set forth in the Code. The Code definitions for the terms “Report” and “State Grant” have been expanded. Definitions, not in the Code, have been added for “Agreed upon procedures engagement”, “Examination engagement”, and “Receipts”.

- §155-9-3. Reports of the Disbursement of State Grants.

This section contains the statutory requirement for the filing of reports by a grantee who receives \$50,000 or more in the aggregate in a fiscal year. It also provides for the contents of the reports, the procedures for filing when a grantee receives more than one grant, the filing procedure where the fiscal year of the grantee is different than State's fiscal year, reports submitted prior to the effective date of the rule, and inclusion of the reports with the grantee's annual financial statements.

- §155-9-4. Audit Reports for Funds.

This section authorizes a grantee, in lieu of a report, to file an audit performed by an independent CPA in accordance with OMB standards which includes a schedule of state grant receipts and expenditures, as well as an auditor's opinion on whether the schedule is fairly stated in relation to the financial statements taken as a whole or an audit complying with OMB standards which includes a schedule of state grant receipts and expenditures, as well as an auditor's opinion on whether the schedule is fairly stated in relation to the financial statements taken as a whole. The CPA performing an audit must maintain all audit work papers for five years following the date of issuance of the audit report.

- §155-9-5. Sworn Statements of Expenditures Made Under Grants.

Under this section, any grantee who: receives state grants in the aggregate amount of less than \$50,000; is not required to file a report because an audit, meeting certain standards, has been conducted by a certified public accountant and a copy is available for public inspection; and is not required to file a report because an audit complying with OMB standards is substituted for the report, is to file a sworn notarized statement of expenditures for all applicable grants with the grantor and the State Auditor. It sets forth the minimum requirements for the sworn statement, including the form.

A senior representative of the grantee must sign the statement and swear or affirm that the amounts of the disbursements were expended as prescribed by statute. Any sworn statement submitted before the effective date of the rule is acceptable if it complies with the Code.

- §155-9-6. Debarment.

The Code provides that any grantee who fails to file a required report or sworn statement of expenditures for state grants within the required time is barred from subsequently receiving further state grants until the grantee comes into compliance with requirements of the rule. Under this section, the grantor is primarily responsible for making this determination and the State Auditor is responsible for administering the process. This section also has provisions regarding notice to the grantee, disputes regarding a proposed debarment, updating of the debarment list, and applications by a debarred grantee for federal funding assistance or other types of funding.

- §155-9-7. Grantor Reporting Requirements.

This section contains grantor reporting requirements. It requires a grantor to provide the information required by the Code and to notify each grantee of the reporting requirements contained in this section. It requires reporting requirements to be contained in a clause within the formal grant agreement, contractual document or grant award notification letter or in certain cases an ancillary communication. A grantor is required to provide notice to the State Auditor if a grantee fails to meet reporting requirements. The grantor must provide a copy of any report or sworn statement of expenditures containing deficiencies, violations, illegal acts, etc. to the State Auditor within 30 days of receipt.

- §155-9-8. Verification Process.

Under this section, a grantor, before awarding a state grant, is required to verify the person seeking the state grant is not barred from receiving the grant. It sets forth the verification process.

- §155-9-9. Stop Payment Procedures.

The Code requires that grantor agencies or the State Auditor are to issue stop payment orders for failure of a grantee to file required reports or keep appropriate records. This section sets forth the procedure for issuing stop payment orders, the information which must be contained on the order, the method of notifying the grantee, the circumstances under which an order may be temporarily or permanently lifted, and the manner of contesting the order.

- §155-9-10. Grant Funds Recovery Procedure.

This section basically contains the provisions of the statute regarding the recovery of any grant funds which have been misspent or are being improperly withheld.

- §155-9-11. Prohibited Political Activity.

This section basically contains the provisions of the statute regarding the use of grant funds for prohibited political activity.

- §155-9-12. Chief Accountability Officer.

This section contains the provisions of the statute regarding the requirement that each state grantor agency designate a chief accountability officer.

- §155-9-13. Conflict of Interest Provisions.

The statute requires the State Auditor to develop rules regarding conflict of interest. This section requires each state grantor agency to develop conflict of interest policies which are to be filed in writing with the State Auditor.

- §155-9-14. Legislative Reporting.

This section contains the provisions of the statute regarding required reporting by the State Auditor to the Joint Committee on Government and Finance.

West Virginia Board of Chiropractic Examiners – Chiropractic Telehealth Practice, 4 CSR 09

The rule is new. It applies to chiropractors licensed to practice in other jurisdictions who seek to provide limited interstate telehealth services in West Virginia.

The rule provides definitions for the terms Board, Health care practitioner, interstate telehealth, registration, and telehealth services.

The rule requires an applicant to submit registration on a board approved form, pay the appropriate fee, hold licenses in good standing in all states and not be or subject to an administrative complaint.

The rule provides that the registration expires on June 30th. It references the standard of care for licensure and incorporates the same. It states that registration does not authorize a physical office. A health care professional must notify the board of any restrictions immediately. Failure to comply with the rule is grounds for disciplinary action.

West Virginia Contractor Licensing Board – Contractor Licensing Act, 28 CSR 02

House Bill 2006, which became effective June 15, 2021, made the Contractor Licensing Board independent of the Division of Labor and moved the Contractor Licensing Act from chapter 21 of the West

Virginia Code to a new article in chapter 30 of the code, W. Va. Code §30-42-1 et seq. The rule changes citations to code throughout to reflect the Act's relocation to chapter 30.

The rule revises various definitions and adds several others. It strikes out definitions for certain specialty contractor classifications for which separate testing is no longer required, including asphalt contractors, drywall contractors, landscaping contractors, low voltage systems contractor, residential pools contractors, roofing contractors, and siding contractors. It eliminates definitions in the rule for contractor classifications that are defined in code.

Finally, several provisions in the rule, such as those relating to disciplinary powers of the Board are now in the Code and therefor deleted from the rule.

West Virginia Board of Examiners in Counseling – Licensing Rule, 27 CSR 01

The rule amends a current legislative rule. It has been amended to: allow payment of application fees by credit card; remove reference to similar degrees containing the word counseling as being an acceptable degree for licensure; and add a new section 17 relating to inactive status. Section 17 sets forth the documents which a licensee must submit to the Board when applying for inactive status, prohibits a licensee with an inactive license from practicing, exempts the licensee from the need for continuing education requirements, and requires 35 hours of continuing education in the two years preceding the licensee's application to return to active status.

West Virginia Board of Examiners in Counseling –Licensed Professional Counselors Fees Rule, 27 CSR 02

The rule amends a current legislative rule. It deletes the fees for a name change or duplicate license. It adds an Inactive Status application fee of \$50 and an Inactive Status renewal fee of \$25.

West Virginia Board of Examiners in Counseling – Marriage and Family Therapist Licensing Rule, 27 CSR 08

The rule amends a current legislative rule. It has been amended to allow payment of application fees by credit card and to add a new Section 16 relating to inactive status. Section 16 sets forth the documents which a licensee must submit to the Board when applying for inactive status, prohibits a licensee with an inactive license from practicing, exempts the licensee from the need for continuing education requirements, and requires 35 hours of continuing education in the 2 years preceding the licensee's application to return to active status.

West Virginia Board of Examiners in Counseling – Marriage and Family Therapist Fee Rule, 27 CSR 09

The rule amends a current legislative rule. It adds an Inactive Status application fee of \$50 and an Inactive Status renewal fee of \$25.

Dangerous Wild Animal Board – Dangerous Wild Animals, 74 CSR 01

The rule adds a 10-year sunset provision.

West Virginia Board of Dentistry – Rule for the West Virginia Board of Dentistry, 5 CSR 01

The rule amends a current legislative rule. The amendments allow the Board to issue a teaching permit to a person who is not licensed in this state who is a participant in a dental residency program located in this state.

The rule allows the Board to issue a dental intern permit, dental resident permit, or teaching permit to a foreign trained dentist who has been offered a position in an approved dental program in this state. It

also allows the Board to issue a dental license to an applicant trained in a foreign dental school who possesses a certification of a two year or more advanced general dentistry program from a U.S. or Canadian dental school accredited by the Commission on Dental Accreditation. Finally, it allows the Board to issue a dental license to an applicant trained in a foreign dental school who possesses a certification of a two year or more dental specialty advanced education training program from a dental school accredited by the Commission on Dental Accreditation. The applicant must apply for a general and specialty license and may only practice in the specialty in which he or she is licensed.

Language has been added to provide that the Board may revoke any permit for cause and that any permit expires at the end of one year or the date the teaching appointment ends, whichever comes first.

West Virginia Board of Dentistry – Formation and Approval of Professional Limited Liability Companies, 5 CSR 02

The rule amends a current legislative rule. It requires the Board to notify the Secretary of State when a professional limited liability company's certificate of authorization is no longer valid due to noncompliance or expiration of the certificate. It provides for reinstatement of a certificate that has been expired for more than 60 days or where the PLLC was in noncompliance. Finally, it states that the Board may file a complaint or take disciplinary action against a PLLC that does not comply with the law or the rule.

West Virginia Board of Dentistry – Formation and Approval of Dental Corporation and Dental Practice Ownership, 5 CSR 06

The rule amends a current legislative rule. It has been amended to require the Board to notify the Secretary of State when a dental corporation's certificate of authorization is no longer valid due to noncompliance or expiration of the certificate. It provides for reinstatement of a certificate that has been expired for more than 60 days or where the dental corporation was in noncompliance. Finally, it states that the Board may file a complaint or take disciplinary action against a dental corporation that does not comply with the law or the rule.

West Virginia Board of Dentistry Continuing Education Requirements, 5 CSR 11

The rule amends a current legislative rule. It provides that the Board may allow a licensee who does not provide proof of completion of the required continuing education to make up for the deficiency and allows the Board to assess a late fee.

A new Section 5 relates to continuing education requirements for a tele-dentistry registrant. It requires a dentist to complete the continuing education required by the state he or she is licensed in as well as three hours on drug diversion every two years. It requires a dental hygienist to complete the continuing education required by the state he or she is licensed in. The Board may randomly audit the continuing education records. A false statement on a renewal form or continuing education form is unprofessional conduct and subject the registrant to disciplinary action.

West Virginia Board of Dentistry – Administration of Anesthesia by Dentists, 5 CSR 12

The rule amends a current legislative rule. It requires a dentist applying for the permit to consent to an initial inspection of his or her facility, as well as re-inspections and requires the annual renewal of permits.

A new Section 8 relating to inspection and evaluation failures requires the Board to notify a dentist if his or her facility fails the initial or a subsequent inspection. After 30 days from receipt of the notice, the dentist may request a new inspection or a reevaluation. If the Board grants the request, the new inspection

or reevaluation must be scheduled within 90 days of receipt of the request and completed within 150 days of receipt of the request. A second failure results in the dentist's loss of the ability to administer any level of sedation requiring a permit for one year. The Board may recommend the dentist receive remedial training or complete continuing education prior to any future inspections or reevaluations. Finally, the Board has the authority to issue cease and desist orders.

West Virginia Board of Dentistry – Expanded Duties of Dental Hygienists and Dental Assistants, 5 CSR 13

The rule amends a current legislative rule. Section 4 relating to the expanded duties of dental assistants was amended to state that all duties requiring a board-approved course and examination require a certificate issued by the Board to perform those duties. The dental assistant must apply to the Board for the certificate and pay the required fee.

Section 5 related to expanded duties of dental hygienists has been amended to allow a hygienist to use a laser with a wavelength of no more than 1064 nanometers for certain specified procedures. Language that was added requires the hygienist to apply for a certificate to use a laser as well as for the administration of infiltration and block anesthesia and to pay the required fee. The amendments prohibit any person from using lasers under general supervision or a public health practice permit.

West Virginia Board of Dentistry – Tele-dentistry, 5 CSR 16

This is a new rule. The rule does the following: defines terms; sets forth registration requirements, provides for annual renewal and provides for reinstatement of an expired license; requires a dentist or dental hygienist to be licensed in this state; requires a bona fide practitioner-patient relationship between the dentist and the patient and sets forth the requirements for the existence of that relationship; requires a dentist to have written or electronic protocols and specifies what those protocols must include; sets forth information which the dentist or dental hygienist must obtain from the patient or provide to the patient; requires the dentist or dental hygienist to obtain the patient's informed consent for the tele-dentistry and specifies requirements for the informed consent; requires that the dentist or dental hygienist to ensure that any electronic or digital communication is secure to maintain patient confidentiality; requires the dentist or dental hygienist to maintain a patient dental record and specifies the contents of that record; prohibits a dentist from prescribing Schedule II drugs through tele-dentistry; and sets forth prohibitions.

West Virginia Board of Funeral Service Examiners – Fee Schedule, 6 CSR 07

The rule amends a current legislative rule. It increases the following initial fees:

- Main funeral home - \$500 to \$700;
- Branch funeral home - \$350 to \$550;
- Crematory - \$350 to \$500;
- Funeral Service licensee - \$160 to \$300;
- Apprentice license - \$175 to \$300;
- Crematory operator - \$120 to \$300;
- Courtesy card - \$300 to \$500; and
- Mortuary service - \$400 to \$700

It increases the following biennial renewal fees:

- Main funeral home - \$400 to \$600;
- Branch funeral home - \$275 to \$475;
- Crematory - \$350 to \$500;

- Funeral Service licensee - \$200 to \$400;
- Apprentice license - \$175 to \$250;
- Crematory operator - \$100 to \$300;
- Courtesy card - \$300 to \$500; and
- Mortuary service - \$400 to \$550.
- The fee for late renewal - \$150 to \$250 plus renewal fee.
- A reinstatement fee of \$350 plus renewal fee has been added.
- It increases the following reinspection fees:
 - Out of compliance inspection fee \$250 to \$350;
 - Missed appointment inspection fee (first occurrence) - \$250 to \$350;
 - Missed appointment inspection fee (subsequent occurrences) - \$300 to \$400;
 - Facility after undergoing renovations - \$250 to \$350;
 - Newly constructed or new owner - \$250 to \$350; and
 - Failure to renew license before reinstatement - \$300 to \$400.
- It increases or adds the following other fees:
 - Reactivation of Inactive license - \$10 to \$25;
 - State law examination - \$250 to \$300;
 - Law examination study packet - \$75 to \$100;
 - Apprentice handbook replacement - \$75 to \$100;
 - Reinstatement of crematory training provider - \$200 to \$300;
 - Reissuance of pocket card - \$25 to \$40;
 - Reciprocal license background check - \$25 to \$40;
 - List of licensees - \$150; and
 - License verification - \$30.

West Virginia Massage Therapy Licensure Board - General Provisions, 194 CSR 01

The rule sets a 10-year sunset date. The current rule requires a client to provide voluntary consent prior to a breast massage. The rule requires the client to provide a written medical directive to the massage therapist before the massage is performed. The massage therapist is required to place the directive in the client file and must also obtain written consent from the client prior to performing the massage. The massage is to be performed in accordance with the medical directive.

West Virginia Board of Medicine – Licensing and Disciplinary Procedures: Physicians, Podiatric Physicians and Surgeons, 11 CSR 01A

The rule amends a current legislative rule relating to licensure requirements and application requirements for allopathic physicians and podiatric physicians by the WV Board of Medicine.

The rule incorporates new definitions for licensee, practice credential or credential, and website. It updates the current rule in accordance with Senate Bill 372, which passed during 2021 Regular Legislative Session for approved types of postgraduate clinical training for graduates of medical schools located in Canada, the United States and Puerto Rico and for graduates of international medical schools.

The eliminates a reference to a discontinued portion of the United States Medical Licensing Examination SMLE licensing examination and incorporates new tests attempt limits imposed by the USMLE Composite Committee, the examination body for physicians. This eliminates the discrepancy between the Board's rule and the forthcoming four attempt limit set by the administering body.

Section 9 brings the rule into alignment with Senate Bill 372 with respect to temporary licensure, which clarifies that a temporary permit includes full prescriptive authority.

Section 11 includes modifications which clarify that the confidentiality provisions of the complaint and investigation process apply to all credential holders who are authorized to practice by the Board.

Section 12 includes modifications which clarify that the grounds for discipline and the types of disciplinary actions the Board may impose apply to all practitioners authorized by the Board. It provides that it is professional misconduct for a practitioner not only to exercise influence within the provider-patient relationship for purpose of engaging a patient in sexual activity, but that it is also professional misconduct to engage in sexual activity with a patient, or to sexually harass or exploit a patient. This section also allows the Board to require a practitioner to participate in a Board designated physician health program for drug or alcohol abuse as a condition of probation.

Section 13 adds that insurers shall report to the board whether credential holders also have professional liability insurance, not just licensees.

West Virginia Board of Medicine - Licensure, Practice Requirements, Disciplinary and Complaint Procedures, Continuing Education, Physicians, 11 CSR 01B

The rule amends a current legislative rule relating to physician assistants and to their licensing, practice, complaint procedures and professional discipline, and continuing education. During the 2021 session, the Legislature enacted Senate Bill 714 which updated the Physician Assistants Practice Act.

The rule provides a regulatory framework for the licensure, regulation, and discipline of physician assistants practicing in West Virginia who are licensed by the WVBM. It include qualifications for licensure as a physician assistant; requirements for licensure, renewal, reinstatement and reactivation of expired licenses; requirements for practice, including practice notifications and related fees; the extent to which physician assistants may practice in this state in collaboration with physicians; the responsibilities of collaborating practitioners; physician assistant prescriptive authority; continuing education requirements; professional conduct requirements for physician assistants; complaint, investigation, audit and disciplinary procedures; and denial of licensure and disciplinary penalties.

The rule updates the drug diversion training to include additional information developed by the Governor's Council on Substance Abuse Prevention and Treatment; allows the practice notification to include prescribing, dispensing, and administering of controlled substances, prescription drugs, or medical devices; allows a physician assistant to prescribe schedule II drugs for no more than a three day supply with no refills; and removes the requirement that the physician assistant have certification from the National Commission on Certification of Physician Assistants, but clarifies which title a certified PA may use.

With respect to practice requirements, new requirements are included that state the physician assistant may provide only those medical service for which they have been prepared by their education, training and experience and are competent to perform, consistent with sound medical practice and that will protect the health and safety of the patient. This may occur in any health care setting.

The rule provides that the physician assistant may not practice independent of a collaborating physician; must comply with applicable federal and state law governing the practice of physician assistants; and may practice in collaboration upon executing a practice notification.

The scope of practice is amended to reflect that the physician assistant can perform medical actions for which they have been trained and these acts include prescribing, dispensing, and administering controlled substances, prescription drugs, or medical devices.

West Virginia Board of Medicine – Board of Medicine Rules for Dispensing of Prescription Drugs by Practitioners, 11 CSR 05

The rule amends a current legislative rule which establishes the Board’s standards related to the office-based dispensing of prescription drugs by licensees of the Board. The amendments provide clarity, uniformity, and general clean-up. The reference to a practice agreement is removed. The rule also requires that an active practice notification be on file with the Board for the proposed controlled substance dispensing location.

West Virginia Board of Medicine – Continuing Education for Physicians and Podiatric Physicians, 11 CSR 06

The rule amends a current legislative rule that establishes the minimum continuing education requirements satisfactory to the Board for physicians and podiatric physicians.

The rule adds a requirement that information related to substance use disorder treatment referral be included in all drug diversion training and best practice prescribing of controlled substance training. Additionally, it also requires training on the impacts of stigma on treatment effectiveness, including the concept of addiction as a chronic disease

Finally, the rule permits podiatric physicians to satisfy continuing education requirements, except for the drug diversion training and best practice prescribing of controlled substances training requirement, by sitting for and passing a certification or recertification examination of the American Board of Podiatric Medicine or the American Board of Foot and Ankle Surgery during the relevant period.

West Virginia Board of Medicine – Practitioner Requirements for Accessing the West Virginia Controlled Substances Monitoring Program Database, 11 CSR 10

The rule amends a current legislative rule which sets requirements for the licensees and registrants of the Board regarding obtaining and maintaining access to the West Virginia Controlled Substances Monitoring Program database. It eliminates obsolete definitions, updates and modifies existing definitions and adds a definition for benzodiazepine.

A new section 3 requires practitioners who prescribe certain controlled substances to obtain and maintain online or other electronic access to the database and to certify compliance to the Board at renewal.

Section 6 is amended to incorporate current administrative penalties as set forth in W. Va. Code §60A-9-5a.

West Virginia Board of Medicine – Establishment and Regulation of Limited License to Practice Medicine and Surgery at Certain State Veterans Nursing Home Facilities, 11 CSR 11

The rule amends a current legislative rule which establishes the qualifications and application process for a limited license to practice at a designated state veterans nursing home facility. It updates the rule in accordance with Senate Bill 372, which passed during the 2021 Regular Legislative Session regarding approved types of postgraduate clinical training for graduates of medical schools located in Canada, the United States and Puerto Rico and for graduates of international medical schools.

West Virginia Board of Medicine – Registration to Practice During Declared State of Emergency, 11 CSR 14

The rule amends a current legislative rule which establishes a registration process to allow out of state physicians or physician assistants to practice in WV during a declared state of emergency.

An emergency registration that is issued to an out-of-state or a state retired, or inactive physician or physician assistant, expires sixty days after issuance or five days after a declared state of emergency terminates, whichever is sooner. Thereafter, the emergency registrant must hold an active status West Virginia medical license or an interstate telehealth registration to practice medicine to West Virginia patients.

West Virginia Board of Medicine – Telehealth and Interstate Telehealth Registration for Physicians, Podiatric Physicians and Physician Assistants, 11 CSR 15

The rule is new. It establishes the scope of the practice for the provision of medical services via telehealth technologies and the process for physicians, podiatric physicians, and physicians' assistants to obtain an interstate telehealth registration with the Board. During the 2021 Regular Session, the Legislature enacted House Bill 2024 which created an interstate telehealth registration process for physicians and physician assistants who want to provide telehealth services in this state.

To obtain a registration an applicant must have an active license in good standing in another state and provide specified information. The physician registration fee is \$150, and the physician assistant registration fee is \$50. The registration is valid for one year.

The rule specifies the ways in which to establishes the patient provider relationship. Provider-patient relationships may not be established through text-based communications such as emails, internet questionnaires, text-based messaging, or other written forms of communication.

Once a provider-patient relationship has been established, providers may use any telemedicine technology that meets the standard of care and is appropriate for the patient presentation. The rule does not prohibit the use of text-based communications for responding to calls for existing patients and for a provider who has established a provider-patient relationship with the patient through an in-person encounter or in a medical emergency.

Telehealth providers must practice in a manner consistent with the practice of the provider's scope as well with the standards set forth in their profession. The standard of care for telehealth services is the same for in-person health care services.

For continued treatment of a patient solely via telemedicine technologies the standard of care requires a provider to verify that a patient has visited in-person within twelve months. This however does not apply to acute inpatient care, post-operative follow-up checks, behavioral medicine, addiction medicine, or palliative care. This service may be suspended on a case-by-case basis. If suspended, the provider must document the reason for suspending the in-person visit requirement in the patient medical record. Telehealth providers must verify the identity and location of the patient.

Providers must determine if the patient's specific health issue is appropriate for telehealth technologies. They must obtain the consent of the patient to conduct telehealth services. Providers must conduct all appropriate evaluations and history of the patient consistent with the standard of care as well as create and maintain health care records for the patient.

When prescribing via telemedicine a provider must remain within the prescriptive authority of the providers profession. Telehealth providers are prohibited from prescribing a Schedule II controlled

substance via telemedicine technologies unless they are an established patient of the prescribing telehealth provider's practice or the provider submits an order to dispense schedule II controlled substance to a hospital patient, other than in the emergency department, for immediate administration in a hospital or if a provider is treating patients who are minors, or if 18 years of age or older, who are enrolled in a primary or secondary education program and are diagnosed with intellectual or developmental disabilities, neurological disease, Attention Deficit Disorder, Autism or a traumatic brain injury in accordance with guidelines as set forth by organizations.

Telehealth provider who prescribes schedule II through V drugs must obtain online or other electronic access to the CSMP. Telehealth providers may not, based solely upon a telemedicine encounter, prescribe any drug with the intent of causing an abortion.

West Virginia Board of Osteopathic Medicine - Licensing Procedures for Osteopathic Physicians, 24 CSR 01

The rule amends a current legislative rule which establishes the operation of the Board and the regulation and licensing of osteopathic physicians. This filing makes changes to the drug diversion training and best practice prescribing of controlled substances training by requiring that the training also have elements of training on the administration of an opioid antagonist, information related to substance use disorder treatment referral, and recordation of attendance.

The amendments also add the ability of applicants to provide certain licensure documents to the board through the Federation of State Medical Boards Credential Verification Service.

West Virginia Board of Osteopathic Medicine - Osteopathic Physician Assistants, 24 CSR 02

The rule amends a current legislative rule which relates to physician assistants and their licensing, practice, complaint procedures and professional discipline, and continuing education. During the 2021 legislative session, the Legislature enacted Senate Bill 714 which updated the Physician Assistants Practice Act.

The rule eliminates the practice agreement between a physician assistant and the physician. The practice agreement was a document that was approved by the licensing board. In lieu of the practice agreement there is a practice notification which may be kept on file at the practice.

The practice notification may include prescribing, dispensing, and administering of controlled substances, prescription drugs, or medical devices. A Physician Assistant may prescribe a 3-day supply of schedule II drugs with no refills.

The rule removes the requirement that the physician assistant have certification from the National Commission on Certification of Physician Assistants but clarifies which title a certified Physician Assistant may use.

The physician assistant may not practice independent of a collaborating physician and may practice in collaboration upon executing a practice notification.

The scope of practice is amended to reflect that the physician assistant can perform medical actions for which they have been trained and these acts include prescribing, dispensing, and administering controlled substances, prescription drugs, or medical devices.

West Virginia Board of Osteopathic Medicine – Practitioner Requirements for Controlled Substances Licensure and Accessing the West Virginia Controlled Substances Monitoring Program Database, 24 CSR 07

The rule amends a current legislative rule which establishes the requirements for licensees and registrants of the West Virginia Board of Osteopathic Medicine regarding controlled substances licensure and accessing the West Virginia Controlled Substances Monitoring Act, W. Va. §60A-9. The purpose of the rule is to conform the rule changes made to the statute. The changes to the rule include adding the requirement that all practitioners who prescribe or dispense Schedule II, III, IV, or V controlled substances shall register with the CMSP and obtain and maintain online or other electronic access to the program database.

West Virginia Board of Osteopathic Medicine – Telehealth and Interstate Telehealth Registration for Osteopathic Physicians and Physician Assistants, 24 CSR 10

This new rule establishes the scope of the practice for the provision of medical services via telehealth technologies and the process for osteopathic physicians and osteopathic physicians' assistants to obtain an interstate telehealth registration with the Board. During the 2021 Regular Session, the Legislature enacted House Bill 2024 which created an interstate telehealth registration process for physicians and physician assistants who want to provide telehealth services in this state.

To obtain a registration an applicant must have an active license in good standing in another state and provide specified information. The osteopathic physician registration fee is \$150 and the osteopathic physician's assistant registration fee is \$50. The registration is valid for 1 year.

The rule specifies the ways in which to establishes the patient provider relationship. Provider-patient relationships may not be established through text-based communications such as emails, internet questionnaires, text-based messaging, or other written forms of communication.

Once a provider-patient relationship has been established, providers may use any telemedicine technology that meets the standard of care and is appropriate for the patient presentation. The rule does not prohibit the use of text-based communications for responding to calls for existing patients and for a provider who has established a provider-patient relationship with the patient through an in-person encounter or in a medical emergency.

Telehealth providers must practice in a manner consistent with the practice of the provider's scope as well with the standards set forth in their profession. The standard of care for telehealth services is the same for in-person health care services.

For continued treatment of a patient solely via telemedicine technologies the standard of care requires a provider to verify that a patient has visited in-person within twelve months. This however does not apply to acute inpatient care, post-operative follow-up checks, behavioral medicine, addiction medicine, or palliative care. This service may be suspended on a case-by-case basis. If suspended, the provider must document the reason for suspending the in-person visit requirement in the patient medical record. Telehealth providers must verify the identity and location of the patient.

Providers must determine if the patient's specific health issue is appropriate for telehealth technologies. They must obtain the consent of the patient to conduct telehealth services. Providers must conduct all appropriate evaluations and history of the patient consistent with the standard of care as well as create and maintain health care records for the patient.

When prescribing via telemedicine a provider must remain within the prescriptive authority of the providers profession. Telehealth providers are prohibited from prescribing a Schedule II controlled substance via telemedicine technologies unless they are an established patient of the prescribing telehealth provider's practice or the provider submits an order to dispense schedule II controlled substance to a hospital patient, other than in the emergency department, for immediate administration in a hospital or if a provider is treating patients who are minors, or if 18years of age or older, who are enrolled in a primary or secondary education program and are diagnosed with intellectual or developmental disabilities, neurological disease, Attention Deficit Disorder, Autism or a traumatic brain injury in accordance with guidelines as set forth by organizations.

Telehealth provider who prescribes schedule II through V drugs must obtain online or other electronic access to the CSMP. Telehealth providers may not, based solely upon a telemedicine encounter, prescribe any drug with the intent of causing an abortion.

Board of Pharmacy – Licensure and Practice of Pharmacy, 15 CSR 1

The rule amends a current legislative rule which governs the licensure and the practice of pharmacist care in West Virginia. The amendment removes the requirement a pharmacist wears a white coat and makes it optional.

Board of Pharmacy – Controlled Substances Monitoring Program, 15 CSR 8

The rule amends a current legislative rule which establishes requirements for the controlled substance monitoring database. The amendments implement the changes required by House Bill 2262 from the 2021 legislative rule, which requires pharmacists to check the Controlled Substance Monitoring Program when dispensing any Schedule II substance, opioid, or any benzodiazepine to a patient who is not suffering from a chronic illness. It also requires them to annually check the database if still dispensing the controlled substance.

Board of Pharmacy – Regulations Governing Pharmacists, 15 CSR 16

The rule amends a current legislative rule by cutting the biennial renewal fee for pharmacists 65 and older from \$100 to \$50.

Public Service Commission – Rules Governing the Occupancy of Customer-Provided Conduit, 150 CSR 37

The rule amends a current legislative rule by extending the sunset date for one year from August 1, 2022, to August 1, 2023.

Real Estate Appraiser Licensing and Certification Board – Requirements for Licensure and Certification, 190 CSR 02

The rule amends a current legislative rule. Subdivision 5.2.a. has been amended to require an applicant for licensure as a licensed residential appraiser to demonstrate the ability to develop all three approaches to value. Subsection 6.2, relating to experience, has been amended to delete certain specified experience for certified general or certified residential appraisers. Section 7 relating to the procedure for calculation of experience by the Board has been amended to delete language setting forth the maximum experience credits the Board may award. This section is also amended to redefine a complex appraisal. Finally, Section 11 which relates to apprentices is amended to authorize the Board to periodically require supervisors to submit an apprentice's experience logs for review. The Board may randomly select a work product for review and may withdraw or revoke a certificate where a supervisor fails to meet the supervisor certification standards.

Real Estate Appraiser Licensing and Certification Board – Renewal of Licensure or Certification, 190 CSR 03

The rule amends a current legislative rule, primarily for clarification. The amendments allow for online renewals and authorize the Board to perform random audits of renewals.

Real Estate Appraiser Licensing and Certification Board – Requirements for Registration and Renewal of Appraisal Management Companies, 190 CSR 05

The rule amends a current legislative rule. It deletes subsections 8.2 and 8.3 of the current rule which required an appraisal management company to require an appraiser being added to its appraiser panel to certify in writing his or her areas of geographic competency, the types of property he or she is competent to appraise and the methodologies he or she is competent to perform. The information was to be updated annually.

West Virginia Board of Examiners for Registered Professional Nurses – Limited Prescriptive Authority for Nurses in Advanced Practice, 19 CSR 08

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

West Virginia Board of Examiners for Registered Professional Nurses – Telehealth Practices, 19 CSR 16

This new rule sets forth the standards for the practice of telehealth by a registered nurse or advanced practice registered nurse. During the 2021 Regular Session, the Legislature enacted House Bill 2024 which created an interstate telehealth registration process for registered professional nurses and advanced practice registered nurses who want to provide telehealth services in this state.

To obtain a registration an applicant must have an active license in good standing in another state and provide specified information. The registration fee is \$100. The registration is valid for one year.

The rule specifies the ways in which to establishes the patient provider relationship. Provider-patient relationships may not be established through text-based communications such as emails, internet questionnaires, text-based messaging, or other written forms of communication.

Once a provider-patient relationship has been established, providers may use any telemedicine technology that meets the standard of care and is appropriate for the patient presentation. The rule does not prohibit the use of text-based communications for responding to calls for existing patients and for a provider who has established a provider-patient relationship with the patient through an in-person encounter or in a medical emergency.

Telehealth providers must practice in a manner consistent with the practice of the provider's scope as well with the standards set forth in their profession. The standard of care for telehealth services is the same for in-person health care services.

For continued treatment of a patient solely via telemedicine technologies the standard of care requires a provider to verify that a patient has visited in-person within twelve months. This however does not apply to acute inpatient care, post-operative follow-up checks, behavioral medicine, addiction medicine, or palliative care. This service may be suspended on a case-by-case basis. If suspended, the provider must document the reason for suspending the in-person visit requirement in the patient medical record. Telehealth providers must verify the identity and location of the patient.

Providers must determine if the patient's specific health issue is appropriate for telehealth technologies. They must obtain the consent of the patient to conduct telehealth services. Providers must

conduct all appropriate evaluations and history of the patient consistent with the standard of care as well as create and maintain health care records for the patient.

When prescribing via telemedicine a provider must remain within the prescriptive authority of the providers profession. Telehealth providers are prohibited from prescribing a Schedule II controlled substance via telemedicine technologies unless they are an established patient of the prescribing telehealth provider's practice or the provider submits an order to dispense schedule II controlled substance to a hospital patient, other than in the emergency department, for immediate administration in a hospital or if a provider is treating patients who are minors, or if 18 years of age or older, who are enrolled in a primary or secondary education program and are diagnosed with intellectual or developmental disabilities, neurological disease, Attention Deficit Disorder, Autism or a traumatic brain injury in accordance with guidelines as set forth by organizations.

Telehealth provider who prescribes schedule II through V drugs must obtain online or other electronic access to the CSMP.

Secretary of State – Voter Registration at the Division of Motor Vehicles, 153 CSR 03

The rule amends a current legislative rule provides by providing for a sunset extension until August 1, 2027.

Secretary of State – Voter Registration List Maintenance by the Secretary of State, 153 CSR 05

The rule amends a current legislative rule provides by providing for a sunset extension until August 1, 2027.

Secretary of State – Combined Voter Registration and Driver Licensing Fund, 153 CSR 25

The rule amends a current legislative rule to make updates regarding funding of the Secretary of State's subscription to a National Change of Address (NCOA) service. The rule the following substantive changes:

- Consolidates provisions under §4.4.1 and §4.4.2 regarding NCOA service.
- Deletes language setting minimum and maximum amounts from the Combined Voter Registration and Driver Licensing Fund to pay for the NCOA service and the requirement for participating counties to reimburse the Fund for the balance.
- Deletes language providing for receipt of bids from authorized vendors of the NCOA service, determination of percentage of costs which can be made from the Fund, and notification of participating counties regarding reimbursement amount; amended language will require SOS to pay for NCOA service from the Fund from revenues of the current fiscal year.
- Adds language in new §4.6 requiring any balance exceeding \$100,000 on June 30 of each year to be transferred to the General Revenue Fund pursuant to W. Va. Code §3-2-12(c).

Secretary of State – Use of Digital Signatures, 153 CSR 30

The rule amends a current legislative rule which was last amended in 2008 and provides requirements for the use of electronic signatures by state agencies. The agency represents that the amendments remove outdated standards and procedures, and simplify standards and procedures for ensuring adequate integrity, security, confidentiality, and auditability of records signed electronically. The rule includes the following substantive changes:

- Defines the following new terms in §2: "Electronic record" and "Electronic signature".
- Updates process for agencies to apply to use electronic records and electronic signatures in §3.
- Requirements for Acceptance of Digital Signatures §5 recognizes the Office of Technology as state certificate authority for registration and issuance of certificates to subscribers for the use of digital

signatures, requiring agencies to use Office of Technology technology for accepting digital signatures, and

- Deletes “Requirements for Acceptance of Digital Signatures” provisions from §6 and reserves this section.
- Deletes “Authorization of Electronic Postmark” provisions from §8 and replaces with updated “Compliance Audit” provisions (previously in §19), authorizing SOS and OT to conduct compliance audits, authorizing SOS to require reports, and authorizing SOS to suspend or revoke an agency’s approval to use electronic signatures if audit issues are not timely corrected.
- Deletes the following sections: §9 (Selection of State Authority; Eligibility Requirements for Registration and Certificate Authority), §10 (Requirements for State Certificate Authority Practice), §11 (Requirements for State Repository Practice), §12 (Requirements for Issuance of Certificates), §13 (Subscribers; Duties Upon Acceptance of Certificate), §14 (Suspension of Certificate), §15 (Revocation of Certificate), §16 (Expiration of Certificate), §17 (Form of Certificates), §18 (Record Keeping and Retention), §19 (Compliance Audit), §20 (Procedure on Discontinuance of Business of State Certificate Authority or State Repository), and §21 (Fees for Issuance of Certificates).

Secretary of State – Regulation of Political Party Headquarters Finances, 153 CSR 43

This rule amends a current legislative rule to include county political party campaign headquarters financing pursuant to House Bill 2688 passed during the 2021 Regular Legislative Session. The rule includes the following substantive changes:

- Inserts a sunset date provision (currently none specified in rule).
- Updates deadlines for quarterly financial report filings in definition of “filing period”.
- Inserts definition of “Party headquarters committee” into existing definition of “Committee”.

Secretary of State – Standards and Guidelines for Electronic Notarization, Remote Online Notarization and Remote Ink Notarization, 153 CSR 45

This rule amends a current legislative rule which provides requirements for electronic notarization. Pursuant to Senate Bill 469 passed during the 2021 Regular Legislative Session, this rule is being amended to include two new methods of notarization (remote online notarization and remote ink notarization). The rule includes the following substantive changes:

- Updates rule title to include remote online notarization and remote ink notarization.
- Extends sunset date to August 1, 2027.
- Amends definitions of “electronic notarial act” and “electronic notarization” to specify that the official act is performed in the presence of an electronic notary public.
- Adds definitions for the following two new terms: “remote online notarial act” and “remote ink notarial act”.
- Adds “remote online notarial acts” and “remote ink notarial acts” to notary registration requirement in §3.1
- Adds “witnessing” to registration requirement upon recommissioning before an electronic notary may notarize or witness electronically.
- Excludes remote ink notarial acts from requirement of §12.1 for the notary to attach a registered electronic signature and registered electronic notary seal, or registered single element to an electronic notarial certificate.

- Deletes almost all provisions of §27 regarding remote notarization authorized during a state of emergency in certain circumstances, and amends §27.1 to require remote online notarial acts performed for a remotely located individual to be in conformity with Code.
- Adds new §28 requiring remote ink notarial acts performed for a remotely located individual to be in conformity with Code.

Secretary of State – Real Property Electronic Recording Standards and Regulations, 153 CSR 48

This rule is new and is being promulgated pursuant to House Bill 2086 passed during the 2020 Regular Legislative Session. The rule establishes real property electronic recording standards and practices for implementation by West Virginia county clerks. The rule consists of 8 sections summarized below:

- §1: Establishes scope, authority, filing date, effective date, and sunset provision (August 1, 2027).
- §2: Defines the following terms: Delivery Agent, Document, Electronic, Electronic Document, Electronic Document Delivery System, Electronic Recording, Electronic Signature, Land Records, Land Records Management System, Land Records Management System Vendor, Participating Clerk, Paper Document, PDF or Portable Document Format, Person, PRIA, Recording Information, Submitter, State, TIFF or Tagged Image File Format, and XML or Extensible Markup Language.
- §3: Requires electronic document recording to meet certain Property Records Industry Association (PRIA) standards, specifies where such standards are available, requires transmittal and storage of electronic documents to meet certain International Organization for Standardization (ISO) standards, and authorizes participating county clerks to adopt a standardized property record document format.
- §4: Requires documents certified using electronic means to meet applicable Code provisions.
- §5: Provides for electronic recording processing including required notice of confirmation or rejection of an electronic recording to be provided by a participating clerk to a submitter, contact prior to notice of confirmation or rejection, and determination of “first-to-file priority” of recordings, including a requirement for participating clerks to develop a local processing policy and requirements for determining chronological order of in-person, mail-in, and electronic submissions.
- §6: Establishes security requirements for electronic delivery systems, recording and maintaining electronic documents, accepting documents via electronic document delivery system, system and security failures, data back-ups, disaster recovery, audit trail mechanisms, unauthorized parties, security breaches, and electronic transmissions.
- §7: Requires real property records maintenance to comply with applicable Code provisions and rules.
- §8: Establishes requirements for agreements between delivery agents and participating clerks for electronic document recording within the county.

Board of Social Work Examiners – Qualifications for the Profession of Social Work, 25 CSR 01

The rule amends a current legislative rule in response to Enrolled Committee Substitute for House Bill 2024, which passed during the 2021 Regular Legislative Session. The rule defines terms related to telehealth and added two new sections. Section 5 relating to telehealth services sets forth licensing requirements, requires the social worker to be competent in the technology and skills necessary for providing telehealth, requires the social worker to follow agency procedures or develop and follow certain specified procedures and allows a social worker to provide telehealth when appropriate and in an ethical manner. Section 6 relates to interstate registration as a telehealth provider. It sets forth requirements for registration and biennial renewal, as well as the standard of care for the provision of telehealth services.

The rule also deletes subdivision 3.3.1, which provides that individuals seeking employment with Department of Health and Human Resources may be eligible for a provisional license with a degree in fields other than social work or social work-related fields. Enrolled Committee Substitute for Senate Bill 312, which passed in 2020, created a registration process for service workers within the Bureau for Children and Families.

Board of Social Work Examiners – Continuing Education for Social Workers and Providers, 25 CSR 05

The rule amends a current legislative rule. The rule adds definitions for the terms “asynchronous training” and “synchronous training”. It reduces the number of continuing education hours required biennially for licensure renewal from 40 to 30. It requires that at least 10 hours be in a synchronous format and states that no more than 10 hours may be obtained online using an asynchronous format.

West Virginia Board of Examiners for Speech Pathology and Audiology – Licensure of Speech Pathology and Audiology, 29 CSR 01

The rule is a current legislative rule which was amended in response to Enrolled Committee Substitute for House Bill 2024 which passed during the 2021 Regular Legislative Session. Where appropriate, reference is made to interstate tele-practice, including the addition of a \$175 renewal fee for registration. A new Section 16 relates to the registration, renewal standards of care and standards of conduct of an interstate tele-practice practitioner. That section defines terms, sets forth eligibility requirements for registration as a tele-practice practitioner, sets forth renewal requirements for registration, and sets forth standards of care for the provision of services.

State Treasurers Office – Substitute Checks – Exceptional Items Found, 112 CSR 02

The rule amends a current legislative rule to update the rule issuing substitute checks in compliance with statutory authority. The rule was last updated in 1979 and is amended to modernize and conform with current rulemaking standards. The rule includes definitions and specific categories that may trigger the Treasurer and Auditor to reissue a substitute check. If the payee of a check alleges that a check has been forged, the payee must provide an affidavit to the Treasurer and the Treasurer is authorized to pursue claims relating to theft or forgery.

State Treasurers Office – Procedures for Deposit of Monies with the State Treasurer’s Office by State Agencies, 112 CSR 04

The rule amends a current legislative rule to extend the sunset provision to June 1, 2027.

State Treasurers Office – Selection of State Depositories for Disbursement Accounts through Competitive Bidding, 112 CSR 06

The rule amends a current legislative rule to extend the sunset provision to June 1, 2027.

State Treasurers Office – Selection of State Depositories for Receipt Accounts, 112 CSR 07

The rule amends a current legislative rule to extend the sunset provision to June 1, 2027.

State Treasurers Office – Procedures for Processing Payments from the State Treasury, 112 CSR 08

The rule amends a current legislative rule to extend the sunset provision to June 1, 2027.

State Treasurers Office – Reporting Debt, 112 CSR 10

The rule amends a current legislative rule relating to reporting debt by modernizing the rule to conform with drafting standards. The rule updates the definition of a lease to conform with the Government Accounting Standards Board definition of a lease.

State Treasurers Office – Procedures for Fees in Collections by Charge, Credit or Debit Card or by Electronic Payment, 112 CSR 12

The rule amends a current legislative rule to extend the sunset provision to June 1, 2027.

State Treasurers Office – Procedures for Providing Services to Political Subdivisions, 112 CSR 13

The rule amends a current legislative rule to reflect Senate Bill 280, which passed during the Regular Legislative Session, and requires political subdivisions to offer a system for the public to pay the political subdivision online.

It allows a political subdivision to apply for an exemption to offering online payments. For a political subdivision to receive an exemption, it must submit a written exemption request that includes: 1) the types and annual totals of state revenue collected, 2) the types and annual totals of other revenue collected, and 3) information about business operations. The Treasurer will evaluate the exemption request and approve or deny the exemption. Exemptions may be withdrawn or requested based on significant changes as reported by the political subdivision.

CODE REFERENCE: West Virginia Code §64-9-1 et. seq – amended

DATE OF PASSAGE: March 12, 2022

EFFECTIVE DATE: March 12, 2022

ACTION BY GOVERNOR: Signed March 30, 2022

Senate Bill 419

Establishing pilot project to evaluate impact of certain post-substance use disorder residential treatments

The bill creates a pilot program whereby the DHHR shall enter into contracts as a pilot with MCOs where a minimum of 15% of substance use disorder residential treatment contracts for facilities providing substance use disorder are paid based upon performance-based metrics.

The bill states that MCOs shall contract with a substance use disorder residential treatment facility and allow substance use disorder residential treatment facilities the option to be paid based upon performance-based metrics.

The metrics are listed in the existing bill, and include but are not limited to community supports, housing, job placement, and transportation. The bill permits an internal advisory group at DHHR to formulate performance metrics and rates to include the variables in the code as well as additional variables.

The bill provides data shall be reported monthly to the ODCP and a full-time person.

The bill provides the advisory committee shall evaluate the outcome of the pilot annually and adjust quality metrics to improve quality outcomes and assess the pilot for continuation.

The pilot will termination in 3 years unless it is recommended for further evaluation.

The reporting requirements contains a requirement for an actuarial analysis, and additional information on the overall performance of the contract, and any metrics that have been added in the previous fiscal year.

CODE REFERENCE: West Virginia Code §9-5-29 – new

DATE OF PASSAGE: March 7, 2022

EFFECTIVE DATE: June 5, 2022

ACTION BY GOVERNOR: Signed March 30, 2022

Senate Bill 424

Relating generally to 2022 Farm Bill

The purpose of this bill is to enact the WV Farm bill of 2022; provide additional powers to the commissioner, including increased powers to collect debts and interest owed the department; modify reporting requirements; establish the West Virginia Animal Remedy law, and clarify definition of agritourism. Specifically, the bill affects the following sections of West Virginia Code:

Repeals §19-1-10. Requirement for social security number on applications.

The bill repeals this section which requires applicants to include their social security number on applications for a license, permit, certificate of registration, or registration.

Repeals §19-15-11. Publications.

The bill repeals this section which requires the commissioner of agriculture to publish at least annually information regarding the distribution of regulated products and the results of the analysis of samples of regulated products distributed within the state compared to the analysis guaranteed by sections two (registration of products for distribution) and three (labels on products distributed in the state) of article 15

Adds §19-1-13. Annual reporting to the Legislature.

This is a new section added to Department of Agriculture article to require the Commissioner of Agriculture to file an annual report with the Speaker of the House, President of the Senate, and the Joint Committee by January 31 of each year describing the activities of the department during the preceding fiscal year. The report must include all donations, gifts, contributions, grants, and appropriations of money, services, materials, real estate, or other things of value accepted and received by the department. The commissioner is also required to send a copy of the report to the Division of Archives and History as a permanent record of the state.

Amends §11-13DD-3. Amount of credit; limitation of credit.

Current law provides that farmers may receive a tax credit against their personal income and corporate net income equal to 30 percent of the value of donated edible agricultural products to nonprofit food programs in the state, but not to exceed \$2,500 during a taxable year or the total amount of personal income or corporate net income tax, whichever is less, in the year of donations. The amendment increases the specified dollar amount of the tax credit from \$2,500 to \$5,000 and makes the tax credit retroactive for eligible donations made on and after January 1, 2022. Current law provides that the total amount of tax credit is capped at \$200,000 in any fiscal year.

Amends §19-1-4a. Commissioner authorized to accept gifts, etc., and enter into cooperative agreements.

Current law essentially authorizes the commissioner to accept donations, gifts, contributions, grants, and appropriations of money, services, materials, real estate or other things of value from the United States Department of Agriculture and individuals, partnerships, associations, or corporations and to use them as provided.

This provision is amended to expand the authorization to include the United States Food and Drug Administration, the United States Environmental Protection Agency, or any other agency of the United States government.

Amendments to this section also update language and style.

Amends §19-1-11. Rural Rehabilitation Loan Program.

The amendment to this section eliminates the provision in current law that requires the commissioner to file an annual report to the Joint Committee on Government and Finance regarding the rural rehabilitation loan program, including information about the loans awarded, loans repaid, loans outstanding, interest rates, delinquency and collections, and other pertinent data.

Amends §19-9-7a. National Animal Identification System Animal disease traceability; rulemaking; exemption.

The amendment to this section changes the name of the program dealing with diseases among domestic animals from the current name of “National Animal Identification System” to “Animal Disease Traceability” program. The section heading is also changed to reflect the new name.

Amends §19-12E-4. Industrial hemp authorized as agricultural crop; license required.

This section is amended to provide that a person must hold a license issued by the “state” instead of the “department” to cultivate, handle, or process industrial hemp in the state.

Amends §19-12E-5. Industrial hemp – licensing.

The amendment to this section gives the commissioner the option to recognize industrial hemp grower licenses issued by the United States Department of Agriculture or issued by the state to cultivate, handle, or process industrial hemp in the state.

Amends §19-15A-4. Inspection fee; report of tonnage; annual report.

The bill amends this section by removing language which requires the Commissioner of Agriculture to publish an annual report on the amount of liming material sold in the state during the preceding period.

Amends §19-16-6. Duties and authority of Commissioner of Agriculture.

The bill amends this section by deleting language which requires the Commissioner of Agriculture to publish and distribute an annual report containing information on the sale of seeds in the state to include agricultural, vegetable, tree and shrub, or flower seed, and seed potatoes; the results of analysis of official samples compared to guarantees on the label; firms responsible for the product; and other information the commissioner considers necessary in the report.

Amends §19-16A-21. Violations.

This section is amended by adding language which allows the Commissioner of Agriculture to suspend, deny, modify, or revoke a pesticide license issued based upon a violation, conviction, or a final order assessing a penalty pursuant to the federal Insecticide, Fungicide and Rodenticide Act. This is in addition to a list of several other grounds for denying, modifying, suspending, or revoking a pesticide license.

Amends §19-20C-3. Rulemaking; annual report.

The bill amends this section by removing language which requires the Commissioner of Agriculture to file an annual report with the Joint Committee regarding the number of dogs and cats sterilized in the state.

Amends §19-36-5. Maintenance of property status for certain purposes; exceptions.

The bill adds language to this section to provide that agritourism on land classified as agricultural does not change the nature or use of property that otherwise qualifies as agricultural for zoning purposes, and it adds language that exempts agritourism businesses from complying with fire codes when using certain facilities for occasional events if the facilities are considered structurally sound and otherwise safe for the intended use.

CODE REFERENCE: West Virginia Code §19-1-10, §19-15-11 – repealed; §11-13DD-3, §19-1-4a, §19-1-11, §19-9-7a, §19-12E-4, §19-12E-5, §19-15A-4, §19-16-6, §19-16A-21, §19-20C-3, and §19-36-5 – amended; §19-1-13 – new

DATE OF PASSAGE: March 12, 2022

EFFECTIVE DATE: June 10, 2022

ACTION BY GOVERNOR: Signed March 28, 2022



Senate Bill 434

Updating authority to airports for current operations

This bill increases the range of fines for vehicular and pedestrian violations from existing law of \$2-10 to a range of \$10-\$30 and it expands the definition of airport to include, “any airport, heliport, helistop, vertiport, glider port, seaplane base, ultralight flight park, manned balloon launching facility, or other aircraft landing or takeoff area”. It also adds definitions for abandoned and derelict aircrafts as well as adds the term “international airport” to various portions of the code.

It creates a notification process, requirements, and timeline for ultimately securing a lien against abandoned and derelict aircrafts, and gives the airport the ability to use, trade, sell, or remove aircraft if it hasn't been removed within 30 calendars of giving the owner notice. It provides an exception for the 30-day notice rule for situations where the aircraft poses a health or safety threat.

It establishes requirements for an airport to perfect a lien on aircraft and provides that if the aircraft is sold, the airport is permitted to satisfy its lien as well as its reasonable expenses. The owner can claim the balance of proceeds of the sale, if any, and if no person claims the balance of the proceeds within 12 months of the sale, the airport authority gets to retain the funds.

Airport authorities are given the power to: (1) acquire, receive, and hold property within or without the corporate limits of any authorizing subdivision and to use, manage and develop the property; (2) construct or acquire buildings, structures and facilities (including roadway access) and to lease those properties; and (3) enter into agreements with a county, city, or town for the management by the authority of the airport.

The bill clarifies police jurisdiction and gives a regional airport authority police power: (1) in any area where a regional airport is authorized to operate an airport; (2) on any property leased, operated, managed, utilized, or controlled by a regional airport authority; and (3) in an area where the regional airport authority facilitates training activities pursuant to a written agreement.

The range on the fine for misdemeanors occurring on airport property is increased from the existing law of \$5 to \$100 to a range of \$50 to \$100.

CODE REFERENCE: West Virginia Code §8-28-5, §8-29-1, §8-29-3, §8-29-8, §8-29-9, §8-29-12, §8-29-17, and §8-29-20, §8-29B-2, §8-29B-3, and §8-29B-5 – amended; §8-29-8a – new

DATE OF PASSAGE: March 11, 2022

EFFECTIVE DATE: June 9, 2022

ACTION BY GOVERNOR: Signed March 30, 2022

Senate Bill 438

Relating generally to WV Security for Public Deposits Act

The bill would amend the provisions of the WV Code related to requirements for public depositories.

The bill would direct the Treasurer to implement and administer a new program entitled the West Virginia Security for Public Deposits Program to be operable on or before March 1, 2024. The Treasurer is to propose legislative rules necessary to effectuate the program.

The Program will provide the terms and conditions by which public deposits are to be secured and collateralized. The Program authorizes a pooled method of securing deposits. "Pooled method" is defined by the bill as "securing public deposits by accepting contingent liability for losses of public deposits of other designated state depositories that choose this method."

Legislative rules are to provide, among other things, (1) the terms and conditions under which public deposits must be secured; (2) the method for determining collateral required under the pooled method of security; (3) the securities or instruments eligible to be collateral; (4) the process for determining when a default or insolvency has occurred or is likely to occur and the actions necessary for the protection, collection, and settlement of any claim arising out of such default or insolvency; (5) requirements for the payment of losses by pooled or dedicated methods; (6) the process for a depository to withdraw from the pooled method of securing public deposits and instead be governed by another method of securing deposits; and (7) reporting requirements of depositories. The bill authorizes the Treasurer to collect administrative fees, fines, penalties and service charges in connection with the program or any agreement, contract or transaction pursuant to the new article.

The State Treasurer would be subrogated to all of a depositor's rights, title and interest against a depository that is in default or insolvent. When deposits are made in accordance with the program, no official of a public depositor would be personally liable for any loss resulting from the default or insolvency of any designated state depository in the absence of negligence, malfeasance, misfeasance or nonfeasance. The bill would require monthly reports to the State Treasurer.

CODE REFERENCE: West Virginia Code §12-1-5 – amended; §12-1B-1 through §12-1B-14 – new

DATE OF PASSAGE: March 12, 2022

EFFECTIVE DATE: June 10, 2022

ACTION BY GOVERNOR: Signed March 30, 2022

Senate Bill 440

Establishing Uniform Commercial Real Estate Receivership Act

The Act applies to receiverships for real property as well as personal property that is related to the real property or used in its operation. It does not govern a receivership for an interest in real property improved by one to four dwelling units, unless (1) the interest is used for agricultural, commercial, industrial, or mineral extraction purposes, other than incidental uses by an owner occupying the property as the owner's residence; (2) the interest secures an obligation incurred when the property was used or planned for use for agricultural, commercial, industrial or mineral extraction purposes; (3) the owner planned or is planning to develop the property with one or more dwelling units to be sold or leased in the ordinary course of the owner's business, or (4) the owner collects rents or other income from an unrelated tenant or other occupier. The Act does not provide the exclusive method for appointment.

The state court's general equity jurisdiction has exclusive jurisdiction of the receivership process

The bill establishes standards under which a court may appoint a receiver in the exercise of its equitable jurisdiction. It also establishes standards under which a petitioning mortgage lienholder is entitled to appointment of a receiver, either as a matter of right or as a matter of the court's discretion. Where the court appoints a receiver ex parte, the court may require the party seeking appointment to post security for any damages, attorney's fees and costs incurred by a person injured by an appointment later determined to be unjustified.

Because a receiver holds receivership property for the benefit of all interested parties the bill requires that the receiver provide sworn evidence of the receiver's independence, subject to an exception to prevent disqualification based on certain pre-existing relationships that are de minimus in nature. While a party seeking the appointment of a receiver may nominate a person to serve as a receiver, the nomination is non-binding on the court.

On appointment, a receiver has the status and priority of a lien creditor with respect to receivership property. Appointment of a receiver does not affect the validity of a pre-receivership security interest in receivership property, and property required after appointment is subject to any pre-receivership security agreement to the same extent as if no receiver had been appointed. On appointment, persons having possession, custody and control of receivership property must turn the property over to the receiver, and persons owing debts that constitute receivership property must pay those debts to the receiver. Entry of the order of appointment effects a stay, applicable to all persons, of an act to obtain possession of, exercise control over, or enforce a judgment against receivership property, as well as an act to enforce a lien against receivership property. In appropriate situations, the court can expand the scope of the stay, and grant relief of the stay. However, certain actions are outside the scope of the stay. The Act also addresses the consequences of a violation of the stay.

The bill sets forth the receiver's presumptive powers, as well as those that the receiver may exercise only with court approval. It also sets forth the duties of the receiver and the duties of the owner of receivership property.

The Act authorizes the receiver to engage and pay professionals to assist in the administration of the receivership following court approval.

With Court approval, the bill permits the receiver to use, sell, lease, license, exchange, or otherwise transfer, receivership property other than in the ordinary course of business. Unless the agreement of transfer provides otherwise, the transfer is free and clear of rights of redemption and liens other than liens

than are senior to the lien of the person who obtained the receiver's appointment. Liens extinguished by the receiver's sale attach to the proceeds with the same validity, perfection, and priority as they had with respect to the property sold. The sale may be conducted as a private sale, and creditors with valid secured claims may credit bid. The bill also provides a safe harbor for purchasers, in case a party objects to the sale but fails to get a stay of the order approving the sale. Secured creditors are entitled to the proceeds of the collateral according to the priority rules established by law other than this Act, although the court may award the receiver the reasonable and necessary fees and expenses for carrying out the receiver's duties.

With court approval, a receiver may adopt or reject an executory contract of the owner relating to receivership property. The bill covers the mechanics for adoption or rejection of executory contracts. The receiver may also assign an adopted executory contract to the extent permitted by the contract and applicable law other than this Act. The bill specifies the consequences of a receiver's rejection of an executory contract. It contains protections for purchasers in possession of real property or real property time share interests that are analogous to those contained in the Bankruptcy Code. The bill also limits the receiver's ability to reject the unexpired lease of a tenant, permitting rejection of the lease only in a very limited situation. Consistent with the receiver's status as an officer of the court, the bill provides the receiver with immunity for acts or omissions within the scope of the receiver's appointment. Further, the bill incorporates the Barton doctrine and provides that a receiver cannot be sued personally for an act or omission in administering receivership property except with the approval of the appointing court.

The bill requires the receiver to notify creditors of the appointment of the receiver unless the court order otherwise and requires creditors to file claims with the receiver as a precondition to obtaining any distribution from receivership property or the proceeds of such property. It permits the receiver to recommend disallowance of claims. The bill also authorizes the court to forgo the filing of unsecured claims where the receivership property is likely to be insufficient to satisfy secured claims against the property. The receiver must file interim reports as directed by the court and on completion of the receivers' duties, a final report.

Where a receiver has been appointed by another state, the bill authorizes the court to appoint that person or its designee as an ancillary receiver for the purpose of obtaining possession, custody, and control of receivership property located within the state. The bill also permits the court to enter any order necessary to effectuate an order of a court in another state appointing or directing a receiver.

The bill makes clear that the appointment of a receiver required by a mortgagee or assignee of rents, and actions taken by the receiver do not make the mortgagee or assignee of rents a "mortgagee in possession" do not constitute an election of remedies or make the secured obligation unenforceable, and do not constitute an "action" within the meaning of the state's "one-action" rule. In a state with anti-deficiency rules, where a receiver conducts a sale of receivership property free and clear of a lien, the state's anti-deficiency rules will apply to any person that held a lien extinguished by the sale to the same extent those rules would have applied after a foreclosure sale not governed by the bill.

CODE REFERENCE: West Virginia Code §55-20-1 through §55-20-28 – new

DATE OF PASSAGE: March 9, 2022

EFFECTIVE DATE: June 7, 2022

ACTION BY GOVERNOR: Signed March 23, 2022

Senate Bill 476

Relating to imposition of minimum severance tax on coal

This bill corrects a cross reference regarding the severance tax rate on “thin seam” coal. The correction is made by removing any reference to a specific subsection within the cross-referenced section. The bill defines “thin seam” coal identically as it is defined in §13A-3(g)(1). That definition provides: “mined by underground methods from seams with an average thickness of 45 inches or less.”

CODE REFERENCE: West Virginia Code §11-12B-3 – amended

DATE OF PASSAGE: March 10, 2022

EFFECTIVE DATE: March 10, 2022

ACTION BY GOVERNOR: Became Law Without Governor’s Signature

Senate Bill 478

Relating to Neighborhood Investment Program

This bill eliminated the annual reporting requirement of persons who claim the Neighborhood Investment Program. Current law requires that this be reported annually in the State Register. This credit is infrequently claimed, and the reporting is a cumbersome process to ensure that confidential tax information is not inadvertently disclosed. The elimination of the reporting requirement would promote efficiency and ensure privacy of taxpayer confidential information. The elimination of the reporting requirement would be effective January 1, 2022.

CODE REFERENCE: West Virginia Code §11-13J-10 – amended

DATE OF PASSAGE: March 10, 2022

EFFECTIVE DATE: March 10, 2022

ACTION BY GOVERNOR: Signed March 23, 2022

Senate Bill 487

Relating to Revenue Shortfall Reserve Fund and Revenue Shortfall Reserve Fund – Part B

This bill changes the formula which the Department of Revenue uses to determine the amount of surplus revenue to be transferred into the Revenue Shortfall Reserve Fund (Rainy Day A) at the end of a fiscal year. The bill raises the threshold percentage of General Revenue appropriations required in the Revenue Shortfall Reserve Fund to trigger a transfer of surplus at the end of a given fiscal year from 13% to 20%. The bill also includes the balances of both Revenue Shortfall Reserve Funds when calculating the total to trigger a General Revenue surplus transfer.

CODE REFERENCE: West Virginia Code §11B-2-20 – amended

DATE OF PASSAGE: March 12, 2022

EFFECTIVE DATE: June 10, 2022

ACTION BY GOVERNOR: Signed March 30, 2022

Senate Bill 518

Allowing nurses licensed in another state to practice in WV

The bill makes changes to the board composition, restructures the duties of the board, and requires the board to appoint nine members to the Nursing Shortage Study Commission to study the nursing shortage and make recommendations to the Joint Committee on Health by December 1, 2022. This shall terminate on January 1, 2023.

CODE REFERENCE: West Virginia Code §30-7-1a, §30-7-15e, and §30-7-20 – repealed; §30-7-3, §30-7-4, §30-7-6, §30-7-7, §30-7-8, §30-7-8a, and §30-7-20 – amended

DATE OF PASSAGE: March 12, 2022

EFFECTIVE DATE: March 12, 2022

ACTION BY GOVERNOR: Signed March 28, 2022

Senate Bill 520

Increasing financial penalties for ransomware attacks

This bill creates a felony offense of disrupting or degrading, causing the disruption or degradation, or threatening the disruption or degradation of computer services of another with the intent to obtain money or any other thing of value. The penalty is up to 1 million dollars fine, incarceration of up to 20 years, or both fined and confined.

CODE REFERENCE: West Virginia Code §61-3C-8 – amended

DATE OF PASSAGE: March 4, 2022

EFFECTIVE DATE: June 2, 2022

ACTION BY GOVERNOR: Signed March 23, 2022

Senate Bill 523

Transferring oversight of Jobs Investment Trust Fund to WV Economic Development Authority

The bill terminates the Jobs Investment Trust Board and moves its duties, authority, and funds (including the Jobs Investment Trust) to the West Virginia Economic Development Authority (WVEDA). The executive director of the Trust is still appointed by the Governor with advice and counsel of the Senate. The Economic Development Authority is to provide office space and support staff regarding the Trust. The WVEDA maintains the powers and duties of the defunct Jobs Investment Trust Board, and the requirement that it report to the Governor and the joint committee on gov't and finance at least 20 days before it intends to extend any repayment term is likewise maintained. The section on funding the trust is repealed, and the EDA is given governance and administration powers over the Jobs Development Fund.

CODE REFERENCE: West Virginia Code §12-7-8 – repealed; §12-7-2, §12-7-3, §12-7-4, §12-7-5, §12-7-6, §12-7-7, §12-7-9, §12-7-12; §31-15-6; §31-18-20c – amended

DATE OF PASSAGE: March 7, 2022

EFFECTIVE DATE: March 7, 2022

ACTION BY GOVERNOR: Signed March 23, 2022

Senate Bill 529

Encouraging additional computer science education in WV schools

This bill amends requirements for a plan required to be submitted to LOCEA related to computer science instruction and learning standards and requires the updated plan to be submitted prior to the 2023 regular legislative session. The purpose of the bill is to encourage the teaching of additional computer science subject matter in schools across the state, including computational thinking, block-based programming, text-based programming, network communication, computer architecture, coding, application development, digital literacy, and cyber security.

CODE REFERENCE: West Virginia Code §18-2-12 – amended

DATE OF PASSAGE: March 12, 2022

EFFECTIVE DATE: June 10, 2022

ACTION BY GOVERNOR: Signed March 30, 2022

Senate Bill 530

Encouraging public-private partnerships in transportation

This bill addresses public-private partnerships (P3's) for public transportation facilities, such as roads, bridges, and tunnels. The primary intent of the bill is to improve the P3 proposal and implementation process to further encourage such partnerships.

It eliminated the restriction on use of the state road fund for P3 proposals. The bill added language authorizing the Department of Highways (DOH) to rank P3 proposals it has solicited for a project, allowing the commissioner to modify those rankings, and permitting the commissioner to authorize DOH to enter into an agreement with the highest-ranked developer. At least 60 days before execution of the agreement, a copy must be provided to the Joint Legislative Oversight Commission on Department of Transportation Accountability. Failure to enter into an acceptable agreement with the highest-ranked developer allows the commissioner to authorize entry into an agreement with the next-highest-ranked developer. Before entry into a comprehensive agreement resulting from an unsolicited proposal, the commissioner must find, in writing, that the agreement serves the public purpose and is in the best interest of the state.

The bill broadened the DOH's power of condemnation and further modifies the DOH's remedies upon developer default. SB530 also exempts P3 projects from the bidding requirements of the Fairness in Competitive Bidding Act, W. Va. Code §5-22-1 et seq.

The bill allows a P3 developer to be paid the state portion of the severance tax on coal extracted during project construction. The tax would be paid by the developer and held in escrow by the DOH commissioner. It would be paid to the developer only upon satisfactory completion of the project and fulfillment of all obligations to the project and the state.

CODE REFERENCE: West Virginia Code §17-27-3; §17-27-4; §17-27-5; §17-27-7; §17-27-8; §17-27-9; §17-27-11; §17-27-13; §17-27-14; §17-27-15; §17-27-16 – amended; §11-13A-6b – new

DATE OF PASSAGE: March 12, 2022

EFFECTIVE DATE: June 10, 2022

ACTION BY GOVERNOR: Signed March 30, 2022

Senate Bill 533

Relating to funding for health sciences and medical schools in state

This bill relates to funding sources for health sciences and medical schools at the state's three medical schools. It eliminates the provision that the proceeds of the sales tax on soda be dedicated exclusively for the construction, maintenance, and operation of a medical, dental, and nursing school at West Virginia University. Those funds would not be deposited into the state's general revenue fund. Effective July 1, 2024, the soft drink tax would be repealed.

To alleviate the gap this would create in the health sciences budget at West Virginia University funds from the Insurance Premium Tax would be dedicated at the same level the University was receiving from the soda tax. That amount would be \$14,000,000. In addition, the Medical School at Marshall University would receive dedicated funds in the amount of \$5,500,000 the amount of their annual appropriation and the West Virginia School of Osteopathic Medicine would receive dedicated funds in the amount of \$3,900,000. These amounts represent the current level of appropriation in the state budget for the two institutions.

There is a provision in the bill that specifies that the Legislature may dedicate additional funding if they so choose. These dedicated funds are not meant to limit any additional appropriation.

CODE REFERENCE: West Virginia Code §11-19-2 and §33-3-14b – amended; §11-19-13 – new

DATE OF PASSAGE: March 12, 2022

EFFECTIVE DATE: July 1, 2022

ACTION BY GOVERNOR: Signed March 30, 2022

Senate Bill 542

Transferring Broadband Enhancement Council from Department of Commerce to Department of Economic Development

Senate Bill 542 transfers the Broadband Enhancement Council from the Department of Commerce to within the Department of Economic Development. The bill removes the Secretary of Commerce from the Council and adds the Secretary of the Department of Economic Development as a voting member.

The bill also corrects the title of the Chief Information Officer from "Chief Technology Officer" as that title was changed during the 2021 Regular Session.

CODE REFERENCE: West Virginia Code §31G-1-3 – amended

DATE OF PASSAGE: March 7, 2022

EFFECTIVE DATE: March 7, 2022

ACTION BY GOVERNOR: Signed March 23, 2022

Senate Bill 548

Authorizing Workforce WV employers to obtain employment classifications and work locations

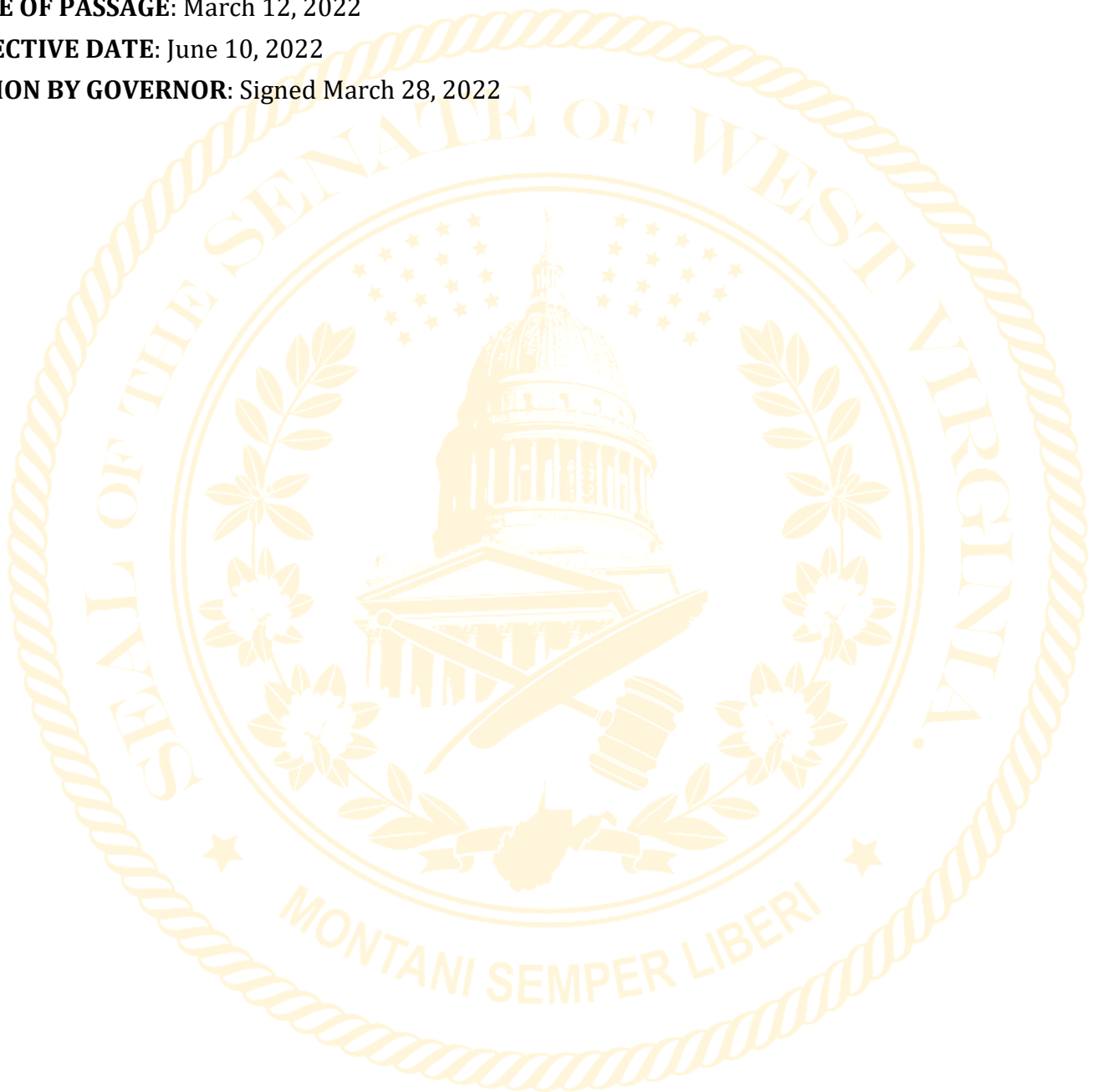
The bill requires participating employers provide Workforce West Virginia with information relating to employment classifications and work locations in which employees are working.

CODE REFERENCE: West Virginia Code §21A-10-11 – amended

DATE OF PASSAGE: March 12, 2022

EFFECTIVE DATE: June 10, 2022

ACTION BY GOVERNOR: Signed March 28, 2022



Senate Bill 552

Relating to tax sale process

This bill modifies and modernizes the process for a tax sale. It transfers the current procedure for selling tax delinquent properties and for redeeming property sold for delinquent taxes from the sheriff's office to the State Auditor. The State Auditor instead of the sheriff will now conduct the sale of tax delinquent properties.

Timelines throughout the entire process essentially remain the same. Under current law, there is a period of approximately two years, nine months from the time a taxpayer receives a tax ticket (July 1 of each year) to the time the Auditor issues a tax deed to a purchaser at a tax sale. During this period, a list of delinquent properties is published, posted, and the list is certified to the Auditor by the county commission. A second publication of the delinquency list occurs with the tax sale occurring approximately nine months after taxes were due. Over the next 17 months, if the delinquent taxpayer fails to redeem the property, a tax deed is issued by the Auditor with opportunity for taxpayer to redeem.

Under the new procedure, the timeline is approximately two years, seven months from the time a taxpayer receives a tax ticket to the time a tax deed is issued by the Auditor. During this period, the sheriff publishes two delinquency notices, a notice of delinquent properties is certified to the Auditor, the Auditor certifies list of delinquent properties to each county, the list is published, and the Auditor holds a sale. Thereafter, the county reports sales to the Auditor and the period of redemption begins and notice to redeem is issued to appropriate parties.

New language would create a preference list for buyers of property at the deputy commissioner annual auction. First priority is to adjacent landowners, then to a municipality if the land is located within the municipality. Next in priority is the county commission if the land is located within the county. If they both do not place the deputy commission on notice of their intent to acquire the next person in priority is the West Virginia Land Stewardship Corporation, urban renewal authorities, municipal land banks, or land reuse authorities. The purchase is contingent upon the deputy commissioner and the entity agree upon a purchase price. If none of these entities exercise their priority, the land is sold to the highest bidder.

Additionally, a provision has been added that if property is the purchaser's primary residence, a purchaser may petition the Auditor to redeem the property in three incremental assignments. There is also a procedure to redeem properties sold at a tax sale or to set aside a deed where a deed was obtained improperly or where a person entitled to receive notice of a tax deed was not notified as required by the new law.

The bill also authorizes the Department of Environmental Protection (DEP) to assist local governments, urban renewal authorities, municipal land banks, and land reuse agencies to remediate abandoned, blighted, and dilapidated structures. The DEP is further authorized to use an existing fund, the Reclamation of Abandoned and Dilapidated Properties Program Fund, to assist the local governments, authorities and agencies to remediate structures by demolishing, deconstructing, and redeveloping rehabilitation, together with pre-development expenses for distressed properties acquired by local governments, the West Virginia Land Stewardship Corporation, and certain agencies and authorities. The DEP is required to consult with the State Fire Marshall, Insurance Commissioner, State Auditor, Secretary of Revenue, and the Legislative Auditor on the needs of slum clearance by local governments, agencies and authorities. It is also required to submit a report to the Joint Committee on Government and Finance regarding steps that need to be implemented to develop and redevelop abandoned and dilapidated

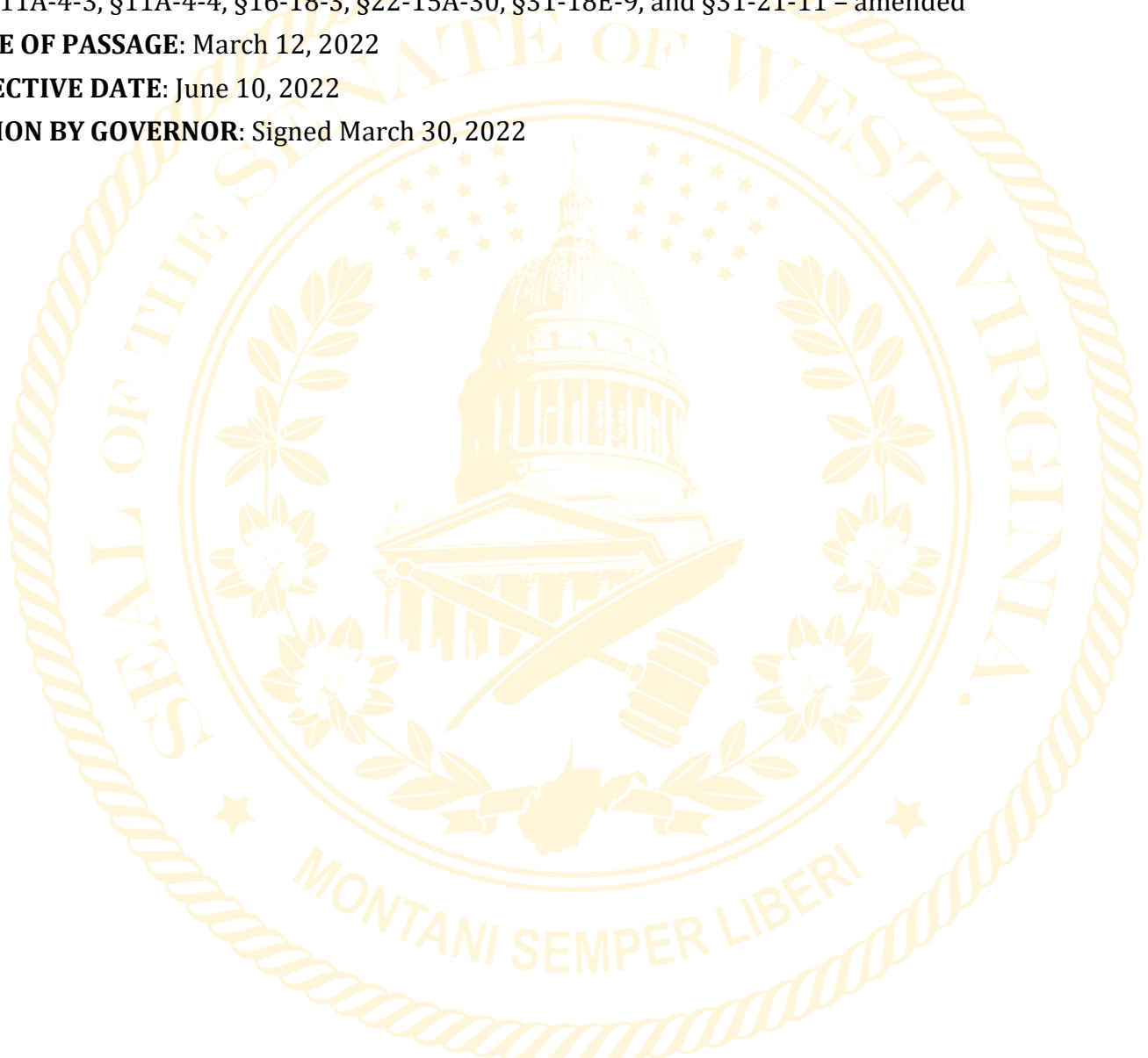
structures and properties. The DEP is also given contract authority to assist local governments and agencies and authorities with slum clearance.

CODE REFERENCE: West Virginia Code §11A-2-18, §11A-3-5, §11A-3-5a, §11A-3-5b, §11A-3-6, §11A-3-7, §11A-3-14, §11A-3-15, §11A-3-16, §11A-3-17, §11A-3-18, §11A-3-19, §11A-3-20, §11A-3-21, §11A-3-22, §11A-3-23, §11A-3-24, §11A-3-25, §11A-3-26, §11A-3-27, §11A-3-28, and §11A-3-29, §11A-3-30, and §11A-3-31 – repealed; §11A-1-8, §11A-2-14, §11A-3-1, §11A-3-2, §11A-3-4, §11A-3-8, §11A-3-9, §11A-3-10, §11A-3-11, §11A-3-12, §11A-3-13, §11A-3-32, §11A-3-39 §11A-3-42, §11A-3-44, §11A-3-45, §11A-3-46, §11A-3-48, §11A-3-50, §11A-3-52, §11A-3-53, §11A-3-54, §11A-3-55, §11A-3-56, §11A-3-66, §11A-3-69, §11A-4-3, §11A-4-4, §16-18-3, §22-15A-30, §31-18E-9, and §31-21-11 – amended

DATE OF PASSAGE: March 12, 2022

EFFECTIVE DATE: June 10, 2022

ACTION BY GOVERNOR: Signed March 30, 2022



Senate Bill 568

Relating to health insurance loss ratio information

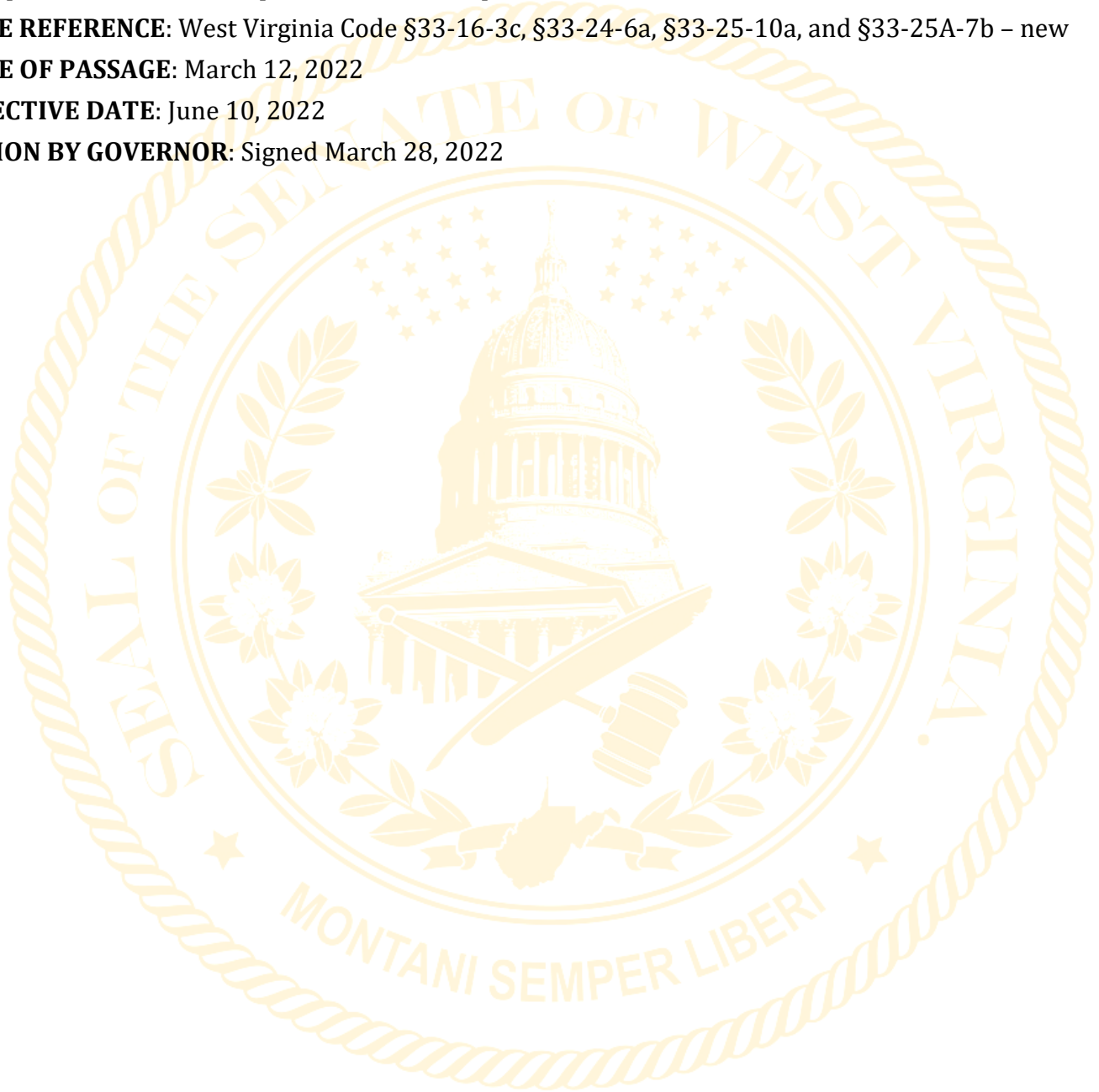
The bill requires loss ratio information to be made available upon request of an insured relating to Group Accident and Sickness Insurance; Hospital Service Corporations, Medical Service Corporations, and Health Service Corporations; Health Care Corporations; and Health Maintenance Organizations. The bill exempts Dental Service Corporations from the provisions of the sections.

CODE REFERENCE: West Virginia Code §33-16-3c, §33-24-6a, §33-25-10a, and §33-25A-7b – new

DATE OF PASSAGE: March 12, 2022

EFFECTIVE DATE: June 10, 2022

ACTION BY GOVERNOR: Signed March 28, 2022



Senate Bill 582

Creating WV Workforce Resiliency Act

This bill created a new article in Chapter 29 (Misc. Boards and Officers) named the West Virginia Workforce Resiliency Act.

The first new section under this article names and describes the purpose of the act; which is to establish an office within the Office of the Governor to coordinate workforce development, job training, education, and related programs and initiatives across agencies and entities of the state.

The second new section established the West Virginia Workforce Resiliency Office with the following criteria:

- The office will be organized within the Governor's office;
- The WV Workforce Resiliency Officer is appointed by the Governor with advice and consent from the Senate;
- The WV Workforce Resiliency Officer has the authority and duties prescribed under this new article;
- The WV Workforce Resiliency Officer shall have managerial or strategic planning experience in matters relating to workforce development, job training, and related fields.
- The third new section described both the Office's and the Officer's authority and duties. These include coordination with various state entities and agencies such as:
 - Workforce West Virginia;
 - Department of Economic Development;
 - Department of Commerce;
 - DHHR;
 - Department of Tourism;
 - Higher Education Policy Commission;
 - WVU;
 - Marshall;
 - WV Economic Development Authority; and
 - Other miscellaneous public and private parties as the Officer deems necessary.

The Office and Officer is otherwise empowered to work to develop, implement, and manage programs and initiatives to accomplish the purpose of this article, and to advise the Governor regarding all matters related to workforce development. Finally, the Office and Officer is to propose opportunities for legislative changes to accomplish said goals.

The fourth and final section of the Act pertains to employees of the Office, who are to be hired, administered, and managed by the WV Workforce Resiliency Officer.

These employees:

- Are exempt from both the classified services category and the classified-exempt services category under §29-6-4;
- Contingent upon receipt of necessary federal and/or state funds;
- Employed at-will;
- Not entitled to make use of the state grievance procedure (because they are at-will);
- Allowed to participate in PEIA, PERS, workers' comp and unemployment comp programs;
- Required to execute surety bonds (includes WV Workforce Resiliency Officer);

Salaries of these employees will be determined by WV Workforce Resiliency Officer.

CODE REFERENCE: West Virginia Code §29-33-1 through §29-33-4 – new

DATE OF PASSAGE: March 12, 2022

EFFECTIVE DATE: June 10, 2022

ACTION BY GOVERNOR: Signed March 30, 2022



Senate Bill 584

Relating to WV Infrastructure and Jobs Development Council

This bill relates to funding from the Infrastructure Fund. These funds are used to make loans, loan guarantees, or grants to finance all or part of the costs of water or wastewater facility projects.

This bill makes the following substantive changes:

- Current code requires funding assistance from the Infrastructure Fund be on a pro rata basis divided equally among the congressional districts. The bill would eliminate that pro rata funding requirement.
- Current code limits the amount of moneys disbursed from the fund in the form of a grant to no more than 25% of the total amount available for funding projects, but authorizes the Infrastructure and Job Development Council (IJDC) to convert up to 30% of funds available for loans be used for grants, if the amount available for grants is below \$150,000. This bill would authorize this conversion if the amounts available for grants is below \$1,000,000 at the beginning of any month.
- Current code limits the amount of funding assistance that may be provided to all project sponsors to defray the expenses of the preapplication process to \$500,000 annually. The bill would increase that to \$1,300,000 annually.
- Current law authorizes the IJDC to have up to \$4 million per congressional district transferred into the Critical Needs and Failing Systems Sub Account of the Infrastructure Fund on June 30 of each year. The bill would authorize the IJDC to have up to \$12 million transferred without regard to congressional district.
- Current code authorizes the IJDC to make a loan or grant from the Critical Needs and Failing Systems Sub Account when the IJDC determines that a project will address a critical immediate need by providing extensions to a water or wastewater facility that will add customers with a total cost of less than \$1 million. The bill would increase the total cost limitation to less than \$2 million provided that a person or government agency shall pay any overage not to exceed 10% of the total project cost.

CODE REFERENCE: West Virginia Code §31-15A-10 and §31-15A-17c – amended

DATE OF PASSAGE: March 11, 2022

EFFECTIVE DATE: June 9, 2022

ACTION BY GOVERNOR: Signed March 23, 2022

Senate Bill 585

Creating administrative medicine license for physicians not practicing clinical medicine

The bill creates an administrative medicine license. This is a medical license that allows a physician to practice administrative medicine in such areas as managing the clinical operations and other business activities related to the delivery of health care services.

The West Virginia Board of Medicine may issue a license to a physician who completes an application pays the fee and meets all qualifications for licensure and demonstrates competency to practice administrative medicine. An administrative licensee may not practice clinical medicine.

The bill gives the board the ability to propose emergency rules.

CODE REFERENCE: West Virginia Code §30-3-11c – new

DATE OF PASSAGE: March 10, 2022

EFFECTIVE DATE: June 8, 2022

ACTION BY GOVERNOR: Signed March 23, 2022

Senate Bill 603

Prohibiting licensure and re-licensure in WV if applicant is prohibited from practicing in another jurisdiction

The bill provides that board shall not issue an initial license, reinstate, or reactivate a license, to any individual whose license has been revoked, suspended, surrendered, or deactivated in another state based upon conduct which is substantially equivalent to an act of unprofessional conduct prohibited by the code or the board's legislative rules, until reinstatement of his or her license in the state.

CODE REFERENCE: West Virginia Code §30-3-10 – amended

EFFECTIVE DATE: June 6, 2022

DATE OF PASSAGE: March 8, 2022

ACTION BY GOVERNOR: Signed March 23, 2022

Senate Bill 606

Relating to WV Medical Practice Act

Senate Bill 606 modifies provisions of the West Virginia Medical Practice Act which govern professional discipline of physicians and podiatrists.

The bill adds a new reporting requirement to subsection (b)(5), imposing a duty on a healthcare provider licensed or authorized by the Board of Medicine to submit a written report to the Board if he or she reasonably believes a provider has engaged in certain conduct. The bill specifies five categories of provider conduct which are reportable under this provision. The bill requires the report to be submitted within 30 days of the incident itself or the provider's subsequent knowledge of same. It establishes failure to report as unprofessional conduct which is grounds for disciplinary action. The bill provides an exception to this reporting requirement for physicians who obtain otherwise reportable information exclusively while functioning as an executive director or employee of a board-approved professional health program.

The bill provides immunity from civil liability for a person who submit any report under subsection (b) in good faith and without fraud or malice. It establishes bad faith, fraudulent, or malicious reporting as unprofessional conduct and grounds for disciplinary action.

The bill expands the reasons the Board may deny a license application or discipline a provider under subsection (c) to include engaging in other sexual misconduct and failing to comply with a reporting requirement under subsection (b). Lastly, in new subsection (u), the bill provides rulemaking authority to the Board to define sexual misconduct and identify prohibited professional misconduct, including sexual misconduct, for purposes of denying an application or disciplining a provider.

CODE REFERENCE: West Virginia Code §30-3-14 – amended

DATE OF PASSAGE: March 11, 2022

EFFECTIVE DATE: June 9, 2022

ACTION BY GOVERNOR: Signed March 28, 2022

Senate Bill 638

Changing hearing and notice provisions for failing or distressed public utilities

Senate Bill 638 amends a single section of code relating to proceedings concerning distressed or failing utilities. A public hearing or hearings must be held to determine whether the utility is in fact failing or distressed, and, if so, what the appropriate remedies are.

The bill eliminates the notice requirement for publication of a Class I legal notice. The bill instead requires that all notices of hearing be “reasonable,” and retains all the other specific types of notice required by current law.

The bill also amends the hearing location requirements to provide that the hearing is to be held in or within 25 miles of the utility's service area rather than exclusively within the utility's service area.

CODE REFERENCE: West Virginia Code §24-2H-6 – amended

DATE OF PASSAGE: March 7, 2022

EFFECTIVE DATE: June 5, 2022

ACTION BY GOVERNOR: Signed March 23, 2022

Senate Bill 639

Providing 45-day waiting period on rate increases when water and sewer services are purchased from municipality

Senate Bill 639 amends a single section of code to provide that any proposed municipal ordinance that increases water or sewer, or water and sewer, service rates must contain provisions that the rate increase will not go into effect until 45 days following adoption of the ordinance, and only applies to service provided after the effective date.

The waiting period is intended to allow utilities that purchase water or sewer services from the municipality time to seek rate increases to cover the increased costs of purchasing water or sewer services from the municipality.

CODE REFERENCE: West Virginia Code §8-11-4 – amended

DATE OF PASSAGE: February 28, 2022

EFFECTIVE DATE: May 29, 2022

ACTION BY GOVERNOR: Signed March 9, 2022

Senate Bill 643

Removing residency requirement of members appointed to county airport authority

The bill requires that a majority of members be a resident of the county in which the airport is situated. The bill no longer requires all members of a county airport authority be a resident of the county in which the airport is situated.

CODE REFERENCE: West Virginia Code §8-29A-2 – amended

DATE OF PASSAGE: March 10, 2022

EFFECTIVE DATE: June 8, 2022

ACTION BY GOVERNOR: Signed March 23, 2022

Senate Bill 650

Eliminating number of royalty owners required for utilization by operator for lawful use and development by co-tenants

This bill altered the applicability of the co-tenancy reform bill passed during the 2018 general session. The law provided that, in cases where there are 7 or more owners, consent for the lawful use and development of oil or natural gas by persons owning an undivided three fourths in an oil or natural gas property was permissible, was not waste, and was not trespass. This bill removed the conditional language requiring 7 or more owners for the statute to be applicable.

The bill also corrects internal citations.

CODE REFERENCE: West Virginia Code §37B-1-4 – amended

DATE OF PASSAGE: March 5, 2022

EFFECTIVE DATE: June 3, 2022

ACTION BY GOVERNOR: Signed March 30, 2022

Senate Bill 656

Providing tax credit for certain corporations with child-care facilities for employees

This bill would allow qualified employers to claim a tax credit for providing childcare services. The bill has an extensive list of definitions. Many are standard definitions in tax code. Specific to this credit are a number of terms including “employer provided”, “qualified childcare property”, and “recapture event”. A recapture event is an occurrence that would result in all, or any portion of the tax credit being recaptured, disallowed or invalidated. For purposes of this bill, it is the disposition of childcare property by the taxpayer. The bill contains a schedule of percentages that will be recaptured based upon the number of years the qualified property is placed in service.

The credit is allowed in the first year the childcare property is placed in service. The allowable credit is 50% of the cost of all qualified childcare property for five years claimed at the rate of 20% per year. There are carry forward provisions allowing the credit to be carried forward for three years from the close of a tax year. There is also a provision that would limit the credit when combined with other credits to 50% of the taxpayer’s liability.

A schedule is required to be attached to the taxpayer’s return that describes the facility, lists the amount of property acquired and its costs, the tax credit claimed, the amount of qualified property acquired in prior years, any carryover amount, the amount of the credit utilized in the current year, any amount to be carried forward to subsequent years, and a description of any recapture events.

Based upon the recapture schedule set forth in the definitions section, the bill provides for the means for recapture that allows for a reduction of any carryover amount and a reduction in the actual credit. In addition to the credit for operating a childcare, any employer who sponsors childcare for their employees, may also claim a credit equal to 100% of the costs to the employer minus any amounts by employees. Employers are required to certify names of employees, names of childcare providers, and any other information necessary to assure the credit is properly applied.

The bill would also amend an existing provision of code (§11-21-71) to allow employers that provide child care for their employees that are 1) non-profits who don’t pay income tax; and 2) to allow business entities that don’t pay corporate net income tax, but for whose activities personal income are paid, to receive a tax credit against the income tax paid by their employees each paycheck that the employer sends on to the State Tax Department, referred to as their withholdings.

Finally, the Tax Commissioner is granted rulemaking authority, including emergency rulemaking authority to effectuate the provisions of the new section.

CODE REFERENCE: West Virginia Code §11-21-97 and §11-24-44 – new

DATE OF PASSAGE: March 12, 2022

EFFECTIVE DATE: June 10, 2022

ACTION BY GOVERNOR: Signed March 30, 2022

Senate Bill 662

Relating to creation, expansion, and authority of resort area district

The bill revises Chapter 7, Article 25 (the Resort Area District Act) of the code. The bill, most importantly, permits the resort area district to impose an assessment for essential services. The bill also clarifies the process for expansion of a resort area district. The bill allows for reasonable compensation for board service on the resort Area District Board and provides an appointment process for vacancies of less than one year.

CODE REFERENCE: West Virginia Code §7-25-3, §7-25-5, §7-25-6, §7-25-10, §7-25-15 – amended

DATE OF PASSAGE: March 11, 2022

EFFECTIVE DATE: June 9, 2022

ACTION BY GOVERNOR: Signed March 28, 2022

Senate Bill 686

Clarifying use of notes and bonds of WV Housing Development Fund

The bill related to the WV Housing Development Fund (WVHDF). It made the following substantive changes to current code:

- Current law authorizes the WVHDF to borrow money and issue bonds or notes as evidence of such borrowing. Notes are limited to a maturity of no more than 10 years. This bill would extend that maturity to no more than 20 years. It likewise would extend the maturity of renewal notes from no more than 10 to no more than 20 years.
- There is clarification on the limitations on a loan made or purchased with the proceeds of notes or bonds of the Housing Development Fund.
- The related note or bond has received an investment grade rating from a nationally recognized bond-rating agency;
- All payments of principal of an interest on a loan, note or bond are the subject of credit enhancement that is a senior obligation of a bank, national bank, trust company, savings bank, savings and loan association, insurance company, US governmental agency, Federal National Mortgage Association, or Federal Home Loan Mortgage Corporation;
- Permanent financing is in full force and effect to be drawn upon to pay all unpaid amounts prior to the issuance of a note or bond;
- The note or bond is fully cash-collateralized; or
- The note or bond is a mortgage finance bond.
- Authorized the WVHDF to allocate a portion of its state ceiling allocation to a political subdivision or city or county housing authority upon such terms and conditions as its Board deems reasonable and desirable. If any allocated portion is not used, the WVHDF will use its authorized carryforward as to those portions.

CODE REFERENCE: West Virginia Code §31-18-6 and §31-18-9 – amended

DATE OF PASSAGE: March 12, 2022

EFFECTIVE DATE: March 12, 2022

ACTION BY GOVERNOR: Signed March 30, 2022

Senate Bill 694

Relating to oil and gas conservation

This bill allows for unitization of mineral interests for the purpose of horizontal well drilling for oil and gas.

The bill defines necessary terms and makes necessary stylistic changes to recognize horizontal drilling in West Virginia. It also modifies the composition of the Oil and Gas Conservation Commission. Currently, there are five members, this bill would add a seventh member. In addition to two ex officio members who are the Director of the EPA and the Chief of the Office of Oil and Gas, there is an independent producer, a public who is not a member of the PSC or FERC and an engineer or geologist with oil and gas experience. The two new members would be someone with agricultural or farming experience and a resident mineral owner.

There is a declaration of public policy and legislative intent which encourages horizontal drilling. It also prohibits waste of oil and gas resource and unnecessary use of the surface. It encourages the maximum recovery of oil and gas and to protect the property rights of surface owners and agricultural users.

The bill establishes an application process for proceeding with shallow or deep horizontal well drilling. The application is filed with the Commission. Prior to filing any application an applicant must have:

- Obtained consent of at least 75% of the royalty owners in the unit to pool or unitize.
- Obtained consent of at least 75% of the operators for shallow well unit (this would include Marcellus) and 55% of the operators for deep well units (this would include Utica).
- Made good faith offers and negotiated in good faith with all known and locatable royalty owners and operators.

Once these conditions are met, the operator is deemed to have control of the unit and may file an application. There are factors for the Commission to consider in determining if the operator has the requisite control. If the Commission finds the applicant has not met the necessary requirements the application is dismissed without prejudice. If the application is complete, the Commission will authorize the unitization of the tracts for horizontal drilling. This includes unknown and unlocatable interest owners.

The bill sets out an application process and requires certain documents to be included with the application. These include:

- A description of the project including the target formations.
- Contemplated operations.
- A plat depicting the boundaries and acreage of the proposed horizontal well unit.
- A list of all oil and gas tracts within the horizontal well unit.
- Names and last known addresses of royalty owners, including if they are unknown or unlocatable.
- Names of operators or proposed horizontal well unit target formation acreage including if any are unknown or unlocatable.
- A description of the actions taken to identify and locate unknown and unlocatable owners.
- The percentage of the net acreage in the proposed well unit owned by executory interest royalty owners.
- The percentage of the acreage in the proposed well unit held by bonded operators.
- A percentage allocation of the separately owned tracts or portions thereof in the unit.
- A certificate that the applicant is deemed to have control of the unit.
- Statement that the necessary permits have been applied for the DEP.

- A joint operating agreement governing the contractual relationship between the applicant and any unleased royalty owners following an election by the executory interest to participate in the unit.

Following receipt of an application the Commission is required to schedule a hearing and provide notice to all interested parties. The bill contains a number of factors for the Commission to consider. These include:

- Ownership control of the tracts or portions thereof.
- Whether the tracts are owned in whole or in part by unknown or unlocatable owners.
- The information provided to locate the unknown or unlocatable owners.
- The percentage of executory interest royalty.
- The percentage of acreage held and bonded by operators.
- Whether the applicant controls the proposed well unit.
- The area to be drained by the horizontal well unit.
- Correlative rights.
- The extent the applicant will prevent waste.
- Whether the action has met all of the requirements to be deemed in control of the unit.
- Whether notice has been provided to all necessary parties.
- Whether the applicant demonstrated the intent and ability to drill all wells proposed in the unit.

Upon review, the Commission shall enter a Horizontal Well Unit Order. The order must include:

- The size and boundaries of the horizontal well unit but in no instance shall it exceed 640 acres unless to do so would make draining the well unit more efficient and economical. A horizontal well unit containing one or more shall wells may not contain more than 128 net acres controlled by nonconsenting royalty owners.
- A description of the wells to be drilled and whether they are shallow or deep.
- If vertical wells exist in the area, the area where the where horizontal wells may not be completed.
- Target formation(s) where the well unit applies.
- Any unit consideration due.
- If there are unknown or unlocatable interest owners a finding that identifies them as such.
- The allocation of the percentage of production in the horizontal well unit are in proportion to each tract's net acreage within the unit.
- Authorization and perfection of the unitization of all interests in the target formation.
- Authorize the creation of a unit and drilling and operation of one or more horizontal wells.
- Provide for consideration to nonconsenting royalty owners in an amount equal to 25% of the weighted average monetary bonus amount on a net mineral acre basis and a royalty percentage equal to 80 percent of the weighted average production percentage rounded.
- Provide that the applicant, royalty owners, and owners of leasehold, working interest, overriding royalty interest and other interest are bound by the order and consideration shall be paid to the extent of their interest in the well.

For interests where there is no lease in existence there are three options:

- Option 1: To surrender the interest or a portion thereof to the participating operators, including the applicant, to the extent of their interest and for a just compensation, which, if not agreed upon, shall be an amount equal to the weighted average amount paid to executive interest owners in 3rd party transaction for the acquisition of oil and gas mineral rights in the same target formation.
- Option 2: They can have their interest considered leased for the following consideration:

- Bonus payments per net mineral acre equal to the weighted average monetary bonus paid. If the executive interest can show they made a good faith offer that was rejected and that the offer is less than or equal to the highest bonus paid on a net mineral basis for leases in the same target formation the bonus payment shall be the amount of the offer.
- A royalty percentage that is equal to the average royalty percentage within the unit with the option for the owner to show that a good faith offer was made and if the offer was lower than the highest paid royalty amount in the unit, they will receive the higher amount. Royalty owners can elect to be paid at an index price in effect at the beginning of each calendar month or the weighted average sale price.
- Option 3: To participate in the in the horizontal well unit.

If a nonconsenting owner does not make a timely election, he or she will be deemed to have opted for option two.

A non-consenting operator is permitted to participate after an application has been filed and who does not want to elect to participate in the risk and cost of drilling on a carried basis. A carried basis is This interest is paid, or carried, for the drilling and or completion costs as specified in the contract between the parties, by another working interest owner typically until casing point is reached, or through the tanks, meaning through completion of the well, as agreed upon contractually.

There are provisions to modify the order if the wells are not drilled and completed as provided in the initial order, to correct a clerical error. A modification requires a recalculation of the allocation production from the tracts.

Moneys payable to unknown or unlocatable interest owners are required to be held in an escrow account.

Horizontal well drilling orders shall expire if the well has not been drilled within three years of the entry of the order unless extended by the Commission. If the well has been drilled, they remain in full force and effect until the last well ceases production.

The bill provides for notice of hearings and directs the Commission to establish a website for publication of hearing notices, filed applications, and proposed unit plats. Upon request of an interested party, the Commission shall conduct a hearing on the application. Hearing requests must be received within fifteen days after notice of the application is posed on the Commission's website. If no timely request for a hearing is received, the Commission may issue a proposed unit order and provide a copy of the proposed unit order to all interested parties. Any interested party aggrieved by the order may appeal the proposed order to the Commission and request a hearing, which request must be made within fifteen days of the proposed order. If no timely request is received, the proposed order shall become final. If a hearing is timely requested, the hearing shall commence within 45 days of the issuance of the initial notice. The Commission must render their decision within 20 days of the hearing. The bill contains the required documents for the applicant to file in the event of a hearing. Parties are permitted to appear at hearings in person.

Ten days prior to any hearing the applicant must file with an independent, third-party attorney or accountant selected by the Commission the following:

- The prevailing economic terms of the leases with the unit including the best bonus payment per net mineral acres and production royalty rate.
- The prevailing amount amounts paid to executive interest royalty owners per net mineral acre.

The third party will review this information for accuracy and report back to the Commission:

- Weighted average monetary bonus paid per net mineral acre
- Weighted average production royalty percentage per net mineral acre

The fees for the third-party review are to be paid by the applicant. Additionally, there are provisions to mark portions of the report as confidential. All orders of the Commission are subject to judicial review. A unit order does not grant surface rights, and the commission's approval is required for additional drilling through the target formation.

The bill has a provision that deep well horizontal unit applications filed prior to the effective date are grandfathered. Ones filed after the effective date are subject to the provisions of this section.

There is an opportunity for surface owners to acquire interest of unknown and unlocatable interest owners. The applicant is required to notify the person paying the taxes on the surface interest of the availability to acquire mineral interest. The applicant is required to provide information to the surface owner who may then petition the circuit court to perfect a conveyance of the mineral rights. All unknown and unlocatable interest owners are required to be joined as defendants. If a person claims to be a legitimate owner of the mineral rights and establishes such to the satisfaction of the court, the petition is required to be dismissed. If there are amounts awarded to unknown or unlocatable interest owners these amounts are paid into the Oil and Gas Reclamation Fund three years after the petition is filed unless unknown or unlocatable owner makes an appearance in the proceedings. The court may appoint a special commissioner to deliver a deed to the petition five years following the filing of the petition. Personal service or process is preferred via the Rules of Civil Procedure, but if this is not possible service may be by publication in a Class III legal advertisement pursuant to West Virginia Code. The petitioner is also required to file a lis pendens notice with the County Clerk. This is a legal notice that a legal action has been filed. That notice is required to contain:

- The names of the petition and defendants and their last known address.
- Details regarding the instrument creating the mineral rights.
- A description of the land.
- Source of the title of the last known owner of the mineral rights.
- A description of the consequences for not appearing i.e. transfers of the mineral rights within the next five years.

Notice is required to be sent certified mail to the last known address of the mineral rights owner(s).

If the court makes a finding conveying the mineral rights to the surface owner, the special commissioner is required to prepare a deed. The form of the deed is set out in the bill. Following entry of the deed the surface owner is entitled to receive all proceeds due and payable under the unit order. It is not necessary to join the applicant for a well unit order to the suit.

There is a limitation of liability for funds due any unknown or unlocatable mineral interest owner by the operator when the operator pays the unknown or unlocatable mineral interest owner's portion into the Oil and Gas Reclamation Fund. Any petition must be filed within three years of notice given to the surface owners.

Once the special commissioner's deed is filed unknown and unlocatable mineral interest owners may not bring an action to recover past or future proceeds due under the well unit order. If they establish to the court's satisfaction they are entitled to proceeds, they will only receive any amount payable from the date of their appearance forward.

The operators and surface owners have no liability for any other amount paid.

The final section in the bill provides a severability clause.

CODE REFERENCE: West Virginia Code §22C-9-1 through §22C-9-5 – amended; §22C-9-7a – new

DATE OF PASSAGE: March 9, 2022

EFFECTIVE DATE: June 7, 2022

ACTION BY GOVERNOR: Signed March 30, 2022



House Bill 2096

Reinstating the film investment tax credit

This bill reinstates the film tax credit that was originally enacted in 2007 and discontinued in 2018. It would provide a credit for qualified projects which are defined in the bill as feature films, direct to video motion pictures, made for television movies, music videos, commercial still photography, a television pilot, series or mini-series that incurs a cumulative amount of \$50,000 in direct production expenses in a calendar year.

The credit would equal to 27% of direct production cost expended in West Virginia. State entities are excluded from the credit and the bill requires an eligible company who is performing a qualified project for a state entity to indicate on their proposal that they intend to claim the credit.

The Office of Economic Development Office is required to create a database of locations, music, and other resources which are available for use in film projects.

The credit is effective July 1, 2022, and will sunset on December 31, 2027.

CODE REFERENCE: West Virginia Code §11-13X-3 through §11-13X-5, §11-3X-7, §11-3X-8, and §11-3X-11 through 13 – amended

DATE OF PASSAGE: March 11, 2022

EFFECTIVE DATE: June 9, 2022

ACTION BY GOVERNOR: Signed March 28, 2022

House Bill 2817

Donated Drug Repository Program

The bill creates a new chapter of code entitled the Donated Drug Repository Program. The bill defines terms. The Board is the WV Board of Pharmacy. The terms donor includes a member of the public, or any entity legally authorized to possess drugs with a license or permit in good standing. Drugs means both prescription and nonprescription drugs. Eligible patient means an indigent person. However, if the recipients supply of donated drugs exceeds the need for donated drugs by indigent persons, then any other person in need of a particular drug can be an eligible patient.

The bill provides for waivers for donors and eligible recipients from any rule related to this program. The bill provides that any person or entity may dispose of an eligible drug by donating it to an eligible recipient. The bill provides an eligible recipient may receive drugs from a donor. The bill provides that an eligible recipient may accept drugs that are in tamper-resistant packaging and drugs that have a tamper evident seal. The drugs that may be dispensed are prescription drugs that do not expire before the completion of medication by the eligible patient based on the prescribing health care professionals' directions for use and for over-the-counter drugs, based upon the manufacturer's label and the drugs were donated in a unopened tamper-evident packaging. The bill provides that controlled substances and drugs subject to the FDA managed risk and evaluation mitigate on strategy may not be donated. Eligible drugs are drugs believed to be unadulterated. The bill lists the eligible recipients and requires the board to publish a list on its website. Participating entities shall make all records available within five business days.

The bill defines the information that needs to be collected from a new donor, including whether the donor meets the definition of donor; the donors name, address, phone number and license number. The bill provides the donor shall only make donations in accordance with the program. The donor shall ensure the integrity of any drug requiring temperature control. The bill sets forth requirements for storage and inventory. The bill provides donated drugs shall be kept separate from other inventory and that drugs may be repackaged as necessary for storage, replenishment, dispensing and administration.

With respect to dispensing the drugs, it must be consistent with law. The drugs must be dispensed pursuant to a valid prescription. The patient shall be provided appropriate counseling. The bill provides that an eligible recipient may further donate unused prescription drugs do or receive unused prescription drugs from another eligible recipient. The bill provides an inventory shall be kept unless both eligible recipients are under common ownership and control.

The bill provides that an eligible recipient shall dispose of drugs that do not meet the requirements of the program by returning them to the donor, destroying the drugs in an incinerator, or transfer of the drug to a reverse distributor. The bill provides that donated drugs may not be resold and shall be considered nonsalable. A handling fee may be charged. The fee may not exceed the reasonable costs of participating in the program. Dispensed drugs shall be repackaged in a new contained and previous patient information and pharmacy information shall be redacted. An expiration date is required for all drugs. The bill provides for rulemaking, and incorporates language regarding liability protection.

CODE REFERENCE: West Virginia Code §60B-1-1 through §60B-1-8 – new

DATE OF PASSAGE: March 11, 2022

EFFECTIVE DATE: June 9, 2022

ACTION BY GOVERNOR: Signed March 28, 2022

House Bill 3082

Stabilizing funding sources for the DEP Division of Air Quality

This bill will stabilize funding sources for the Division of Air Quality within the Department of Environmental Protection. The Division of Air Quality operates from two accounts established in the State Treasury:

- The Air Pollution Education and Environment Fund, and
- The Air Pollution Control Fund.

The bill removed language governing these two funds which allows the transfer of excess funds to other accounts for other purposes. The bill also authorizes the DEP to invest or reinvest these funds in lawful investments. The investments will then generate additional revenue to support the division's operations. The bill adds language requiring that unspent funds and interest shall not be transferred to other funds or to the General Revenue Fund.

The bill includes technical clean up to the code section citations.

CODE REFERENCE: West Virginia Code §22-5-2 and §22-5-4 – amended

DATE OF PASSAGE: March 11, 2022

EFFECTIVE DATE: March 9, 2022

ACTION BY GOVERNOR: Signed March 28, 2022

House Bill 3220

Restrictions on Taxpayer funded lobbying

House Bill 3220 requires state agencies, municipalities, counties, and school districts that contract for lobbying services on and after July 1, 2022, disclose certain information regarding that contract to the state Ethics Commission.

The state entity must disclose contract details, such as the identity of the parties to the contract, the contract's effective date, contract term, costs incurred under the contract, and payment terms. The identities of any individuals who may have to register as a lobbyist as a result of their activities under the contract must also be provided to the Ethics Commission, along with a copy of the contract.

The bill mandates annual update reporting to the Ethics Commission of lobbying activities under the contract, or other contracts for lobbying services, on July 1 of each year, beginning July 1, 2023.

CODE REFERENCE: West Virginia Code §6B-3-10 – amended

DATE OF PASSAGE: February 21, 2022

EFFECTIVE DATE: July 1, 2022

ACTION BY GOVERNOR: Signed March 2, 2022

House Bill 3223

Prohibit state, county, and municipal governments from dedicating or naming any public structure for a public official who is holding office at the time

House Bill 3223 prohibits the dedication or naming of any state, county, or municipal building or structure for a public official who is holding office at the time of the proposed dedication or naming.

The term “public official” is used throughout code but is not often defined. It is defined in §6B-2B-1 of code to mean: “Any person who is elected or appointed to any state, county, or municipal office or position, including boards, agencies, departments, and commissions, or in any other regional or local governmental agency.”

CODE REFERENCE: West Virginia Code §5-6-4 – amended; §7-3-19 and §8-12-22 – new

DATE OF PASSAGE: March 8, 2022

EFFECTIVE DATE: June 6, 2022

ACTION BY GOVERNOR: Signed March 30, 2022

House Bill 4002

Creating the Certified Sites and Development Readiness Program

This bill created the “Certified Sites and Development Readiness Program” under the Department of Economic Development. The program will establish evaluation criteria and site certification levels based upon developmental readiness of an applicant’s site. Applicants may include state, county, municipal, or regional governmental entities. The department will select, evaluate, and certify sites in the program. The sites will be evaluated based upon its readiness to be developed. After evaluation, the department will provide a report to the applicant identifying deficiencies, strengths, and suggesting site improvements. The department may recertify a site as improvements are made.

The program includes two grant programs:

- Matching Grants – The department may provide funding up to a 50 percent match which may be spent only for directly improving selected sites. The department will establish an application process for awarding these grants. The department is also required to keep track of how the money is spent. The matching funds are required to be paid back to the department when a site is sold or leased for development. The bill requires the department to take steps to receive a security interest in program sites.
- Micro Grants – The department may provide funding to applicants through micro grants. No single site may receive more than \$25,000 in microgrant funds. The department will create an application process and document how the money is spent.

Both types of grants must be spent or returned to the department within 12 months of receipt. All funds returned will remain within the program. Lastly, the bill created a “Certified Sites and Development Readiness Fund” to be administered by the Department of Economic Development.

CODE REFERENCE: West Virginia Code §5B-2-18 – new

DATE OF PASSAGE: March 12, 2022

EFFECTIVE DATE: June 10, 2022

ACTION BY GOVERNOR: Signed March 30, 2022

House Bill 4003

Relating generally to commercial benefit of substances removed from waters of the state by the treatment of mine drainage

The bill restates long-standing public policy of the state that it is compelled to maintain reasonable standards of purity and quality of the waters of the state which are consistent with public health and the protection of all forms of life.

In this bill, the Legislature finds that treatment of mine drainage reduces environmental harm by reducing pollution in the waters of the state. The expensive treatment of mine drainage may produce materials that contain valuable concentrations of rare earth elements and critical minerals with commercial value. The Legislature finds that these materials are part of the water and can only be separated with expensive investments of resources which may last for decades. The bill is to help fulfill the state's obligations to maintain the purity and quality of the water by encouraging investments into the treatment of mine drainage.

The bill determines that all chemical compounds and other potentially toxic materials which are found within the waters of the state and which are derived from the treatment of mine drainage, may be used, sold, or transferred for commercial gain and benefit. Funds received by the DEP are deposited into the Special Reclamation Water Trust Fund or the Acid Mine Drainage Set-Aside Fund and used by the department to fulfill its legal obligations. Private parties may retain the proceeds for themselves.

CODE REFERENCE: West Virginia Code §22-2-10 – new

DATE OF PASSAGE: March 10, 2022

EFFECTIVE DATE: June 8, 2022

ACTION BY GOVERNOR: Became Law Without Governor's Signature

House Bill 4008

Relating to Higher Education Policy Commission funding formula

This bill establishes a funding formula for institutions of higher education in West Virginia. The formula would be performance based.

The Higher Education Policy Commission and the Council for Community and Technical College Education are granted emergency rulemaking authority to develop the formula. The funding formula will be in effect for the 2024 budget year. The bill sets out a number of essential components that the rule is required to emphasize. These are:

- A focus on outcomes on student success and post-secondary education needs in West Virginia;
- Weighted variables that correspond to each institution's mission;
- Incentives for productivity improvements consistent with the goal of strengthening the state's economy and workforce

Elements that are required to be included in the rule include:

- Objective performance metrics supporting the state's higher education goals and objectives;
- A methodology for allocation of funds based upon these metrics;
- The ability to ensure that each institutions base appropriation is based on outcomes over a defined period of time;
- Incentivize postsecondary results geared toward the state's higher education goals and workforce development priorities; and
- Safeguards to allow for revisions to the metrics over time and account for inflation.

That bill also provides that institutions of higher education may receive an exemption from developing new programs on their own campuses if the program is incentivized by the funding formula and if the institutions state appropriation is 40% less than their operating expenses for three consecutive years.

The bill also makes technical updates.

CODE REFERENCE: West Virginia Code §18-1-1f and §18-1B-4 – amended

DATE OF PASSAGE: March 12, 2022

EFFECTIVE DATE: June 10, 2022

ACTION BY GOVERNOR: Signed March 30, 2022

House Bill 4012

Prohibiting the showing of proof of a COVID-19 vaccination

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

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

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

DATE OF PASSAGE: March 12, 2022

EFFECTIVE DATE: March 12, 2022

ACTION BY GOVERNOR: Signed March 30, 2022

House Bill 4021

Relating to the Medical Student Loan Program

This bill rewrites the section of code relating to the Medical Student Loan Program. It establishes the medical student loan program at the Marshall University School of Medicine, the West Virginia University School of Medicine, and the West Virginia School of Osteopathic Medicine.

The bill authorizes the medical schools, subject to the availability of funds, to make medical student loans to students enrolled in or admitted to their respective medical schools in a course of instruction leading to the degree of doctor of medicine or doctor of osteopathy who enter into a written medical student loan agreement with the medical school. The bill provides that the number of awards is to be determined by the availability of funds in the program at each school.

The bill also continues the special revolving fund accounts at the Marshall University School of Medicine, the West Virginia University School of Medicine, and the West Virginia School of Osteopathic Medicine, which are to be used to carry out the purposes of the Medical Student Loan Program.

The following are the eligibility requirements for a medical student loan:

- Full-time enrollment in a medical school in a program leading to the degree of doctor of medicine or doctor of osteopathy. The person cannot have previously obtained such a degree.
- Demonstrated financial need as determined by the medical schools' individual financial aid offices.
- Demonstrated credit-worthiness by not being in default of any previous student loan or medical student loan issued by any lender.
- United States citizenship as either born or naturalized.

The bill requires that the medical student loans be awarded on a priority basis first to qualified applicants who are West Virginia residents at the time of entry into the medical school, and second to qualified applicants who are not West Virginia residents at the time of entry into the medical school.

The bill provides that in order to be eligible for renewal of a medical student loan, the person must meet the initial minimum eligibility requirements, as well as maintain good academic standing and make satisfactory progress toward degree completion.

The bill also provides that each medical student loan issued by a medical school is to provide to the recipient of the medical student loan a maximum annual amount of \$10,000; and that the medical student loan can be renewed annually for a period not to exceed four years.

The bill also requires that each medical student loan be memorialized in a written medical student loan agreement, which must require, at a minimum, that the person receiving the loan:

- Complete the required course of instruction and receive the degree of doctor of medicine (M.D.) or doctor of osteopathy (D.O.).
- Apply for and obtain a license to practice medicine in West Virginia.
- Engage in the full-time practice of medicine for a period of 12 months within an approved service commitment area.
- Commence the full-time practice of medicine within nine months after completion of an approved post-graduate residency training program and licensure in an approved service commitment area and continue full-time practice in the approved service commitment area for a consecutive period of months equal to the total number of months for which the medical student loan was provided.

- Agree that the service commitment for each agreement entered into is in addition to any other service commitment contained in any other agreement the person has entered or may enter into for the purpose of obtaining any other financial aid.
- Maintain records and make reports to the issuing medical school to document the person's satisfaction of the obligations under the agreement to engage in the full-time practice of medicine in an approved service commitment area and to continue the full-time practice of medicine in the approved service commitment area for a consecutive period of months equal to the total number of months the student received the medical student loan. Persons practicing in a federally designated population-based health professions shortage area shall provide documentation that more than 50 percent of their service is provided to the designated population.
- Upon failure to satisfy the requirements of the agreement that the person engage in the full-time practice of medicine within an approved service commitment area for the required period of time under the medical student loan agreement, the person receiving a medical student loan is required to repay amounts to his or her issuing medical school.

The bill also provides that upon the selection of an approved service commitment area for the purpose of satisfying a service obligation under a medical student loan agreement, the person shall inform the issuing medical school of the service area selected. The person can serve all or part of the commitment in the approved service commitment area initially selected or in a different approved service commitment area. If the person chooses a different approved service commitment area, the person must notify his or her issuing medical school of his or her change of approved service commitment areas.

The bill also provides that upon the person's presentation of a report to the issuing medical school evidencing his or her satisfaction of the terms of the medical student loan agreement, the issuing medical school shall cancel \$10,000 of the outstanding loan for every twelve full consecutive months of service as required in the agreement.

The bill also provides that upon the failure of any person to satisfy the obligation to engage in the full-time practice of medicine within an approved service commitment area of this state for the required period of time under any medical student loan agreement, the person is required to repay to his or her issuing medical school an amount equal to the total of the amount of money received by the person pursuant to the medical student loan agreement plus annual interest at a rate of 9.5 percent from the date the person first received the medical student loan. For any such repayment, the following provisions shall apply:

- The person must repay an amount totaling the entire amount to be repaid under all medical student loan agreements for which the obligations are not satisfied, including all amounts of interest at the rate prescribed. The repayment shall be made either in a lump sum or in not more than 12 equal monthly installment payments.
- All installment payments are required to commence six months after the date of the action or circumstance that causes the person's failure to satisfy the obligations of the medical student loan agreement, as determined by the issuing medical school based upon the circumstances of each individual case. In all cases, if an installment payment becomes 91 days overdue, the entire amount outstanding shall become immediately due and payable, including all amounts of interest at the rate prescribed.
- If a person becomes in default of his or her medical student loan repayment obligations, the medical school shall make all reasonable efforts to collect the debt.

The bill also provides that if, during the time a person is satisfying the service requirement of a medical student loan agreement, the person desires to engage in less than the full-time practice of medicine within an approved service commitment area and remain in satisfaction of the service requirement, the person can apply to the medical school that issued the medical student loan for permission to engage in less than the full-time practice of medicine. Upon a finding of exceptional circumstances made by the medical school that issued the medical student loan, the medical school can authorize the person to engage in less than the full-time practice of medicine within an approved service commitment area for the remaining required period of time under the medical student loan agreement and for an additional period of time that shall be equal to the length of time originally required multiplied by two. The bill also provides that in no event shall the person be allowed to practice medicine less than half-time.

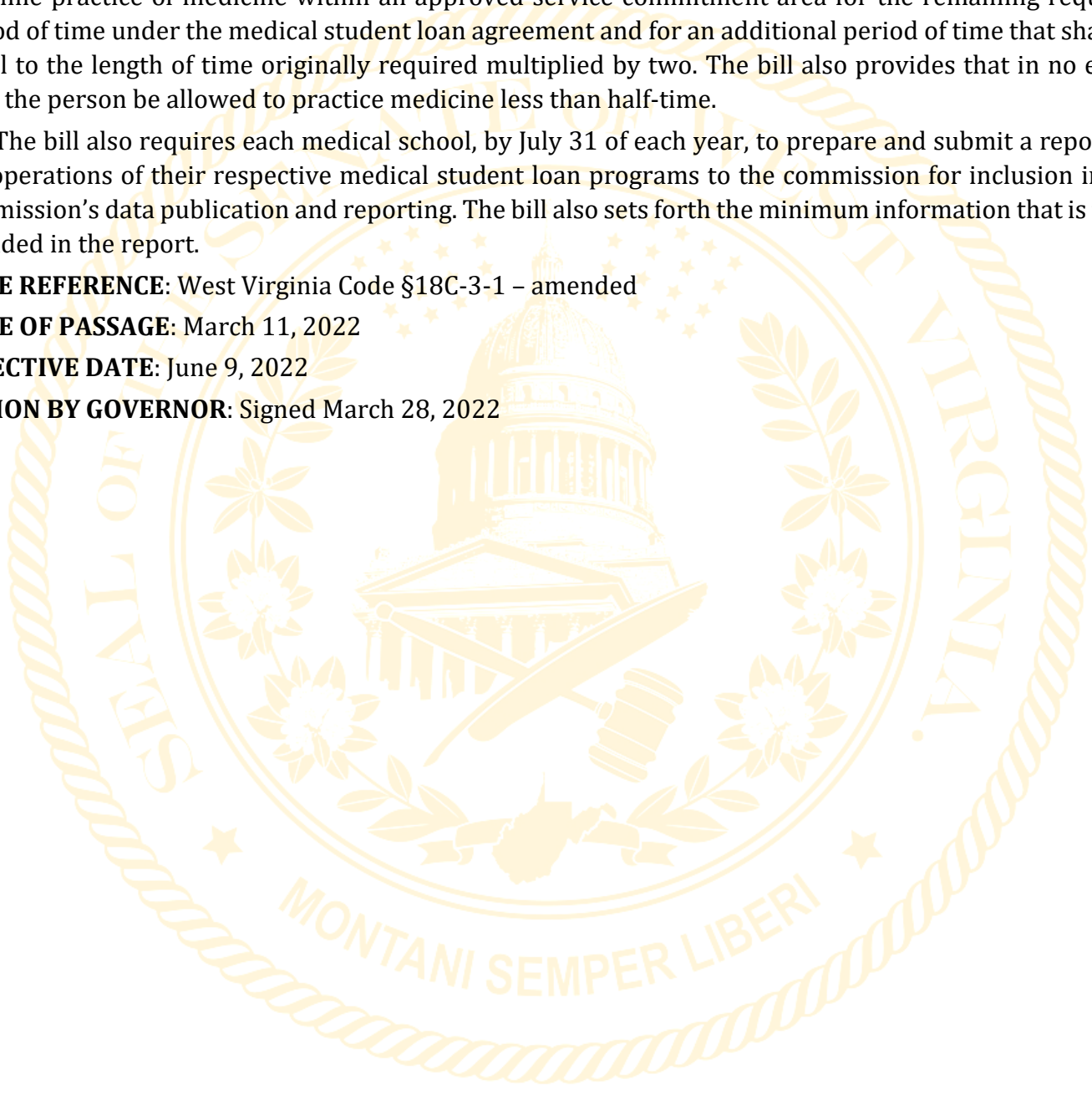
The bill also requires each medical school, by July 31 of each year, to prepare and submit a report on the operations of their respective medical student loan programs to the commission for inclusion in the commission's data publication and reporting. The bill also sets forth the minimum information that is to be included in the report.

CODE REFERENCE: West Virginia Code §18C-3-1 – amended

DATE OF PASSAGE: March 11, 2022

EFFECTIVE DATE: June 9, 2022

ACTION BY GOVERNOR: Signed March 28, 2022



House Bill 4067

To make certain agency reports electronic or eliminating certain agency reports altogether

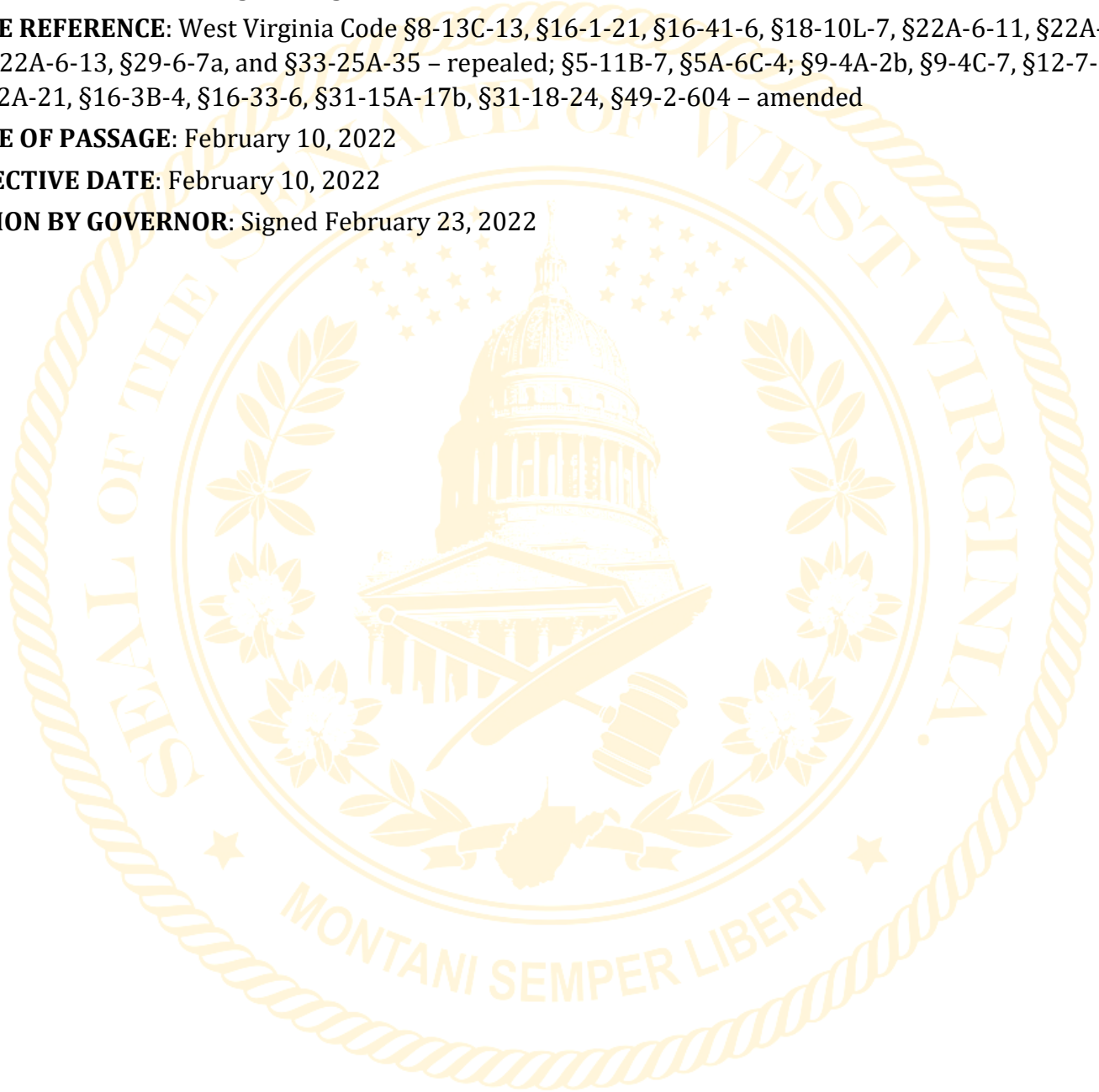
House Bill 4067 provides that certain agency and other reports to legislative and executive branch entities are to be made electronically rather than in hard copy form. Print copies of those reports are, however, to be furnished upon request. The bill eliminates the reporting requirement for certain reports altogether that are no longer being made.

CODE REFERENCE: West Virginia Code §8-13C-13, §16-1-21, §16-41-6, §18-10L-7, §22A-6-11, §22A-6-12, §22A-6-13, §29-6-7a, and §33-25A-35 – repealed; §5-11B-7, §5A-6C-4; §9-4A-2b, §9-4C-7, §12-7-12, §14-2A-21, §16-3B-4, §16-33-6, §31-15A-17b, §31-18-24, §49-2-604 – amended

DATE OF PASSAGE: February 10, 2022

EFFECTIVE DATE: February 10, 2022

ACTION BY GOVERNOR: Signed February 23, 2022



House Bill 4074

Require schools provide eating disorder and self-harm training for teacher and students

This bill, entitled “Meghan’s Law”, requires the state board to promulgate a rule to establish training requirements for certain employees focused on developing skills, knowledge, and capabilities related to preventing, recognizing, and responding to students’ self-harm behaviors and eating disorders. The employees subject to the training requirements include all county board employees who might come into contact with a student, including full-time, part-time, and contract employees, as well as any volunteers of a school or school district that might come into contact with a student as such employees and volunteers may be further defined in the rule. The rule:

- Must include instruction and information to better equip schools and their employees to recognize warning signs of self-harm behaviors and eating disorders that can lead to serious health issues and death; support the healthy development of students by learning how to appropriately respond to or refer a student who exhibits warning signs of self-harm or eating disorders; and provide consistent and standard protocols for responding to disclosures or discovery of self-harm or an eating disorder.
- Must contain provisions to ensure that public school employees complete the required training every three years.
- May provide for this training to be administered virtually or through self-review of materials and resources provided by the state board.

The bill also requires that children in grades 5-12 annually receive information regarding self-harm and eating disorder signs, prevention, and treatment. The information can be obtained from the Bureau for Behavioral Health and Health Facilities, a licensed healthcare provider, or from commercially developed awareness and prevention training programs for the awareness, treatment resources and prevention of self-harm behavior and eating disorders approved by the state board in consultation with the bureau to assure accuracy and appropriateness. The bill also allows the state board to promulgate a rule to facilitate the process and develop resources.

CODE REFERENCE: West Virginia Code §18-2-40a – new

DATE OF PASSAGE: February 11, 2022

EFFECTIVE DATE: May 12, 2022

ACTION BY GOVERNOR: Signed February 21, 2022

House Bill 4084

Relating to advanced recycling

This bill allows advanced recycling facilities to be developed in the state to help convert plastics and other materials into new products with advanced recycling processes. The bill amended the definition section of the Solid Waste Management Act. The Act establishes a program to control solid waste by the DEP.

Advanced recycling is the use of manufacturing processes to convert post-use polymers and recovered feedstocks into products to be used, processed, and sold. Under the bill, post-use polymers and recovered feedstocks will no longer be considered solid waste.

This bill adds 8 new definitions and modifies 2 existing definitions. Among these are advanced recycling, advanced recycling facility, solid waste, solid waste facility, post-use polymer, and recovered feedstock.

The changes except out post-use polymers and recovered feedstocks from regulation, provided they will be converted at an advanced recycling facility. If the materials are not converted or waiting to be converted by the list of processes, the Solid Waste Management Act will still govern the materials.

The overall effect, once implemented and economical, should be an increase in recycling and a decrease in waste.

CODE REFERENCE: West Virginia Code §22-15-2 – amended

DATE OF PASSAGE: March 3, 2022

EFFECTIVE DATE: June 1, 2022

ACTION BY GOVERNOR: Signed March 30, 2022

House Bill 4098

Relating to Geothermal Energy Development

House Bill 4098 establishes a new regulatory program for the exploration, development, and production of geothermal resources to be administered by the Department of Environmental Protection (DEP). Geothermal resources are underground reservoirs of hot water at varying temperatures and depths below the Earth's surface. Wells are drilled into the reservoirs to tap steam and extremely hot water that can be brought to the surface to be used in a variety of ways, including generation of electricity, direct use, and heating and cooling.

The bill directs the secretary of the DEP to propose a legislative rule to implement the regulatory program. Residential and farm buildings using geothermal heating and cooling heat pump systems would be excluded from regulation. Geothermal systems regulated pursuant to the Bureau of Public Health legislative rule for Water Well Design Standards, 64 CSR 46, or any horizontal system with a depth of less than 30 feet, would also be excluded from regulation.

A permit would be required before commencing work to develop and produce a geothermal resources well. At a minimum, the regulatory program would establish minimum temperature levels and flow rates for determining jurisdiction, standards for well site development, reclamation, and disposal of certain geothermal fluids and other wastewater fluids, in addition to civil penalties and injunctive relief. The bill also directs the DEP to develop a procedure for permit applications, renewals and permit modifications, public review and comment, administrative and judicial review of permitting decisions, and suspension or revocation of a permit.

Finally, the geothermal resources statute acknowledges the common law doctrine that the owner of any geothermal resource is the surface owner of the property overlying the geothermal resource. The statute further provides that it does not divest any person or the state of ownership rights to any geothermal resource, and that no mineral or water estate includes geothermal resources unless clearly reserved in instruments conveying or reserving mineral or water estates.

CODE REFERENCE: West Virginia Code §22-33-1 through §22-33-12 – new

DATE OF PASSAGE: March 12, 2022

EFFECTIVE DATE: June 10, 2022

ACTION BY GOVERNOR: Signed March 28, 2022

House Bill 4112

Provide consumers a choice for pharmacy services

The bill relates to pharmacy benefits managers (PBMs). The definition of covered entity is deleted in the definitions and throughout the bill and replaced with health benefit plan. A new definition of “health care payor” or “payor” is added. It means a health insurance company, a health maintenance organization, a hospital, medical, or dental corporation, a health care corporation, an entity that provides, administers, or manages a self-funded health benefit plan, including a governmental plan, or any other payor that provides prescription drug coverages, including a workers’ compensation insurer. Health care payor does not include an insurer that provides coverage under a policy of casualty or property insurance. The definition of specialty drug is amended to reflect that a specialty drug is a drug means a drug used to treat a chronic and complex, or rare medical conditions and requiring special handling or administration, provider care coordination, or patient education that cannot be provided by a non-specialty pharmacy or pharmacist.

With respect to pharmacy audits, the on-site requirement is deleted. With respect to the definition of a rebate, the terms does not include any discount that may be provided to or made to any 340B entity through such program.

The definition of third party is deleted.

Technical changes are made throughout the bill.

Language stating that a pharmacy benefit manage may only directly or indirectly hold a pharmacy, a pharmacist, or a pharmacy technician responsible for a fee related to the adjustment of a claim if the fee is identified, reported and specifically explained, or the total amount of the fee is apparent at the point of sale and not adjusted between the point of sale and the issuance of the remittance advice is deleted.

With respect to the 340B language, a proviso is added stating that nothing in this section shall be construed to prohibit the Medicaid program or a Medicaid managed care organization from preventing duplicate billing discounts. The provisions of this sections apply to PEIA. This same language applies to the discriminatory practice provision language.

Language is stating that filed methodologies shall comply with the provisions of the code and pharmacy benefits managers shall not enter into a contract with a pharmacy for reimbursement not permissible. This section refers to NACAC and WAC pricing.

With respect to the freedom of choice provisions, language has been deleted applying the provisions to the health benefit plan. Language is deleted restricting access to the PBM’s affiliate. The definition of health benefit plan is deleted. The last section of the bill is re-numbered.

CODE REFERENCE: West Virginia Code §33-51-3, §33-51-8, §33-51-9, §33-51-11 – amended; §33-51-13 – new

DATE OF PASSAGE: March 12, 2022

EFFECTIVE DATE: June 10, 2022

ACTION BY GOVERNOR: Signed March 30, 2022

House Bill 4282

Relating to establishing next generation 911 services in this state

House Bill 4282 provides a mechanism to study and develop implementation of Next Generation 911 in West Virginia. It establishes a commission to study Next Generation 911 (NG911) services and delineates the commission's membership and duties. It mandates a preliminary report by December 31, 2022, and a final report to the Joint Committee on Government and Finance and the Governor by June 1, 2023, on how NG911 is to be accomplished. The bill establishes an effective date and termination date of June 30, 2023, for the commission, unless continued by the Legislature.

The 911 emergency system has been a staple for dispatching law enforcement, fire, and emergency medical services for decades. The legacy 911 system is becoming increasingly less effective, however, as telecommunications services evolve, and as more people rely on cell phones and Internet Protocol (IP) devices to communicate. Traditionally, callers who dial 911 from a landline phone are connected to a 911 call center—a public safety answering point (PSAP)—where the caller's phone number and address are displayed on an operator's screen. This provides critical information for firefighters, paramedics, and law enforcement officers. Wireless calls, however, are not as easily identified and create obstacles for dispatchers who are trying to determine a caller's location. According to the National Center for Health Statistics, an estimated 62.5% of adults and 73.6% of children in the United States used only wireless telephones in 2020, and that number is growing. As of 2018, over half (52.6%) of West Virginians aged 18 and older lived in wireless-only households.

Stakeholders at the local, state, and national levels have been working to implement NG911, which would allow public emergency communication services to accept digital data, including text messages, videos, and images, and enable transferring 911 communications from one PSAP to another. For text-to-911 to be most effective, text messages must include the address or location where emergency responders are needed. In August 2014, the FCC ordered all wireless companies to develop the capability to deliver emergency text messages to public safety answering points that request them by June 30, 2015. In addition, the National Emergency Number Association initiated a voluntary agreement with the four largest wireless companies—AT&T, Sprint, T-Mobile, and Verizon—to make 911 texting accessible in locations where the local PSAP is equipped to accept texts.

CODE REFERENCE: West Virginia Code §24-6-2 – amended; §24-6-15 – new

DATE OF PASSAGE: March 7, 2022

EFFECTIVE DATE: June 5, 2022

ACTION BY GOVERNOR: Signed March 30, 2022

House Bill 4285

Relating to real estate appraiser licensing board requirements

House Bill 4285 updates code regarding the Real Estate Appraiser Licensing Board. The bill adds a section disqualifying board members from participating in disciplinary proceedings for activities in which they have participated, testified, or been engaged to testify. The bill also requires the board to provide a written statement to an applicant when denying a license that clearly describes what qualifications are missing or deficient.

The bill also mandates the board provide guidance on the Uniform Standards of Professional Appraisal Practice (USPAP) to ensure that persons submitting appraisals as a qualification for licensure are provided ample time to learn the process correctly. An applicant has 60 days to correct any issues identified by the board.

The bill eliminates the legislative rule-making process for updating the USPAP standards. The rules are often updated by the national body every two years and the board cannot keep up with the rapidly changing rules via the current rulemaking process. The standards will remain in place and communication about changes can be disseminated much faster.

CODE REFERENCE: West Virginia Code §30-38-10, §30-38-11, and §30-38-17 – amended

DATE OF PASSAGE: March 12, 2022

EFFECTIVE DATE: June 10, 2022

ACTION BY GOVERNOR: Signed March 30, 2022

House Bill 4295

To transfer the State Office of the National Flood Insurance Program from the Offices of the Insurance Commissioner to the Division of Emergency Management

House Bill 4295 is a joint agency bill from the Offices of the Insurance Commissioner (OIC) and the Division of Emergency Management of the Department of Homeland Security (EMD) to transfer the State Office of the National Flood Insurance Program from the Offices of the Insurance Commissioner to the Division of Emergency Management in the Department of Homeland Security.

The bill provides that state-owned property in any nonparticipating community be governed by rules promulgated by the Division of Emergency Management; requires the State Office of the National Flood Insurance Program and floodplain managers to develop a strategic plan to meet goals and objectives; and that the strategic plan be reviewed and approved by the State Resiliency Officer and State Resiliency Board.

The bill further requires the State Office of the National Flood Insurance Program to establish floodplain management guidelines in special hazard areas that are in conformity with federal regulations and that the State Office of the National Flood Insurance Program cooperate with the State Resiliency Office (SRO) to the fullest extent practicable to assist the SRO in fulfilling its duties. The assets of the State Office of the National Flood Insurance Program are transferred from the Offices of the Insurance Commissioner to the Division of Emergency Management within DHS, and the State Treasurer is required to distribute funds from the flood insurance tax fund to finance the operations and responsibilities of the State Office of the National Flood Insurance Program.

CODE REFERENCE: West Virginia Code §33-2-23, §33-3-14, and §33-3-14a – amended; §15-5-20b – new

DATE OF PASSAGE: March 8, 2022

EFFECTIVE DATE: June 6, 2022

ACTION BY GOVERNOR: Signed March 28, 2022

House Bill 4296

To revise outdated provisions within Chapter 23 of the West Virginia Code, which pertains to workers' compensation

Chapter 23 of the West Virginia Code is known as the West Virginia Workers' Compensation Act and it governs employer compliance, employee benefits, claim adjudication, and the responsibilities of the Insurance Commission. This bill does not make substantive changes to the Workers Compensation Act and only removes or updates outdated and obsolete provisions in the Code. Much of the bill addresses technical changes necessitated from the 2005 transition when the workers compensation system was privatized. The only added section of Code is W. Va. Code §23-1-21, which was moved from Article 3 of Chapter 23 and allowed for the repeal of Article 3 in its entirety.

CODE REFERENCE: West Virginia Code §23-1-1c, §23-1-1d, §23-1-1e, §23-1-1g, §23-1-3, §23-1-4a, §23-1-6, §23-1-7, §23-1-20, §23-2-1b, §23-2-4, §23-2-5c, §23-5-5d, §23-2-14, §23-2-15, §23-2-16, §23-2B-1, §23-2B-2, §23-2B-3, §23-2C-3a, §23-2C-4, §23-2C-11, §23-2C-13, §23-2C-14, §23-2C-23, §23-2C-24, §23-2D-1, §23-2D-2, §23-2D-3, §23-2D-4, §23-2D-5, §23-2D-5a, §23-2D-6, §23-2D-7, §23-2D-8, §23-2D-9, §23-2D-10, §23-3-1, §23-3-1a, §23-3-2, §23-3-3, §23-3-4, §23-3-5, §23-3-6, §23-4A-2, §23-4A-3, §23-4A-4, §23-4A-5, §23-4A-6, §23-4A-8, §23-4A-9, §23-4B-6, §23-4B-8, §23-4B-8a, §23-4B-8b, §23-4C-1, §23-4C-2, §23-4C-3, §23-4C-4, §23-4C-5, and §23-4C-6 – repealed; §23-1-1, §23-1-1b, §23-1-1f, §23-1-2, §23-1-4, §23-1-5, §23-1-8, §23-1-9, §23-1-10, §23-1-11, §23-1-12, §23-1-13, §23-1-14, §23-1-15, §23-1-18, §23-1-19, §23-2-1, §23-2-1c, §23-2-1d, §23-2-2, §23-2-3, §23-2-5, §23-2-5a, §23-2-6, §23-2-7, §23-2-8, §23-2-9, §23-2-11, §23-2-13, §23-2-17, §23-2A-1, §23-2C-1, §23-2C-2, §23-2C-3, §23-2C-6, §23-2C-7, §23-2C-8, §23-2C-12, §23-2C-15, §23-2C-16, §23-2C-16, §23-2C-18, §23-2C-19, §23-2C-20, §23-2C-21, §23-4A-1, §23-4B-2, §23-4B-4, §23-4B-5, §23-4B-7, and §23-4B-9 – amended; §23-1-21 – new

DATE OF PASSAGE: March 10, 2022

EFFECTIVE DATE: June 8, 2022

ACTION BY GOVERNOR: Signed March 30, 2022

House Bill 4324

To update collaborative pharmacy practice agreements

The bill sets forth standards for collaborative pharmacy practice, which is that practice of pharmacist care where one or more pharmacists have jointly agreed, on a voluntary basis, to work in conjunction with one or more physicians under written protocol where the pharmacist may perform certain patient care functions authorized by the physicians under certain specified conditions and limitations.

The bill amends the definition of collaborative pharmacy practice agreement to include a medical provider in training where the agreement is signed by the supervising physician or chairperson of the medical department where the medical provider in training is practicing. The definition strikes approval by the board. A definition is inserted for health care system to mean an organization of people, institutions, and resources that deliver health care services to meet the health care needs of a target population. With respect to pharmacists' scope, board approval is removed. A definition of practice notification is added to mean written notice to the appropriate licensing board that an individual physician or physician group or medical provider in training where the agreement is signed by the supervising physician or chairperson of the medical department where the medical provider in training is located, and an individual pharmacist or pharmacist will practice in collaboration.

With respect to the section regarding practice agreement, it is expanded to include a practice notification. The section provides that a pharmacist or group of pharmacists may practice in collaboration with physicians in any practice setting, including but not limited to a health care setting, pursuant to a practice notification which has been filed with the appropriate board. There is language to grandfather existing agreements. The practice notification shall become effective immediately upon filing. The boards retain jurisdiction to investigate their respective licensees.

The language regarding appeals has been removed.

CODE REFERENCE: West Virginia Code §30-5-4 and §30-5-19 – amended

DATE OF PASSAGE: March 8, 2022

EFFECTIVE DATE: March 8, 2022

ACTION BY GOVERNOR: Signed March 28, 2022

House Bill 4329

To clarify the definition of an “interested person” for purposes of the West Virginia Small Estate Act

This bill expands on the West Virginia Small Estate Act of the 2021 Regular Legislative Session. It expands the definition of “person” to include any individual, corporation, business trust, fiduciary, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency, instrumentality, public corporation, or any other legal or commercial entity and expressly includes a bank, financial institution, credit union, or West Virginia Division of Motor Vehicles.

The bill further clarifies “interested person,” which is currently defined as having a meaning that “varies from time to time” and is “determined according to the particular purposes or matter involved in the proceeding.” This bill would more clearly define “interested person” to include heirs, devisees, distributees, legatees, children, spouses, or creditors of the decedent and beneficiaries and any others having a property right in or a claim against the estate of a decedent or property in a small estate. Additionally, it clarifies that interested persons include persons having priority for appointment as a personal representative and other fiduciaries representing interested persons. Furthermore, an “interested person” may also include a bank, financial institution, credit union, or person that is holding assets related to the estate.

The bill also expressly excludes from a “small estate” a probate estate of a testate decedent where the will provides for real estate devised to be sold and not merely confer the power to sell the real estate and provides that where the small assets are insufficient for the payment of debts, the authorized successor, successor, or a creditor may commence a circuit court proceeding to subject the real estate to the payment of debts within six months of the small estate authorization.

CODE REFERENCE: West Virginia Code §44-1-28, §44-1A-1, §44-1A-2, and §44-1A-4 – amended

DATE OF PASSAGE: March 10, 2022

EFFECTIVE DATE: June 8, 2022

ACTION BY GOVERNOR: Signed March 30, 2022

House Bill 4331

West Virginia’s Urban Mass Transportation Authority Act

House Bill 4331 creates a new section within the state Municipal Code to address federal grants to urban mass transportation authorities and employee wage deductions.

The bill allows union or labor organization dues or fees to be deducted from the wages of employees of an urban mass transportation authority which receives federal funding, directly or indirectly, from the Federal Transit Administration pursuant to the Urban Mass Transportation Act of 1964. The bill clarifies that the section applies only to urban mass transportation authorities under Chapter 8, Article 27.

CODE REFERENCE: West Virginia Code §8-27-21a – new

DATE OF PASSAGE: March 11, 2022

EFFECTIVE DATE: March 11, 2022

ACTION BY GOVERNOR: Signed March 30, 2022

House Bill 4336

Providing for the valuation of natural resources property

This bill provides a revised and more specific methodology to the Tax Commissioner for valuing property producing oil, natural gas, and natural gas liquids for property tax assessments.

The bill rewrites the methodology with more specific definitions and procedures. For instance, the Tax Commissioner shall value property producing oil, natural gas, and natural gas liquids at its fair market value determined by applying a yield capitalization model to the net proceeds. Net proceeds are from the actual gross receipts on a sales volume basis and the actual price received as reported on the taxpayer's returns, less royalties, and less actual annual operating costs, also reported on the taxpayer's returns. The definitions of natural gas liquids and actual annual operating costs remain with some changes. There are many new definitions most concerning expenses.

On July 1, 2022, the Tax Commissioner shall annualize gross receipts and actual annual operating expenses before calculating the working interest model and the royalty interest model for wells that produced less than 12 months during the first calendar year of production or after being shut in. Companies may also provide additional actual gross receipts and actual operating expense information that will be supplemented or used in lieu of the Tax Commissioner annualization calculations.

On July 1, 2024, but not before, the Tax Commissioner may not include a minimum valuation for any calculation related to determining the value of any well. Currently, they are applying a minimum net-proceeds based on volumes extracted. For all assessments made prior to July 1, 2024, no minimum valuation shall exceed the values of \$0.30 per MCF of natural gas, \$10.00 per barrel of oil, or \$0.30 per unit of natural gas liquids. These values were established in a Notice to taxpayers from the State Tax Department dated late last year.

A safe harbor provision is added for marginal wells. These owners have the option of filing a detailed return with expenses or selecting a simplified option for expenses annually created by the Tax Department. This is for efficiency.

The bill contains annual reporting requirements to the legislature so we may reevaluate the methodology and consider additional changes.

The Tax Commissioner is authorized to propose rules required to administer this subdivision, including emergency rules.

Finally, the subdivision has a sunset clause. It will have no further force or effect for any assessments made on or after July 1, 2025, unless it is reenacted by the legislature.

CODE REFERENCE: West Virginia Code §11-1C-10 – amended

DATE OF PASSAGE: March 11, 2022

EFFECTIVE DATE: June 9, 2022

ACTION BY GOVERNOR: Signed March 30, 2022

House Bill 4345

Relating to motor vehicle registration cards by establishing electronic or mobile registration cards

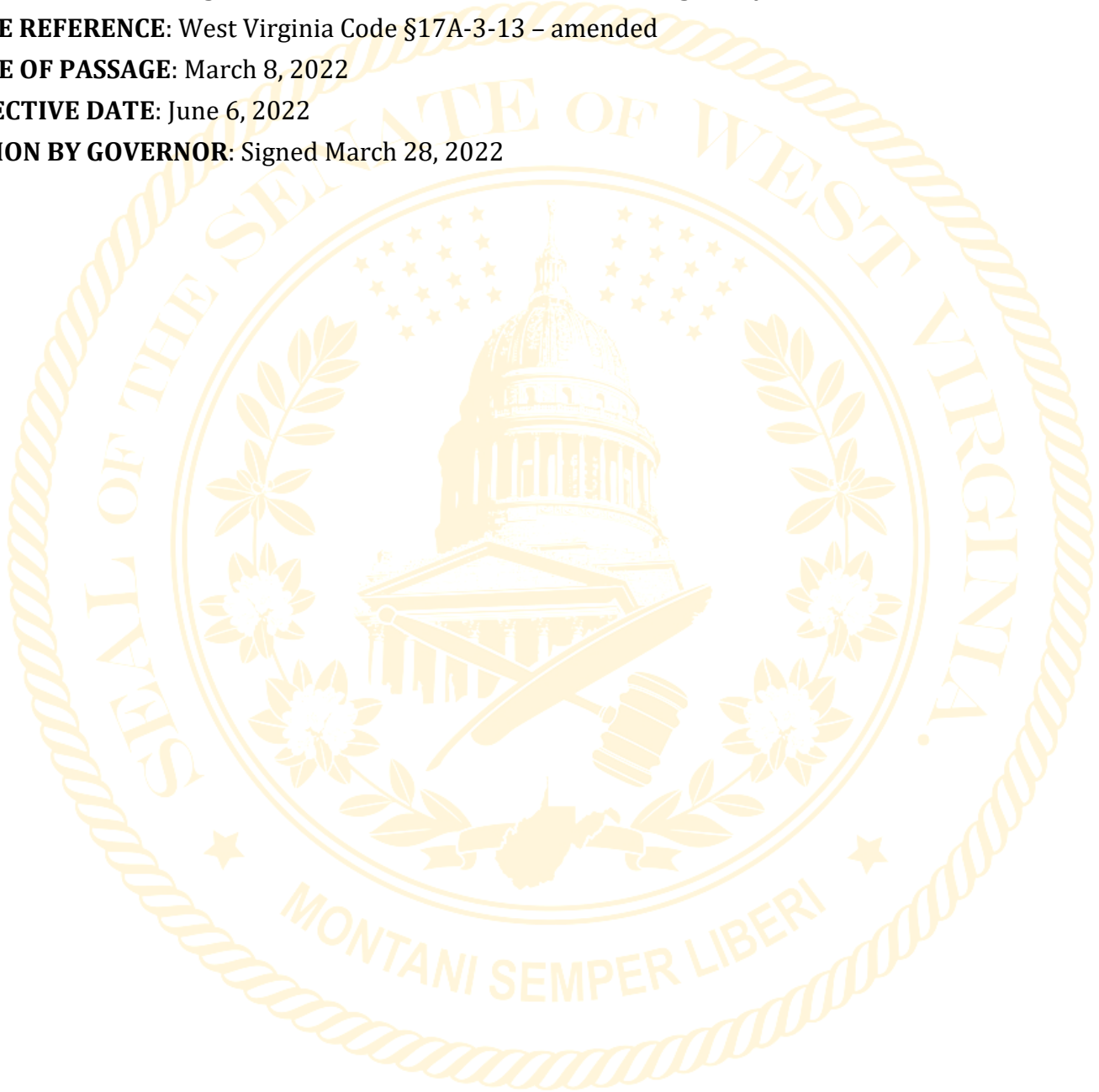
The bill permits a person driving or in control of a motor vehicle to satisfy the requirement to always carry the registration card by having an electronic or mobile registration card issued by the Division of Motor Vehicles. The registration card also does not need to be signed by the vehicle owner.

CODE REFERENCE: West Virginia Code §17A-3-13 – amended

DATE OF PASSAGE: March 8, 2022

EFFECTIVE DATE: June 6, 2022

ACTION BY GOVERNOR: Signed March 28, 2022



House Bill 4355

Relating to the disclosure by state institutions of higher education of certain information regarding textbooks and digital courseware and certain charges assessed for those items

This bill defines several terms one of which is “course material” which replaces the term “textbook” throughout the section. It requires that the listing of course materials required for any course at higher education institutions include whether the course material is an open educational resource material, and whether all educational materials required for the course or course section are generally available at no cost and without limitation to all students enrolled in the course or course section. It also requires that the list include any associated fee or charge, such as a technology cost, library use cost, or printing or publication fee. Also, if the student will be charged for the course material or for access to digital courseware for a course by the institution or another entity on the student’s enrollment in a course, course section, or program or in the institution for the applicable semester or term, the list is required to include the certain disclosures as set forth below.

The bill requires that an institution disclose to a student enrolled at the institution any charges for course materials or access to digital courseware assessed by the institution or another entity to the student on the student’s enrollment in a course, course section, or program or in the institution for the applicable semester or term, regardless of how the charge is assessed on an opt-in, opt-out, or compulsory basis. This disclosure requirement does not apply to a charge assessed for a purchase initiated by the student separately from the enrollment process at the institution, such as the purchase of course materials at a bookstore that may be charged to the student’s account at the institution.

The bill also provides that if the required course materials or digital courseware has not been selected prior to a student’s enrollment in a course or course section such that the disclosure requirements are not met or if a change to the course materials or digital courseware required would cause an increased charge to the student, the institution is required to:

- Provide individual notice to each student affected of the new or increased charges.
- Provide each student affected with the opportunity to withdraw from the course or course section, or change to a different course or course section, without penalty.
- Only assess the new or increased charge to a student if that student affirmatively opts in to accepting the charge for that specific course or course section.

For a charge for course materials or access to digital courseware assessed by the institution or another entity to the student on the student’s enrollment in a course, course section, or program or in the institution for the applicable semester or term that is assessed based on the cost of required or recommended textbooks or access to digital courseware for a certain course or course section in which the student is enrolled, the bill also requires the institution to:

- In the listing of textbooks required for any course, state or provide an internet website link to:
- The full amount of the charge.
- If the charge is for a course material in a primarily electronic format or for access to digital courseware, the terms under which the publisher of the course material or digital courseware collects and uses student data obtained through a student’s use of the course material or digital courseware.
- Any provision that allows the student to opt in or opt out of the charge or the collection or use of the student’s data.

- Itemize the charge separately from any other charges assessed for the course or course section in the institution's billing to the student.

For a charge for course materials or access to digital courseware assessed by the institution or another entity to the student on the student's enrollment in a course, course section, or program or in the institution for the applicable semester or term that is assessed on the basis of the number of semester credit hours or the equivalent or the number of courses in which the student is enrolled, the institution is required to:

- Include the amount of the charge in the institution's tuition or fees.
- In a prominent location in any written or electronic agreement authorizing the charge, disclose:
- If the charge is for course materials in a primarily electronic format or for access to digital courseware, the terms under which the publisher of the course material or digital courseware collects and uses student data obtained through a student's use of the course material or digital courseware.
- Any provision that allows the student to opt in or opt out of the charge or the collection or use of the student's data.
- Not assess the charge to a student for a course or course section for which all required educational materials are generally available at no cost in at least one form to the student, such as:
 - An open educational resource material.
 - Digital materials available at no cost through a multi-user license held by the institution's library.
 - Other lawfully made materials available to the public at no cost and without limitation to all students enrolled in the course or course section.

The bill also allows an institution to enter into an agreement between the institution and an entity under which the institution assesses on the entity's behalf or allows the entity to assess a charge for course materials or access to digital courseware assessed by the institution or another entity to the student on the student's enrollment in a course, course section, or program or in the institution for the applicable semester or term to students enrolled at the institution only if:

- The institution's educational materials affordability committee determines the agreement to be consistent with certain enumerated goals.
- The governing board of the institution adopts a policy that provides that:
- The institution's refund policy would apply with respect to the charges assessed to a student if the student withdraws from the course or course section.
- A student may opt out of the charge at any time during a period beginning no later than when the student enrolls in the course or course section or takes any other action triggering the assessment of the charge and ending no earlier than the last day to withdraw from the course without penalty.
- The agreement does not provide that the educational materials are made available to the student not later than:
 - The first day of the semester or term, if the student enrolls in the course or course section at least seven days before the first day of the semester or term, or
 - The seventh day after enrollment in the course or course section.
- The agreement does not provide for a penalty or charge added to price of materials provided under the agreement based on failing to meet a target or quota for a number or percentage of:
 - Students to whom the charge is assessed.
 - Courses or course sections for which the charge is assessed.

- The agreement prohibits the entity from engaging in, or authorizing third parties to engage in, the sale, disclosure, licensing, use, retention, or other exploitation of any data collected under the agreement, including but not limited to personally identifiable information, location data, anonymized data, and any materials derived therefrom, except as expressly authorized, in each case, in the agreement.

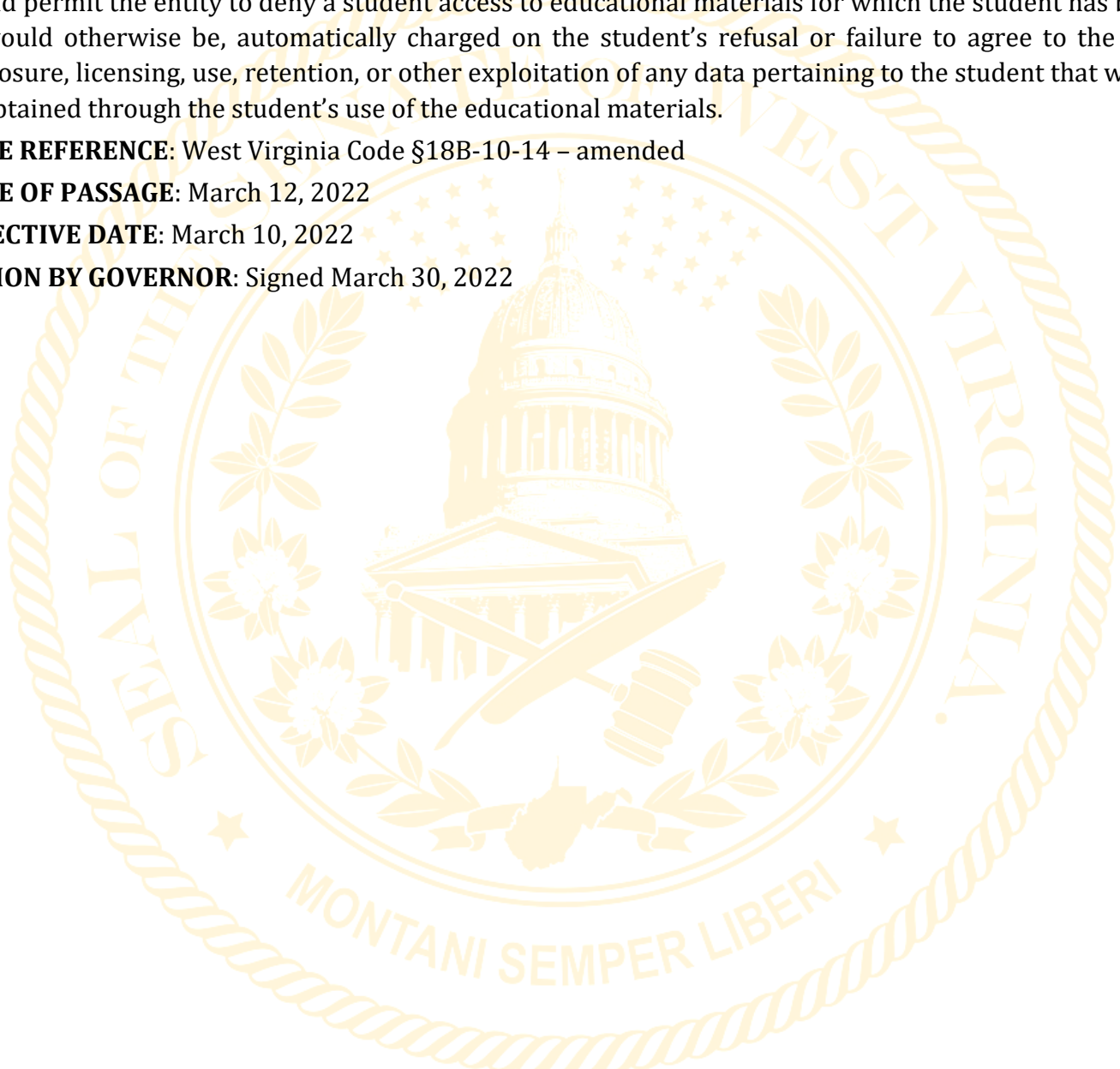
The bill also provides that an agreement authorized above is a public record under the Freedom of Information Act; and that an institution cannot deny, or enter into an agreement with another entity that would permit the entity to deny a student access to educational materials for which the student has been, or would otherwise be, automatically charged on the student's refusal or failure to agree to the sale, disclosure, licensing, use, retention, or other exploitation of any data pertaining to the student that would be obtained through the student's use of the educational materials.

CODE REFERENCE: West Virginia Code §18B-10-14 – amended

DATE OF PASSAGE: March 12, 2022

EFFECTIVE DATE: March 10, 2022

ACTION BY GOVERNOR: Signed March 30, 2022



House Bill 4369

Update the telepsychology compact

The bill updates the telepsychology compact by adding educational criteria for foreign graduates. In order for a foreign graduate to practice telepsychology the foreign graduate must meet the criteria set forth in existing code and hold a graduate degree in psychology that meets the following criteria: the program, wherever it is administratively housed, shall be clearly identified and labeled as a psychology program.

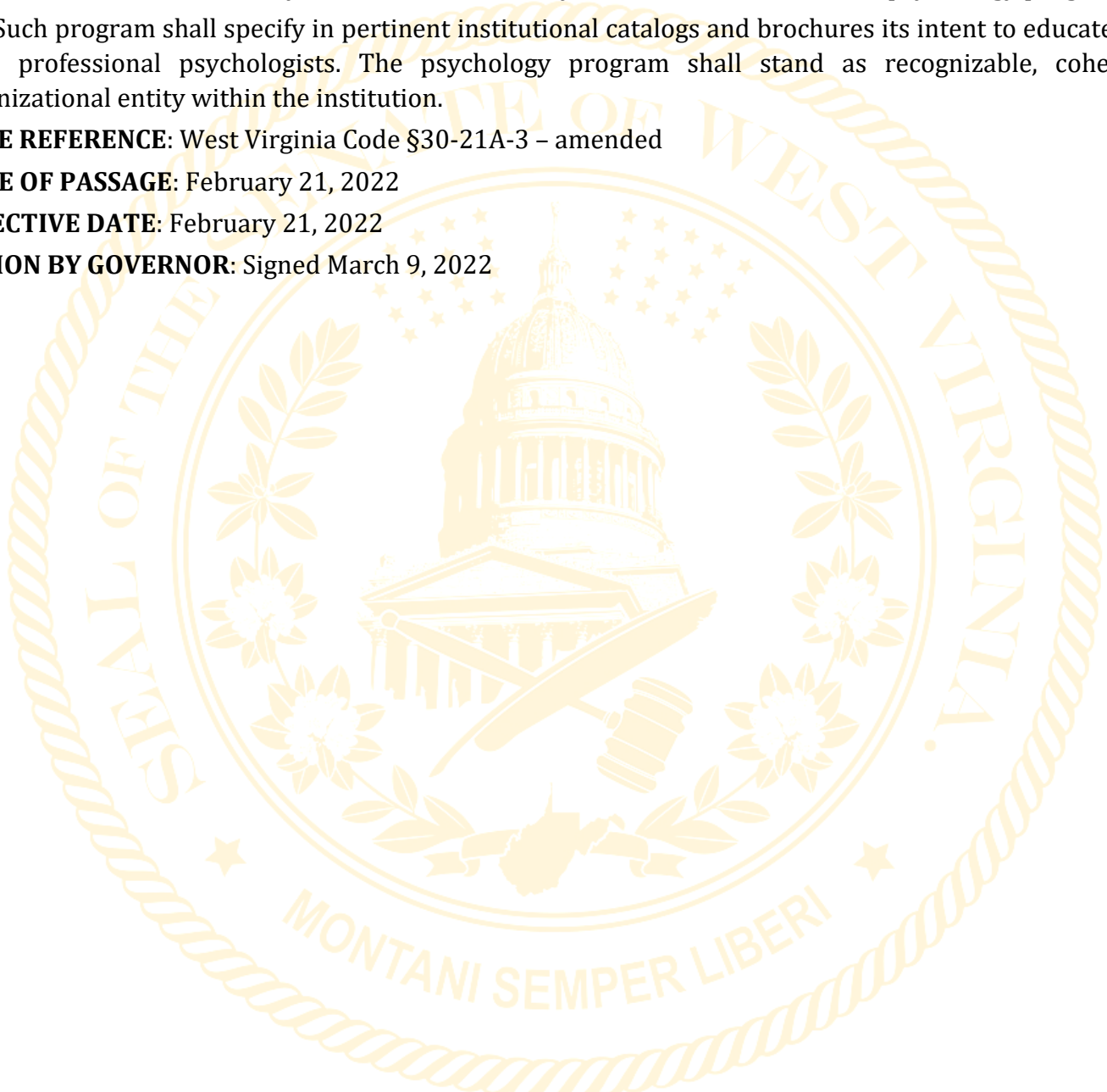
Such program shall specify in pertinent institutional catalogs and brochures its intent to educate and train professional psychologists. The psychology program shall stand as recognizable, coherent, organizational entity within the institution.

CODE REFERENCE: West Virginia Code §30-21A-3 – amended

DATE OF PASSAGE: February 21, 2022

EFFECTIVE DATE: February 21, 2022

ACTION BY GOVERNOR: Signed March 9, 2022



House Bill 4393

To increase the managed care tax if the managed care organization receives a rate increase

The bill would amend the section of code that imposes a provider tax on Health Maintenance Organizations (HMOs). In subdivision (d)(i) of the statute, the bill adds the following language: "If the MCO is granted a rate increase the tax shall adjust by the rate of the increase."

The bill has a section that addresses the rate and measure of the tax. It states that prior to July 1, 2022, the tax imposed by this section shall be applied to each taxable health plan's total Medicaid member months within tiers 1, 2, and 3, and to non-Medicaid member months within tiers 4 and 5.

The bill provides that after July 1, 2022, the tax imposed by this section shall be based upon the same tiers 1-5 and for the same member months but for an increased amount of money for tier. Tier 1 is increased from \$35 to \$36.25, Tier 2 is increased from \$20 to \$20.72, Tier 3 is increased from \$1 to 1.036, Tier 4 is increased from 25 cents to 25.9 cents and Tier 5 is increased from 10 cents to 10.36 cents.

The bill provides that on July 1, 2023, and every year thereafter that the tax rates for each tier will be increased by the greater of either 0.0% of the average of the WV Medicaid managed care capitation rate change from the two preceding fiscal years ending on June 30, provided that any increased shall meet the requirements of the federal law related to permissible health care related taxes.

The bill states how the WV Medicaid managed care capitation rate will be calculated. The monthly membership weights by rate cell and month will be determined based on the projected member months from the most recent SFY rate certification. For each of the two preceding fiscal years, to determine the total projection premium payments for each year, the WV Bureau for Medical Services will multiply the initial SFY certified capitation rates net of directed payments by the monthly membership weights by rate cell and month as determined by language set forth earlier in the bill.

For each of the two preceding fiscal years, the WV Bureau for Medical Services will divide the total projected premium payments as set forth above by the total enrollment to determine the average premium payment for each fiscal year.

To determine that average WV Medicaid managed care capitation rate change from the preceding two fiscal years, the WV Bureau for Medical Services will divide the most recent fiscal years average premium payment by the earlier fiscal year's average premium payment and subtract 1.

The bill states that before July 1, 2023, and every July 1 thereafter the WV Bureau for Medical Services will certify to the Tax Commissioner the capitation rate change from the preceding two fiscal years, the calculation used in making the determination and whether the increase meets the requirements of federal and state law for permissible health care related taxes.

The bill requires the WV Bureau for Medical Services and the Tax Commissioner to publish, by Administrative Notice, before July 1 of each year the rate for the next year to each taxable health plan's total Medicaid member month's within Tiers 1, 2, and 3, and to non-Medicaid member months within Tiers 4 and 5.

There are new definitions of tax year which means the fiscal year beginning July 1 and ending on June 30. Rate cell is defined to mean a set of mutually exclusive categories of enrollees that is defined by one or more characteristics for the purpose of determining the capitation rate and making a capitation payment. This would include age, gender, region, etc. Initial SFY rate certification means the MHT and MHP actuarial certifications as submitted to the Centers for Medicare and Medicaid prior to the start of the state fiscal year and prior to any mid-year or other rate amendment.

The bill also extends strikes the termination date for the imposition of this tax.

CODE REFERENCE: West Virginia Code §11-27-10a – amended

DATE OF PASSAGE: March 12, 2022

EFFECTIVE DATE: June 10, 2022

ACTION BY GOVERNOR: Signed March 30, 2022



House Bill 4408

Relating to contracts for construction of recreational facilities in state parks and forests

This bill modifies the contracting authority of the Division of Natural Resources with third parties in state parks, state forests, and state trails. The provisions of the bill only apply to new construction projects. Watoga State Park is exempted.

It changed the duration of a contract from 25 to 40 years and also allows for a renewal for 10 years. Electronic notice of any extension is required to be forwarded to the Joint Committee on Government and Finance. Notice by publication and a public hearing are required.

Any construction must be in keeping with the provisions of West Virginia Code §20-5-3 which requires the promotion and preservation and protection of natural areas or unique or exception scenic, scientific, cultural, archaeological, or historic significance.

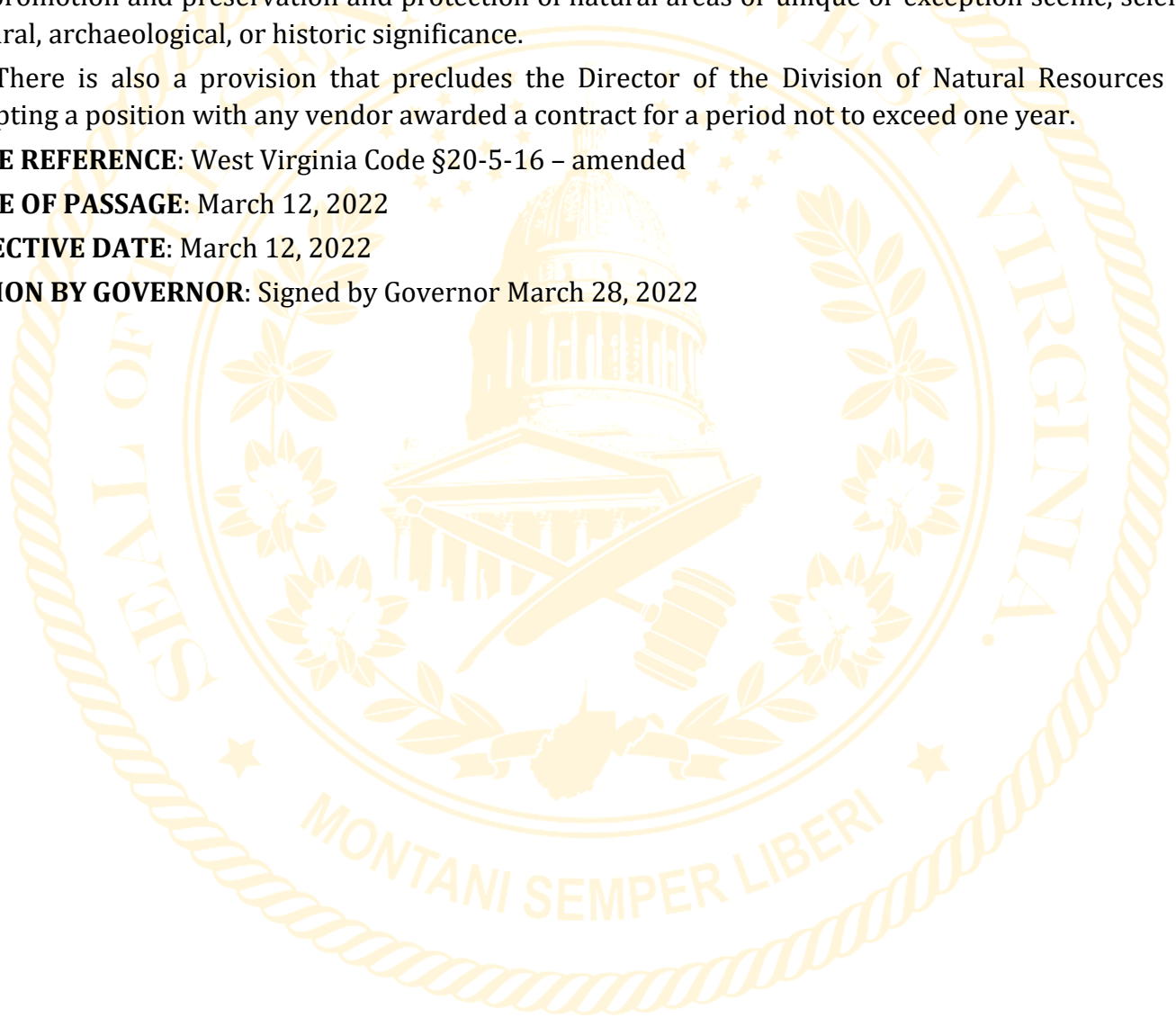
There is also a provision that precludes the Director of the Division of Natural Resources from accepting a position with any vendor awarded a contract for a period not to exceed one year.

CODE REFERENCE: West Virginia Code §20-5-16 – amended

DATE OF PASSAGE: March 12, 2022

EFFECTIVE DATE: March 12, 2022

ACTION BY GOVERNOR: Signed by Governor March 28, 2022



House Bill 4410

Specifying allocation, apportionment and treatment of income of flow-through entities

During the 2021 session the Legislature amended language in the corporate income tax section of our code dealing with market-based sourcing. The change provided that when determining the proportion of a corporation's sales to be taxed by West Virginia, taxation of a corporation's sales of service and intangible personal property would be based upon where the service or property was delivered, not where the activity that generated the sale occurred. This bill would extend market-based sourcing to flow-through entities. A flow-through entity is a legal business entity that passes any income it makes straight to its owners, shareholders, or investors. This change would effective January 1, 2022.

Per the interpretation of the Tax Department, the bill would amend provisions of the allocation and apportionment of income of nonresidents from multistate business activity section of the West Virginia Personal Income Tax to mirror the recent legislative changes made to the allocation and apportionment section of the West Virginia Corporation Net Income Tax. The apportionment formula is used when a business has income from both inside and outside of West Virginia.

The bill states that the changes do not apply to W. Va. Code §11-21-12K, §11-21-37b, and §11-21-37c. The changes would be effective for taxable years beginning on and after January 1, 2022. Under current law, apportionment of income is typically done using a four-factor formula consisting of a property factor, a payroll factor, and a double weighted sales factor.

This bill would convert the apportionment formula to a single sales factor formula with the numerator being sales in West Virginia and the denominator being sales everywhere. Businesses already incur tax liabilities on property and payroll in West Virginia. Moving to a single sales factor apportionment will prevent businesses from being penalized for locating within the state.

Additional changes to the apportionment formula would include elimination of the current throw-out rule which requires taxpayers to exclude from their West Virginia business income tax calculations sales from states in which they were not subject to tax and the adoption of "market-based sourcing" for services and tangible property.

CODE REFERENCE: West Virginia Code §11-21-37a – amended

DATE OF PASSAGE: March 9, 2022

EFFECTIVE DATE: June 7, 2022

ACTION BY GOVERNOR: Signed by Governor March 30, 2022

House Bill 4418

Relating to the Small Business Supplier Certification Assistance Program

The bill established the Small Business Supplier Certification Assistance Pilot Program, to develop and implement a certification process for small business enterprises to engage in government contracting and bidding processes. The Department of Economic Development may partner with Marshall University to help start the pilot program. The bill sets forth the criteria for the pilot program and its overarching goals to help small businesses better engage with the public sector and bid on public projects. The pilot program is set to run through December 31, 2023. The bill protects information, like trade secrets or other profitable business processes, disclosed by any small business during the certification process from FOIA requests.

CODE REFERENCE: West Virginia Code §5B-2-18 – new

DATE OF PASSAGE: March 8, 2022

EFFECTIVE DATE: June 6, 2022

ACTION BY GOVERNOR: Signed March 28, 2022

House Bill 4433

Providing that retirement benefits are not subject to execution

This bill amends current state law to prohibit municipal policemen's and firemen's pension and relief funds from being the subject of execution, attachment, garnishment, the operation of bankruptcy or insolvency laws or other process, or assignment, except qualified domestic relations orders. It makes exceptions for deductions from payments for group insurance or prepayment plans and allows a municipality to set off any claim arising from embezzlement by, or fraud of, a member, retirant or beneficiary. The bill also exempts assets of the retirement system from state, county, and municipal taxes.

CODE REFERENCE: West Virginia Code §8-22-25b – new

DATE OF PASSAGE: March 11, 2022

EFFECTIVE DATE: June 9, 2022

ACTION BY GOVERNOR: Signed March 28, 2022

House Bill 4451

Eliminating the requirement that otherwise qualified investment assets be located or installed at or within 2 miles of a preexisting manufacturing facility

This bill makes void the requirement that a qualified capital addition to a manufacturing facility be located or installed at or within two miles of a preexisting manufacturing facility owned or operated by the person making the capital addition if the addition is placed in service or use on and after the first day of January 2023.

CODE REFERENCE: West Virginia Code §11-6F-6 – amended

DATE OF PASSAGE: March 10, 2022

EFFECTIVE DATE: January 1, 2023

ACTION BY GOVERNOR: Signed March 30, 2022

House Bill 4479

Establishing the Coalfield Communities Grant Facilitation Commission

The bill would amend the provisions of the WV Code by adding a new article to be known as the “Coalfield Grant Facilitation Act of 2022.”

The new article creates the “Coalfield Community Grant Facilitation Commission” consisting of 9 members appointed by the Governor with the advice and consent of the Senate. The Executive Director of the Economic Development Authority (or his or her designee) is a member and will serve as the chair of the Commission. The remaining members will represent: county governments, large and small municipalities, foundations or nonprofits that provide public interest grants, institutions of higher education, business and industry in the state, and coalfield areas of the state. The Commission is required to establish a process for review and approval of awards to applicants for funds a coalfield community may need as a match for a grant; provide grant applicants with technical assistance and support; and educating coalfield communities as to the availability of state, federal and nongovernmental resources. The Economic Development Authority is to provide the Commission administrative, clerical and technical support. Commission members are to be reimbursed for any costs incurred by them for their participation, but not compensation. The Commission must find that a project to be funded is in the public interest and that the grant will be used for a public purpose. A project in the public interest and for a public purpose may provide private benefit, so long as the Commission determines the project will enhance a local community or region, the grant making entity requires a public purpose for grant eligibility and the Commission determines that the project will enhance the quality of life or services of a community or region.

The bill also creates a subcommittee of the Commission made up of representatives of WVU, Marshall, the Alliance for Economic Development of Southern WV, and all institutions of higher learning in the coal field counties and regions to provide assistance in the development of grants and grant applications. The bill requires an annual report to the Joint Committee on Government and Finance on its work.

CODE REFERENCE: West Virginia Code §5B-2K-1 through §5B-2K-6 – new

DATE OF PASSAGE: March 10, 2022

EFFECTIVE DATE: June 8, 2022

ACTION BY GOVERNOR: Signed March 28, 2022

House Bill 4488

Relating to coal mining and changing fees for permitting actions

This bill ensures adequate funding for the operation of the Department of Environmental Protection's Division of Mining and Reclamation. The division's revenue has gradually decreased each year, but its expenses are remaining relatively constant. Estimates indicate that the division will be operating in a deficit by FY2026 without an increase in revenue.

The provisions of the bill increase or add new fees for various permits concerning surface coal mining operations. Adjusting these fees will generate additional annual revenue for the division. The amended fee structure would include these additions or changes:

- Permit Renewals – \$3,000 (Currently \$1,000 and not differentiated from new permits)
- Major Permit Modification – \$2,000 (Currently \$500)
- Minor Permit Modification – \$1,000 (Currently \$500)
- Permit Reissuance – \$3,000 (New)
- Permit Transfer – \$2,000 (New)
- Annual Permit Fee (All permits) – \$2,000 (Currently \$1000)
- Applications for the water quality certification for activities covered by federal law – \$500 (New)

CODE REFERENCE: West Virginia Code §22-11-10 – amended

DATE OF PASSAGE: March 11, 2022

EFFECTIVE DATE: June 9, 2022

ACTION BY GOVERNOR: Became Law Without Governor's Signature

House Bill 4491

To establish requirements for carbon dioxide sequestration

This bill defines matters relating to underground carbon sequestration. It establishes a new framework to govern these types of injection wells and the operation of such facilities. It will be unlawful to operate a facility without a Class 6 underground injection control permit. The bill empowers DEP to propose rules and to enter cooperative agreements. DEP is to determine the content of permit applications and to establish fees, public notices, public hearings, and comment periods. DEP may only issue a permit if certain conditions are met.

The bill provides that operators are the owners of the injected CO₂ until DEP issues a certificate of completion. Once this certificate is issued, ownership transfers to the owners of the pore space without payment of compensation. All liability and regulatory requirements become the responsibility of the state. The state will defend and indemnify the pore space and surface owners against all claims.

The bill contains ownership provisions governing pore space. Title to pore space may not be severed from the surface estate. The bill does not affect transactions before the effective date if an instrument explicitly severed pore space from the surface estate.

The operator must negotiate with pore space owners and acquire needed rights. If an operator cannot locate or reach an agreement with all pore space owners but has secured consent from at least 75 percent of the interests, all the pore space may be declared included within the facility. Unknown or unlocatable owners are deemed to have consented. This authority is given to the Oil and Gas Conservation Commission.

The OGCC may issue a collective storage order to authorize the long-term storage of CO₂ beneath a tract despite an operator's inability to achieve 75% of the owners' consent, provided the operator has rights to 75% of the entire storage field. The collective order will establish the compensation for unknown, unlocatable, and nonconsenting pore space owners and the basis for the valuation.

CODE REFERENCE: West Virginia Code §22-11A-3 and 22C-9-4 – amended; §22-11B-1 et seq. – new

DATE OF PASSAGE: March 1, 2022

EFFECTIVE DATE: May 30, 2022

ACTION BY GOVERNOR: Signed March 30, 2022

House Bill 4492

Creating the Division of Multimodal Transportation

House Bill 4492 streamlines and makes for more efficient operations of multimodal agencies by combining the current Aeronautics Commission, State Rail Authority, Port Authority, and the Division of Public Transit into one agency. The multimodal agency will be part of the Department of Transportation. The DOT Secretary will be the Chief Operating Officer of the Division of Multimodal Transportation Facilities and will coordinate with the Department of Economic Development to facilitate economic development activities utilizing transportation facilities.

The bill does not create any new funds or expand any powers of any section making up the new Division of Multimodal Transportation. The division may solicit advice regarding projects relating to air, water, or rail by convening special advisory boards and utilizing their expertise.

CODE REFERENCE: §17-16B-1, §17-16B-2, §17-16B-3, §17-16B-5, §17-16B-6, §17-16B-7, §17-16B-7a, §17-16B-7b, §17-16B-8, §17-16B-9, §17-16B-10, §17-16B-11, §17-16B-12, §17-16B-13, §17-16B-14, §17-16B-15, §17-16B-16, §17-16B-17, §17-16B-18, §17-16B-19, §17-16B-20, §17-16B-21, §17-16B-22, §17-16C-1, §17-16C-2, §17-16C-3, §17-16C-5, §29-2A-1, §29-2A-2, §29-2A-3, §29-2A-4, §29-2A-5, §29-2A-6, §29-2A-7, §29-2A-8, §29-2A-10, §29-2A-11, §29-2A-11a, §29-2A-11b, §29-2A-11c, §29-2A-11d, §29-2A-11e, §29-2A-11f, §29-2A-12, §29-2A-13, §29-2A-14, §29-2A-20, §29-18-1, §29-18-2, §29-18-3, §29-18-4, §29-18-4a, §29-18-5, §29-18-6, §29-18-7, §29-18-8, §29-18-9, §29-18-10, §29-18-11, §29-18-12, §29-18-13, §29-18-14, §29-18-15, §29-18-16, §29-18-17, §29-18-18, §29-18-19, §29-18-20, §29-18-21, §29-18-22, §29-18-23, §29-18-24, §29-18-25 – repealed; §17-16F-1 through §17-16F-34 – new

DATE OF PASSAGE: March 12, 2022

EFFECTIVE DATE: March 12, 2022

ACTION BY GOVERNOR: March 30, 2022

House Bill 4499

Relating to making the procurement process more efficient by modifying and updating outdated processes and requirements

House Bill 4499 modernizes and updates the operations of the Purchasing Division. It encourages earlier communication with purchasing agencies and aid to spending units by Purchasing Division experts regarding the manner and process of procurement.

The bill also increases the thresholds under which agencies can purchase commodities. The bill permits the director to delegate procurement limits for commodities \$25,000 or less to the agency to purchase on their own. Purchasing currently operates an inspection and compliance system that tracks how well agencies comply with the purchasing laws of the state and as an agency becomes more comfortable operating in the purchasing environment, the director may increase the agency's delegated procurement authority to any amount up to \$100,000. Delegation of procurement authority has been successfully effected in other states and will provide agencies with needed flexibility in making required purchases.

The bill also eliminated duplicative paperwork such as filing an affidavit when a contractor places a bid for a state contract. The wvOASIS system performs this function to ensure a contractor with an outstanding debt due to the state is disqualified from winning a state contract. By eliminating this duplicative function, bids can be completed, and contracts awarded, in a timelier manner.

CODE REFERENCE: West Virginia Code §5A-3-1, §5A-3-3, §5A-3-4, §5A-3-10, §5A-3-10a, §5A-3-11, §5A-3-12, §5A-3-17, §5A-3-18, §5A-3-29, §5A-3-35, §5A-3-45; §6D-1-2 – amended

DATE OF PASSAGE: March 9, 2022

EFFECTIVE DATE: March 9, 2022

ACTION BY GOVERNOR: Signed March 28, 2022

House Bill 4502

Establishing the BUILD WV Act

This bill was introduced at the request of the Executive. It creates the BUILD WV Act. The purpose of the act is to provide reasonably priced housing for graduate, pos-graduate and professional job holders, technical workers and entrepreneurs for targeted businesses in key geographic areas.

The bill contains an extensive list of defined terms. It also provides for rulemaking for the Tax Commissioner to effectuate the purpose of the article. BUILD WV would be administered by the Development Office. Powers and duties with respect to project administration are set out in the bill. That office would certify a geographic district where BUILD WV housing projects may be approved. If approved the project would be exempt payers from state and municipal sales, service and use tax. The exemption would be limited to purchases of building materials and tangible personal property directly incorporated into certified project residential buildings and structures, common areas, and infrastructure during construction, repair, maintenance, and refurbishment.

A property value adjustment tax credit is also provided in the bill. That adjustment would be calculated by a formula set forth in the bill. It provides that the amount of the credit would be:

- Approved cost x by .60 which is then multiplied by the statewide average Class III property tax rate of this state during the construction tax year which is then multiplied by 10.

The sum of this calculation would be applied annually for ten consecutive years. There are no carry back provisions and no carry forward provisions. The tax is also non-transferrable any may be recaptured if improperly taken.

A district is certified through an agreement between the Secretaries of Economic Development, Commerce, and Tourism. Certification is contingent upon factors set forth in the bill and there may be no more than 3 districts at any one time. These are:

- The housing and employment needs within the certified district;
- Whether the certified district will have a significant and positive economic impact on the state;
- Whether there is substantial and credible evidence that designating the certified district will result in one or more certified projects likely to be started and completed in a timely fashion;
- Whether the certified district will, directly or indirectly, improve the opportunities in the area where the project will be located for the successful establishment or expansion of other commercial businesses;
- Whether the certified district will, directly or indirectly, assist in the creation of additional employment opportunities in the area or assist in the filling of currently available jobs;
- Whether the certified district helps to diversify the local economy;
- Whether the certified district is consistent with the goals of this article; and
- Any other relevant and reasonable criteria determined by the designating officials.

There is an application process and factors that must be included on a written application. These include:

- A description and location of the proposed project;
- Capital and other anticipated expenditures for the project and the sources of funding therefore;
- The anticipated employment, revenues and expenses generated by the project; and
- Anything else determined necessary by the Department of Economic Development.

The aggregate sum for all costs is limited to \$40,000,000 in any fiscal year. Any approved project must also have an aggregate sum of approved costs of at least \$3,000,000 or include six residential units or houses.

Approval of an application is contingent upon the Secretary of Economic Development certifying that:

- The project will have approved costs of at least \$3 million or includes at least six residential units or houses;
- The project will have a significant and positive economic impact on the state;
- The quality of the proposed project and how it addresses economic problems in the area in which the project will be located;
- Whether there is substantial and credible evidence that the project is likely to be started and completed in a timely fashion;
- Whether the project will, directly or indirectly, improve the opportunities in the area where the project will be located for the successful establishment or expansion of other commercial businesses;
- Whether the project will, directly or indirectly, assist in the creation of additional employment opportunities in the area where the project will be located;
- Whether the project helps to diversify the local economy;
- Whether the project is consistent with the goals of this article;
- Whether the project is economically and fiscally sound using recognized business standards of finance and accounting;
- Whether the proposed project demonstrates that the project will meet the immediate future needs of the area; and
- The ability of the eligible company or group of multiple party project participants to carry out the project.

The bill also has exclusions. No property may be part of a residential or commercial time share, it may not be used for industrial or manufacturing operations, it may not be a warehouse or distribution center, telephone call center, telemarketing operation, an airport, and it may not be used primarily for business activity.

There is a required annual report to the Joint Committee on Government and Finance.

The final portion of the bill provides for an agreement between the Department of Economic Development and an approved company or group.

The act is effective for a five-year period beginning January 1, 2023.

CODE REFERENCE: West Virginia Code §5B-2L-1 through §5B-2L-17 – new

DATE OF PASSAGE: March 12, 2022

EFFECTIVE DATE: June 10, 2022

ACTION BY GOVERNOR: Signed March 30, 2022

House Bill 4511

To make numerous amendments to modernize and increase efficiencies in the administration of the West Virginia Unclaimed Property Act

This bill amends the law relating to unclaimed property to reflect new technology and new forms of property not previously addressed. This bill includes definitions for the terms: electronic, electronic mail, and virtual currency as well as shortens the timeframe for when certain property types are presumed abandoned to facilitate a prompter return of property.

Addressing virtual currency, the bill creates a presumption of abandonment for virtual currency and a process for unclaimed virtual currency. More specifically, it requires the holder to liquidate the unclaimed virtual currency anytime within 30 days of filing the report and remit the proceeds to the administrator.

The bill makes it easier to return abandoned property in safe deposit boxes by authorizing the administrator to directly reimburse the holder for unpaid rent or storage charges in an amount not to exceed \$150 after the property has been claimed and returned to the apparent owner using funds in the Unclaimed Property Fund.

It authorizes the administrator to invest the Unclaimed Property Fund with the West Virginia Board of Treasury Investments or the Investment Management Board. The bill replaces money transfers to the Prepaid Tuition Program, a program that is now closed, and authorizes those transfers to the Jumpstart Savings Program. This program supports individuals who have gone to a trade or vocation school by facilitating saving for tools and equipment upon graduation. The bill reduces the amount of paperwork required for common transactions and provides for a more automated approach to claims processing.

Finally, the bill makes it easier for people to find out information about their unclaimed property and further increases transparency regarding how the Treasurer's office publishes data by requiring the Treasurer's office to publish an annual report.

CODE REFERENCE: West Virginia Code §36-8-1, §36-8-2, §36-8-8, §36-8-10, §36-8-13, §36-8-15, §36-8-25, and §36-8-33 – amended

DATE OF PASSAGE: March 12, 2022

EFFECTIVE DATE: June 10, 2022

ACTION BY GOVERNOR: Signed March 28, 2022

House Bill 4560

Relating generally to motor vehicle dealers, distributors, wholesalers and manufacturers

The purpose of this bill is to modify and update statutes regulating the relationships between car dealers and manufacturers and wholesalers.

The bill clarifies that this article of West Virginia Code governs all agreements addressed in the article to “modernize and acknowledge” that dealers now sign numerous more agreements than just a single Sales and Service Agreement. It further clarifies what it means to engage in the operation and business of a new motor vehicle dealership. The bill also clarifies that a dealership is entitled to be reimbursed by a manufacturer for diagnostic time on warranty and recall work, considering the complexity of the modern motor vehicle, including any assistance with over the air updates.

In addition, the bill sets forth a procedure clarifying the procedure to be used by the manufacturer and motor vehicle dealer in sales and service audits. The bill provides additional protections for motor vehicle dealers from too frequent unreasonable image and facility mandates from manufacturers. It increases their rights to such mandates from 10 to 15 years. Additionally, the bill clarifies the duties and responsibilities of the manufacturer and motor vehicle dealer for vehicles sold pursuant to a reservation or subscription service and clarifies that the financing of motor vehicles occurs at the dealership.

The bill allows a motor vehicle dealer to implement a succession plan while the dealer is still living and sets forth a procedure for any disagreements that may arise between the manufacturer and motor vehicle dealer. The bill increases the protection of a consumer’s data that they provide to a motor vehicle dealer when purchasing a motor vehicle. It also clarifies different duties of a manufacturer and other third-parties such as a dealer management system provider.

The bill provides a definition for “dealer data” and sets standards for the treatment and protection of such data. These include:

- Limiting a manufacturer’s ability to share a dealer’s consumer data to a third-party to the consumer data on its same line vehicles sold by the dealer as opposed to access to all consumer data of a motor vehicle dealer;
- Requiring a dealer management system provider to meet Standards for Technology in Automotive Retail Standards (“STAR”) for the protection of consumer data;
- Preventing a data systems provider from limiting how a dealer shares its consumer data with other required vendors and third-parties or charging an unreasonable fee to a dealer or third party for a dealer sharing its own consumer data;
- Requiring a data systems provider to cooperate in transferring back the motor vehicle dealer’s consumer data and use a commercially reasonable format to allow reasonable transmission back to a dealer upon termination of the agreement without the charging of unreasonable fees;
- Requiring a data systems provider to inform a motor vehicle dealer of any third-party dealer management system provider that it is sharing a motor vehicle dealers customer’s data and requires a dealer management system to obtain permission from the dealer to share a dealer’s customer data;
- Clarifies that the data a customer provides to a motor vehicle dealer is the dealer’s data and allows the dealer to protect that information more securely;
- Allows a dealer to obtain information from a data systems provider or other third-party that it is protecting the dealer’s consumer data it provided to them;

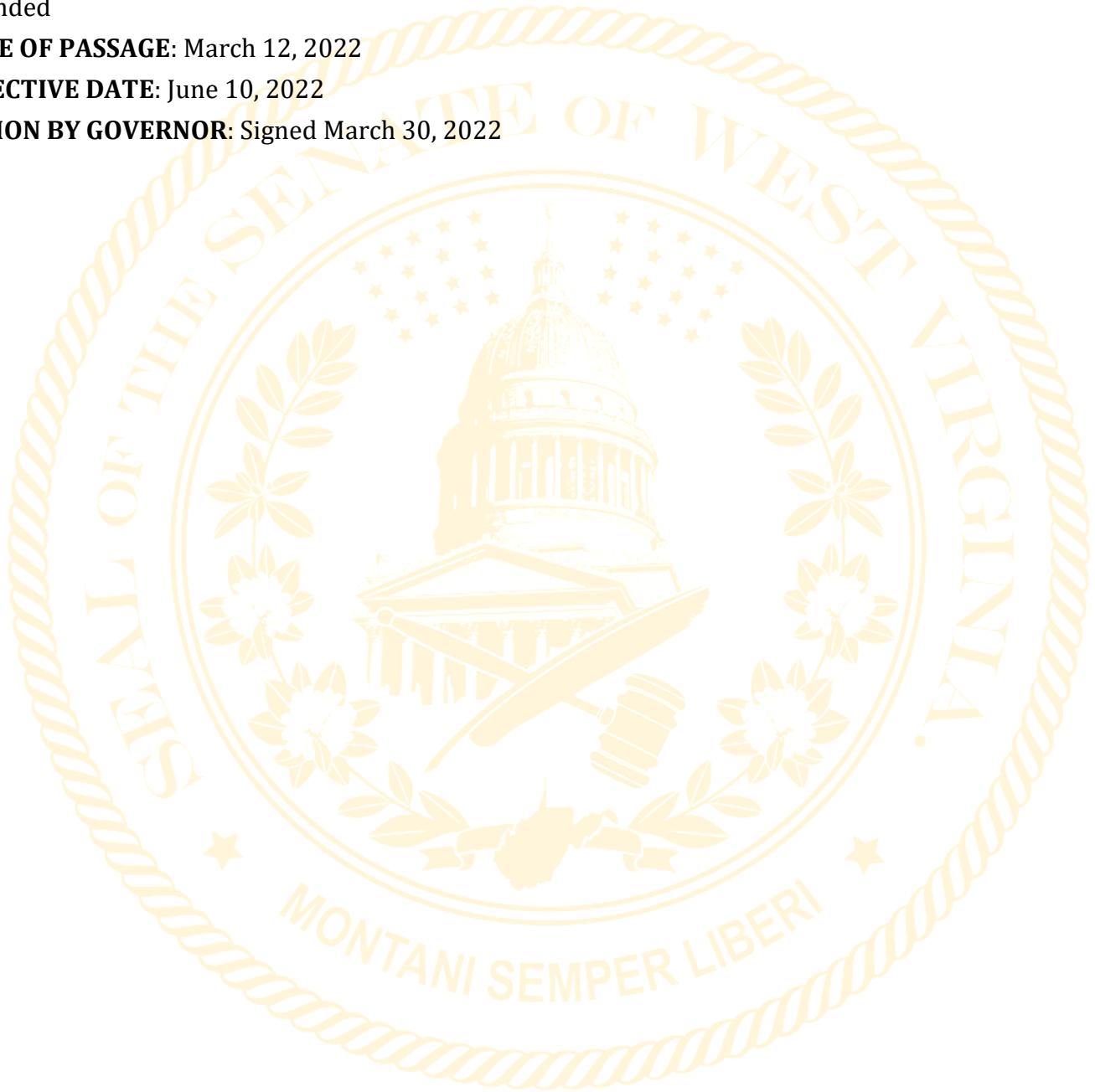
- Gives dealers more control over its customer data by limiting what a third party can access; and
- Providing a severability clause and continues to provide the motor vehicle dealer indemnity from any manufacturer or third-party who engages in willful or negligent actions or allows an impermissible use of protected consumer data.

CODE REFERENCE: West Virginia Code §17A-6A-2, §17A-6A-3, §17A-6A-5, §17A-6A-8a, §17A-6A-10, §17A-6A-11, §17A-6A-12, §17A-6A-13, §17A-6A-15, §17A-6A-15a, §17A-6A-15c, and §17A-6A-18 – amended

DATE OF PASSAGE: March 12, 2022

EFFECTIVE DATE: June 10, 2022

ACTION BY GOVERNOR: Signed March 30, 2022



House Bill 4566

Creating the Economic Enhancement Grant Fund

The bill created a new fund known as the West Virginia Economic Enhancement Grant Fund. The fund would be administered by the Water Development Authority (WDA), consisting of appropriations, grants, gifts, contributions or other moneys from any source, public or private, and all income earned on moneys held in Fund.

The WDA will establish two subaccounts in the Fund:

- Matching Grant Subaccount – If the West Virginia Infrastructure and Jobs Development Council or the West Virginia Department of Economic Development recommend that a local government, the state or a not-for profit should be awarded matching funds for federal or other matching grant funding, then the WDA must review their application for the matching funds and provide a binding commitment to meet the match.
- If the government agency or not-for-profit is awarded the grant, the WDA will provide a grant for the match.
- These matching funds may only be awarded for “infrastructure projects” and “projects,” which are defined in §31-15A-2 as follows:
 - "Infrastructure project" means a project in the state which the council determines is likely to foster and enhance economic growth and development in the area of the state in which the project is developed, for commercial, industrial, community improvement or preservation or other proper purposes, including, without limitation, tourism and recreational housing, land, air or water transportation facilities and bridges, industrial or commercial projects and facilities, mail order, warehouses, wholesale and retail sales facilities and other real and personal properties, including facilities owned or leased by this state or any other project sponsor, and includes, without limitation:
 - The process of acquiring, holding, operating, planning, financing, demolition, construction, improving, expanding, renovation, leasing or otherwise disposing of the project or any part thereof or interest therein; and
 - Preparing land for construction and making, installing or constructing improvements on the land, including water or wastewater facilities or any part thereof, steam, gas, telephone and telecommunications and electric lines and installations, roads, bridges, railroad spurs, buildings, docking and shipping facilities, curbs, gutters, sidewalks, and drainage and flood control facilities, whether on or off the site.”
 - "Project" means any wastewater facility, water facility project or any combination thereof, constructed or operated or to be constructed or operated by a project sponsor.”
- Enhancement Grant Subaccount – Rather than providing matching funds, this subaccount would provide funds to a local government, the state or a not-for profit for all or a portion of infrastructure projects and projects in seven (7) specified circumstances set forth in Subsection (c) of the statute, including, but not limited to, the use of these funds to “cover all or a portion of the infrastructure projects to enhance economic development and/or tourism when recommended by the Secretary of Commerce, the Secretary of Economic Development and/or the Secretary of Tourism.”

The WDA will provide an annual audit made by an independent certified public accountant of its books, accounts and records with respect to the system and distributions and all matters relating to the financial application of the Economic Enhancement Grant Fund including all subaccounts therein to the Legislature.

CODE REFERENCE: West Virginia Code §22C-1-6a – new

DATE OF PASSAGE: March 11, 2022

EFFECTIVE DATE: March 9, 2022

ACTION BY GOVERNOR: Signed March 28, 2022



House Bill 4567

Relating to business and occupation or privilege tax

This bill modifies the business and occupation tax as it relates to the sale of new automobiles. It provides for elimination of the tax on any to be phased in over a three-year period. Effective July 1, 2023, there would be a fifty percent reduction, on July 1, 2024, there would be a fifty percent reduction of the remaining amount and on July 1, 2025, the tax would be eliminated. This elimination applies only to any new, never registered automobile is exempt from the municipal business and occupation tax.

CODE REFERENCE: West Virginia Code §8-13-5 – amended

DATE OF PASSAGE: March 11, 2022

EFFECTIVE DATE: June 9, 2022

ACTION BY GOVERNOR: Signed March 30, 2022

House Bill 4568

To allow phased rehabilitations of certified historic structures

This bill modified the tax credit for historic structures. Current law sets limits on the per project amount of \$10,000,000 and an annual amount per fiscal year of \$30,000,000 in total credits. This bill eliminates both of these limits. The bill also eliminates the \$5,000,000 set-aside for projects asking for credits of \$500,000. New provisions would allow for phased renovation. This would allow the credit to be claimed when phases of a project are completed pursuant to a phased rehabilitation plan submitted to the state historic preservation officer. The tax credit is subject to recapture by the Tax Commissioner if a project is not completed and if the necessary certification forms are not submitted within 60 months.

CODE REFERENCE: West Virginia Code §11-24-23a – amended

DATE OF PASSAGE: March 11, 2022

EFFECTIVE DATE: June 9, 2022

ACTION BY GOVERNOR: Signed March 30, 2022

House Bill 4570

To allow veterinary telehealth in West Virginia with out of state providers

The bill authorizes out of state veterinarians to offer telehealth services in West Virginia. The bill sets forth the framework to allow the board to authorize telehealth services and clearly defines when telehealth veterinary services are permitted. Any provider offering telehealth services in West Virginia is subject to the jurisdiction of the board. The bill sets the registration fee at \$300 for providers to offer telehealth in this state, renewable annually. Finally, the bill requires all veterinarians meet the same standard of care for telehealth patients as in person visits.

CODE REFERENCE: West Virginia Code §30-10-24 – new

DATE OF PASSAGE: March 10, 2022

EFFECTIVE DATE: June 8, 2022

ACTION BY GOVERNOR: Signed March 28, 2022

House Bill 4571

Modifying foundation allowance to account for transportation by electric powered buses

This bill amends Step 4 of the Public School Support Program, the allowance for student transportation operating costs. A part of this allowance is a percentage of the transportation costs incurred by the county for maintenance, operation, and related costs, exclusive of salaries. The percentage is between 87.5 and 95 percent depending on the density category of the county. This bill would increase the percentage by 10 percent for any portion of a county's school bus system that is fully powered by electricity that is stored in an onboard rechargeable battery or other storage device; and also increase the percentage by five percent for the portion of its school bus system that is manufactured within the state.

CODE REFERENCE: West Virginia Code §18-9A-7 – amended

DATE OF PASSAGE: March 12, 2022

EFFECTIVE DATE: July 1, 2022

ACTION BY GOVERNOR: Signed March 28, 2022

House Bill 4629

Relating to procedures for certain actions against the state

This bill provides that if 90 days have elapsed since a notice of intent to institute an action was filed and an action is not instituted the notice is considered to have expired. The complaining party or parties must provide a new notice before an action is instituted. New notices must be accompanied by the required fee payable to the attorney general or chief officer of the state agency. The applicable statute of limitations is not tolled during second or subsequent notices.

This bill also, under the separation of powers provision of the state constitution, prohibits a court, from issuing a writ of mandamus, a writ of prohibition, or an injunction against the Legislature and prohibits the naming of the Legislature or its presiding officers in any action challenging the constitutionality of a statute. It requires dismissal of such actions or dismissal of the improperly joined parties. Finally, the bill provides for the retrospective and retroactive application of the prohibitions to all actions pending at the time of the enactment of this bill.

CODE REFERENCE: West Virginia Code §55-17-3 – amended; §55-17-3a – new

DATE OF PASSAGE: March 12, 2022

EFFECTIVE DATE: June 10, 2022

ACTION BY GOVERNOR: Signed March 28, 2022

House Bill 4634

Relating to occupational licensing or other authorization to practice

House Bill 4634 permits recognition of an individual's occupational license in another state for licensure in this state. The bill requires a person with a license in another state apply for licensure in this state to the board or similar entity that regulates the profession in this state.

The bill sets forth criteria that a person applying for licensure in this state must meet:

- the person holds a valid license from another state;
- the person has held the license for at least one year;
- the person meets all education and examination requirements in the state where he or she is currently licensed;
- the person is a WV resident;
- boards in every state where the person is licensed hold the person in good standing;
- the person doesn't have a disqualifying criminal record;
- the person has never had their license revoked;
- the person has never surrendered a license;
- the person has no pending complaints, allegations, or investigations pending; and
- the person pays all applicable fees in this state.

The bill also sets forth criteria allowing a board to issue an occupational license in this state to a person based on his or her work experience:

- The person worked in a state that does not license the profession;
- The person has worked for at least two years in the occupation;
- The person has taken and passed any national examinations to practice; and
- The person satisfies requirements 6 - 10 stated above.

The bill permits a state board to require a person to take a jurisprudential examination for a license if the board requires the same of all other applicants. The bill allows a board 60 days to make a decision on a completed application. The bill provides an appeal process for a person to appeal to court the board's decisions regarding licensure, scope of practice, or other authorization. The bill stipulates that licensure in this state does not entitle a person to practice in another state unless otherwise provided for by interstate compact or other agreement. The bill permits the board to charge a limited fee for such application. Finally, the bill preempts any other law or ordinance by township, municipality, county, or other governments from requiring an additional license to practice.

CODE REFERENCE: West Virginia Code §21-17-1 through §21-17-12 and §29-33-1 through §29-33-12 – new

DATE OF PASSAGE: March 11, 2022

EFFECTIVE DATE: June 9, 2022

ACTION BY GOVERNOR: Signed March 30, 2022

House Bill 4636

Clarifying when business and occupation taxes owed to a city or municipality are considered to be remitted on time

This bill provides that payments for municipal business and occupation taxes or for rates, fees, and charges that are postmarked on or before their due date are considered to be on time. Municipalities are prohibited from assessing a late fee or penalty on these payments.

CODE REFERENCE: West Virginia Code §11-13-1 and 11-13-32 – amended

DATE OF PASSAGE: March 12, 2022

EFFECTIVE DATE: June 10, 2022

ACTION BY GOVERNOR: Signed March 30, 2022

House Bill 4642

Relating to pecuniary interests of county and district officers, teachers and school officials in contracts

This bill allows county commissioners, district school officers, a secretary of a Board of Education, supervisor or superintendent, principal, or teacher at public schools or any member of any other county or district board or any county or district officer to have a pecuniary interest in a contract where he or she may have any voice, influence or control in the award or letting of the contract under certain circumstances. These criteria are:

- The contract is not for services;
- The contract has been put out for competitive bid, and the contract is awarded based on the lowest cost;
- The party to the contract recuses himself or herself from voting or decision-making if they are in such position as to the contract; and
- The party to the contract has previously obtained a written advisory opinion from the West Virginia Ethics Commission.

CODE REFERENCE: West Virginia Code §61-10-15 – amended

DATE OF PASSAGE: March 12, 2022

EFFECTIVE DATE: June 10, 2022

ACTION BY GOVERNOR: Signed March 28, 2022

House Bill 4667

Prohibition on county, city, or municipality restrictions on advanced air mobility aircraft

House Bill 4667 creates two new sections within the Economic Development Act.

In §5B-2-18, the bill creates the West Virginia Uncrewed Aircraft Systems Advisory Council in the Department of Economic Development. It provides for membership, duties, and expense reimbursement.

In §5B-2-18a, the bill requires uncrewed aircraft system operators to comply with applicable federal law and Federal Aviation Administration regulations. It preempts political subdivisions enacting ordinances regarding ownership or operation of advanced air mobility aircraft or advanced air mobility system and preempts political subdivisions from otherwise regulating uncrewed aircraft systems, advanced air mobility aircraft, and aircraft mobility systems. It provides that an ordinance, whether enacted before or after the effective date of this new statute, is void to the extent it violates this provision. Lastly, the bill defines the terms “advanced air mobility aircraft” and “advanced air mobility system”.

CODE REFERENCE: West Virginia Code §5B-2-18 and §5B-2-18a – new

DATE OF PASSAGE: March 12, 2022

EFFECTIVE DATE: June 10, 2022

ACTION BY GOVERNOR: Signed March 30, 2022

House Bill 4675

Relating to autonomous delivery vehicles

The bill defines terms relating to autonomous delivery vehicles. The bill sets forth the requirements for operation of autonomous delivery vehicles regarding permitted places of operation, adherence to traffic and pedestrian controls, plates and markers for vehicles, and braking systems. The bill sets forth prohibitions on the operations of autonomous delivery vehicles and mobile carriers. The bill prohibits local authorities from regulating the operation of autonomous delivery vehicles. The bill sets forth mandatory minimum insurance requirements for owners and operators of autonomous delivery vehicles.

CODE REFERENCE: West Virginia Code §17C-24-1, §17C-24-2 – new

DATE OF PASSAGE: March 8, 2022

EFFECTIVE DATE: June 6, 2022

ACTION BY GOVERNOR: Signed March 28, 2022

House Bill 4756

Relating to authorizing municipalities to create pension funding programs to reduce the unfunded liability of certain pension and relief funds

This bill relates to the authority of municipalities to create pension funding programs. It defines a “pension funding program” as a program established by a municipality that reduces the unfunded actuarial accrued liability of a policemen’s or firemen’s pension and relief refund.

The bill authorizes a building commission of a Class I, II or III municipality to issue pension funding revenue bonds to fund a pension funding program. Before the building commission may fund any pension funding program through the issuance of bonds, the commission is to enact an ordinance setting forth the following:

- a brief and general description of the pension funding program;
- the cost of the pension funding program;
- the priority of the funding of the pension funding program;
- the requirement of the issuance of pension funding revenue bonds;
- any provisions necessary for a debt service reserve fund; and
- provisions for a debt service contingency reserve in an amount at least equal to 10% of the original principal amount of the bonds.

The ordinance is to be noticed by Class II legal advertisement and there must be a public hearing on held prior to its enactment. Pension funding revenue bonds must be issued in an amount at least equal to the policemen’s or firemen’s pension and relief fund’s then unfunded liability based upon the most recent actuarial valuation report for the pension and relief fund.

The bonds may not have an interest rate of more than 12% per year with a maturity of no more than the estimated amortization period for the municipality as shown in its most recent actuarial valuation reports. The annual principal and interest payments shall, to the extent possible, provide for level debt service and be proportionate to the funding requirements of the most recent valuation report of the pension and relief fund. The bonds may be redeemed prior to maturity, at not more than par value and at a premium of not more than 5%.

The Municipal Pensions Oversight Board is to approve of the issuance of any pension funding revenue bonds by a building commission of a Class III city or for a Class I or II city if the policemen’s or firemen’s pension and relief funds are not both funded at a funding ratio of 40% or greater.

CODE REFERENCE: West Virginia Code §8-22-19, §8-22-20, §8-33-4, and §33-3-14d – amended; §8-12-24, §8-33-4a, §8-33-4b – new

DATE OF PASSAGE: March 12, 2022

EFFECTIVE DATE: June 10, 2022

ACTION BY GOVERNOR: Signed March 30, 2022

House Bill 4769

Eliminate the requirement to send recommended decisions by certified mail

House Bill 4769 eliminates the requirement for the Public Service Commission (PSC) to send recommended orders after a hearing by certified mail, return receipt requested. The elimination of this requirement will result in a cost savings to the Commission.

House Bill 4769 was requested by the PSC. In contrast to a situation where a document is being sent to an individual without prior notice, this bill relates to proceedings where the parties have already appeared, a hearing has been held, and the parties have submitted briefs and proposed findings of fact and conclusions of law. The parties will have had an opportunity to provide the PSC with a valid mailing address and are interested in receiving the recommended order. Moreover, most parties will likely opt to be served via email, eliminating the need to mail the order at all.

CODE REFERENCE: West Virginia Code §24-1-9 – amended

DATE OF PASSAGE: March 8, 2022

EFFECTIVE DATE: June 6, 2022

ACTION BY GOVERNOR: Signed March 28, 2022

House Bill 4773

Adoption of the FCC customer service and technical standards and requiring certain cable operators to operate an in-state customer call center

This bill amends two sections of the West Virginia Code. The first requires a cable operator shall provide a paper copy of the subscriber's monthly bill at no charge, that a cable operator shall prorate any charge for service(s) that is cancelled by a subscriber rather than charging for the full term and that a cable operator shall comply with all customer service and technical standards established by the Federal Communications Commission. These standards, as amended, are adopted for use and application in regulating cable operators. Secondly, the bill requires each cable operator that has been subject to a compliance order issued by the Public Service Commission in a show cause or general investigation proceeding, in which the commission concluded that the provider's customer service communications were not safe, adequate, or reliable, shall maintain a call center within the boundaries of the state to serve its subscribers.

CODE REFERENCE: West Virginia Code §24D-1-14 and §24D-1-17 – amended

DATE OF PASSAGE: March 2, 2022

EFFECTIVE DATE: May 31, 2022

ACTION OF GOVERNOR: Signed March 30, 2022

House Bill 4778

Permit banks to transact business with any one or more fiduciaries on multiple fiduciary accounts

This bill amends current law governing banking institutions and services to allow banks to conduct business with any one of multiple fiduciaries on multiple fiduciary accounts. It would allow a bank to make a payment from a fiduciary account with multiple fiduciaries on request from, or at the direction of, any one or more of the fiduciaries on the account or accounts.

Definitions are established for a “fiduciary account” and “multiple-fiduciary account”.

A fiduciary account is defined as follows:

- an estate account for a decedent,
- an account established by one or more agents under a power of attorney or an existing account of a principal to which one or more agents under a power of attorney are added,
- an account established by one or more conservators,
- an account established by one or more committees,
- a trust account under a testamentary trust, or
- an account established pursuant to an attorney-client relationship.

This definition does not include a trust account.

A multiple-fiduciary account means a fiduciary account where more than one fiduciary is authorized to act.

CODE REFERENCE: West Virginia Code §31A-4-33 – amended

DATE OF PASSAGE: March 10, 2022

EFFECTIVE DATE: June 8, 2022

ACTION BY GOVERNOR: Signed March 28, 2022

House Bill 4779

Permit banks the discretion to choose whether to receive deposits from other banks, savings banks, or savings and loan associations when arranging for the re-deposits of county, municipal, and state funds

This bill provides banks the option to receive a reciprocal deposit from other banks, savings bank, or savings and loan associations when coordinating re-deposits of county, municipal, state, and county board of education funds, while still protecting public funds.

CODE REFERENCE: West Virginia Code §7-6-2, §8-13-22a, §12-1-4, and §18-9-6 – amended

DATE OF PASSAGE: March 11, 2022

EFFECTIVE DATE: June 9, 2022

ACTION BY GOVERNOR: Signed March 28, 2022

House Bill 4787

Creating the Highly Automated Motor Vehicle Act

This bill creates the Fully Autonomous Vehicle Act and permits vehicles with automated systems to operate on West Virginia roadways and highways.

The Society of Automotive Engineers recognizes five levels of driving automation.

- Level 0 – No Driving Automation (but includes emergency braking and blind spot warnings);
- Level 1 (Driver Assistance – would include adaptive cruise control where the vehicle keeps a safe distance behind a car);
- Level 2 (Partial Driving Automation – sometimes referred to as Advanced Driver Assistance Systems (ADAS) and would include things such as Tesla’s current Autopilot system and Cadillac’s Super Cruise;
- Level 3 (Conditional Automation – is not currently operational in the U.S. market, but will have “environmental detection” whereby various driver assistance systems and artificial intelligence make decisions based on changing driving situations around the vehicle);
- Level 4 (Level 4 vehicles can intervene if things go wrong or there is a system failure, but humans can still manually override the vehicle); and
- Level 5 (Full Driving Automation where no human attention is required).

A “fully autonomous vehicle” is defined as a motor vehicle equipped with an automated driving system designed to function without a human driver as a level 4 or 5 system under the Society of Automotive Engineers (SAE) driving automation level system.

Fully Autonomous Vehicles Without Human Drivers

A fully autonomous vehicle on the public roads of this state may be operated without a human driver provided that the automated driving system (ADS) is engaged and the vehicle meets a number of conditions including operating in compliance with motor vehicle safety laws and federal safety standards. Prior to operating a fully autonomous vehicle without a human driver, a person shall submit a law enforcement interaction plan that describes, among other things, the communication with a fleet support specialist and how the vehicle could be safely removed from the road and towed.

Operation of a Fully Autonomous Motor Vehicle With an ADS by a Human Driver

A person may operate a motor vehicle equipped with an ADS capable of performing the entire dynamic driving task (DDT) if:

- Such ADS will issue a request to intervene (i.e., notify the human driver that they should promptly begin or resume performance of part or all of the dynamic driving task) whenever the ADS is not capable of performing the entire DDT with the expectation that the person will respond appropriately to such a request; and
- The ADS is capable of being operated in compliance with the applicable provisions of and regulations promulgated under this article, unless an exemption has been granted by the Department of Transportation or the National Highway Traffic Safety Administration

Nothing in the Act prohibits or restricts a human driver from operating a fully autonomous vehicle equipped with controls that allow for the human driver to control all or part of the DDT.

Operation of Fully Autonomous Commercial and Motor Carrier Vehicles

A fully autonomous vehicle that is a commercial vehicle or a motor carrier vehicle requiring a CDL may operate pursuant to state and federal laws governing the operation of commercial motor vehicles, except that any provision that by its nature reasonably applies only to a human driver does not apply to such a vehicle operating with the ADS engaged. This section does not apply to a school bus.

On-Demand Autonomous Motor Vehicle Networks

An on-demand autonomous motor vehicle network shall be permitted to operate pursuant to State laws governing the operation of transportation network companies, taxis, or any other ground transportation for-hire of passengers, with the exception that any provision of such laws that reasonably applies only to a human driver would not apply to the operation of fully autonomous vehicles with the ADS engaged on an on-demand autonomous vehicle network.

Platooning

“Platooning” refers to a situation when no more than three fully autonomous vehicles are traveling in concert pursuant to a pre-determined written travel plan that identifies the vehicles and proposed route. Platoons have the following restrictions:

- A maximum of three vehicles shall be in a platoon;
- Vehicles in a platoon shall travel only on limited access highways or interstate highways, unless otherwise permitted by the Department or the West Virginia Division of Highways;
- The department or the West Virginia Division of Highways may restrict movement under this section for operational or safety reason, including, but not limited to, emergency conditions; and
- Consistent with applicable Federal and State laws, the lead vehicle in a platoon may operate with a driver and non-lead vehicles may operate with an ADS engaged, with or without a driver.

Plan for general platoon operations. A person may operate a platoon on a highway of this State if the person files and reviews a plan for general platoon operations with the department. The department shall review the plan in consultation with the West Virginia State Police and the West Virginia Division of Highways, as applicable. Non-lead vehicles in a platoon shall not be subject to violations of this code relating to following too closely. Each vehicle in a platoon must be marked with a visual identifier and the State shall establish the criteria and placement of the visual identifier. The WV Department of Transportation shall be the lead state agency on fully autonomous vehicle

Duties Following Crashes Involving Fully Autonomous Vehicles

In the event of a crash:

- The fully autonomous vehicle shall remain at the scene of the crash when required by State law consistent with its capability under §17H-1-5; and
- The owner of the fully autonomous vehicle, or a person on behalf of the vehicle owner, shall promptly report any crashes or collisions consistent with §17C-4-1, et seq.

Fully Autonomous Vehicles Are Not Exempt From State Laws Pertaining to Ownership

Whether traveling individually or in a platoon, fully autonomous vehicles, are not exempt from any other laws or regulations applicable to the ownership and operation of any non-fully autonomous vehicle in this state.

Fully Autonomous Vehicle Equipment Standards

A fully autonomous vehicle that is designed to be operated exclusively by an ADS for all trips is not subject to motor vehicle equipment laws or regulations of this State that relate to or support motor vehicle operation by a human driver seated in the vehicle and which are not relevant for an ADS.

Licensing, Titling, and Registration of a Fully Autonomous Vehicle

When an automated driving system (ADS) installed on a motor vehicle is engaged:

- The ADS is considered the driver or operator, for the purpose of assessing compliance with applicable traffic or motor vehicle laws and shall be deemed to satisfy electronically all physical acts required by a driver or operator of the vehicle; and
- The ADS is considered to be licensed to operate the vehicle.

A fully autonomous vehicle shall be properly registered in accordance with the laws of this state.

If a fully autonomous vehicle is registered in this state, the vehicle shall be identified on the registration as a fully autonomous vehicle. The requirements under this article relating to exhibiting a driver's license and registration card are satisfied if the license and vehicle registration card are in the fully autonomous vehicle physically or electronically, and available for inspection by a police officer.

Insurance

Before operating a fully autonomous motor vehicle on public roads in this state without a human driver, a person shall submit proof of financial responsibility satisfactory to the Department of Motor Vehicles that the fully autonomous vehicle is covered by insurance or proof of self-insurance that satisfy the applicable laws of this state.

CODE REFERENCE: West Virginia Code §17H-1-1 through §17H-1-15 – new

DATE OF PASSAGE: March 12, 2022

EFFECTIVE DATE: June 10, 2022

ACTION BY GOVERNOR: Signed March 30, 2022

House Bill 4797

To create an EV Infrastructure Deployment Plan for West Virginia that describes how our state intends to use its share of NEVI Formula Program funds

The bill requires the Department of Transportation create an Electric Vehicle Deployment Plan to utilize National Electric Vehicle Infrastructure (NEVI) funds. The department must submit the plan to the Joint Committee on Government and Finance by July 1, 2022. On February 10, 2022, the current executive administration announced that West Virginia would receive \$6,761,785 in NEVI funds for FY2022 and \$45,683,164 through FY2026. However, states must submit an electric vehicle infrastructure deployment plan to the Federal Joint Office of Energy and Transportation by August 1, 2022, that describes how the state intends to use its share of NEVI Formula Program funds consistent with Federal Highway Administration (FHWA) guidance before the state can access these funds. The report required to access FY2022 funds is due by August 1, 2022.

CODE REFERENCE: West Virginia Code §17-30-1 – new

DATE OF PASSAGE: March 8, 2022

EFFECTIVE DATE: June 6, 2022

ACTION BY GOVERNOR: Signed March 28, 2022

House Bill 4826

Relating to e-sports

This bill amends the West Virginia Lottery Sports Wagering Act to allow licensed gaming facilities in this state to accept wagers on e-sports events. An e-sports event is defined as “leagues, competitive circuits, tournaments or similar competitions where individuals or teams play video games, typically for spectators, either in-person or online, for the purpose of prizes money, or entertainment”.

CODE REFERENCE: West Virginia Code §29-22D-3 – amended

DATE OF PASSAGE: March 12, 2022

EFFECTIVE DATE: June 10, 2022

ACTION BY GOVERNOR: Became Law Without Governor's Signature

House Bill 4827

Relating to the promotion and development of public-use vertiports

House Bill 4827 creates a new article under the Economic Development Act called the “Promoting Public-Use Vertiports Act”.

Section 1 establishes the state’s policy of promoting development of a network of vertiports and avoiding vertiport monopolization or discrimination.

Section 2 defines the term “vertiport”.

Section 3 provides that the new article applies to any vertiport that is available for public use by any advanced air mobility operator authorized by the U.S. Department of Transportation or Federal Aviation Administration to engage in passenger and/or cargo services in scheduled or non-scheduled service in or affecting interstate commerce.

Section 4 requires covered vertiports to comply with FAA rules and advisory circulars regarding vertiport design and performance characteristics and requires vertiports to submit a vertiport layout plan to the FAA for approval.

Section 5 preempts political subdivisions from exercising zoning and land use authority to grant or permit exclusive rights to one or more vertiport owners or operators and requires political subdivisions to use their authority to promote reasonable access to advanced air mobility operators at public-use vertiports within their jurisdiction.

Section 6 clarifies that the new article is intended to supplement federal law regarding design, construction, operations, or maintenance of a vertiport designed or constructed under certain federal grants and provides that provisions of the article which conflict with or are preempted by federal law are void.

CODE REFERENCE: West Virginia Code §5B-2K-1 through §5B-2K-6 – new

DATE OF PASSAGE: March 12, 2022

EFFECTIVE DATE: March 12, 2022

ACTION BY GOVERNOR: Signed March 28, 2022

House Bill 4848

Relating to nonintoxicating beer, wine and liquor licenses

The purpose of this bill is to modify laws relating to beer, wine, and alcohol by adding new licensees and making other technical corrections.

The bill increases the \$5 cap on the convenience fee to \$20 and removes requirements relating to a scanned stored image of a driver's license or other legal identification when making delivery. However, the law still requires the delivery driver to verify that the person is at least 21 years of age before giving alcohol to the person.

The bill reduces from 300 feet to 200 feet the distance a private club licensee must be from a church or school. The 200-foot restriction may be waived by a church, college or university but not a K-12 school. Additionally, the bill clarifies that licensees are not required to bag alcoholic liquors but are instead permitted to use anything else or simply carry the purchase out of the store. The bill requires Class A licensees to provide notice to the commissioner when planning to hold a sampling event. In addition, the bill increases the minimum markup from 110 percent to 115 percent. The bill also creates new licenses for a private bakery, a private cigar shop, a private college sports stadium, a private food truck, and to permit mini bars in hotels or resort hotels.

The bill continues a reduction to licensing fees to one-third of what those fees are listed as due to the ongoing issues relating to the Covid pandemic. Fees will be two-thirds of their total amount in 2023 and will return to the full amount in 2024. Additionally, the bill permits a licensed entity that is in good standing with the commissioner be authorized to obtain a license for events such as fairs and festivals and provides for those conditions. The bill also permits authorizing wine growler sales to produce a frozen alcoholic beverage like wine slushies.

The bill also authorizes the Commissioner to divest the state of its interest in liquors produced by the Russian Federation and authorizes the Commissioner to auction any liquors to the highest bidder. The proceeds of the sale will be paid to a recognized charity providing assistance to the Ukrainian people. The provisions of this new section will expire three years from the effective date of this section or whenever the Governor lifts this requirement, whichever is earlier.

CODE REFERENCE: West Virginia Code §60-7-17 – repealed; §11-16-6d, §11-16-6f, §11-16-8, §60-3A-3a, §60-3A-3b, §60-3A-17, §60-4-22, §60-4-23, §60-6-24, §60-7-2, §60-7-6, §60-7-8a, §60-7-8f, §60-8-6c, §60-8-6e, §60-8-6f, and §61-8-27 – amended; §11-16-5a, §60-1-3a, §60-3-26, and §60-7-2a – new

DATE OF PASSAGE: March 12, 2022

EFFECTIVE DATE: June 10, 2022

ACTION BY GOVERNOR: Signed March 30, 2022

2022 First Extraordinary Session

Senate Bill 1001

West Virginia Industrial Advancement Act

The purpose of this bill is to provide certain tax incentives, based upon very significant investment and employment thresholds, for labor and capital intensive heavy industrial facilities to locate in the state. The bill would create a new section of tax code that clarifies how existing tax credits for manufacturing would apply to investments of this magnitude. Per a memorandum of understanding between the State of West Virginia and the \$2.7 billion investment related to the Act, the State will not release any money until this prospective company first spends its money within the state. The available funds would not be awarded all at once. They would come in three separate groupings, with the company required to hit specific, auditable milestones of in-state spending first. Those investments are expected to be infrastructure development and upgrades.

CODE REFERENCE: West Virginia Code §11-13LL-1 through §11-13LL-14 – new

DATE OF PASSAGE: January 12, 2022

EFFECTIVE DATE: January 12, 2022

ACTION BY GOVERNOR: Signed January 12, 2022

2022 Second Extraordinary Session

Senate Bill 2001

Relating generally to funding for infrastructure and economic development projects in state

This bill eliminates the revolving loan from the Consolidated Fund to the Economic Development Authority and replaces it with a special revenue account at the Economic Development Authority. The purpose of the loan is to assist business industrial development. The new funds will assume that purpose with a \$600,000,000 appropriation from which the Economic Development Authority shall repay \$200,000,000 to the revolving loan within 30 days of receipt of the funds.

The bill also enables the Board of Treasury to loan up to \$200,000,000 from the Consolidated Fund to the Department of Transportation. These funds will be deposited into a special revenue account upon receipt of:

- A written request from the Secretary.
- A statement from the Secretary that the funds will be used for the requirements set out in the bill.
- Necessary documentation on the planned expenditures.

The funds are limited to use for projects funded pursuant to the Infrastructure Investment and Jobs Act (the Act). Upon reimbursement from the federal government pursuant to that Act, funds shall be transferred to the Consolidated Fund if the balance exceeds the amount required for expenditures authorized pursuant to the agreement with the federal government executed pursuant to the Act. Quarterly reporting to the Joint Committee on Government Finance is required. At the request of the Board of Treasury Investments, the Secretary is required to provide the opportunity to inspect the Department of Transportation records.

The special revenue account created at the Economic Development Authority would retain any remaining funds from the \$200,000,000 loan and have the additional \$600,000,000 appropriation.

This fund would finance high impact development projects which are projects approved for greater than \$50,000,000 by the Economic Development Authority, the enterprise privately invests \$50,000,000, and the project is anticipated to create a number of jobs as set by a loan to jobs creation ratio established by the Authority in consultation with the Secretary of Economic Development. These funds may be invested and reinvested.

Itemized records are required to be kept by the Authority and there is a requirement for an annual report to the Joint Committee on Government and Finance addressing the status of each project.

CODE REFERENCE: West Virginia Code §31-15-20 – repealed; §12-6C11 and §31-15-23a – amended; §12-6C-11b – new

DATE OF PASSAGE: April 26, 2022

EFFECTIVE DATE: April 26, 2022

ACTION BY GOVERNOR: Signed May 3, 2022

Senate Bill 2005

Authorizing Commissioner of Workforce West Virginia to create Unemployment Compensation Insurance Fraud Unit

The purpose of this bill is to establish within Workforce WV, an Unemployment Compensation Fraud Unit. It is generally modeled after statutes relating to Medicaid and insurance fraud.

The bill allows the director of Workforce to hire fulltime staff and requires him or her to provide office space, equipment, and supplies. The director of the fraud unit is required to be a certified fraud investigator with experience in computer technology. The unit is charged with investigating all types of unemployment fraud.

The bill sets out the duties of the unit which include initiating and conducting investigations of the violations of West Virginia unemployment law, review complaints regarding alleged fraud related to unemployment compensation, conduct independent examinations of alleged fraudulent activity, and perform other duties assigned by the Commissioner.

The new unit is allowed to inspect and copy records, issue subpoenas, give oaths, share records with law enforcement, make criminal referrals, conduct investigations outside of the state if necessary information is located outside of the state. Certain personnel may operate state vehicles and carry firearms after meeting certain qualifications. The new unit is not subject to open meetings law or the Freedom of Information Act.

CODE REFERENCE: West Virginia Code §21A-10-23 – new

DATE OF PASSAGE: April 26, 2022

EFFECTIVE DATE: July 24, 2022

ACTION BY GOVERNOR: Signed May 3, 2022

Senate Bill 2007

Revising West Virginia Real Estate Act

This bill amends a single section of the West Virginia Real Estate License Act located in §30-40-1 et seq. of the code. The bill adds a definition of “entity” and adds a proviso to the definition of “salesperson” that allows designation of a corporate entity to receive compensation.

The Real Estate Commission interprets current code to require that compensation be paid only to individuals.

During the Regular Session 2022, a more expansive version of this bill was originated in the Government Organization committee, designated SB 685, and passed the Senate 34-0. The bill was introduced at the request of the Real Estate Commission.

The House amended the bill and its title, effectively reducing the bill to the provisions allowing the designation of a corporate entity to receive compensation. The Real Estate Commission agreed with the amendments. The amended bill passed the House unanimously. Senate concurrence with the House amendments was recommended, but the bill was not considered the last night of the Regular Session.

This bill reflects the House amendments to SB 685.

CODE REFERENCE: West Virginia Code §30-40-4 – amended

DATE OF PASSAGE: April 26, 2022

EFFECTIVE DATE: July 24, 2022

ACTION BY GOVERNOR: Signed May 3, 2022

Senate Bill 2009

Establishing alternative educational opportunities for elective course credit

This bill replaces existing provisions on alternative educational opportunities with the following: The state board is required to establish, develop, and maintain a program whereby students can earn elective course credit for extended learning opportunities that take place outside of the traditional classroom setting; and is required to permit any high school student to receive up to six elective course credits towards graduation for participating and completing any approved extended learning opportunity program.

The bill also provides that the entities eligible to provide extended learning opportunity programs within a county must be broadly defined and at least include the following:

- Nonprofit organizations.
- Businesses with established locations in the state.
- Trade associations.
- Parents of students involved in programs that may otherwise qualify as an alternative educational program.
- Teachers involved in programs outside of the traditional classroom.
- School personnel involved in programs outside of the traditional classroom.

The bill further provides that in order to be certified as an eligible extended learning opportunity program, an individual or entity must successfully complete an application process as established by the state board.

The bill also provides that an extended learning opportunity program qualifies for elective course credit if it has been approved by the state board; requires individuals or entities seeking program accreditation to complete an application form promulgated by the board; and sets forth the criteria to be included in the application.

The bill requires that the state board consider a completed extended learning opportunity program application within 45 days of receipt. It also requires that an approved extended learning opportunity provider comply with all applicable federal and state health and safety laws and regulations, as well as any standards and safeguards as provided by the state board. Background checks are required for all key personnel or instructional staff of an extended learning opportunity provider, and a program is required to provide its background check policy to participating families. A participating program is also required to have proof of insurance.

The bill also provides that if an extended learning opportunity program application is denied, the state board must provide a detailed explanation of the reasons for the denial as well as an explanation of ways in which the program can improve its application in order to obtain a more favorable review by the board. Denial of an extended learning opportunity program application does not prohibit a provider from submitting another application aimed at addressing the concerns or improvements originally suggested by the board.

An approved extended learning opportunity program is required to be monitored and evaluated at the end of its first year by the state board, which may consider in its evaluation input from any participating school's principal or guidance counselors. If an extended learning opportunity program continues to meet the requirements of this section, its approval can be extended by the board for a period of five years.

Thereafter, the extended learning opportunity program must be inspected and monitored on an annual basis. The state board can evaluate an approved program at any time and can disqualify an approved program if the provider has violated the requirements of state law or state board policies. An extended learning opportunity program can appeal any disqualification to the circuit court of Kanawha County or to the circuit court of the county in which the program is administered.

Approved extended learning opportunity programs are required to be implemented and coordinated at the local school level. The county boards are required to adopt an alternative educational opportunities policy that facilitates implementation and participation. The policy is required to:

- Provide for a designee within each school who has primary responsibility for ensuring implementation and coordination of the extended learning opportunity policy.
- Provide for a student seeking elective course credit in an accredited extended learning opportunity program to work with his or her designated advisor or guidance counselor towards participation in the program.

The bill also provides that students under the age of 18 must have approval from a parent or legal guardian to participate in an extended learning opportunity program.

The bill also allows students transferring from other schools to request acceptance of elective course credits awarded for completed extended learning opportunity programs. If the transferring student has completed a program previously approved by the state board, the credits are required to be accepted and applied toward the student's transcript. Completion of nonapproved extended learning opportunity programs must be evaluated in accordance with a county board of education's adopted policy on alternative educational opportunities for purposes of awarding credit.

The bill also provides that transportation to and from an approved program is the responsibility of a student and his or her parent or legal guardian. However, a local school district is allowed to provide transportation at its discretion.

The bill also allows the state board to audit approved extended learning opportunity programs at any time; and authorizes the board to disqualify the program immediately if the audit finds that an approved program is not meeting the provisions of this section.

The bill also requires the Department of Education to report, with respect to the implementation of extended learning opportunity programs, to LOCEA by no later than December 31, 2022.

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

DATE OF PASSAGE: April 26, 2022

EFFECTIVE DATE: July 24, 2022

ACTION BY GOVERNOR: Signed May 3, 2022

House Bill 210

Relating to permitting the use of air rifles when hunting

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

This bill creates a new section of Code allowing any person lawfully entitled to hunt to hunt with an air rifle during small and big game firearms seasons. Specifically, it:

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

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

DATE OF PASSAGE: April 25, 2022

EFFECTIVE DATE: April 25, 2022

ACTION BY GOVERNOR: Signed May 3, 2022

House Bill 214

Relating to prescriptive authority

The purpose of this bill is to clean up the code concerning prescriptive authority of advance practice registered nurses by removing the prescriptive authority from §30-3E-3 and reapplying it in §30-7-15a.

Additionally, the bill makes changes to rulemaking for both physician assistants and registered professional nurses. While the bill leaves intact the WV Board of Medicine's ability to propose rules regarding the eligibility and extent to which a physician assistant may prescribe, it strikes specific detail regarding prescriptive authority for physician assistants.

With respect to the WV Board of Examiners for Registered Professional Nurses, the rulemaking language is removed. Now, the proposed legislation states that a physician assistant and advance practice registered nurse a may not prescribe a schedule I controlled substance, prescribe up to a 3-day supply of a schedule II narcotic, and there are no other limitations on a physician assistant's advance practice registered nurse or prescribing authority, except as provided in the opioid reduction act.

The Senate Committee on Health and the Judiciary Committee recommended passage of HB4111. This bill was the same bill as introduced in the Regular Session.

CODE REFERENCE: West Virginia Code §30-3E-3 and §30-7-15a – amended

DATE OF PASSAGE: April 25, 2022

EFFECTIVE DATE: April 25, 2022

ACTION BY GOVERNOR: Signed May 3, 2022

House Bill 215

Creating a special revenue account known as the Military Authority Reimbursable Expenditure Fund

The bill would amend provisions of WV relating to funding for the National Guard and education benefits for the child or spouse of certain members of the U. S. military.

§15-1J-6 is a new section that creates a new special revenue account known as the “Military Authority Reimbursable Expenditure Fund” to be administered by the Adjutant General. The purpose of the fund is to make moneys available to the Military Authority for expenditures that qualify for cost reimbursement pursuant to a cooperative agreement, grant, or other legal agreement with the federal government. The fund “shall receive all moneys transferred to the fund pursuant to §36-8-13(e) of this code, any income from the investment of moneys held in the fund, and all moneys” . . . “from the federal government to reimburse the Military Authority for expenditures authorized by this section.

Examples set forth of the purposes for which the money in the new Fund may be spent are:

- Expenditures for operations and maintenance of all facilities;
- Expenditures for major and minor construction;
- Any other types of expenditures related to homeland and national security missions; and
- Any other types of expenditures to support missions of the West Virginia National Guard.
- Any balance, including accrued interest and other returns, remaining in the fund at the end of each fiscal year shall be transferred to the Unclaimed Property Fund.

§36-8-13 would be amended create a new §36-8-13(e) to allow the State Treasurer, as the Unclaimed Property Administrator of the State’s Unclaimed Property Trust Fund, to “transfer an amount in any fiscal year from the Unclaimed Property Trust Fund to the Military Authority Reimbursable Expenditure Fund: Provided, That the aggregate amount that may be transferred under this subsection may not exceed \$10,000,000.”

§18-19-2 would be amended. The statute currently provides that upon application, the child or spouse of an enlistee in the U.S. military who designated West Virginia as his or her state of record and who was killed in action or have died or may hereafter die from disease or disability resulting from their war service may attend a state post-secondary education or training institution at no charge for tuition and fees. Additionally, certain amounts (up to \$1,000 per semester) may be provided to the child or spouse by the Department of Veterans Assistance for “matriculation fees, board, room rent, books, supplies and other necessary living expenses.”

The section would modify the section to extend these benefits to the child or spouse of an “enlisted or commissioned service member” of the military who died or may hereafter die from disease or disability resulting from their war service.

The bill is similar to HB 4613 from Regular Session 2022, which died pending Senate concurrence in the House amendment to the bill March 12, 2022.

CODE REFERENCE: West Virginia Code §18-19-2 and §36-8-13 – amended; §15-1J-6 – new

DATE OF PASSAGE: April 25, 2022

EFFECTIVE DATE: April 25, 2022

ACTION BY GOVERNOR: May 3, 2022

2021 Regular Session



Senate Bill 5

Relating to claims arising out of WV Consumer Credit and Protection Act

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

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

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

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

CODE REFERENCE: West Virginia Code §46A-5-104, §46A-5-108, §46A-6-106, and §46A-8-101 – amended; §46A-5-109 – new

DATE OF PASSAGE: March 18, 2021

EFFECTIVE DATE: June 16, 2021

ACTION BY GOVERNOR: Signed March 29, 2021

Senate Bill 11

Declaring work stoppage or strike by public employees to be unlawful

This bill:

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

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

DATE OF PASSAGE: March 4, 2021

EFFECTIVE DATE: June 2, 2021

ACTION BY GOVERNOR: Became Law Without Governor's Signature

Senate Bill 14

Providing for additional options for alternative certification

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

- Holds a bachelor's degree from an accredited institution of higher education.
- Submits to a criminal history check.
- Successfully completes pedagogical training or a pedagogical course or courses in substantive alignment with nationally recognized pedagogical standards; or approved or established by the state board.
- Passes the same subject matter and competency test or tests required by the state board for traditional program applicants for licensure.

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

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

DATE OF PASSAGE: February 26, 2021

EFFECTIVE DATE: May 27, 2021

ACTION BY GOVERNOR: Signed March 10, 2021

Senate Bill 34

Creating exemption to state sales and use tax for rental and leasing of equipment

The bill would amend the provisions of the West Virginia Code providing exemptions from the Consumer Sales and Service Tax. The bill adds a new exemption for leases of heavy equipment or machinery among corporations with at least 50% common ownership.

CODE REFERENCE: West Virginia Code §11-15-9 – amended.

DATE OF PASSAGE: April 10, 2021

EFFECTIVE DATE: July 1, 2021

ACTION BY GOVERNOR: Signed April 28, 2021

Senate Bill 42

Zombie Property Remediation Act of 2021

This bill creates a new code section known as the Zombie Property Remediation Act of 2021.

The section addresses “zombie property” and empowers municipalities to take action (forced foreclosures) to remedy property determined to be “unsafe, unsanitary, dangerous, or detrimental to the public safety or welfare” (defined in §8-12-16), or which has been abandoned.

Subsection (c) of this statute provides instructions regarding the mortgage instrument.

Subsection (d) defines and provides factors of consideration regarding when a property may be considered vacant or abandoned, including steps which must be undertaken by the plaintiff to ensure the property truly is abandoned or vacant.

Subsection (e) of this bill lays out the steps required regarding the recording of deeds following a foreclosure sale of the zombie property when the successful bidder is the mortgagee.

This bill grants the same power to the county commission of the county in which the relevant property is situated only if said property is not situated within any incorporated municipality. Also, this bill does not affect a municipality’s powers of disposal under §8-12-16 of similar properties.

CODE REFERENCE: West Virginia Code §8-12-22 – new

DATE OF PASSAGE: March 18, 2021

EFFECTIVE DATE: June 16, 2021

ACTION BY GOVERNOR: Signed March 29, 2021

Senate Bill 80

Allowing for administration of certain small estates by affidavit and without appointment of personal representative

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

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

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

CODE REFERENCE: West Virginia Code §44-1-28 – amended; §44-1A-1, §44-1A-2, §44-1A-3, §44-1A-4, and §44-1A-5 – new

DATE OF PASSAGE: April 2, 2021

EFFECTIVE DATE: July 1, 2021

ACTION BY GOVERNOR: Signed April 15, 2021

Senate Bill 263

Permitting online raffles to benefit nonprofit organizations

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

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

CODE REFERENCE: West Virginia Code §47-20-2, §47-20-15, §47-21-2, and §47-21-15 – amended

DATE OF PASSAGE: April 10, 2021

EFFECTIVE DATE: April 10, 2021

ACTION BY GOVERNOR: Signed April 28, 2021

Senate Bill 270

Providing for collection of tax by hotel marketplace facilitators

The bill requires certain marketplace facilitators, such as Airbnb and VRBO, to collect and pay the required hotel occupancy tax on behalf of the citizens renting their homes as hotels on such mobile applications for which they book sales. The bill makes the marketplace facilitator responsible for remitting the hotel occupancy tax to the taxing authority, which is either the county commission or the municipality in whose jurisdiction the hotel is located. The bill implements standards in the Wayfair case decided by the US Supreme Court in 2018. Note: The taxes will not start to be remitted until January 1, 2022.

CODE REFERENCE: West Virginia Code §7-18-3 and §7-18-4 – amended

DATE OF PASSAGE: March 9, 2021

EFFECTIVE DATE: June 7, 2021

ACTION BY GOVERNOR: Signed March 18, 2021

Senate Bill 272

Relating to WV Employment Law Worker Classification Act

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

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

The worker signs a written contract with the principal acknowledging certain conditions related to their services;

The worker has filed or is required to file an income tax return for a business or self-employed entity for the fees earned from the work;

The worker actually and directly controls the manner and means by which the work is performed (except the final result of the work, orientation or safety measures required by the principal, or other obligations under law); and

The worker satisfies at least three criteria from a list relating to the workers' ability to control their finances and behavior.

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

CODE REFERENCE: West Virginia Code §21-5-1; 21-5A-16, and §23-2-1a – amended; §21-5I- 1, 21-5I-2, 21-5I-3, 21-5I-4, and 21-5I-5 – new

DATE OF PASSAGE: March 11, 2021

EFFECTIVE DATE: June 9, 2021

ACTION BY GOVERNOR: Signed March 19, 2021

Senate Bill 275

Relating generally to WV Appellate Reorganization Act of 2021

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

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

The bill amends one section in Chapter 6 (General Provisions Respecting Officers) to provide a start date for terms of office of ICA judges. The bill creates one new section in Chapter 16 (Public Health) providing for transfer of appellate jurisdiction over final decisions issued by the West Virginia Health Care Authority in certificate of need reviews from the Office of Judges to the ICA; and sets forth effective dates as well as transition procedures.

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

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

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

- Provides a short title, definitions, and legislative findings;
- Creates the ICA as a three-judge court of record;
- Provides qualifications for the office of ICA judge and limitations on their activities;
- Provides for the Clerk of the Supreme Court of Appeals of West Virginia (“Supreme Court”) to act as Clerk of the ICA;
- Provides that the ICA has no original jurisdiction;
- Establishes the court’s appellate jurisdiction over certain matters as well as certain matters over which the ICA is expressly without jurisdiction;
- Provides for discretionary jurisdiction of the Supreme Court over any civil case filed in the ICA;
- Provides for appellate jurisdiction of the ICA over judgments or final orders in criminal matters if the Supreme Court adopts a policy of discretionary review of criminal appeals;
- Sets forth extraordinary circumstances under which the Supreme Court may grant a motion for direct review of a case on appeal to the ICA, and the procedures therefor;
- Provides for initial appointment of the three ICA judges by the Governor from recommended candidates submitted by the Judicial Vacancy Advisory Commission;
- Provides for ICA appointees to begin their duties as judge on July 1, 2022;
- Provides for 10-year terms for ICA judges following initial terms;

- Provides for the filling of vacancies in the judge’s offices and temporary assignments where a judge is temporarily unable to serve;
- Provides for supervisory control by the Supreme Court over the ICA;
- Provides that pleadings, practice, and procedure, including all filings, in all matters before the ICA will be governed by rules promulgated by the Supreme Court;
- Requires appeals to the ICA to be filed with the Clerk of the Supreme Court;
- Authorizes filing and appeal bonds for filing appeals to the ICA;
- Provides for discretion by the ICA whether to require oral argument; authorizes the Chief Justice of the Supreme Court to exercise supervisory control over the ICA;
- Requires the administrative director of the Supreme Court to provide necessary facilities, furniture, fixtures, and equipment necessary for the ICA, and to make existing courtrooms available for its use;
- Authorizes the administrative director to contract with other facilities to provide space suitable for the ICA;
- Requires the administrative director to provide administrative support and authorizes employment of additional staff, as necessary;
- Provides for selection of a Chief Judge of the ICA under rules to be established by the Supreme Court; requires a written decision on the merits “as a matter of right in each appeal that is properly filed and within the jurisdiction of the” ICA, and the court’s opinions, orders and decisions are binding precedent “unless the opinion, order, or decision is overruled or modified by the Supreme Court of Appeals”;
- Provides that while appeals from orders or judgments of the ICA may be made to the Supreme Court, the Supreme Court has discretion to grant or deny any such appeal, and discretion to stay such order or judgment;
- Provides for annual compensation of an ICA judge of \$142,500;
- Requires the Attorney General to appear as counsel for the State in all cases pending in the ICA to the same extent required by law in cases pending in the Supreme Court; and
- Provides a severability clause for the new article.

The bill creates a new section in a separate article of Chapter 51 providing for appeals of family court decisions to the ICA after a date certain and deprive circuit courts of jurisdiction over such matters within the jurisdiction of the ICA after a date certain; and amends another section in a separate article providing for inclusion of ICA judges in the judicial retirement system. Lastly, the bill amends one section in Chapter 58 (Appeal and Error) to provide for appeals of circuit court decisions after a date certain to the ICA and authorizes the filing of petitions to appeal ICA decisions to the Supreme Court.

CODE REFERENCE: West Virginia Code §3-1-16, §3-4A-11a, §3-5-7, §3-5-13, §3-10-3, §3-10-3a, §6-5-1, §23-5-1, §23-5-3, §23-5-4, §23-5-5, §23-5-6, §23-5-8, §23-5-9, §23-5-10, §23-5-11, §23-5-12, §23-5-13, §23-5-15, §23-5-16, §29A-5-4, §29A-6-1, §51-9-1a, §58-5-1 – amended; §3-5-6e, §16-2D-16a, §23-1-1h, §23-5-1a, §23-5-3a, §23-5-5a, §23-5-6a, §23-5-8a, §23-5-8b, §23-5-9a, §23-5-10a, §23-5-11a, §23-5-12a, §23-5-13a, §23-5-16a, §51-2A-24, §51-11-1, §51-11-2, §51-11-3, §51-11-4, §51-11-5, §51-11-6, §51-11-7, §51-11-8, §51-11-9, §51-11-10, §51-11-11, §51-11-12, §51-11-13 – new

DATE OF PASSAGE: April 1, 2021

EFFECTIVE DATE: June 30, 2021

ACTION BY GOVERNOR: Signed April 8, 2021

Senate Bill 277

Creating COVID-19 Jobs Protection Act

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

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

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

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

DATE OF PASSAGE: March 11, 2021

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

ACTION BY GOVERNOR: Signed March 19, 2021

Senate Bill 280

Relating to e-commerce modernization

The bill requires all political subdivisions, unless exempted by the State Treasurer’s Office, to establish and/or maintain an online presence capable of accepting electronic payments for fees, fines, penalties, etc., on or before March 1, 2023.

CODE REFERENCE: West Virginia Code §12-3A-6 – amended

DATE OF PASSAGE: March 8, 2021

EFFECTIVE DATE: June 6, 2021

ACTION BY GOVERNOR: Signed March 18, 2021

Senate Bill 294

Savings and investment programs offered by state

The bill authorizes the Board of the College Prepaid Tuition and Savings Program (“the Board”) to close the 529 Prepaid Tuition Plan (“the Prepaid Tuition Plan”) and the two funds that support it. It also modifies membership of the Board and creates a new special revenue account. [NOTE: The Board administers two separate college savings plans: the older 529 Prepaid Tuition Plan and the more recent SMART529 College Savings Plan. This bill provides for the closure of only the 529 Prepaid Tuition Plan – the SMART529 College Savings Plan will continue under the administration of the Board]

The bill increases the number of private-citizen members of the eight-member Board from two to three members, and requires that they each have “knowledge, skill, and experience in a financial field.” The bill also directs that reasonable efforts must be made to appoint one such private-citizen member as one who “holds a designation of Chartered Financial Analyst, offered by the CFA Institute” to improve the SMART529 College Savings Plan’s national ratings.

The Board is to close the Prepaid Tuition Plan after satisfying “outstanding contract obligations to persons owning Prepaid Tuition Plan accounts, on a pro rata basis as their interests may appear,” as well as “any fees, charges, expenses, penalties, or any other obligation or liability of the Prepaid Tuition Trust Fund or plan.” The Board is to pay these amounts from the Prepaid Tuition Trust Fund, and if its balance is depleted, the Prepaid Tuition Trust Fund is to be closed and the balance of obligations is to be paid from the Prepaid Tuition Trust Escrow Fund.

If a Prepaid Tuition Plan account owner abandons his or her assets, those assets are to be reported and paid over to the unclaimed property administrator in accordance with the Uniform Unclaimed Property Act. That includes any checks issued to the Prepaid Tuition Plan account holder that have not been cashed 60 days after date of issue.

After the Prepaid Tuition Plan is closed, any balances remaining in the Prepaid Tuition Trust Fund and the Prepaid Tuition Trust Escrow Fund are to be allocated as follows:

First, \$5 million must be transferred to the new West Virginia Savings and Investment Program Fulfillment Fund (see below)

Second, the Board may maintain up to \$1,000,000 in the Prepaid Tuition Trust Escrow Fund “for a period not to exceed 10 years following the closure of the Fund for the purpose of satisfying any claims against the Prepaid Tuition Trust Plan arising after the fund’s closure.” The bill contemplates that the Prepaid Tuition Trust Fund is to be closed after depletion, leaving only the Prepaid Tuition Trust Escrow Fund for these purposes. This disposition also requires that unless the Prepaid Tuition Trust Escrow Fund is depleted before the end of the 10-year period, any moneys remaining in the Prepaid Tuition Trust Escrow Fund upon the expiration of 10 years following the date of closure of the Prepaid Tuition Trust Fund shall revert to the state’s General Revenue Fund and the escrow fund will be closed as well.

Third, after the first and second allocations, any remaining balances of the funds shall “revert to the General Revenue Fund.”

Finally, the bill creates a new special revenue account in the State Treasury into which the \$5 million described above is to be deposited. Also to be deposited into the new West Virginia Savings and Investment Program Fulfillment Fund are “any moneys that may be appropriated to the fund by the Legislature; all interest or other return earned or received from investment of the fund; any moneys which the fund is authorized to receive under any provision of this code for the purposes of this article; and all gifts, grants,

bequests, or transfers made to the fund from any source. These moneys are to be used by the State Treasurer to pay “any expenses incurred by the State Treasurer in implementing or administering any savings and investment program with an initial date of operation occurring on or after July 1, 2021.”

CODE REFERENCE: West Virginia Code §18-30-3, §18-30-4 and §18-30-6 – amended; §18-30-6a – new

DATE OF PASSAGE: April 7, 2021

EFFECTIVE DATE: April 7, 2021

ACTION BY GOVERNOR: Signed April 28, 2021



Senate Bill 295

Relating generally to economic development loans and loan insurance issued by state

The bill modifies current law relating generally to economic development loans and loan insurance issued by the state, principally to continue and revise what will now be known as the Broadband Loan Insurance Program under which the West Virginia Economic Development Authority may insure, for up to 20 years, private loans obtained by eligible broadband providers for capital costs in projects that:

- “has as its principal purpose providing broadband service . . . to a household or business located in an unserved area . . . or to an underserved area” that meets certain criteria [(§31-15-8a(b)(1)(A));
- “has as its principal purpose building a segment of a telecommunications network that links a network operator’s core network to a local network plant that serves either an unserved area . . . or an area in which no more than two wireline providers are operating. [(§31-15-8a(b)(1)(B)).

The loan insurance would be provided by the EDA upon application by broadband providers who meet certain criteria. §31-15-8a(c). No more than \$20 million of loan insurance may be awarded by the EDA “in any single calendar year . . . for any one broadband provider [NOTE: Current law single-year cap is \$10 million].” §12-6C-11a(b)(4)]. The insurance for all the loans approved would be backed by a “nonrecourse revolving loan” not to exceed \$80 million provided to the EDA by the West Virginia Board of Treasury Investments (BTI) from the state’s Consolidated Fund (NOTE: Current law total-outstanding cap is \$50 million). §12-6C-11a(b)(2). The EDA would “maintain the loan moneys made available pursuant to this section in an account that is separate and segregated from its other assets and programs.” §12-6C-11a(b)(5). The EDA may withdraw loan moneys from the separate and segregated account “only in the event that a broadband provider has defaulted on a debt instrument or security interest insured by the authority.” §12-6C-11a(d).

This new Broadband Loan Insurance Program is similar to the loan insurance program created in 2017 for broadband providers under §12-6C-11 and §31-15-8. The bill rewrites these current law provisions to revise the loan insurance program and moves those new provisions to new sections of code, designated §12-6C-11a and §31-15-8a.

The bill also deletes current code as obsolete the language authorizing up to \$25 million in loans beginning in 2005 from the Consolidated Fund for investment in a certain company. See, current law §12-6C-11(g). The bill also adds language requiring the EDA to provide the BTI access to the EDA’s records relating to its loans and loan insurance, and exempting these records from public disclosure while in possession of the BTI to the extent to which those records are exempt from disclosure under current law. See, §12-6C-11(g).

CODE REFERENCE: West Virginia Code §12-6C-11, §31-15-8 – amended; §12-6C-11a, §31-15-8a – new

DATE OF PASSAGE: March 15, 2021

EFFECTIVE DATE: March 15, 2021

ACTION BY GOVERNOR: Signed March 27, 2021

Senate Bill 297

Relating generally to modernizing Board of Treasury Investments

This bill permits the West Virginia Board of Treasury Investments to compensate its two members who are appointed by the Governor in the amount of \$500 per meeting attended. The bill further eliminates certain restrictions on investment by the Board in order to permit the Board to invest using more modern investment strategies appropriate for the current market. The two investment restrictions removed are:

- The requirement that no more than 75% of the Consolidated Fund be invested in any bond, note, debenture, commercial paper, or other evidence of indebtedness of any private corporation or association; and
- The requirement that no less than 15% of the Consolidated Fund be invested in any direct obligation of or obligation guaranteed as to the payment of both principal and interest by the United States

The bill adds a weighted average maturity or duration not to exceed three years for state and local government securities in §12-6C-9(e)(7).

CODE REFERENCE: West Virginia Code §12-6C-4 and §12-6C-9

DATE OF PASSAGE: April 7, 2021

EFFECTIVE DATE: July 6, 2021

ACTION BY GOVERNOR: Signed April 26, 2021

Senate Bill 305

Providing exemption from consumers sales and service tax for certain aircraft maintenance

This bill creates an exemption from sales and service tax for:

- Services including aircraft repair, remodeling, and maintenance services for an aircraft;
- Services including repair, remodeling, and maintenance services for an engine or other component of an aircraft;
- Sales of tangible personal property that, as part of a repair, remodel, or maintenance, is permanently affixed or attached as a component part of an aircraft; and
- Sales of machinery or tools used or consumed directly and exclusively for repair, remodeling, and maintenance services for an aircraft or engine or other component of an aircraft.

This bill also provides the protocol for obtaining the exemption, defines terms, authorizes emergency rules, and grants authority to promulgate legislative rules.

CODE REFERENCE: West Virginia Code §11-15-9t – new

DATE OF PASSAGE: March 23, 2021

EFFECTIVE DATE: June 21, 2021

ACTION BY GOVERNOR: Signed April 2, 2021

Senate Bill 307

Relating generally to in-state tuition rates for certain persons

Current code defines nonresident active members of a National Guard unit in West Virginia who are participating in the National Guard education services program as “residents” for the purposes in-state tuition at state institutions of higher education.

This bill extends that definition to include active members of a West Virginia reserve unit who are not West Virginia residents, and current members of the United States armed forces who reside in West Virginia. In addition, the bill removes the education services program participation requirement.

CODE REFERENCE: West Virginia Code §18B-10-1a – amended

DATE OF PASSAGE: April 6, 2021

EFFECTIVE DATE: July 5, 2021

ACTION BY GOVERNOR: Signed April 26, 2021

Senate Bill 335

Relating to WV Invests Grant Program for students at accredited community and technical college

This bill modifies the West Virginia Invests Grant program to:

- Clearly indicate that the grant covers the cost of tuition, mandatory, fees, and academic program fees; provided that any academic program fees must be approved by the Council on Community and Technical College Education; and
- Change the drug testing requirement from every semester to every year, and from successfully passing a drug test as a condition to eligibility to requiring drug rehabilitation as a condition to eligibility after a second positive drug test.

DATE OF PASSAGE: April 8, 2021

EFFECTIVE DATE: July 1, 2021

CODE REFERENCE: West Virginia Code §18C-9-3, §18C-9-4, and §18C-9-5 – amended

ACTION BY GOVERNOR: Signed April 15, 2021

Senate Bill 344

Relating to credit for qualified rehabilitated buildings investment

The bill would amend the provisions of the West Virginia Code relating to the tax credits against the West Virginia Personal Income Tax and the West Virginia Corporate Net Income Tax for qualified rehabilitated buildings investment. The credit for qualified rehabilitated buildings investment will no longer be available after December 31, 2022. This bill would eliminate the end date and allow the credit indefinitely.

CODE REFERENCE: West Virginia Code §11-21-8a and §11-24-23a – amended

DATE OF PASSAGE: April 10, 2021

EFFECTIVE DATE: July 1, 2021

ACTION BY GOVERNOR: Signed April 21, 2021

Senate Bill 368

Authorizing DEP to develop Reclamation of Abandoned and Dilapidated Properties Program

The purpose of this bill is to modify fees and processing of solid waste. The bill would shift the solid waste assessment fee imposed upon the disposal of solid waste at any solid waste landfill disposal facility in this state and modify the distribution of the fee from a distribution based solely on a per capita basis to each county or regional solid waste authority to a two-tiered distribution: 25% of the additional fee shall be distributed equally to each county or regional solid waste authority; and, 75% of the additional fee shall be distributed on a per capita basis to each county or regional solid waste authority based on the most recent population projections from the United States Census Bureau

The funds are to be expended for the reasonable costs of administration of the county or regional solid waste authority including the necessary and reasonable expenses of its members, and any other expenses incurred from refuse cleanup, recycling programs, litter control programs, or any other locally important solid waste programs deemed necessary to fulfill its duties.

The bill would also change the use by the West Virginia Department of Environmental Protection of the horizontal drilling waste assessment fee deposited into the Gas Field Highway Repair and Horizontal Drilling Waste Study Fund as follows:

- Under current law, those moneys are to be spent on improvement, etc. of public roads of 3 lanes located in the watershed from which the revenue was received. The bill would require instead that those funds be spent on improvement, etc. of public roads of 3 lanes located in the county where the waste is generated through the Division of Highways county office in that county.
- The bill would also allow the West Virginia Department of Environmental Protection to create a new Reclamation of Abandoned and Dilapidated Properties Program and use a new special revenue fund to “work with county commissions or municipalities and implement redevelopment plans which will, at a minimum, establish prioritized inventories of structures eligible to participate in the program, offer reuse options for high-priority sites, and recommend actions county commissions or municipalities may take to remediate abandoned and dilapidated structures in their communities.”
- The new special revenue fund, named the Reclamation of Abandoned and Dilapidated Properties Program Fund, would be funded from legislative appropriations, private funding for the program and excess money from the Solid Waste Facility Closure Cost Assistance Fund.
- Finally, the bill would increase an existing solid waste assessment fee imposed by §22-16-4 upon the disposal of solid waste at any solid waste disposal facility in this state, a portion of the proceeds of which are deposited into the Solid Waste Facility Closure Cost Assistance Fund.

The bill would also exempt any “mixed waste processing and resource recovery facility as those facilities are defined in code or rule and which processes a minimum of 70 percent of the material brought to the facility on any given day on a 30-day aggregate basis” from certain fees and assessments, and from the jurisdiction of the West Virginia Public Service Commission.

CODE REFERENCE: West Virginia Code §22-15-11, §22-15A-11, §22-15A-19, §22-16-4, §22-16-12, §22C-4-30, §24-2-1m – amended; §22-15A-30 – new

DATE OF PASSAGE: April 10, 2021

EFFECTIVE DATE: July 1, 2021

ACTION BY GOVERNOR: Signed April 16, 2021

Senate Bill 398

Limiting eligibility of certain employers to participate in PEIA plans

This bill amends the provisions of the West Virginia Code by adding a new section. The new section would eliminate eligibility of certain employers to participate in PEIA. On or after July 1, 2021, employers eligible for participation in PEIA are limited to:

- mandatory participants – the State, its boards, agencies, commissions, departments, institutions or spending units;
- county boards of education or public charter schools that are also 501(c)(3) corporations and have participation required in their charter contract;
- any employer currently participating in PEIA as of the effective date of the bill.

Any county or municipality, public corporations created by counties or municipalities, comprehensive community health centers, county or municipal health departments that are not already participating in PEIA would be ineligible to participate after effective date of the bill.

CODE REFERENCE: West Virginia Code §5-16-29 – new

DATE OF PASSAGE: April 10, 2021

EFFECTIVE DATE: April 10, 2021

ACTION OF GOVERNOR: Signed April 21, 2021

Senate Bill 421

Authorizing Workforce West Virginia to hire at-will employees

This bill allows the commissioner of Workforce West Virginia to hire up to 100 additional Workforce West Virginia employees as at-will employees, exempting them from classified service altogether. The commissioner must report all exemptions made under this bill to the Division of Personnel.

CODE REFERENCE: West Virginia Code §21A-2-6 – amended

DATE OF PASSAGE: April 2, 2021

EFFECTIVE DATE: July 1, 2021

ACTION BY GOVERNOR: Signed April 15, 2021

Senate Bill 439

Allowing use or nonuse of safety belt as admissible evidence in civil actions

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

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

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

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

CODE REFERENCE: West Virginia Code §17C-15-49 – amended; §17C-15-49A – new

DATE OF PASSAGE: April 7, 2021

EFFECTIVE DATE: July 6, 2021

ACTION BY GOVERNOR: Signed April 19, 2021

Senate Bill 469

Permitting appearance by video for purpose of notarial act

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

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

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

CODE REFERENCE: West Virginia Code §39-4-6, §39-4-6a, §39-4-37 and §39-4-38 – amended

DATE OF PASSAGE: March 19, 2021

EFFECTIVE DATE: June 17, 2021

ACTION BY GOVERNOR: Signed March 30, 2021

Senate Bill 472

Updating criteria for regulating certain occupations and professions

The bill provides updates to the sunrise application provisions. Any individual or group that proposes regulation of an unregulated occupation or profession must submit an application to the Joint Standing Committee. The Performance Evaluation and Research Division (PERD), in evaluating the application, must determine if the proposed regulation uses the least restrictive means necessary to protect consumers from substantiated harms. PERD will use a rebuttable presumption that consumers are sufficiently protected by market competition and private remedies. That presumption may be negated by a finding of significant harm and that consumers do not have the means to protect themselves against it. The bill provides recommendations for remedies for specific types of harm.

With respect to professions and occupations already regulated, the bill would require PERD to review current occupational licensing selected by the Joint Standing Committee chairs, commencing July 1, 2021. PERD would complete its review of all licenses within eight years and repeat the cycle each subsequent eight-year period. In its review, PERD may recommend, among other things, that the licensing remain as it is, converted to a less restrictive regulation, be repealed, or that the scope of practice be redefined.

CODE REFERENCE: West Virginia Code §30-1A-1, §30-1A-2, §30-1A-3, §30-1A-4, §30-1A-5, and §30-1A-6 – amended; §30-1A-1a – new

DATE OF PASSAGE: April 5, 2021

EFFECTIVE DATE: July 4, 2021

ACTION BY GOVERNOR: Signed April 19, 2021

Senate Bill 488

Relating to distributing hotel occupancy tax to convention and visitor's bureaus

The bill prohibits convention and visitor's bureaus (CVB's) that fail to meet certain standards from receiving any distribution of hotel occupancy tax funds, strengthens financial reporting requirements, and imposes a three-year moratorium on the authorization of new CVB's. The bill requires CVB's to send their annual report to the State Auditor and the Joint Committee on Government and Finance, as well as to the county commission or municipality that authorized them. It also requires CVB's to have an audit or financial review by an independent CPA at least once every three years.

CODE REFERENCE: West Virginia Code §7-18-13a and §7-18-14 – amended

DATE OF PASSAGE: April 10, 2021

EFFECTIVE DATE: July 9, 2021

ACTION BY GOVERNOR: Signed April 21, 2021

Senate Bill 492

Establishing program for bonding to reclaim abandoned wind and solar generation facilities

This bill establishes a bonding program to decommission and reclaim land burdened by wind and solar electrical generation facilities after closure.

Under the bill, owners of wind generation facilities and solar generation facilities are required to submit a decommissioning plan, which must be certified by a qualified independent licensed professional engineer and must follow standards and technical specifications of the Department of Environmental Protection including dates when operations began and plans with cost estimates for decommissioning the facilities.

The bill empowers the DEP to determine and assess a reclamation bond based on a generation facility's total disturbed acreage less salvage value. The amount of the bond cannot exceed the projected cost of decommissioning, less salvage value.

The bond is to be conditioned on the satisfactory decommissioning and reclamation of the facilities.

The bill includes a new exemption from the bonding requirement if a facility is legally bound by a prior decommissioning agreement which is based upon a qualified independent party or was granted a siting certificate by the PSC, conditioned upon the execution of an agreement. If the owner is exempt because of a prior decommissioning agreement, the owner must submit a copy of the agreement to DEP.

These prior agreements are not subject to approval or modification by DEP, but are subject to review and comment.

The bill includes an exemption from bond requirements for facilities with nameplate capacities of less than 1 megawatt, and those operated by regulated public utilities who can successfully demonstrate to the PSC and DEP financial integrity and long-term stability. The bill also allows for reductions in bond amounts under certain circumstances.

The bill also provides that the submission of a bond does not absolve owners from complying with other applicable regulations and requirements. The bill includes appellate rights to the Environmental Quality Board and allows for transfer of ownership provisions.

The bill states that the PSC is to condition all siting certificates on compliance with the article as determined by DEP. Developers who are in compliance with the new article enacted by this bill are not subjected to any municipal, county, or local political subdivision's code, ordinances, rules, or regulations.

There are administrative penalties for failure to submit bonds. A charge of \$10,000 for the first day and not more than \$500 for each additional day until submitted. The bill creates a "Wind and Solar Decommissioning Account" into which assessed penalties and accrued interest must be paid and held. Also, to be deposited into this fund, and not addressed by the current fiscal note, is an application fee of \$100 per megawatt, and a modification fee of \$50 per megawatt. This fund will be used by DEP to administer the program.

The DEP will maintain and hold bonds or other surety until released by DEP after DEP is satisfied the property has been properly decommissioned and reclaimed. Bonds will be forfeited when a facility is not properly decommissioned and reclaimed.

Also, if deficiencies are not rectified, the Office of Environmental Remediation or a private entity by contract may decommission and reclaim the facilities.

The bill provides the DEP rulemaking authority and the power to file lawsuits to enforce the program and to recoup costs of reclamation.

CODE REFERENCE: West Virginia Code §22-32-1, §22-32-2, §22-32-3, §22-32-4, §22-32-5, §22-32-6, and §22-32-7 – new

DATE OF PASSAGE: April 10, 2021

EFFECTIVE DATE: July 8, 2021

ACTION BY GOVERNOR: Signed April 26, 2021



Senate Bill 518

Relating to grounds for administrative dissolution of certain companies, corporations, and partnerships

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

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

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

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

CODE REFERENCE: West Virginia Code §31B-8-809, §31E-13-1320, §31D-14-1420, and §47-9-10a – amended

DATE OF PASSAGE: April 5, 2021

EFFECTIVE DATE: July 4, 2021

ACTION BY GOVERNOR: Signed April 15, 2021

Senate Bill 532

Limiting claims for state tax credits and rebates

This bill was introduced as the request of the Tax Commissioner. Many of the economic development tax incentives contain language limiting their use to a single credit. Some of these incentives, however, do not include this preclusion. This bill would correct this oversight.

The new section proposed in this bill would provide that no capital investment used to qualify for a tax credit or rebate may be used for a second or subsequent credit or rebate. Should there be a violation of this preclusion the Tax Commissioner will grant a single credit or rebate which is most favorable to the taxpayer. It is required to be based upon:

- Allow the previous credit granted based the capital investment; or
- Allow the second credit or rebate if no credit had previously been granted.

When a liability occurs, there is a required assessment, interest may be charged, and additions shall be charged pursuant to state code.

The Tax Commissioner is granted rulemaking authority to administer the provisions.

The changes would be effective January 1, 2022.

CODE REFERENCE: West Virginia Code §11-10-5ee – new

DATE OF PASSAGE: April 10, 2021

EFFECTIVE DATE: July 1, 2021

ACTION BY GOVERNOR: Signed April 21, 2021

Senate Bill 534

Permitting Economic Development Authority to make working capital loans from revolving loan fund capitalized with federal grant funds

This bill authorizes the West Virginia Economic Development Authority (EDA) authority to make working capital loans from a revolving loan fund capitalized with federal grant funds including, but not limited to, federal grant funds received from the United States Economic Development Administration.

This bill also allows the West Virginia Board of Treasury Investments (Board) to inspect and copy, upon written notice, all records related to loans made available by the Board to the EDA. The bill increases the revolving loan capacity from the Board to the EDA to \$200 million from the Consolidated Fund. This bill requires that the note representing the revolving loan to the EDA from the Consolidated Fund carry an interest rate of 50% of the EDA's weighted average interest rate for outstanding loans in the Business and Industrial Development Loan Program, and states that he rate may not be lower than 1.50% to be reset on July 1 of each year.

This bill clarifies that the EDA is not authorized to enter into contracts or agreements with financial institutions for banking goods or services without the approval of the State Treasurer.

CODE REFERENCE: West Virginia Code §12-6C-11, §31-15-5, and §31-15-6 – amended

DATE OF PASSAGE: April 9, 2021

EFFECTIVE DATE: July 8, 2021

ACTION BY GOVERNOR: Signed April 26, 2021

Senate Bill 641

Allowing counties to use severance tax proceeds for litter cleanup programs

The bill authorizes counties which receive allocations from the Coal County Reallocated Severance Tax Fund to use those allocations to fund, among a host of projects which can already be financed, litter redress initiatives.

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

DATE OF PASSAGE: April 9, 2021

EFFECTIVE DATE: July 1, 2021

ACTION BY GOVERNOR: Signed April 26, 2021

Senate Bill 642

Requiring legal advertisements by State Auditor be posted to central website

This bill requires the State Auditor's office to set up a public notice database on its website, and, effective July 1, 2022, the state and its agencies to publish all required public notices and legal advertisements on that database on the website and also continue to publish notices and advertisements in newspapers in compliance with current code. This bill mandates the Auditor to propose rules implementing the database, setting up forms and procedures, and verifying publication of notices. There is also an annual reporting requirement to the Joint Committee on Government and Finance.

CODE REFERENCE: West Virginia Code §59-3-2 – amended

DATE OF PASSAGE: April 9, 2021

EFFECTIVE DATE: July 8, 2021

ACTION BY GOVERNOR: Signed by Governor on April 26, 2021

Senate Bill 661

Permitting retailers to assume sales or use tax assessed on tangible personal property

The purpose of this bill is to allow a business to assume or absorb the full amount of any consumer sales tax of any property sold. It eliminates the criminal penalty currently set out in code for doing so. Additionally, to assume or absorb the tax, the business is required to clearly separate the purchase price and the full amount on the tax and remit the amount of the taxes to the Tax Commissioner.

CODE REFERENCE: West Virginia Code §11-9-7 – repealed; §11-15-3, §11-15-4, §11-1-4a, §11-15-13, §11-15A-5, §11-15A-6, and §11-15A-8 – amended

DATE OF PASSAGE: April 9, 2021

EFFECTIVE DATE: July 1, 2021

ACTION BY GOVERNOR: Signed April 26, 2021

Senate Bill 668

Creating Psychology Interjurisdictional Compact

This bill makes West Virginia a participant in the psychology interjurisdictional compact to facilitate telepsychological services and the temporary face-to-face practice of psychology across jurisdictional boundaries.

CODE REFERENCE: §30-21A-1 through §30-21A-13 – new

DATE OF PASSAGE: April 7, 2021

EFFECTIVE DATE: July 6, 2021

ACTION BY GOVERNOR: Signed April 21, 2021

Senate Bill 673

Relating to venue for bringing civil action or arbitration proceedings under construction contracts

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

CODE REFERENCE: West Virginia Code §56-1-1b – new

DATE OF PASSAGE: April 6, 2021

EFFECTIVE DATE: July 1, 2021

ACTION BY GOVERNOR: Signed April 26, 2021

Senate Bill 695

Providing procedures for decreasing or increasing corporate limits by annexation

This bill alters requirements relating to municipal boundary adjustments. With respect to annexation by minor boundary adjustment, the bill limits the area that may be annexed to not more than 105 percent of the existing total municipal boundary and not more than 120 percent of the current area of the municipality, thereby in effect defining the term “minor”. The bill also provides that only one such minor boundary adjustment may be made in a two-year period.

The bill also amends the procedure for decreasing a municipality’s corporate limits by requiring at least five percent of the freeholders in the territory to be deannexed file a petition for such reduction and publish a Class II-0 legal advertisement within 90 days of the petition to provide notice to others in the proposed territory to be deannexed. Any business or freeholder objecting to deannexation must file an objection and will be removed from the metes and bounds description.

CODE REFERENCE: West Virginia Code §8-6-4a; §8-6-5; §8-7-2 – amended

DATE OF PASSAGE: April 9, 2021

EFFECTIVE DATE: April 9, 2021

ACTION BY GOVERNOR: Signed April 28, 2021

Senate Bill 714

Relating to physician assistant practice act

This bill eliminates the practice agreement between a physician assistant and the physician. The practice agreement was a document that was approved by the licensing board. In lieu of the practice agreement a practice notification is required, which may be kept on file at the practice. The physician assistant may not practice independent of a collaborating physician.

With respect to practice requirements, new requirements are included that state the physician assistant shall provide only those medical service for which they have been prepared by their education, training and experience and are competent to perform, consistent with sound medical practice and that will protect the health and safety of the patient. This may occur in any health care setting, both hospital and outpatient in accordance with their practice notification. The complaint process is revised to remove references to collaborating physician or alternative.

CODE REFERENCE: West Virginia Code §30-3E-10 – repealed; §30-3E-1, §30-3E-2, §30-3E-3, §30-3E-4, §30-3E-9, §30-3E-10a, §30-3E-11, §30-3E-12, §30-3E-13, and §30-3E-17 – amended

DATE OF PASSAGE: April 9, 2021

EFFECTIVE DATE: July 8, 2021

ACTION BY GOVERNOR: Signed April 21, 2021

Senate Bill 718

Relating generally to Coal Severance Tax Rebate

The purpose of this bill, which originated in the Senate Committee on Finance, would further clarify the tax rebate granted during the 2019 Regular Session to coal companies for investments in new equipment and improvements to real property.

The original bill provided that a rebate was allowable by comparing the state portion of the severance tax on coal produced from the mine in 2018 with the state portion of severance during the current calendar year. With the passage of time, 2018 has proven to be an outlier. To make the rebate more effective, this bill would remove the 2018 date and rewrite the section of the bill regarding the rebate to allow for a rebate when using the immediately preceding five (5) years of a qualifying investment. The changes to the section also clarify that to be eligible coal production from all the mines of the taxpayer in this state have increased in the pertinent year and there has been an increase in the total number of full-time employees and full-time equivalent employees.

The original bill also required that the rebate could only be used on investments in “new” machinery and equipment. This bill would allow repaired and refurbished equipment to qualify if they are used directly in the production of coal. Definitions have either been added, deleted, or modified for consistency.

CODE REFERENCE: West Virginia Code §11-13EE-2, §11-13EE-3, §11-13EE-5 and §11-13EE-16 – amended

DATE OF PASSAGE: April 10, 2021

EFFECTIVE DATE: April 10, 2021

ACTION BY GOVERNOR: Signed April 28, 2021

House Bill 2001

Relating generally to creating the West Virginia Jumpstart Savings Program

This bill establishes the WV Jumpstart Savings Program. The bill:

- Requires the program to be administered by a WV Jump Start Savings Board consisting of the following seven members:
 - The State Treasurer.
 - The State Superintendent of Schools, or his or her designee.
 - The Chancellor of the WV Community and Technical College System, or his or her designee.
 - Four members appointed by the Governor, with the advice and consent of the Senate, with knowledge, skill, and experience in trade occupations or businesses. One must be a member representing a labor organization that represents tradespersons in this state; one must be a member representing a business or entity offering apprenticeships in this state; and two must be private citizens not employed by, or an officer of, the state or any of its political subdivisions. The appointed members must be state residents, serve for five-year terms and are eligible for reappointment.
- Designates the Treasurer as the chairman and presiding officer of the board and requires the Treasurer to appoint employees the board considers advisable or necessary.
- Addresses vacancies among the appointed members, payment of board member expenses, the adoption of bylaws and rules of procedure; and provides that a majority constitutes a quorum.
- Authorizes the board to take any lawful action necessary to effectuate the provisions of the Jumpstart Savings article and successfully administer the program and sets forth the following minimum specific powers and duties that this authority is to include:
 - Adopt and amend bylaws.
 - Execute contracts and other instruments for necessary goods and services, employ necessary personnel, and engage the services of private consultants, auditors, counsel, managers, trustees, and any other contractor or professional needed for rendering professional and technical assistance and advice; provides that the selection of these services is not subject to the statutory purchasing provisions; and provides that all expenditures and monetary and financial transactions are subject to periodic audits by the Office of Chief Inspector, or the Legislative Auditor, or both.
 - Implement the program through use of financial organizations as account depositories and managers.
 - Develop and impose requirements, policies, procedures, and guidelines to implement and manage the program.
 - Establish the method by which funds are to be allocated to pay for administrative costs and assess, collect, and expend administrative fees, charges, and penalties.
 - Authorize the assessment, collection, and retention of fees and charges against the amounts paid into and the earnings on the trust funds by a financial institution, investment manager, fund manager, WV Investment Management Board, the Board of Treasury Investments, or other professional managing or investing the trust funds and accounts.
 - Invest and reinvest any of the funds and accounts under the board's control with a financial institution, an investment manager, a fund manager, the WV Investment Management Board, the Board of Treasury Investments, or other professional investing the funds and accounts;

and provides that the investments made will be made in accordance with the Uniform Prudent Investor Act.

- Solicit and accept gifts, including bequests or other testamentary gifts made by will, trust, or other disposition; grants; loans; aid; and property, real or personal of any nature and from any source, or to participate in any other way in any federal, state, or local governmental programs in carrying out the purposes of the Jumpstart Savings article.
- Propose legislative rules.
- Requires the Treasurer to:
 - Provide support staff and office space for the board.
 - Establish and monitor, at the direction of the board, the methods and processes by which the funds held in accounts are deposited and distributed.
 - Charge and collect any necessary administrative fees, penalties, and service charges in connection with any agreement, contract, or transaction relating to the program.
 - Develop marketing plans and promotional material to ensure that potential program beneficiaries will be aware of the program and the advantages the program offers.
 - Present the annual evaluations and reports at any meeting or proceeding of the Legislature or the Office of the Governor upon request.
- Allows the Treasurer to:
 - Collect all necessary information from program account holders and beneficiaries.
 - Create forms necessary for implementation of the program.
 - Propose legislative rules for legislative approval that are necessary to effectuate the provisions and purposes of the WV Jumpstart Savings Act article.
 - Perform all other lawful actions necessary to effectuate the provisions of the Jumpstart Savings article.
- Includes provisions relating to requiring the board to establish the Jumpstart Savings Program Trust and a Jumpstart Savings Program Trust Fund Account, entitled the Jumpstart Savings Trust Fund, to receive all moneys from account owners on behalf of beneficiaries or from any other source, public or private.
- Establishes the Jumpstart Savings Program Expense Fund to receive all fees, charges, and penalties collected by the board; and provides that all expenses incurred by the board or the Treasurer in developing and administering the program are to be payable from the fund.
- Allows the board to implement the program through the use of financial organizations as account depositories and managers; sets forth the criteria for selecting the financial organizations; and sets forth the minimum provisions a management contract with a financial institution must include.
- Requires that in order to open a Jumpstart Savings account, an account owner must:
 - Provide all information required by the Treasurer.
 - Make a minimum opening deposit of \$25.
 - Name a single person as the designated beneficiary which may be the account owner him or herself.
- Requires the Treasurer to deposit \$100 from the Jumpstart Savings Expense Fund into a newly opened Jumpstart Savings account if the beneficiary is a WV resident; and the account is opened when the designated beneficiary is under 18 years of age; or the account is opened within the 180 days following the date of the designated beneficiary's enrollment in a qualifying apprenticeship or educational program.

- Allows any person to make a contribution to a Jumpstart Savings account.
- Requires the Treasurer to prescribe all forms required to open and make deposits to a Jumpstart Savings account and make the forms available in a prominent location on the Treasurer's website.
- Sets forth the following as qualified expenses:
 - The purchase of tools, equipment, or supplies by the beneficiary to be used exclusively in an occupation or profession for which the beneficiary is required to:
 - Complete an apprenticeship program registered and certified with the U.S. Department of Labor.
 - Complete an apprenticeship program required by any provision of code or legislative rule.
 - Earn an Associate degree or certification from a community and technical college.
 - Fees for required certification and licensure to practice certain trades or occupations in this state.
 - Costs incurred by the beneficiary that are necessary to establish a business in this state in which the beneficiary will practice certain occupations or professions when the costs are exclusively incurred and paid for the purpose of establishing and operating the business.
- Includes provisions relating to requiring annual reports to the account owners and quarterly reports to the Joint Committee on Government and Finance; requiring an annual external audit of all accounts administered under the program; authorizing the board and an apprenticeship provider, training or educational institution, or employer to exchange information regarding participants in the program to carry out the purposes of the Jumpstart Savings article; and providing that the board, Treasurer, the state, or any agency or instrumentality of the state is under no obligation to guarantee the return of the principal or rate of interest.
- Requires the board to promulgate rules that at least include requirements for any contract to be entered between the board and an account holder; examples of qualified expenses; and procedures for Jumpstart Savings accounts, making contributions to and requesting distributions from the accounts, and instructions for accessing any necessary forms.
- Provides a decreasing modification to WV adjusted gross income, not to exceed \$25,000, for a contribution to a Jumpstart Savings account in an amount equal to the contribution; and allows the deduction to be carried forward over a period not to exceed five years.
- Provides a decreasing modification to WV adjusted gross income for the beneficiary or the account owner, not to exceed \$25,000, equal to the portion of a distribution from a Jumpstart Savings account that is used to pay for qualified expenses.
- Creates a decreasing modification to WV adjusted gross income in an amount equal to a distribution from a Jumpstart Savings account that the account owner rolls over into a WV ABLE account within 30 days of receiving the distribution, the effect of which is to ensure that money rolled over from the Jumpstart Savings Account to a WV ABLE account isn't treated as taxable income based on the transfer.
- Creates a decreasing modification to WV adjusted gross income equal to the portion of a distribution from a Smart529 college savings account if the taxpayer deposits the amount into a Jumpstart Savings account within 30 days of receiving the distribution, the effect of which is to ensure⁴ that money rolled over from the Smart 529 account to a Jumpstart Saving account isn't treated as taxable income based on the transfer.

- Creates a nonrefundable credit, not to exceed \$5,000, for a matching contribution made to a Jumpstart Savings account if the beneficiary of the account is an employee of the taxpayer and a WV resident.

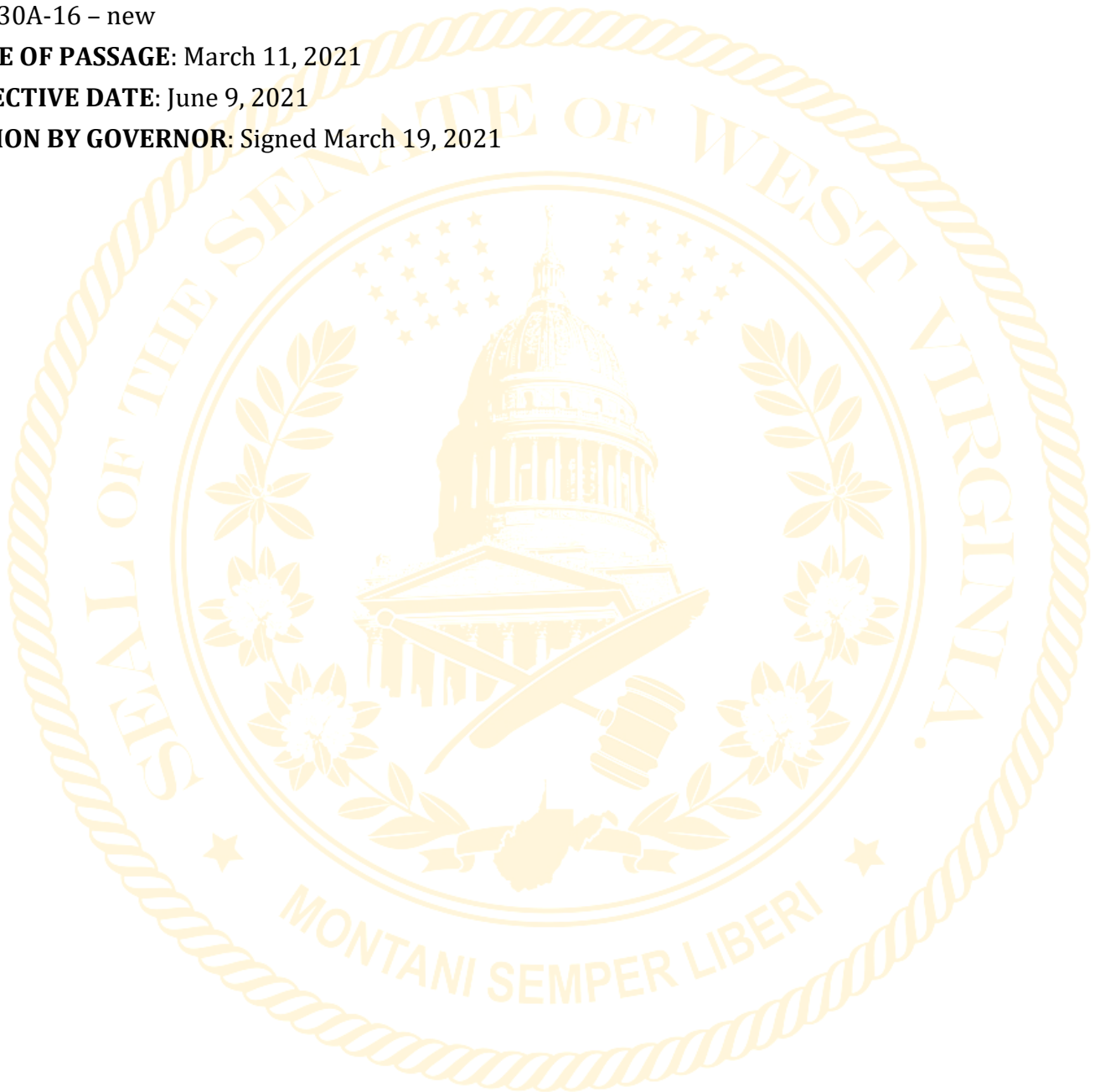
The House and Senate adopted HCR 24 requesting the United States Congress to adopt provisions in the Federal Code granting income tax relief for income earned in West Virginia Jump Start accounts.

CODE REFERENCE: West Virginia Code §11-21-12m, §11-21-25, §11-24-10a, and §18-30A-1 through §18-30A-16 – new

DATE OF PASSAGE: March 11, 2021

EFFECTIVE DATE: June 9, 2021

ACTION BY GOVERNOR: Signed March 19, 2021



House Bill 2002

Relating to Broadband

This bill:

- Amends section 3 of the Dig Once requirements involving Division of Highway rights-of-way and the installation of in-ground telecommunications facilities. Control is given to the division to deny applicants if certain deficiencies exist in any proposed project. The division is also to create, maintain, and provide a consolidated checklist or flow chart of all state or federal regulatory requirements, including all agency reviews, agency regulatory required approvals, forms, and permits related to the installation of broadband, whether buried or aerial, and update it annually.
- Amends section 5 of the Dig Once requirements to change the agency which must be informed of any applicant's proposed dig to the Office of Broadband, and charges that office with ensuring compliance with the section. It allows the division to use a telecommunication carrier's trench, as well, and makes clear that it is in the division's discretion whether any apportioned costs are warranted to it. This section is also changed to tighten up language regarding excepted trenches (total continuous length < 1000 ft), and states that any spare conduit or innerduct shall go to the Office of Broadband, to be made available for sale or lease. The PSC remains the arbiter of any disputes among trench-sharing competitors.
- Repeals in-kind compensation regarding Dig Once.
- Allows the division to enter into an agreement with any carrier to use excess telecommunications facilities which it owns or controls (subject to the Vertical Real Estate Management and Availability Act).
- Allows the division to transfer or assign the ownership, control, or any rights related to any excess telecommunications facilities owned or controlled by the division to any other state agency, upon the Governor's written approval.
- Cleans up language regarding the division's rulemaking authority under §29A-3-1 et seq.
- Amends the Broadband Enhancement Council's powers and duties to include the duty to explore ways to achieve digital equality in the state, to change its target of advice and recommendations to the Office of Broadband, to remove the duty to assist in broadband mapping, and to remove any affirmative fundraising or spending powers and oversight.
- Creates the Office of Broadband within the Department of Economic Development, to be managed by a director who reports to that department's secretary.
- Lays out the powers and duties of the Office of Broadband, consisting largely of affirmative actions regarding fundraising, spending, mapping, creation of guidelines, reporting, contracting, data collection, etc. that once was the charge of the Broadband Enhancement Council. Data collection is permissive and comes with strict regulation regarding the safeguarding and disclosure of the data collected, as does mapping (though mapping is a mandatory function of the office). The Secretary of the Dept of ECD is also given §29A-3-1 rulemaking authority to carry out this article's intent. Regarding the requirement that the office map the broadband services of the state, the office must include designations of unserved areas of the state. "Unserved" means an area lacking broadband internet service from at least one broadband internet service provider offering all of the following in at least one service plan to residential consumers:
 - an actual downstream data rate of at least 25 megabits per second; and
 - an actual upstream data rate of at least three megabits per second; and

- unlimited data usage without overage charges; and
 - unlimited data usage without “throttling” or reduction of downstream or upstream data rate due, in whole or in part, to the amount of data transferred in any period.
- Creates two new sections in Article 3 of Chapter 31G of the code dealing with conduit installation. The first new section gives political subdivisions of the state the power to install their own broadband network, or to partner with essentially any entity or combination of entities to achieve that goal, with similar language regarding the operation of a fiber network.
- The second new section in Article 3 of Chapter 31G regards compatible use and gives broadband operators authorization to construct and operate broadband networks over public rights-of-way and through easements dedicated for compatible uses (“a public or private easement for electric, gas, telephone, or other utility transmission”). The operator must avoid all unnecessary damage and must indemnify the state or political subdivision for it. The authorization is subject to statutes, ordinances, and rules governing the construction, maintenance, and removal of overhead and underground facilities of public utilities. It is also subject to the counties’ rules for their own highways and public welfare rules adopted by the DOT for federal-aid and state highways. Finally, regarding the railroads, nothing in this article shall be construed to provide for any greater or any lesser compliance with any safety policy or procedure established by the railroad with respect to the construction of utility crossings across the railroad’s trackway that is applicable to any other similarly situated utility, whether utilizing aerial or buried lines.
- Amends Article 4, chapter 31G, dealing with Make-Ready Pole Access to, first, include in the article’s definitional section the definition of “applicable codes,” then provides that, in the event an ILEC (Incumbent local exchange carrier - a telephone company in the U.S. that was providing local service when the Telecommunications Act of 1996 was enacted) requires and accepts payment for make-ready work, and fails to perform that work within 45 days, the ILEC which has been paid and which has failed to perform the work, shall immediately return and refund the moneys paid for that work which was not completed. Failure to do so results in fines and costs.
- The bill also amends §31G-4-4, regarding the PSC, charging the commission with the promulgation of rules to deal with various broadband issues, like abandoned cable, conductor, and related facilities attached to utility poles. This section charges the PSC with the promulgation of rules to govern the timely transfer of facilities from an old pole to a new pole and the removal of utility poles that have had electric facilities moved to new poles but continue to have other facilities attached in the telecommunications space on the old existing poles.
- Finally, this bill creates Article 6 within chapter 31G of the code which establishes a blanket preemption of any statute or ordinance, to the extent either inhibits broadband installation. Also, no private entity’s policy, agreement, contract, HOA rule, or anything of the like, promulgated after the effective date of this bill, may regulate or prevent the exterior installation of antennas and equipment necessary to or typically utilized for broadband deployment and the terms of any such document shall be strictly construed in favor of encouraging and assisting broadband installation and deployment.
- Similarly, any statute, rule, regulation, or ordinance regarding pole attachment, spacing, positioning, or order by or between any Investor Owned Utility (“IOU”) and any Incumbent Local Exchange Carrier (“ILEC”) and/or Competitive Local Exchange Carrier (“CLEC”) which would seek to provide broadband service, is pre-empted to the extent necessary in favor of such broadband installation or

deployment. Any corporate agreements regarding the same issue are strictly construed in favor of broadband installation and deployment.

CODE REFERENCE: West Virginia Code §17-2E-6, §31G-1-6, §31G-1-9, §31G-1-12 – repealed; §17-2E-3, §17-2E-5, § 17-2E-7, §17-2E-8, §17-2E-9, §31G-1-4, §31G-4-1, §31G-4-2, §31G-4-4 – amended; §31G-1A-1 through §31G-1A-6, §31G-3-3, §31G-3-4, §31G-6-1 and §31G-6-2 – new

DATE OF PASSAGE: April 10, 2021

EFFECTIVE DATE: May 27, 2021

ACTION BY GOVERNOR: Signed April 28, 2021



House Bill 2005

Relating to health care costs

The bill requires the Insurance Commissioner to enforce the applicable provisions of the No Surprises Act. The Insurance Commissioner may assess a fine for violation or seek administrative penalties for violations of the No Surprises Act. The Insurance Commissioner may seek assistance from any other state government agency regarding regulatory enforcement.

CODE REFERENCE: West Virginia Code §33-2-24 – new

DATE OF PASSAGE: April 8, 2021

EFFECTIVE DATE: July 7, 2021

ACTION BY GOVERNOR: Signed April 28, 2021

House Bill 2006

Relating to the West Virginia Contractor Licensing Act

This bill moves the provisions of the West Virginia Contractor Licensing Act from within the regulation of the Division of Labor (chapter 21) to a new article, article 42, within chapter 30 of the code. The effect of the transfer is to make the Contractor Licensing Board a standalone board that is situated within the chapter of code wherein the large majority of licensing boards are located. The bill continues the Contractor Licensing Board as it currently exists. Inspections to enforce the Licensing Act will continue to be performed by inspectors from the Division of Labor, as is currently the practice. There is a two-year period within which the division must perform the inspections, under contract with the board. The board is then responsible for the inspections and may continue to contract with the Division of Labor for those services.

The bill alters the definition of “contractor”, to exclude work of a total value under \$5,000 for residential work and under \$25,000 for commercial work. The current code excludes work of a total value of under \$2,500. It also excludes landscaping services and residential and commercial painting services. Moving the Contractor Licensing Board to chapter 30 makes the board subject to the cycle of performance review by PERD pursuant to the Performance Review Act. The bill amends §4-10-10 to add the board to the PERD review cycle. Under current law, as an agency within the Department of Commerce, there is no guaranteed cyclical review of the board’s operations. It also makes the board subject to the sunrise review provisions of §30-1A-1 et seq., which requires PERD and legislative review of applications to license an unregulated trade or occupation or to expand the scope of existing licensing. Finally, under chapter 30, the Contractor Licensing Board is subject to the automatic sweep provisions of §30-1-10, which requires the State Treasurer to sweep funds of \$10,000 or twice the board’s annual budget, whichever is greater, into the General Revenue Fund.

CODE REFERENCE: West Virginia Code §21-11-1 through §21-11-18 and §21-11-20 – repealed; §4-10-10, §5-11A-3a, §5-22-1, §21-1-3, §21-3C-10a, §21-3C-10b, §21-3C-11, §21-9-2, §21-9-9, §21-11A-2, §21-11A-4, §21-16-4, §21A-10-11, §48-15-201 – amended; §30-42-1, through §30-42-21 – new

DATE OF PASSAGE: March 17, 2021

EFFECTIVE DATE: June 15, 2021

ACTION BY GOVERNOR: Signed March 27, 2021

House Bill 2008

Amending requirements for licensure relating to elevator mechanics, crane operators, HVAC, electricians, and plumbers

This bill removes certain licenses with national certifications, and modifies the hours required for licenses in areas such as HVAC Technicians, electricians, fire protection workers, and plumbers.

The bill provides that a person may not operate a crane or tower crane without a national certification according to OSHA regulation 29 CFR §1926.1427 and any amendments that may be made to it. The bill permits the Commissioner of the Division of Labor enter into a cooperative agreement with OSHA as it relates to crane operators. Any state certifications that may expire during the year starting January 1, 2021, will not expire until January 1, 2022. The bill indicates that all funds remaining in the Crane Operation Certification Fund on January 1, 2022, shall be appropriated by the Legislature.

The bill alters the qualifications for a journeyman plumber to be the passage of a journeyman plumber written examination with a score of at least 70 percent. The requirements for a master plumber are also altered in the bill by requiring that the person pass a master plumber written examination with a score of at least 70 percent and at least one year of work experience as a journeyman plumber.

The bill adds that a HVAC Technician is a person with 2,000 hours of HVAC related work, training, and experience along with the current requirements (i.e., passing a written examination) and prohibits an applicant seeking licensure in this state from being required to provide documentation of over 2,000 hours of work experience. The bill adds a section establishing veteran qualification for licensure as HVAC Technician. The section allows any veteran to apply for licensure if:

- He or she completed a course while in the service that qualifies him as a HVAC Tech's mate, and otherwise meets the requirements for licensure;
- He or she was honorably discharged;
- He or she submits a completed application to the Division of Labor; and
- He or she pays the associated fees.

The section also states that a veteran who has allowed more than 30 years to pass from the date of his or her successful completion of a course of instruction and the date of application for licensure in this state may be required to attend additional training courses.

The bill establishes altered requirements for journeyman electrician license to require one year of electrical work experience. The bill also alters requirements for a master electrician to require at least two years of electrical work experience. The "apprentice electrician" classification is eliminated.

The bill broadens slightly the exemptions from requiring a license to perform electrical work to include:

- A person who performs electrical work with respect to any property, owned or leased, by that person or that person's immediate family; and
- Any person who performs low voltage electrical work with only low voltage wiring Low voltage electrical work is 80 volts or less, and directly related wiring.

The bill adds passage of a national certification exam for fire protection layout work from the National Inspection Testing and Certification (NITC) organization or achieving certification from the National Fire Protection Association as a certified water-based systems professional to the "fire protection layout technician" definition. The bill alters the requirements for a journeyman sprinkler fitter's qualification to require 2,000 hours of work experience. The bill also permits a person to perform fire protection or

damper work without a license, but still requires that a person performing damper work have an HVAC Technician license.

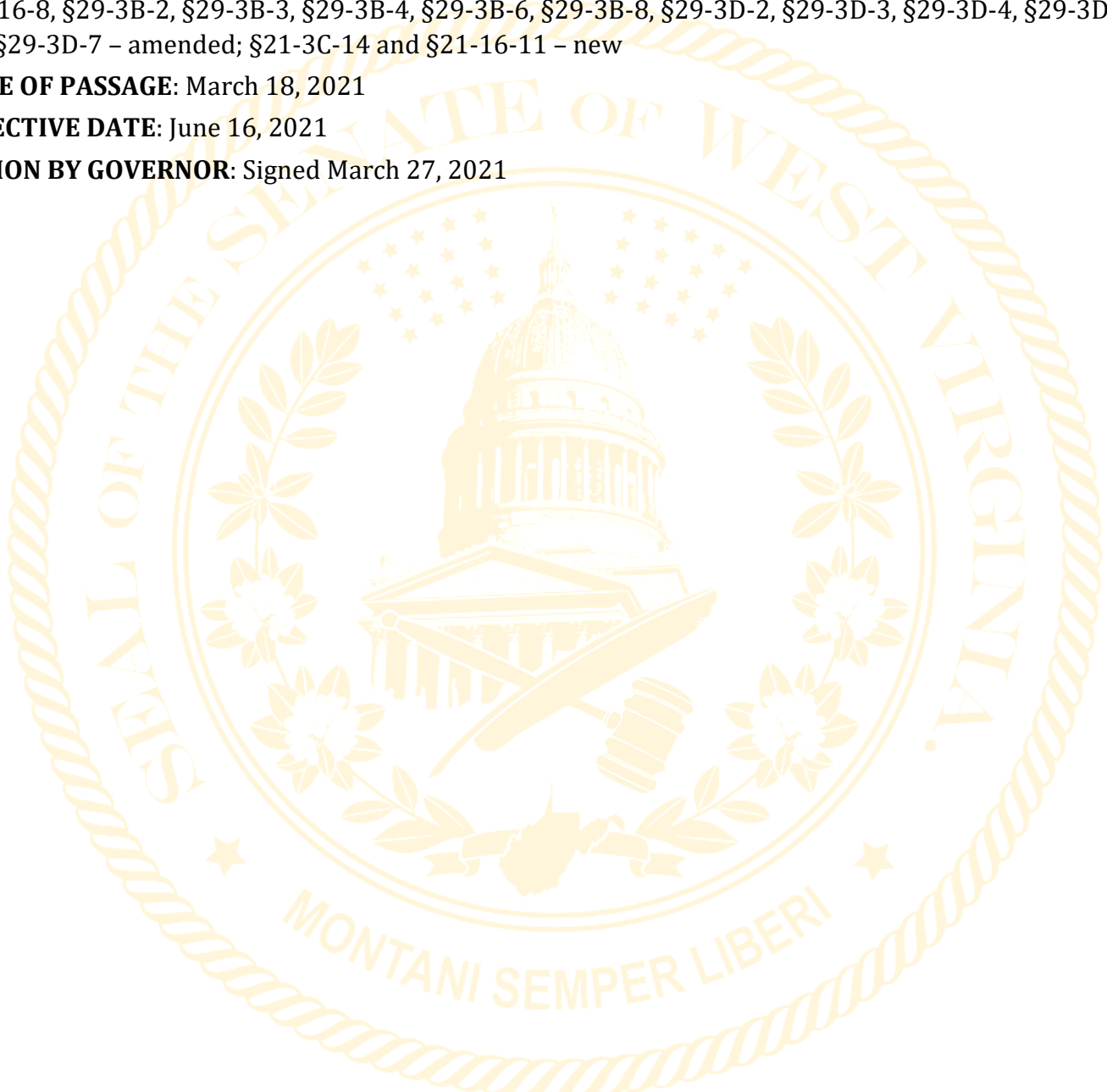
The bill removes criminal penalties for performing regulated work without a license throughout the bill but retains the associated fines for each time a person is caught working without a license.

CODE REFERENCE: West Virginia Code §21-3D-4, §21-3D-5, §21-3D-6, §21-3D-7, and §21-3D-9 – repealed; §21-3D-1, §21-3D-2, §21-3D-3, §21-3D-8, §21-14-2, §21-14-7, §21-16-2, §21-16-3, §21-16-5, §21-16-8, §29-3B-2, §29-3B-3, §29-3B-4, §29-3B-6, §29-3B-8, §29-3D-2, §29-3D-3, §29-3D-4, §29-3D-6, and §29-3D-7 – amended; §21-3C-14 and §21-16-11 – new

DATE OF PASSAGE: March 18, 2021

EFFECTIVE DATE: June 16, 2021

ACTION BY GOVERNOR: Signed March 27, 2021



House Bill 2009

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

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

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

The bill also replaces the notarization requirement for assignments with a requirement that an assignment or order must be in writing. It also expressly protects the right of private employers and employees to agree between themselves as to payroll deductions, and expressly protects the right of employees to join, become a member of, contribute to, donate to, or pay dues to a union, labor organization, or club.

The bill amends one section in the Consumer Credit and Protection Act, W. Va. Code §46A-1-1 et seq., by adding union or club fees, labor organization dues or fees, and any form of insurance offered by an employer as deductions which are excluded under the definition of “assignment of earnings”.

The bill makes the following additional changes elsewhere in the Code to correspond with the changes described above: The bill creates one new section in Chapter 7 (County Commissions and Officers) which provides that no deductions or assignments of earnings are allowed for union, labor organization, or club dues or fees from the compensation of county officers or employees.

The bill amends one section in Chapter 8 (Municipal Corporations) by providing that no deductions or assignments of earnings are allowed for union, labor organization, or club dues or fees from the compensation of municipal officers or employees, except for municipal employees covered by a collective bargaining agreement with a municipality which is in effect on July 1, 2021.

The bill amends one section in Chapter 12 (Public Moneys and Securities) by removing language that currently allows state officers and employees to authorize voluntary deductions for payment of membership dues or fees to an employee association.

It also authorizes the Auditor to approve and authorize voluntary other deductions as defined in the Wage Payment and Collection Act; removing a proviso regarding existing arrangements for dues deductions between employers or political subdivisions and employees; and clarifying that no deductions or assignments of earnings are allowed for union, labor organization, or club dues or fees from the compensation of state officers or employees. Finally, the bill amends one section in Chapter 18A (School Personnel) by providing that no deductions or assignments of earnings are allowed for union, labor organization, or club dues or fees from the compensation of teachers or other school employees.

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

DATE OF PASSAGE: March 19, 2021

EFFECTIVE DATE: June 17, 2021

ACTION BY GOVERNOR: Signed March 30, 2021

House Bill 2012

Relating to public charter schools

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

- The limit of 3 authorized and operating pilot public charter schools until July 1, 2023, and to 3 additional in every 3-year period thereafter is increased to 10 in both instances.
- An audit by the Legislative Auditor of the public charter school program is required two years after the first public charter school commences operation. The findings are to be reported to LOCEA.
- Requires two or more county boards to initially act together when application is made to form a public charter school with a primary recruitment area that encompasses territory in two or more counties. If the application is rejected by the collective group, one or more of the individual county boards may approve the application, but the school must be located in one of the counties where the application was approved.
- The newly created West Virginia Professional Charter School Board is added as an authorizer empowered to review, approve or reject applications, enter into contracts and oversee public charter schools.
- The definition of an “Education service provider” is amended to mean a public or private nonprofit or for-profit education management organization, etc.
- A “full-time virtual public charter school” is defined as a public charter school that offers educational services predominantly through an online program.
- The deadline for applying to establish a public charter school is reset to August 31 of the year prior to proposed beginning of operation in the following school year.
- Local Education Agency (LEA) status is changed to make a public charter school as its own LEA for all purposes except as needed under the provisions of the public school support plan (school aid formula) for funding purposes.
- Any rule promulgated by the State Board to clarify and address unforeseen issues with the charter school statute is prohibited from conflicting with the code. The rules required by these statutes must be promulgated by July 1, 2021, and may by emergency rules.
- Each authorizer now must require each charter school it oversees to submit an annual report to assist the authorizer in gathering the information it needs about the school consistent with the statutory requirements and the charter contract.
- The provisions related to charter contracts are modified as follows:
 - All or parts of an approved application may be incorporated into a charter contract as long as the application contains all of the requirements of the contents required for a contract.
 - A requirement that the contract contain the specific commitments of the authorizer relating to its obligations to oversee, monitor progress and supervise the charter school are deleted.
 - The contract must contain conditions under which a contract may be non-renewed and the non-renewal process, including the time period for notice of potential non-renewal and the reasons, the right to be represented by counsel, and not less than 60 days to provide a response. Contract revocation is removed from these provisions.
 - A June 30 deadline of the final year of a charter school’s operation is established for the authorizer to issue contract renewal application guidance to the charter school. The guidance must be specific to the named charter school.

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

Virtual public charter schools may be authorized and are subject to the same requirements as non-virtual public charter schools to the extent those requirements do not conflict with the provisions of this section. The section permits the Professional Charter School Board to authorize one (2) statewide virtual charter schools that are limited to no more than 5% of the headcount enrollment per year. Each county board also may authorize one virtual charter school with enrollment limited to students within the primary recruitment area identified in the application and may not exceed 10% of the county's headcount enrollment.

When enrolling a student who may require special education services, the same obligations apply to a virtual public charter school as applies to all other public charter schools. Enrollment may not be denied or delayed on the basis of a disability and the charter school must convene an Individualized Education Program (IEP) meeting after admission to ensure that the school develops an appropriate IEP in accordance with all of the requirements set forth in the Individuals with Disabilities Education Act (IDEA). To the extent the charter contract delineates instruction outside of a school building, the student or parent are not subject to penalties for being absent from a building and to the extent the instruction is learn at your own pace, are not subject to instructional term requirements.

The governing body of a virtual charter must undergo at least one training per year on appropriate oversight of virtual charters. Virtual charters are required to offer student orientation and require students to attend the orientation before completing any other instructional activity as defined in the section. The virtual charter is also required to have a policy with consequences for students that fail to participate in instructional activities, including disenrollment when certain conditions are met. The virtual must

coordinate directly with the district of residence regarding appropriate educational placement based on assessments for a student transferring from a virtual charter.

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

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

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

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

The Professional Charter School Board must investigate official complaints submitted to it that allege serious impairments in the quality of education in a public charter school or virtual public charter school it has authorized pursuant to this article, or that allege such schools are in violation of the policies or laws applicable to them.

The Board also may at its own discretion conduct or cause to be conducted audits of the education and operation of public charter schools or virtual public charter schools it has authorized pursuant to this article that it determines necessary to achieve its mission of authorizing high-quality public charter schools.

Upon a determination that serious impairments or violations exist, the Board shall promptly notify in writing the public charter school governing board of the perceived serious impairments or violations and provide reasonable opportunity for the school to remedy the serious impairments or violations.

The Board shall take corrective actions or exercise sanctions in response to apparent serious impairments or violations. If warranted, the actions or sanctions may include requiring a charter school to develop and execute a corrective action plan within a specified time frame.

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

DATE OF PASSAGE: April 3, 2021

EFFECTIVE DATE: June 1, 2021

ACTION BY GOVERNOR: Signed April 11, 2021

House Bill 2013

Relating to the Hope Scholarship Program

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

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

presiding officer of the board; authorizes the Treasurer to provide office space and staff to the board; authorizes the State Superintendent to provide staff to the board; provides that a majority constitutes a quorum; and subjects the members to the Governmental Ethics Act requirements.

- Authorize the Board to take any action necessary to effectuate the provisions of the Hope Scholarship article and sets forth the minimum powers the authority includes.
- Require the Hope Scholarship Program to be operational no later than July 1, 2022.
- Require the board to create a standard application form that a parent can submit to establish his or her student's eligibility for the award of Hope Scholarship funds, to be placed in a personal education savings account to be used for qualifying education expenses on behalf of the eligible recipient; and requires information about scholarship funds and the application to be available on the board's website.
- Require the board to make the applications available by March 1, 2022 and to begin accepting applications immediately thereafter; requires the board to issue an award letter to eligible recipients within 45 days of receipt of an application and all required documentation; and requires the board to approve an application if all of the following conditions are met:
 - A parent submits an application.
 - The student is an eligible student.
 - The parent signs an agreement with the board, promising to:
 - Provide an education for the eligible recipient in at least the subjects of reading, language, mathematics, science, and social studies.
 - Use the Hope Scholarship funds exclusively for qualifying expenses.
 - Comply with the rules of the program.
 - Afford the Hope Scholarship student opportunities for educational enrichment such as organized athletics, art, music, or literature.
 - The board confirms with the West Virginia Department of Education that the student satisfies the 2nd part of the definition of an eligible student, but if the West Virginia Department of Education does not respond within 30 days, this criteria is considered satisfied.
- Provide that an application for a Hope Scholarship is confidential and not subject to release pursuant to FOIA.
- Create a West Virginia Hope Scholarship Program Fund to be administered by the Treasurer and consist of funds transferred by the Department of Education.
- Require the amount of Hope Scholarship funds made available to an eligible recipient on a yearly basis be equal to 100% of the prior year's statewide average net state aid share allotted per pupil subject to administrative costs; and requires that the amount be prorated when an eligible students is awarded the scholarship for less than a full fiscal year.
- Require an amount not to exceed 5% of the fund to be transferred annually to the West Virginia Hope Scholarship Program Expense Fund to cover annual administrative costs; and allows the Treasurer to request an appropriation if the number of Hope Scholarship accounts increases significantly after any fiscal year.
- Require half of the annually required deposit to be made no later than August 15 of every year into an eligible recipient's Hope Scholarship account and half to be made no later than January 15 of every year; and provides that any funds remaining at the end of the fiscal year can be carried over to the next fiscal year.

- Provide that funds deposited in a student’s account, other than funds for transportation services, do not constitute taxable income to the parent or student.
- Require the board to continue to make deposits into an eligible recipient’s Hope Scholarship account unless any of the following occur:
 - The parent fails to renew the account or withdraws from the program.
 - The board determines that the student is no longer eligible for the Hope Scholarship.
 - The board suspends or revokes participation in the program for failure to comply with the program requirements.
 - The Hope Scholarship student successfully completes a secondary education program.
 - The student reaches 21 years of age.
- Require that if any of the foregoing conditions occur, the board must notify the parent that the eligible recipient’s account will be closed in 45 calendar days. If a parent fails to adequately address the condition upon which closure is based within 30 days of receipt of notice, the board shall close the account and any remaining fund shall be returned to the state.
- Set forth the following as qualifying expenses:
 - Ongoing services provided by a public school district, including without limitation, individual classes and extracurricular activities and programs.
 - Tuition and fees at a participating school.
 - Tutoring services provided by an individual or a tutoring facility except that the tutoring services cannot be provided by a member of the Hope Scholarship student’s immediate family.
 - Fees for nationally standardized assessments, advanced placement examinations, any examinations related to college or university admission, and tuition and/or fees for preparatory courses for the aforementioned exams.
 - Tuition and fees for programs of study or the curriculum of courses that lead to an industry-recognized credential that satisfies a workforce need.
 - Tuition and fees for nonpublic online learning programs.
 - Tuition and fees for alternative education programs.
 - Fees for after-school or summer education programs.
 - Educational services and therapies, including, but not limited to, occupational, behavioral, physical, speech-language, and audiology therapies.
 - Curriculum.
 - Fees for transportation paid to a fee-for-service transportation provider for the student to travel to and from an education service provider.
 - Any other qualified expenses as approved by the board.
- Require annual renewal of the Hope Scholarship; provides that the recipient remains eligible to apply for renewal until one of the above conditions for ceasing deposits into an account occurs; and requires that the board verify the following with the West Virginia Department of Education by July 1 of every year:
 - A list of all active Hope Scholarship Accounts.
 - The resident school district of each Hope Scholarship student.
 - For a Hope Scholarship student who chooses to attend a participating school, annual confirmation of his or her continued attendance at a nonpublic school that complies with all requirements that other nonpublic school students must comply with.

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

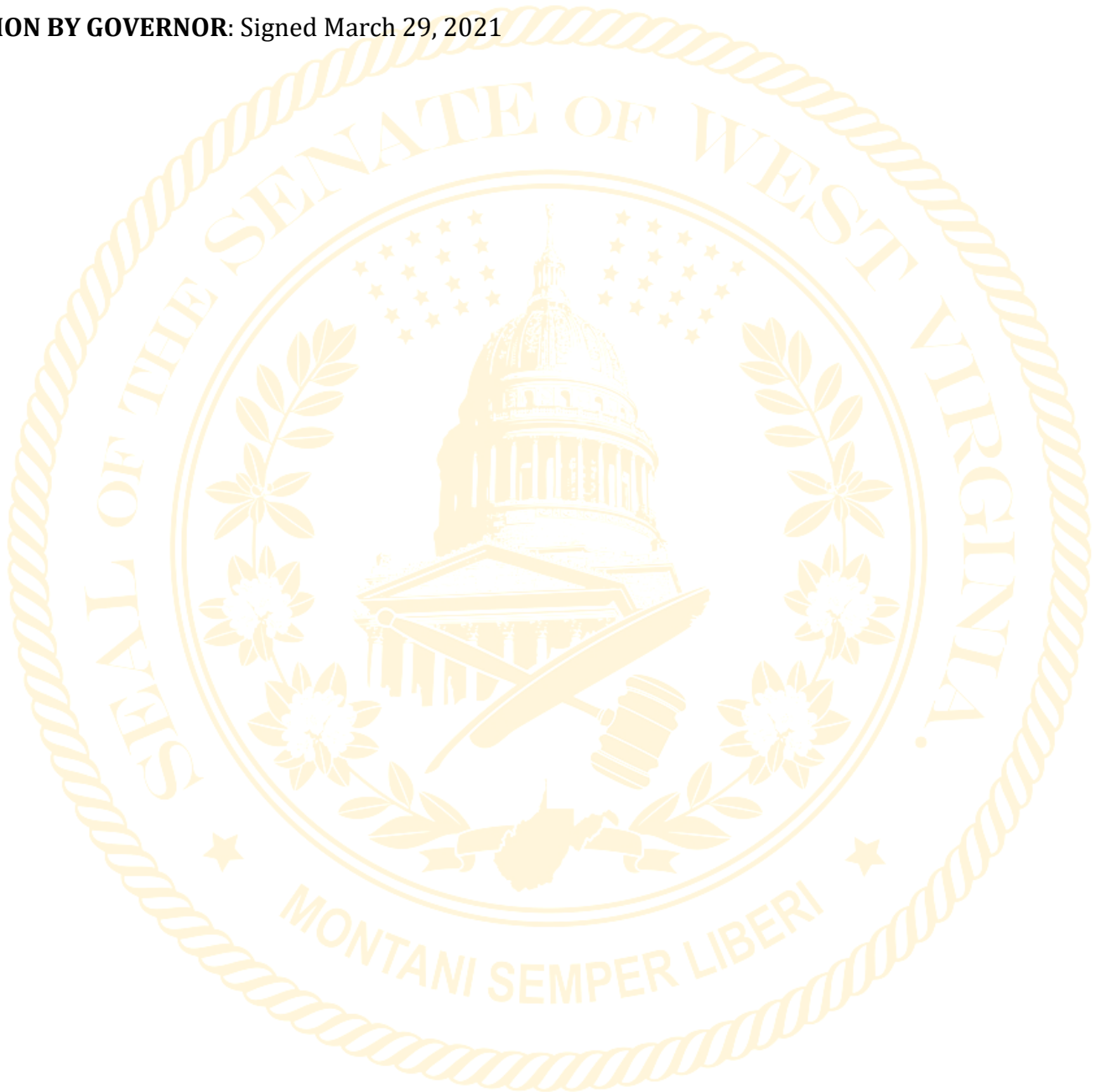
- Include language relating to the provision of a student’s school records to an education service provider, legal proceedings, and severability.

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

DATE OF PASSAGE: March 17, 2021

EFFECTIVE DATE: June 15, 2021

ACTION BY GOVERNOR: Signed March 29, 2021



House Bill 2019

Elevating Economic Development and Tourism Departments

The purpose of this bill is to reorganize and redesignate the Development Office as the Department of Economic Development and the Tourism Office as the Department of Tourism. The bill raises the Department of Economic Development, removing it from the Department of Commerce to a separate and distinct department in the executive branch and redesignates the executive director of the development office as the Secretary of the Department of Economic Development. The bill also raises the Department of Tourism, removing it from the Department of Commerce to a separate and distinct department in the executive branch and redesignates the executive director of the tourism office as the Secretary of the Department of Tourism. The bill exempts both new departments from Purchasing Division requirements.

The bill requires the Secretary for the Department of Economic Development and the Secretary for the Department of Tourism be appointed by the Governor with advice and consent of the Senate for the Governor's term. The Tourism Commission is renamed the Tourism Advisory Council and adds the Secretary of the Department of Economic Development as an ex officio member. The Department of Economic Development and the Department of Tourism to utilize existing resources of the Department of Commerce and permits both departments to enter in agreements to utilize resources.

CODE REFERENCE: West Virginia Code §5B-1-2, §5B-2-1, §5B-2-2, §5B-2-3, §5B-2-4, §5B-2-4a, §5B-2-5, §5B-2-6, §5B-2-6a, §5B-2-9a, §5B-2-10, §5B-2-14, §5B-2-15, §5B-2-16, §5B-2-17, §5B-2I-2, §5B-2I-3, §5B-2I-4, §5B-2I-5, §5B-2I-6, §5B-2I-7, §5B-2I-8, §5F-2-1 – amended

DATE OF PASSAGE: February 26, 2021

EFFECTIVE DATE: May 27, 2021

ACTION BY GOVERNOR: Signed March 8, 2021

House Bill 2024

Expand use of telemedicine to all medical personnel

The purpose of this bill is to update the regulation on telehealth services. Requires the Public Employees Insurance Agency, Medicaid, and specified insurance plans to reimburse for telehealth services at a negotiated rate for virtual telehealth encounters; Requires the Public Employees Insurance Agency, Medicaid, and specified insurance plans to provide reimbursement for a telehealth service on the same basis and at the same rate as if the service is provided in-person for established patients or for care rendered on a consulting basis to a patient located in an acute care facility whether inpatient or outpatient. Creates a registration to permit health care practitioners licensed in other states, in good standing, to practice in West Virginia using telehealth services. A physician-patient relationship may begin with an audio-only call or conversation in real time. Establishes a minimum standard of care related to telehealth services.

CODE REFERENCE: West Virginia Code §5-16-7b, §30-1-26, §30-3-13a, §30-14-12d, §33-57-1; New §9-5-28 – amended

DATE OF PASSAGE: February 26, 2021

EFFECTIVE DATE: February 26, 2021

ACTION BY GOVERNOR: Signed April 9, 2021

House Bill 2025

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

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

- Considering COVID-19, and its impact on the hospitality industry, there is a reduction in license fees beginning July 1, 2021. The licensee shall pay one-third of the fee the first year, two-thirds of the fee the second year, and full fees the third year.
- The ability to begin sales of beer, wine, and liquor at 6:00 a.m.
- Permitting a 16-year-old to be employed in the sale and service of alcohol when supervised by a person 21 years of age or older.
- The ability to offer sealed liquor drinks in a craft cocktail, sealed wine, and sealed beer by a Class A licensee or a third party, who obtains a third-party delivery license, with a food order utilizing telephone, mobile ordering app, or web-based software; there is no fee for the existing licensee. The third-party license fee is \$200 to deliver each type of alcohol.
- A nonintoxicating beer or nonintoxicating beer retail transportation permit, a private wine delivery permit, and craft cocktail delivery permit to transport a food order and beer, wine, and liquor in a vehicle to a purchasing patron; The convenience fee may not exceed five dollars.
- Outdoor dining and outdoor street dining areas when authorized by a municipality for beer, wine, and liquor; there is no fee for either.
- Authorizing in-person or in-vehicle delivery while picking up food and sealed nonintoxicating beer, nonintoxicating craft beer, wine, or craft cocktail growler orders-to-go.
- Allows offering pre-mixed alcoholic drinks for sale to the public.
- The nonintoxicating beer floor plan extension fee was reduced from \$100 to \$50.
- An unlicensed brewer or home brewer temporary license to attend a limited number of fairs and festivals in West Virginia and provide nonintoxicating beer to patrons which allows market testing in the state,
- Permitting distilleries, mini-distilleries, micro-distilleries, wineries, and farm wineries to operate a private manufacturer club on their licensed premises which can include outdoor spaces in the defined floor plan.
- Permitting owners of distilleries, mini-distilleries, and micro-distilleries to operate wineries farm wineries, brewers, and resident brewers, and vice versa for wineries and farm wineries.
- Expanded definitions and requirements for pre-mixing alcoholic drinks not in the original container with public health and safety issues addressed.
- A new license for a private caterer which is already licensed as a private club restaurant to caterer food and alcohol to unlicensed venues.
- A new license for a private club bar which only provides pre-packaged or basic food in a limited kitchen.
- A new license for a private club restaurant which provides freshly prepared food in a restaurant style kitchen.

- A new license for a private tennis club bar where the facility has tennis courts and other grounds which could encompass the licensed premises.
- A new license for a private wedding venue or barn where food and alcohol are provided on limited basis and the licensee does not operate with daily bar hours.
- A new license for a one-day license for a charity to conduct a liquor auction in conjunction with a private club.
- A new license for a multi-vendor fair and festival license where multiple vendors may share liability and responsibility when conducting a joint alcohol event authorized by a municipality.
- A new license for a private professional sport stadium for alcohol sales, where professional sports are played.
- A new license for a private multi-sport complex for alcohol sales of substantial acreage where multiple sports are played.
- A new license for a private farmers market where multiple vendors and retailers can share liability and responsibility for alcohol sales throughout the property.
- Facilitating the economic development of hard cider in West Virginia by reclassifying hard cider in code, establishing a hard cider tax rate; tax collection; creating a new fund for the Agriculture Department to facilitate fruit production for use in hard cider, and additional hard cider requirements.
- Authorizing the ability to offer sealed wine growlers from wineries, farm wineries, and various wine retailers.
- Providing additional exceptions to the criminal penalty for the unlawful admission of children to dance house for certain private clubs with approved age verification systems.

CODE REFERENCE: West Virginia Code §7-1-3ss, §11-16-9, §11-16-18, §60-1-5a, §60-3A-25 §60-4-3a, §60-4-3b, §60-6-8, §60-7-2, §60-7-6, §60-7-12, §60-8-2, §60-8-3, §60-8-4, §60-8-18, §60-8-29, §60-8-34, and §61-8-27 – amended; §11-16-6d, §11-16-6e, §11-16-6f and §11-16-11c, §19-2-12 and §19-2-13, §60-3-3b, §60-4-3c, §60-7-8b, §60-7-8c, §60-7-8d, §60-7-8e, §60-7-8f, §60-8-6c, §60-8-6d, §60-8-6e, §60-8-6f and §60-8-32a, §60-8A-1, §60-8A-2, §60-8A-3, §60-8A-4, §60-8A-5, and §60-8A-6 – new

DATE OF PASSAGE: April 10, 2021

EFFECTIVE DATE: May 10, 2021

ACTION BY GOVERNOR: Signed April 28, 2021

House Bill 2026

Relating to the modernization of the collection of income taxes by adopting uniform provisions relating to the mobile workforce

The purpose of this bill is to modernize the collection of income taxes by adopting uniform treatment of mobile employees. This bill contains a number of provisions related to income taxes. It starts by adding a provision to code with respect to taxation of mobile employees. It provides a nonresident employee's compensation for duties performed in West Virginia are excluded from West Virginia taxation if:

- The nonresident is present in West Virginia for less than 30 days during a tax year;
- The individual worked in more than one state;
- The person is paid as a professional athletes, entertainers, prominent individuals
- If the state of residence of the nonresident taxpayer has a similar exclusion or has no personal income tax or the income is exempt by this state under the U.S. Constitution or federal law.

The bill also has provisions for a mechanism to calculate the manner in which an employer would determine whether or not to impose withholding of West Virginia taxes. The section would be effective July 1, 2021. The second significant income tax implication is the single sales factor. This would modify the current formula for calculation of a means of determining a corporations business activity in West Virginia for purposes of taxation when a corporation has business income in two states. Currently the ratio of determining such activity is based on three factors: the value of property owned by the corporation in this state, the corporation's payroll in the state, and the amount of sales.

The change would reduce that to the sales. The bill also eliminates the throw out rule. A throw out rule generally requires a taxpayer to throw out or exclude receipts from the sales factor that are attributable to a state where the taxpayer is not subject to tax. In the equation to determine taxation the numerator is the amount apportioned to the state and the denominator is the amount of total sales.

When the throw out rule is applied, that amount is removed from the denominator. This has the effect of increasing in-state tax liability by including the nontaxed receipts in the corporations total business income for purposes of the sales factor. This would be effective January 1, 2022.

Throw out rules are traditionally seen as discouraging investments and are inconsistent with the idea of taxing the share of a company's income reasonably associated with a state. West Virginia is only one of three states that have a throw out rule. The other two are Maine and Louisiana.

Effective January 1, 2022, the allocation of sales would be determined to be in this state if:

- In the case of a sale of a service the service is delivered in this state; and
- In the case of intangible property, the property is rented, leased or licensed and used in this state.
- If there is a contract, government license, or similar intangible property that authorizes the holder to conduct business in a geographic area that includes part of West Virginia;
- Receipts from intangible property sales that are contingent on productivity, use, or disposition would be treated as sales receipts from the intangible property; and
- All other receipts from a sale of intangible property are excluded.

CODE REFERENCE: West Virginia Code §11-21-31 – NEW and §11-24-7 – amended.

DATE OF PASSAGE: March 30, 2021

EFFECTIVE DATE: June 28, 2021

ACTION BY GOVERNOR: Signed April 5, 2021

House Bill 2221

Relating to the establishment of an insurance innovation process

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

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

Specifically, the bill does the following:

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

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

- An explanation on the value of the innovation to the public; its economic viability; and its safety;
- A detailed description of the statutory and regulatory issues that prevents the innovation from being made available currently;
- A certification that no like innovation is available in West Virginia;
- Contact information for the applicant’s insurance regulatory counsel;
- A detailed description of the specific conduct that the applicant proposes should be permitted by the limited no-action letter (a letter detailing what conduct will not result in regulatory action by the OIC during the testing phase or “beta test”);
- Proposed terms and conditions to govern the applicant’s beta test;
- Proposed metrics by which the commissioner may reasonably test the innovation’s utility during the beta test;
- Disclosure of certain interested parties;
- A statement that the applicant has funds of at least \$25,000 available to guarantee its financial stability; and a statement confirming that the applicant authorized to make an application.

Certain persons would be prohibited from making application for admission to the regulatory sandbox. (See §33-60-2(b)). In §33-60-3, the bill contains the criteria for OIC’s acceptance or rejection of an application, which must be made within 60 days, but may be extended for an additional 30 days with notice to the applicant. If the OIC does not act on the application, it is deemed accepted. The OIC may request information from the applicant as necessary to evaluate the application and must review the application based on various criteria. If the application is rejected, the OIC would have to explain the defects. If accepted, the OIC would have to issue a notice of acceptance that sets forth requirements and conditions. The notice would expire unless accepted in writing within 60 days. The applicant would be entitled to request a hearing on the decision of the OIC.

In §33-60-4, the bill provides that the OIC is required to issue a “limited no action letter” within 10 days of acceptance. Such letter would describe the OIC enforcement exemptions that the participant will

secure so long as the participant operates within the terms and conditions set forth in the letter. The OIC would be required to publish all such letters on its website.

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

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

In §33-60-7, the bill requires the OIC to keep documents, materials, or other information in the possession or control of the commissioner that are created, produced, obtained, or disclosed in relation to this article and that relate to the financial condition of any person or entity confidential and privileged. Such information would not be subject to FOIA, subpoena, or discovery, and not admissible in evidence in any private civil action.

In §33-60-8, the bill requires that the OIC report to the legislature on the program. The bill also specifies content requirements of such reports. In §33-60-9, the bill allows the OIC to enter into reciprocity agreements with state, federal, or foreign regulatory agencies, making the WV insurance innovation available in other jurisdictions, and vice versa as to innovations from other jurisdictions under standards of this new article. In §33-60-10, the bill requires rulemaking by the Insurance Commissioner for purposes of administering this article and requires the development of forms, contracts, and other documents as necessary.

CODE REFERENCE: West Virginia Code §33-53-1 through §33-53-10 – new

DATE OF PASSAGE: April 10, 2021

EFFECTIVE DATE: July 9, 2021

ACTION BY GOVERNOR: Signed April 26, 2021

House Bill 2263

Update the regulation of pharmacy benefit managers

The purpose of this bill to update the regulation of pharmacy benefit managers. It clarifies information PEIA is required report to the Joint Committee on Government and Finance in a quarterly summary report concerning its contract with its PBM. The information to be reported includes: the overall total amount charged to the agency for all claims processed by the pharmacy benefit manager during the quarter; the overall total amount of reimbursements paid to pharmacy providers during the quarter; and the overall total number of claims in which the pharmacy benefits manager reimbursed a pharmacy provider for less than the amount charged to the agency for all claims processed by the pharmacy benefit manager during the quarter. Subjects ERISA plans using PBMs to state regulation.

Requires a PBM to reimburse a pharmacy at least the national avg drug acquisition cost and the dispensing fee of at least \$10.49. A PBM is prohibited from reimbursing an affiliate more than it reimburses another pharmacy. It requires a PBM to file its reimbursement methodologies with Office of Insurance Commissioner, requires the PBM to offer all rebates back to the health plan, and requires the PBM to accept any pharmacy that is willing to accept its contract. Finally, it requires a manufacture's rebate to be provided at the point of sale to a purchaser to reduce its cost.

CODE REFERENCE: West Virginia Code §5-16-9, §33-51-2, §33-51-3, §33-51-8, and §33-51-9 – amended; §33-51-11 and §33-51-12 – new

DATE OF PASSAGE: March 30, 2021

EFFECTIVE DATE: June 28, 2021

ACTION BY GOVERNOR: Signed April 9, 2021

House Bill 2266

Relating to expanding certain insurance coverages for pregnant women

The bill extends Medicaid coverage for pregnant women and their newborn infants to 1-year postpartum, from the current 60 days postpartum. This would be effective July 1, 2021, or as soon as federal approval occurs. The current law provides coverage to 185% of the federal poverty level and this was an increase from 150% which was changed in 2019.

The bill provides that any woman who established eligibility shall continue to be treated as an eligible individual without regard to any change in income of the family of which she is a member until the end of the one-year period beginning on the last day of her pregnancy.

Pregnant women have been covered under by Medicaid under the Public Health Emergency (PHE), Maintenance of Effort (MOE) requirement for FY2021. The MOE provides continuous coverage for Medicaid enrollees through the end of the PHE. The Biden Administration has indicated that the PHE could realistically extend through December 31, 2021. The American Rescue Plan, passed on March 11, 2021, provides states in both Medicaid and CHIP the option to provide full benefits to pregnant and postpartum women during pregnancy and for one year postpartum. States choosing to use this option in Medicaid must also make the option available for pregnant and postpartum women covered under CHIP. The option becomes available on the first day of the first fiscal quarter one year after enactment of the statute. It is available for five years after that date.

CODE REFERENCE: West Virginia Code §9-5-12 – amended

DATE OF PASSAGE: April 10, 2021

EFFECTIVE DATE: April 10, 2021

ACTION BY GOVERNOR: Signed April 28, 2021

House Bill 2290

Initiating a State Employment First Policy to facilitate integrated employment of disabled persons

The purpose of this bill is to establish an Employment First Policy in West Virginia the objective of which is to promote employment opportunities for disabled persons with publicly funded services.

The bill contains legislative findings and defines necessary terms. These terms include: “competitive employment”, “customized employment”, and “integrated employment”. The bill also creates an Employment First Taskforce. Membership of the taskforce is included in the bill. There is representation of the disability community and their families, WorkForce West Virginia, the Division of Rehabilitation, the Department of Education, Medicaid, the Developmental Disability Council, provider representation, and various other disability and behavioral health advocacy groups.

The taskforce is required to develop a plan to, among other things, detail cost projections, describe strategies, incorporate Employment First practices, comply with federal policy and practice and develop strategy for training standards. There are provisions for submitting the plan to the Governor and the Legislature and for biennially updating the plan. The Bureau for Behavioral Health, the Division of Rehabilitation, the Department of Education, WorkForce West Virginia, and the Bureau for Medical Services shall adopt and implement an Employment First policy. The bill also contains a sunset date of December 31, 2025.

CODE REFERENCE: West Virginia Code §18-10Q-1 through §18-10Q-5 – new

DATE OF PASSAGE: March 30, 2021

EFFECTIVE DATE: June 28, 2021

ACTION BY GOVERNOR: Signed April 7, 2021

House Bill 2366

Requiring agencies who have approved a proposed rule that affects fees or other special revenues to provide to the committee a fiscal note

The purpose of this bill is to require agencies proposing rules that adjust any fees or special revenue to include in the fiscal note provided to the committee: 1) the fund name, 2) the fund number, 3) and the past five years of actual revenues and expenses of the fund affected by the fee or special revenue adjustment.

CODE REFERENCE: West Virginia Code §29A-3-11 – amended

DATE OF PASSAGE: April 5, 2021

EFFECTIVE DATE: July 4, 2021

ACTION BY GOVERNOR: Signed April 19, 2021

House Bill 2382

Authorizing the Department of Environmental Protection to promulgate a legislative rule relating to ambient air quality standards

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Subsection 8.6. in the rule required DEP on or before April 1, 2020, to propose updates to the numeric human health criteria found to be presented to the 2021 Legislative Session. These proposed changes

include revisions to human health criteria in Appendix E, subsections 8.23 and 8.25, in order to adhere to a mandate from the 2019 Legislature.

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

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

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

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

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

The federal rule amendments adopted by this rule change are:

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

The amendments add aerosol cans to a classification of hazardous waste known as universal waste. Universal waste also includes batteries, lightbulbs, and pesticides. These materials have lower toxicity levels and are managed differently with a more relaxed regulatory framework. This change will only have an effect on commercial and industrial facilities. Households are exempt. DEP amended the rule to adopt the most current federal hazardous waste regulations to maintain consistency with the federal program and the state program. The adoption is necessary to maintain primacy.

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

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

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

The table has been relocated to the VRP Guidance Manual. DEP will then be able to update the voluntary remediation standards annually or immediately following significant regulatory changes using

the scientific sources outlined within the rule. The time spent requiring the agency to amend the legislative rule every legislative session will be eliminated, streamlining the process. The agency believes this change will lead to increased efficiency and increased responsiveness.

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

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

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

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

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

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

CODE REFERENCE: West Virginia Code §64-3-1 et seq. – amended

DATE OF PASSAGE: March 26, 2021

EFFECTIVE DATE: March 26, 2021

ACTION BY GOVERNOR: Signed April 7, 2021

House Bill 2495

Relating to the filing of asbestos and silica claims

This bill provides new criteria for sworn information forms in asbestos and silica claims under the Asbestos and Silica Claims Priorities Act, which specifies evidence gathered regarding each claim against each defendant. The form must be filed 60 days after filing of the claim, and must contain:

- The name, address, date of birth, marital status, occupation, smoking history, current and past worksites, current and past employers of the exposed person, and any person through which the exposed person alleges exposure;
- Each person through whom the exposed person was exposed to asbestos or silica and the exposed person's relationship to each such person;
- Each asbestos-containing or silica-containing product to which the person was exposed and each physical location at which the person was exposed to asbestos or silica, or the other person was exposed if exposure was through another person;
- The identity of the manufacturer or seller of the specific asbestos or silica product for each exposure;
- The specific location and manner of each exposure, including for any person through whom the exposed person was exposed;
- The beginning and ending dates of each exposure and the frequency of the exposure, including for any person through whom the exposed person was exposed;
- The specific asbestos-related or silica-related disease claimed to exist; and
- Any supporting documentation relating to the information required under this section.

CODE REFERENCE: West Virginia Code §55-7G-4 – amended

DATE OF PASSAGE: March 31, 2021

EFFECTIVE DATE: June 29, 2021

ACTION BY GOVERNOR: Signed April 15, 2021

House Bill 2499

Tax reduction for arms and ammo manufacturing

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

The bill is broken into four (4) parts.

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

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

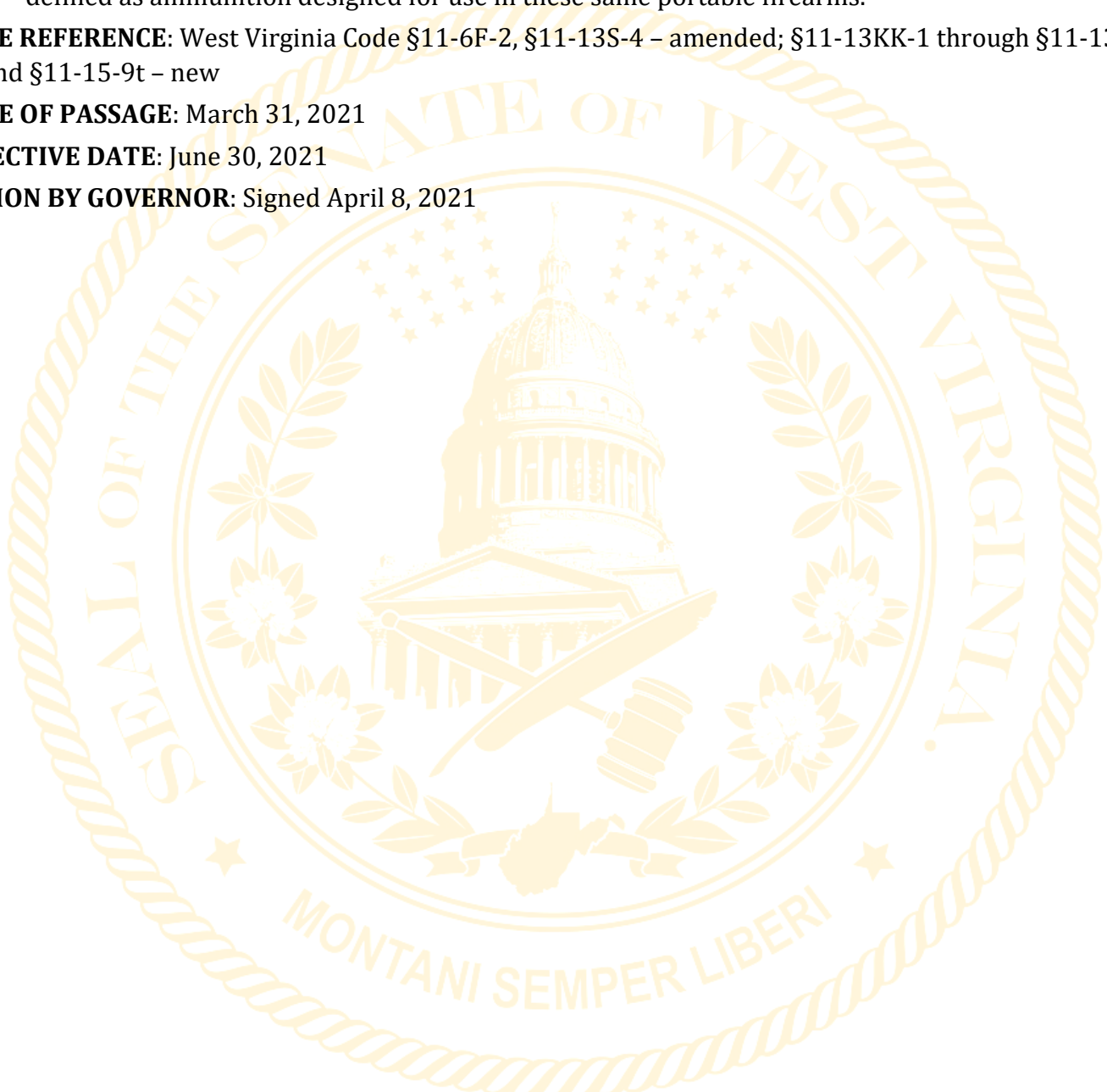
- The fourth part of the bill exempts sales of small arms and small arms ammunition from state sales and use taxes. “Small arms” are defined as any portable firearm, designed to be carried and operated by a single person, such as rifles, pistols, shotguns, and revolvers, with a gun barrel internal diameter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

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

DATE OF PASSAGE: March 31, 2021

EFFECTIVE DATE: June 30, 2021

ACTION BY GOVERNOR: Signed April 8, 2021



House Bill 2573

Relating generally to the transparency and accountability of state grants to reduce waste, fraud, and abuse

This bill is intended to ensure transparency, oversight, and accountability of state grants and to reduce waste, fraud, and abuse.

Under current law, grantees of state grants are required to file reports or sworn statements with the grantor within two years of the end of the grantee's fiscal year after disbursement, or otherwise face debarment. The grantor is required to notify the Legislative Auditor if the required reports are not filed, and the Legislative Auditor maintains a list of debarred grantees. All grantors are required to contact the Legislative Auditor and verify that a grantee is not debarred from receiving grants prior to disbursing a grant. The Department of Administration currently has rule-making authority regarding the granting of funds. Audits may be performed by the Legislative Auditor at the discretion of the Joint Committee on Government and Finance.

House Bill 2573 changes current law in several ways, in particular giving the State Auditor oversight responsibility over state grants. The State Auditor is authorized to promulgate rules governing state grants and to create and maintain uniform reporting requirements, a publicly available database for all issued state grants, a list of debarred entities, stop payment procedures, and stop payment orders.

The bill authorizes all grantors, the State Auditor, and the Attorney General to recover misspent grant funds through defined procedures, including informal conferences, formal administrative hearings, use of private collection agencies, and the courts.

The bill requires each grant-making agency to designate a "Chief Accountability Officer"; suspends expenditures of grant funds by grantor agencies under a specific grant if reporting and record-keeping requirements are not met; requires written disclosure of conflicts of interest by both grantees and grantors; and provides for audits by the State Auditor. The bill also clarifies that activities by subgrantors and subgrantees are governed by the same laws and rules as grantors and grantees.

The bill prohibits grant funds from being used towards prohibited political activity, as defined, and establishes criminal penalties for violations.

Finally, it requires limited reporting to the Joint Committee on the Government and Finance.

CODE REFERENCE: Creates new article, §5B-10-1, §5B-10-2, §5B-10-3, §5B-10-4, §5B-10-5, §5B-10-6, §5B-10-7, §5B-10-8, and §5B-10-9; amends §12-4-14

DATE OF PASSAGE: April 10, 2021

EFFECTIVE DATE: July 9, 2021

ACTION BY GOVERNOR: Signed April 26, 2021

House Bill 2581

Providing for the valuation of natural resources property and an alternate method of appeal of proposed valuation of natural resources property

This bill requires the Tax Commissioner to propose emergency rules for valuation of property producing oil, natural gas, natural gas liquids, or any combination thereof, by July 1, 2021. It also provides guidelines for promulgating those rules, including definitions of terms.

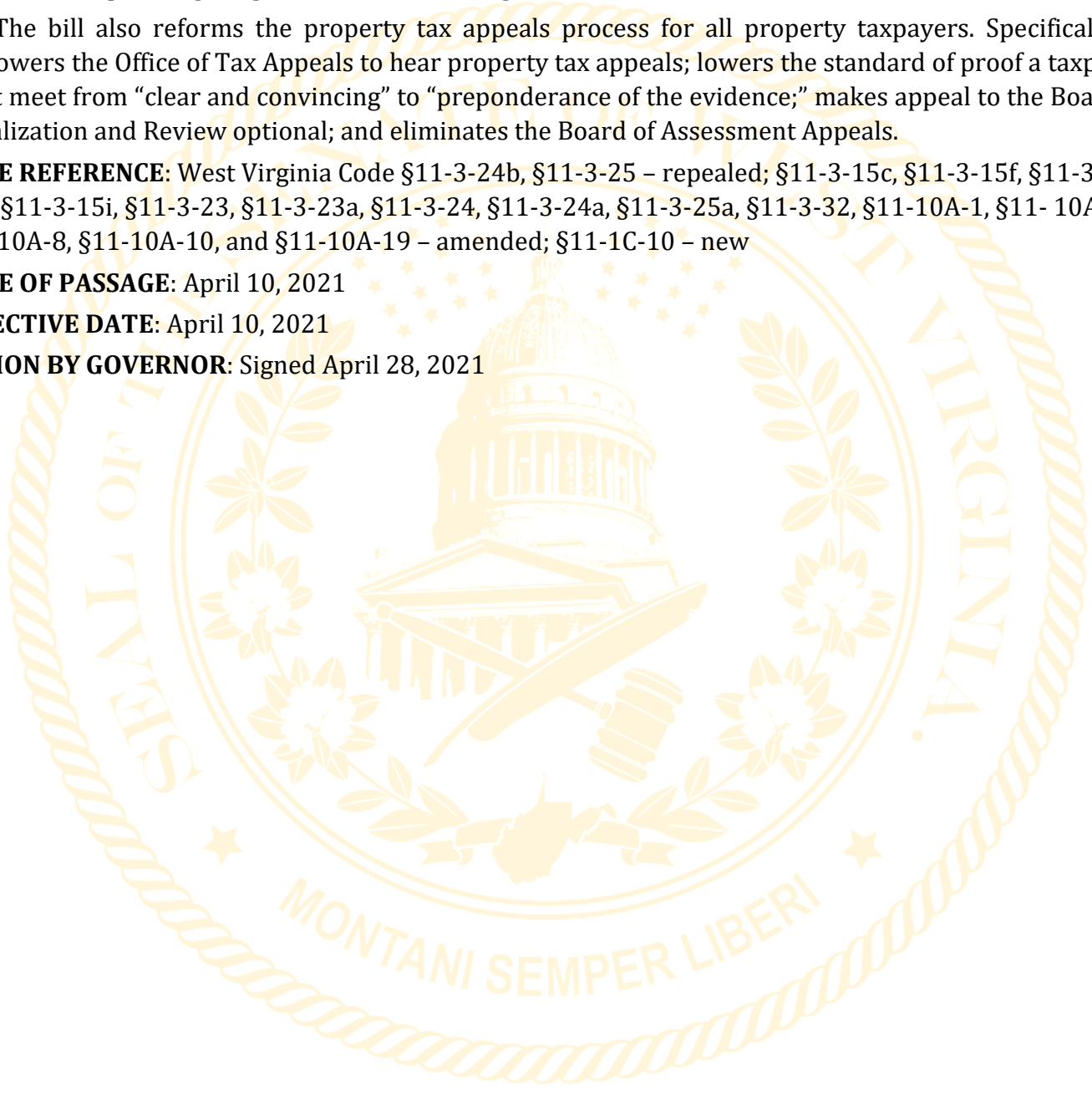
The bill also reforms the property tax appeals process for all property taxpayers. Specifically, it empowers the Office of Tax Appeals to hear property tax appeals; lowers the standard of proof a taxpayer must meet from “clear and convincing” to “preponderance of the evidence;” makes appeal to the Board of Equalization and Review optional; and eliminates the Board of Assessment Appeals.

CODE REFERENCE: West Virginia Code §11-3-24b, §11-3-25 – repealed; §11-3-15c, §11-3-15f, §11-3-15h, §11-3-15i, §11-3-23, §11-3-23a, §11-3-24, §11-3-24a, §11-3-25a, §11-3-32, §11-10A-1, §11-10A-7, §11-10A-8, §11-10A-10, and §11-10A-19 – amended; §11-1C-10 – new

DATE OF PASSAGE: April 10, 2021

EFFECTIVE DATE: April 10, 2021

ACTION BY GOVERNOR: Signed April 28, 2021



House Bill 2667

To create a cost saving program for state buildings regarding energy efficiency

The purpose of this bill is to promote cost and energy savings for state taxpayers by improving upon current energy savings programs for state buildings.

The bill requires the Office of Energy (within the newly-organized Department of Economic Development) to establish a program to support energy-savings contracts. The program is to include the development of standardized contract templates, procedures, and manuals to assist state agencies to implement energy savings measures.

Agencies within the Department of Administration are authorized under the bill to enter into energy-savings contracts to implement the program. The contracts must mandate an annual energy audit performed by a contractor that includes an analysis comparing anticipated to actual energy savings and including the terms and conditions of agency payment and performance guarantees. The performance guarantees must require the contractor to be responsible for maintenance and repair services for any energy related equipment, including computer software. If a project does not generate the guaranteed level of savings, the provider is liable to the agency for the amount of the shortfall plus related expenses.

Pursuant to the bill, no later than October 1, 2021, the Office of Energy is to establish an energy savings program designed to reduce energy usage for electricity, natural gas, fuel oil, and steam in all state buildings under the care and control of the state. The reductions are to be 25% below 2018 levels by 2030. The bill requires that no later than July 1, 2021, the Department of Economic Development is to establish a program to measure and benchmark the energy usage and efficiency of all state buildings under custody and control of the state. The bill requires the use of a benchmarking tool called the Energy Star Portfolio Manager operated by the United States Environmental Protection Agency. No later than October 1, 2021, and each year thereafter, the secretary shall submit energy usage data for all state buildings to the benchmarking tool.

Finally, the bill requires the Office of Energy to develop and administer a program for auditing energy metering devices for electricity and natural gas which are installed at state buildings to determine whether these devices are active or inactive. The program is to be designed to audit 20% of the energy metering devices each year and is to be complete for all such devices no later than January 1, 2027. If the audit determines that an energy metering device is no longer active, the energy service provider is to be notified, the device removed, and the utility bills adjusted accordingly. Finally, the bill includes regular reports to the Legislature concerning the results of the programs.

CODE REFERENCE: West Virginia Code §5A-3B-1, §5B-2F-2 – amended; §5A-3B-3, §5A-4-7, §5A-4-8 – new

DATE OF PASSAGE: April 10, 2021

EFFECTIVE DATE: July 9, 2021

ACTION BY GOVERNOR: Signed April 22, 2021

House Bill 2682

Relating to the issuance of license suspensions to insurance producers and insurance adjusters who have failed to meet continuing education requirements

This bill amends sections in the insurance code covering insurance producers and solicitors (agents and agencies) and insurance adjusters as it relates to their continuing education (CE) requirements and the contact information they are required to submit to the Offices of the Insurance Commissioner (OIC). Regarding, the bill replaces a requirement of notice by certified mail for the issuance of license suspensions by the Insurance Commissioner to insurance producers and insurance adjusters who have failed to meet CE requirements with an electronic mail notice requirement or, if requested, a regular mail notice requirement. The bill further requires producers and adjusters to report to the Insurance Commissioner the licensee's electronic mail address. It clarifies the contact information that license applicants and licensed adjusters, agents, agencies, solicitors, and service representatives must provide to the Insurance Commissioner. The bill also specifies that the Insurance Commissioner must be informed within 30 days of any change to the contact information, including the email address.

CODE REFERENCE: West Virginia Code §33-12-8 and §33-12-9; §33-12B-13 and §33-12B-14 – amended

DATE OF PASSAGE: March 19, 2021

EFFECTIVE DATE: July 1, 2021

ACTION BY GOVERNOR: Signed March 30, 2021

House Bill 2709

Providing that the aggregate liability of a surety on a consumer protection bond under the West Virginia Fintech Regulatory Sandbox Program does not exceed the principal sum of the bond

This bill provides that the aggregate liability of a participant in the Fintech Regulatory Sandbox Program for the consumer protection bond required by the Division of Financial Institutions does not exceed the principal sum of the bond.

CODE REFERENCE: West Virginia Code §31A-8G-4 – amended

DATE OF PASSAGE: March 19, 2021

EFFECTIVE DATE: June 17, 2021

ACTION BY GOVERNOR: Signed March 30, 2021

House Bill 2758

Requiring the Insurance Commissioner to regulate professional bondsmen

This bill:

- Amends §51-10-1 by providing definitions for “bonding business,” “bondsmen,” “commissioner,” and “insurer.”
- Amends §51-10-8 as follows:
 - Requires the Insurance Commissioner to promulgate and propose rules regulating bail bondsmen. Under current law, bondsmen are regulated by the West Virginia Supreme Court of Appeals;
 - Requires the Insurance Commissioner to promulgate rules related to the qualifications of a person applying to be a bondsman;
 - In promulgating rules and granting a license to a bondsman applicant, the insurance commissioner must take into consideration the financial responsibility of the applicant and the applicants moral character, including convictions involving moral turpitude;
 - An applicant must provide the commissioner a power of attorney from a licensed insurer or surety company or pledge cash or approved securities with the commissioner as security for bail bonds;
 - Requires a criminal background check of an applicant;
 - A principal bondsman must file a list of employees of the bondsman, along with an affidavit from the bondsman and employees that the each will abide by the terms and conditions of the article;
 - A bondsman is required to renew his or her license every two years and provide an affidavit swearing that he or she has abided by the provisions of the article;
 - The commissioner is required to keep a list of all bondsmen, and, upon request of a place of detention, to provide such list to the jail; and
 - Requires all bondsmen to be licensed by the insurance commissioner after July 1, 2022.

CODE REFERENCE: West Virginia Code §51-10-1 and §51-10-8 – amended

DATE OF PASSAGE: April 7, 2021

EFFECTIVE DATE: July 6, 2021

ACTION BY GOVERNOR: Signed April 26, 2021

House Bill 2760

Relating to economic development incentive tax credits

This bill would make changes to the economic opportunity tax credit. These modifications include:

- Lowering the new job percentage from the current level of 20 new jobs for a 20% applicability of the tax credit to 10 new jobs for a 10% applicability of the tax credit.
- Elimination of the Credit for small business effective January 1, 2022 but grandfathering any business that qualified prior to that date.
- Significant changes to the credit for high technology manufacturers. It expands the credit to include emerging technological business to encompass drones, robotics that include medical robotic equipment, autonomous motor vehicles, artificial intelligence, manufacture of biotechnological products and manufacturing medical devices. Many of these terms are defined.
- Eliminating confusing language regarding a taxpayer taking multiple tax credits for the same qualified investment.

The bill provides for a number of effective dates and makes technical changes including eliminating a now dormant report to the Legislature.

CODE REFERENCE: West Virginia Code §11-13Q-9, §11-13Q-10, §11-13Q-10a, and §11-13Q-22 – amended

DATE OF PASSAGE: April 10, 2021

EFFECTIVE DATE: July 9, 2021

ACTION BY GOVERNOR: Signed April 22, 2021

House Bill 2764

Allow the Division of Financial Institutions to enter into reciprocity agreements with other jurisdictions that operate similar programs to the West Virginia Fintech Sandbox Program

This bill allows the Division of Financial Institutions to enter into reciprocity agreements with other jurisdictions that operate programs similar to the West Virginia Fintech Sandbox Program. Participants in the program would be able to offer their “innovative financial product or service” outside West Virginia in those participating jurisdictions, and vice versa.

CODE REFERENCE: West Virginia Code §31A-8G-3 – amended

DATE OF PASSAGE: March 19, 2021

EFFECTIVE DATE: June 17, 2021

ACTION BY GOVERNOR: Signed March 30, 2021

House Bill 2791

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

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

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

DATE OF PASSAGE: April 5, 2021

EFFECTIVE DATE: July 4, 2021

ACTION BY GOVERNOR: Signed April 15, 2021

House Bill 2794

To extend the Neighborhood Investment Program Act to July 1, 2026

This bill extends the Neighborhood Investment Tax Credit program through July 1, 2026. The program was set to expire the credit for contributions made after July 1, 2021.

CODE REFERENCE: W. Va. Code §11-13J-12 – amended

DATE OF PASSAGE: April 9, 2021

EFFECTIVE DATE: July 8, 2021

ACTION BY GOVERNOR: Signed April 26, 2021

House Bill 2829

Providing for the amortization of annual funding deficiencies for municipal police or firefighter pension and relief funds

This bill amends the provisions of the West Virginia Code providing for municipal Policeman's and Fireman's pension and relief funds. Current provisions require the Municipal Pensions Oversight Board to have an actuarial valuation report done on each pension and relief fund annually. The bill requires that future valuations allow annual impacts on funding deficiencies due to new gains or losses and changes in actuarial assumptions be amortized over 15 years. Any impacts on funding deficiencies due to plan changes will be amortized over 5 years. Every 5 years, the actuary is to decide if synchronization of the annual 15-year amortizations will help avoid volatility in payments.

CODE REFERENCE: West Virginia Code §8-22-20 – amended

DATE OF PASSAGE: April 6, 2021

EFFECTIVE DATE: July 5, 2021

ACTION BY GOVERNOR: Signed April 21, 2021

House Bill 2842

Preventing cities from banning utility companies in city limits

This bill prohibits a city or political subdivision from enacting an ordinance which would prohibit:

- A utility from furnishing utility service to a customer based upon the energy source provided or used by the utility;
- A customer from purchasing or connecting to a utility service based upon the energy source provided or used by the utility; or
- A utility from using or powering vehicles and equipment used for providing utility service to a customer.

This bill also requires that any ordinance enacted by a city or political subdivision must preserve the ability of a private property owner to use utility services that are otherwise authorized by state law.

CODE REFERENCE: West Virginia Code §8-12-23 – new

DATE OF PASSAGE: April 8, 2021

EFFECTIVE DATE: July 7, 2021

ACTION BY GOVERNOR: Signed April 26, 2021

House Bill 2874

Extend the current veteran's business fee waivers to active duty military members and spouses

This bill amends the provisions of the West Virginia Code relating to certain fees for services provided by the West Virginia Secretary of State. Current law provides an exemption for veteran owned businesses from the fee for filing the following documents with the Secretary of State's Office:

- articles of incorporation of a for-profit or non-profit corporation;
- articles of organization of a limited liability company;
- general partnership agreements;
- certificates of a limited partnership;
- voluntary association agreements;
- articles of organization of a business trust; and
- annual reports for the first four years after initial registration of a business.

This bill expands this exemption from fees to businesses owned by an active-duty member of any branch of the US military or a business owned by any veteran's or active-duty member's spouse.

CODE REFERENCE: West Virginia Code §59-1-2 and §59-1-2a – amended

DATE OF PASSAGE: April 7, 2021

EFFECTIVE DATE: July 6, 2021

ACTION BY GOVERNOR: Signed April 28, 2021

House Bill 2877

Expand direct health care agreements beyond primary care to include more medical care services

The purpose of this bill is to expand direct health care agreements beyond primary care to include more medical care services and health care practitioners.

CODE REFERENCE: West Virginia Code §30-3F-1, §30-3F-2, and §30-3F-3 – amended

DATE OF PASSAGE: April 5, 2021

EFFECTIVE DATE: July 4, 2021

ACTION BY GOVERNOR: Signed April 19, 2021

House Bill 2890

To clarify the regulatory authority of the Public Service Commission of West Virginia over luxury limousine services

This bill partially exempts luxury limousine services from Public Service Commission regulation and jurisdiction. The bill defines “luxury limousine service” to mean passenger motor carrier service by pre-arranged appointment with a minimum charge of no less than \$60.00 with a formally dressed chauffeur, using a large and luxurious sedan, SUV, van, or antique vehicle. It does not include passenger motor carrier service to railroad crews for railroad purposes or for nonemergency medical transport other than when covered by Medicaid. The bill also requires limousine services to comply with safety rules and insurance requirements promulgated by the PSC.

CODE REFERENCE: West Virginia Code §24A-1-2 and §24A-1-3 – amended

DATE OF PASSAGE: April 7, 2021

EFFECTIVE DATE: July 6, 2021

ACTION BY GOVERNOR: Signed April 26, 2021

House Bill 2969

To clarify the procedures for the sale and operation of a municipally owned toll bridge by a private toll transportation facility

This bill permits a municipally owned toll bridge to be sold to a private company to manage or maintain the bridge. The bill permits a private company to charge a toll to passengers to use the bridge and makes the toll exempt from regulation by the Public Service Commission. The bill permits a private company to be charged ad valorem tax on either the salvage value of the bridge or the original cost of the bridge, whichever is lower. The bill makes other technical corrections to references to state-owned bridges to further differentiate them from privately-owned bridges. The bill also allows the Division of Motor Vehicles to disclose certain information in anticipation of litigation.

CODE REFERENCE: West Virginia Code §17-16D-6, §17-16D-10, §17-17-10, §17-17-11, §17-17-12, §17-17-21, and §17-17-22, §17A-2A-7, §17A-2A-9 and §24-2-1 – amended; §17-17-38 – new

DATE OF PASSAGE: April 7, 2021

EFFECTIVE DATE: April 7, 2021

ACTION BY GOVERNOR: Signed April 28, 2021

House Bill 3010

To extend the special valuation method for cellular towers to towers owned by persons not subject to regulation by the Board of Public Works

This bill provides that if wireless technology property is not owned by a public service business and assessed according to the provisions of §11-6-1 et seq. of the Code (Assessment of Public Service Business), then the valuation and assessment of the tower is to be conducted in the manner provided for assessments generally in §11-3-1 et seq. of the Code (Assessments Generally).

The bill defines the term “tower” as “a structure which hosts an antenna or other equipment used for the purposes of transmitting cellular or wireless signals for communications purposes, including telephonically, or for computing purposes, including any antenna and all associated equipment, and which is constructed or erected on or after July 1, 2019.”

CODE REFERENCE: West Virginia Code §11-6L-4 – amended

DATE OF PASSAGE: March 31, 2021

EFFECTIVE DATE: June 29, 2021

ACTION BY GOVERNOR: Signed April 26, 2021

House Bill 3081

Updating the West Virginia Business Corporations Act

This bill updates the Business Corporation Act and Nonprofit Corporation Act to allow shareholder/member meetings to be conducted, in whole or in part, by remote communication to the extent authorized by the corporate board of directors. If remote participation is authorized, the board must establish guidelines and procedures which must, at minimum, provide that participants have a reasonable opportunity to read or hear the proceedings concurrently with the meeting and provide for reasonable verification that remote participants are shareholders/members or a proxy.

CODE REFERENCE: West Virginia Code §31D-7-708 and §31E-7-708 – amended

DATE OF PASSAGE: April 2, 2021

EFFECTIVE DATE: April 2, 2021 (retroactive to March 1, 2020)

ACTION BY GOVERNOR: Signed April 26, 2021

House Bill 3294

Relating to unemployment insurance

This bill creates two new articles in Chapter 21A, relating to unemployment compensation. New Article 2D creates the Unemployment Insurance Program Integrity Act, and new Article 6B creates a short-time compensation program.

Unemployment Insurance Program Integrity Act

The Unemployment Insurance Integrity Act requires the commissioner to check on a weekly basis, unemployment insurance rolls against Division of Corrections and Rehabilitation's list of imprisoned individuals; check new hire records against the National Directory of New Hires; and check unemployment rolls against a commercial database that provides cross-matching functions to verify eligibility for unemployment benefits.

The Act also allows the commissioner to enter into data sharing agreements with other agencies. If Workforce West Virginia receives information affecting eligibility, it must investigate that information and take action within one week. Workforce is also required to implement internal policies to recover overpayments and enter into a cooperative agreement with U.S. Department of Labor Office of the Inspector General.

The Act also allows employers a mechanism for employers to report employees that decline to accept an offer to return to work. Workforce is required to investigate these reports. The procedures outlined in the Act must be in place no later than July 1, 2022.

Short-Time Compensation Program

New Article 6B requires Workforce to create a work-sharing program no later than July 1, 2023. This program allows employers experiencing a slowdown in business to save jobs by reducing the number of hours their employees work in a given unit, instead of laying off a portion of those employees. In exchange, employees whose hours have been reduced can recover prorated unemployment benefits tied to the amount of their reduced hours.

Employers are not required to participate in this program, but must certify as part of the application that participation in the program is in lieu of layoffs and that no employees will be hired or transferred into the affected business unit while the plan is in place. Workforce can approve a work-share plan for employees whose hours are reduced by between 10% or as much as 60%.

Employees included in the work-share plan will be eligible to collect prorated unemployment benefits tied to the percentage reduction in hours. An employer can modify or terminate an approved work-share plan at any time.

However, an employer must request permission to modify its work-share plan unless the change is "not substantial." Every modification, including non-substantial ones, must be reported to the Commissioner in writing. The Commissioner has power to revoke the plan at any time for good cause. Finally, the Commissioner must have access to corporate records necessary to ensure compliance.

CODE REFERENCE: §21A-2D-1 through §21A-2D-10 and §21A-6B-1 §21A-6B-7 – new

DATE OF PASSAGE: April 7, 2021

EFFECTIVE DATE: July 1, 2022

ACTION BY GOVERNOR: Signed April 28, 2021

House Bill 3301

Relating generally to property tax increment financing districts

This bill would make several changes to the Tax Increment Financing Act including the following:

- Authorizes a county commission to extend the length of existence of a development or redevelopment district. Any extension of a TIF timeline by a county subject to the approval of any municipality that lies within the TIF district.
- Authorizes the governing body of a municipality to extend the length of existence of a development or redevelopment district.
- Authorizes a TIF district created prior to December 31, 2020, for which TIF obligations have been issued to be extended up to 5 years or until December 31, 2050, whichever is earlier.
- Prohibits a county commission or municipality from terminating a district early if there are financing bonds outstanding.
- Amends the definition of payment in lieu of taxes, which would allow the payments in lieu of taxes to be less than the amount that would be paid if the property were taxed, but this would only apply for TIF districts created after the enactment of this bill.
- Amends the definition of tax increment in order to clarify that for any TIF district whose termination date is extended, only the regular and excess property tax levies of the county commission and any affected municipality are included during such extension period.
- Clarifies that the termination date of a district that is combined with another district is the latest termination date of the two individual districts.
- Provides that financing bonds may be issued for 30 years from their date of issue rather than from the date of the approval of the district as current law provides. This would allow more flexibility for the issuance of refunding bonds.

CODE REFERENCE: West Virginia Code §7-11b-3, §7-11b-7, §7-11b-9, §7-11b-10, §7-11b-18 and §7-11b-22 – amended

DATE OF PASSAGE: April 10, 2021

EFFECTIVE DATE: April 10, 2021

ACTION BY GOVERNOR: Signed April 26, 2021

House Bill 3310

Relating to the jurisdiction of the Public Service Commission

This bill sets forth legislative findings generally providing that individuals and entities that enter into solar power purchase agreements should not be considered or treated as public utilities. (See §24-1-1c.)

The bill amends §24-1-2, reorganizes the definitions, places existing definitions in alphabetical order for ease of use, and provides an exception to the term “public utility” for individuals or entities owning a solar facility that is located on the premises of and serves only the needs of a retail customer under a lease or power purchase agreement, subject to the provisions of §24-2-1(a).

This bill amends §24-2-1(a), relating to the jurisdiction of the Public Service Commission. It reorganizes the section by separating and numbering the public services.

The bill also provides that a solar photovoltaic energy facility located on and designed to meet only the electrical needs of the premises of a retail electric customer, the output of which is subject to a power purchase agreement (PPAs) with the retail electric customer, is not a public service, subject to certain conditions and limitations:

- The aggregate of all PPAs and net metering arrangements for any utility must not exceed three percent (3%) of the utility’s aggregate customer peak demand during the previous year;
- There are individual customer on-site generator limits of designing the photovoltaic energy facility to meet only the electrical needs of the premises of the retail electric customer and may not exceed 25kW for residential customers, 500 kW for commercial customers, and 2,000 kW for industrial customers;
- Customers who enter into PPAs must notify the utility of its intent to enter into a transaction. In response, the utility must notify within 30 days if any of the caps have been reached. If the utility does not respond within 30 days, the generator may proceed and the caps will be presumed not to have been reached; and
- The Public Service Commission may promulgate rules to govern and implement the provisions of interconnections for PPAs, except the PSC does not have authority over the power rates for the arrangements between the on- site generator and the customer.

Finally, this bill corrects errors in §24-2-1(f) and (g).

CODE REFERENCE: West Virginia Code §24-1-2 and §24-2-1 – amended; §24-1-1c – new

DATE OF PASSAGE: April 9, 2021

EFFECTIVE DATE: April 9, 2021

ACTION BY GOVERNOR: Became Law Without Governor’s Signature

2020 Regular Session



Senate Bill 94

Providing persons with physical disabilities ability to vote by electronic absentee ballot

This bill allows voters with physical disabilities to vote by electronic absentee ballot. Previously, the Code (§3-3-5) permitted uniformed and overseas citizens voters (UOCAVA voters) to vote by electronic absentee ballot. It also permits any person who is unable to enter an inaccessible polling place, or who is prevented from voting in person because of “illness, injury, other medical reason” or “physical disability or immobility due to extreme advanced age,” to vote by mail-in absentee ballot. The bill clarifies that persons with physical disabilities are eligible to vote by mail-in absentee ballot and provides that only voters with physical disabilities and UOCAVA voters are eligible to vote by electronic absentee ballot.

The bill adopts the federal Americans with Disabilities Act (ADA) definition of “disability,” which is “a physical or mental impairment that substantially limits one or more major life activities.” 42 U.S.C. §12102. The bill further defines “physical disability,” as “a physical impairment that substantially limits one or more major life activities and renders a person unable to vote in person, at the polls, without assistance.” The previous definition of physical disability in the Code (§3-3-4(j)), for the purposes of absentee and assisted voting requirements, narrowly applied to individuals with blindness and certain disabilities of the hands and did not extend to all individuals required to receive voting accommodations under the ADA. Additionally, the bill eliminates references throughout

W. Va. Code §3-3-1 et seq. that limited certain accommodations to voters who are “permanently and totally disabled,” as the ADA requires reasonable accommodations for all voters with disabilities.

The bill requires an application for placement on the “special absentee voting list” to include an inquiry of whether a person voting absentee due to physical disability intends to vote by mail-in absentee ballot or by electronic absentee ballot. The special absentee voting list is a list maintained by the Secretary of State that provides county clerks with the names of persons, including people with physical disabilities, who are permitted to vote absentee on a continuing basis without reapplying for an absentee ballot every election. The bill also permits the Secretary of State to accept electronic applications to vote absentee from individuals with disabilities.

The bill amends the provisions in the Code concerning general requirements for delivery and submission of paper absentee ballots to include similar general requirements for delivery and submission of electronic absentee ballots. Finally, the bill makes numerous non-substantive, technical corrections to existing language in the Code.

CODE REFERENCE: West Virginia Code §3-3-1, §3-3-2, §3-3-2b, §3-3-4, §3-3-5, and §3-3-6 – amended; §3-3-1a – new

DATE OF PASSAGE: January 24, 2020

EFFECTIVE DATE: January 24, 2020

ACTION BY GOVERNOR: Signed February 3, 2020

Senate Bill 120

Establishing priorities for expenditures for plugging abandoned gas or oil wells

This bill prioritizes how forfeited bond money is to be used to plug abandoned wells.

The bill requires the bond posted for the well to be used to plug the well on the land where the well is located if:

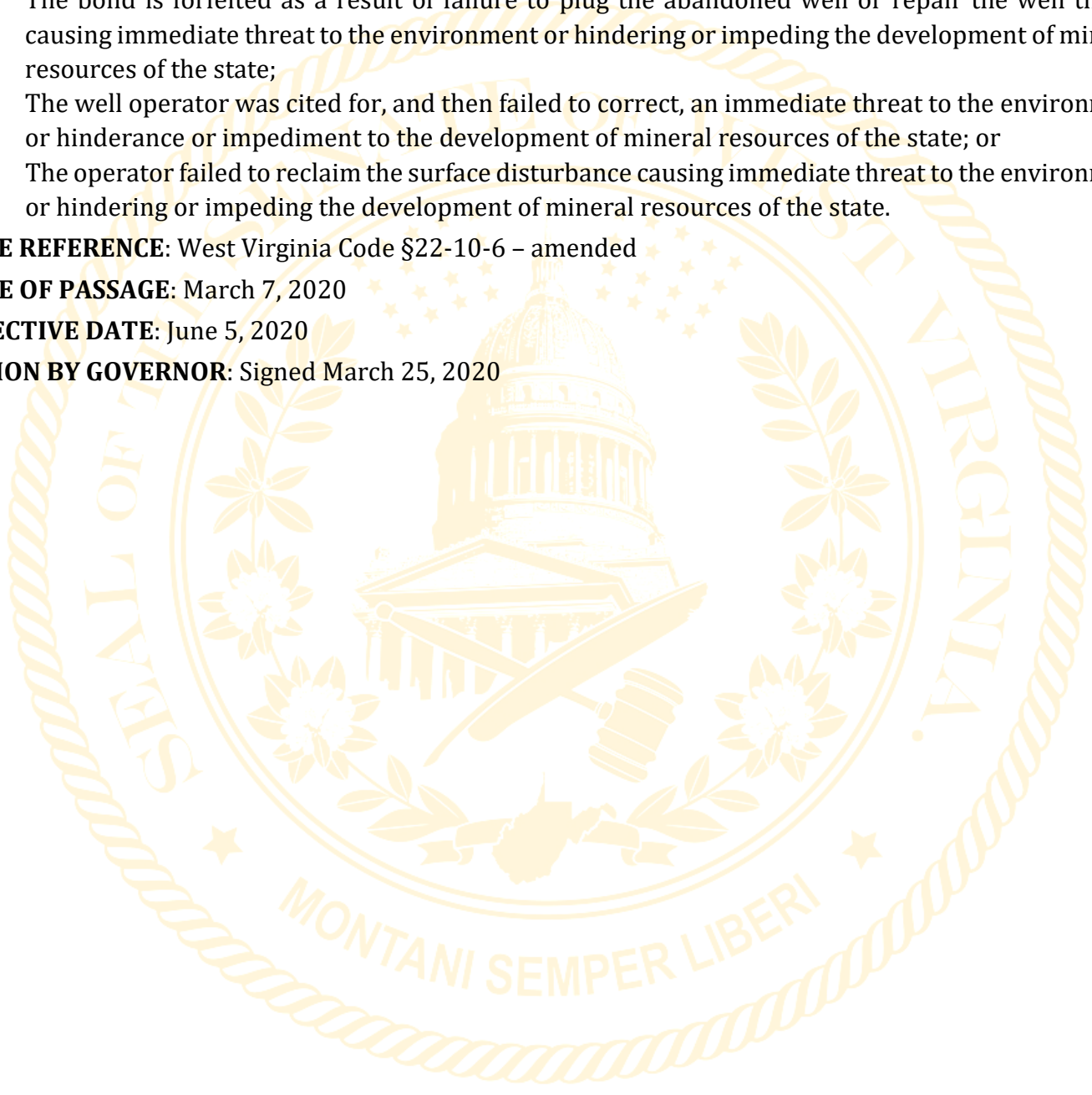
- The bond is forfeited as a result of failure to plug the abandoned well or repair the well that is causing immediate threat to the environment or hindering or impeding the development of mineral resources of the state;
- The well operator was cited for, and then failed to correct, an immediate threat to the environment or hinderance or impediment to the development of mineral resources of the state; or
- The operator failed to reclaim the surface disturbance causing immediate threat to the environment or hindering or impeding the development of mineral resources of the state.

CODE REFERENCE: West Virginia Code §22-10-6 – amended

DATE OF PASSAGE: March 7, 2020

EFFECTIVE DATE: June 5, 2020

ACTION BY GOVERNOR: Signed March 25, 2020



Senate Bill 136

Prohibiting certain misleading lawsuit advertising practices

This bill defines and prohibits deceptive legal advertising. The bill provides a short title of Prevention of Deceptive Lawsuit Advertising and Solicitation Practices Act; provides definitions; lists specific deceptive legal advertising practices that are prohibited; and provides criminal penalties.

According to the bill, a person engages in an unfair or deceptive act or practice if, in a legal advertisement, the person presents a legal advertisement that does any of the following:

- Fails to contain the statement: “This is a paid advertisement for legal services;”
- Appears as a “consumer medical alert,” “health alert,” “consumer alert,” “public service health announcement,” or uses a substantially similar phrase suggesting to a reasonable recipient that the advertisement is offering professional, medical, or government agency advice about pharmaceuticals or medical devices rather than legal services;
- Displays the logo of a federal or state government agency in a manner that suggests affiliation with the sponsorship of that agency;
- Uses the word “recall” when referring to a product that has not been recalled by a government agency or through an agreement between a manufacturer and government agency;
- Fails to identify the sponsor of the legal advertisement; or
- Fails to indicate the identity of the attorney or law firm that will represent clients, or how potential clients or cases will be referred to attorneys or law firms that will represent clients if the sponsor of the legal advertisement may not represent persons responding to the advertisement.

The bill requires the following disclosures and warnings in legal advertisements:

- If the legal advertisement soliciting clients for legal services is in connection with a prescription drug or medical device approved by the U.S. Food and Drug Administration, the advertisement shall include the following warning: “Do not stop taking a prescribed medication without first consulting with your doctor. Discontinuing a prescribed medication without your doctor’s advice can result in injury or death.”
- If the legal advertisement soliciting clients for legal services is in connection with a prescription drug or medical device approved by the U.S. Food and Drug Administration, the advertisement shall disclose that the subject of the legal advertisement remains approved by the U.S. Food and Drug Administration, unless the product has been recalled or withdrawn.

Any words or statements required to appear in an advertisement must be presented clearly and conspicuously. Written disclosures must be clearly legible and, if televised or displayed electronically, must be displayed for a sufficient time to enable the viewer to easily see and fully read the disclosure or disclaimer. Spoken disclosures must be plainly audible and clearly intelligible.

CODE REFERENCE: West Virginia Code §47-28-1, §47-28-2, §47-28-3, §47-28-4, and §47-28-5 – new

DATE OF PASSAGE: March 7, 2020

EFFECTIVE DATE: June 5, 2020

ACTION BY GOVERNOR: Signed March 25, 2020

UPDATED ACTION: Order permanently enjoining and prohibiting state from enforcing law entered in U.S. District Court for the Northern District of West Virginia on May 8, 2020. On April 27th, 2022, the Fourth Circuit Court of Appeals reversed the lower federal court decision.

Senate Bill 163

Relating to municipal or county taxation of hotel rooms booked through marketplace facilitator

This bill clarifies how municipal or county taxation of hotel rooms booked through marketplace facilitator will be paid. The bill ensures that rentals booked through marketplace facilitators such as AirBnB and VRBO properly pay the hotel occupancy taxes by requiring the marketplace facilitator to collect and remit the taxes to the State Tax Department. The bill contains a provision that should a company use a marketplace facilitator but prefer to collect and remit the taxes on their own, they can agree to do so.

CODE REFERENCE: West Virginia Code §7-18-3 and §7-18-4 – amended

DATE OF PASSAGE: March 4, 2020

EFFECTIVE DATE: July 2, 2020

ACTION BY GOVERNOR: Vetoed March 25, 2020

Senate Bill 209

Relating to annexation by minor boundary adjustment

West Virginia law currently provides three methods to effect annexation: 1) through vote of the freeholders and qualified voters of the proposed additional territory; 2) through petition of qualified voters and freeholders in the additional territory; and, 3) by minor boundary adjustment. Annexation by minor boundary adjustment is affected when the municipality seeking annexation files an application with the county commission, and the county commission grants or denies the application after a hearing. Annexation by minor adjustment is the only method of annexation that does not require the direct input of the freeholders and voters of the area being annexed. §8-6-4a and §8-6-5 are amended to allow for annexation by minor boundary adjustment. The other two methods of annexation would remain in effect.

All parties in the additional territory to be annexed by minor boundary adjustment provide an affidavit that they consent to be included in the annexation. If a party cannot be located, the bill provides a procedure for attempting to make contact. If a party cannot be located within 90 days, that party will be deemed to have consented to the annexation. If the county commission, upon receipt of an application for minor boundary adjustment annexation, determines that the annexation could be efficiently and cost effectively accomplished under one of the other two methods of annexation, or that the application is otherwise defective, the commission must enter an order denying the application, stating the reasons for denial. The bill prohibits a municipality from reapplying for annexation by minor boundary adjustment for two years after a denial of the application, except when directed by a circuit court.

CODE REFERENCE: W. Va. Code §8-6-4a and §8-6-5 – amended

DATE OF PASSAGE: February 20, 2020

EFFECTIVE DATE: February 20, 2020

ACTION BY GOVERNOR: Signed March 5, 2020

Senate Bill 261

Creating criminal penalties for introducing ransomware into computer with intent to extort

The purpose of this bill is to specifically criminalize the intentional use of ransomware to obtain money or other consideration. The bill defines “ransomware,” and criminalizes introduction or attempted introduction of ransomware into a computer, computer system, or network. The new crime is a felony, punishable by imprisonment for a determinate sentence of up to 10 years, a fine of not more than \$100,000, or both incarceration and the fine.

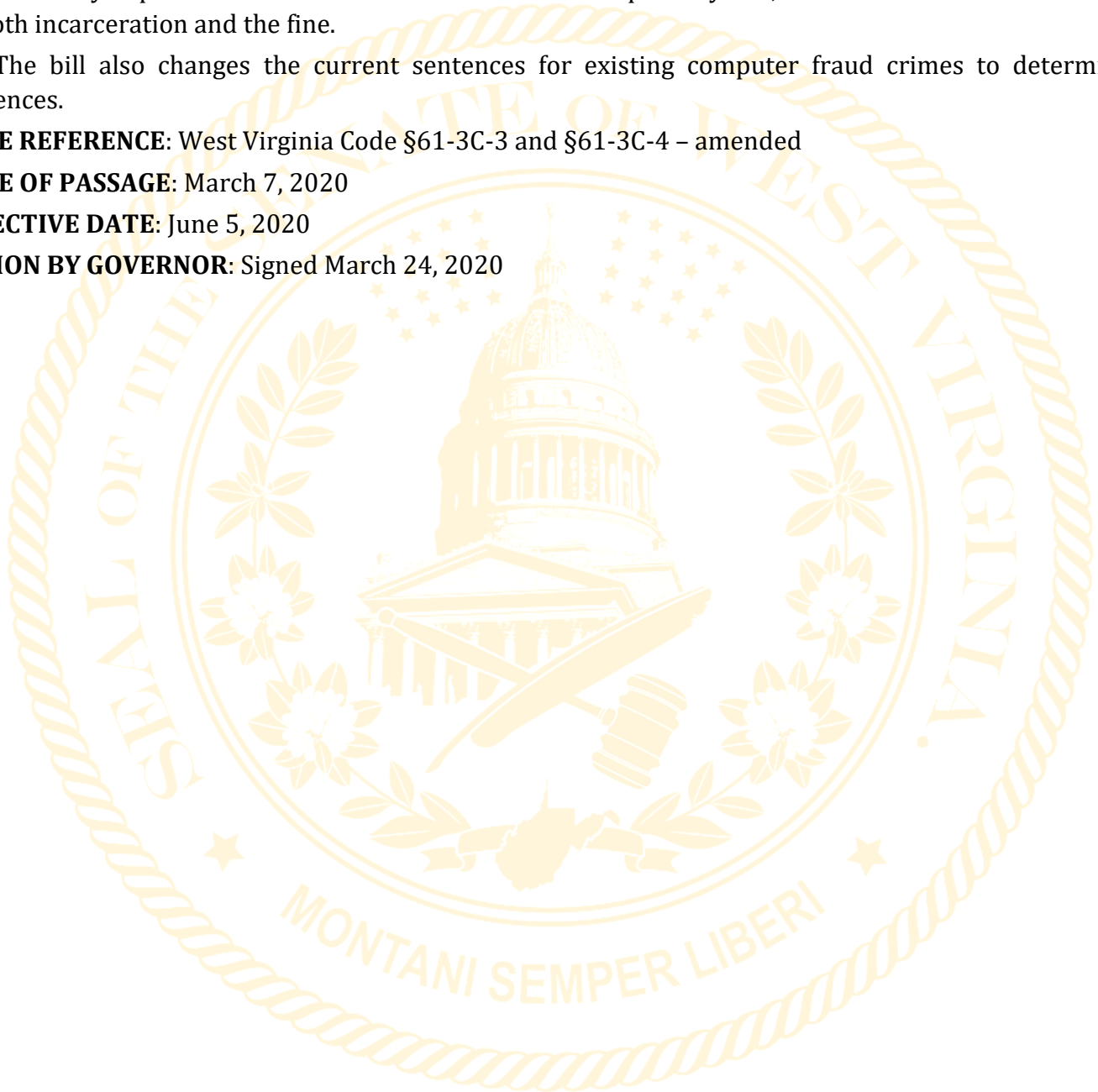
The bill also changes the current sentences for existing computer fraud crimes to determinate sentences.

CODE REFERENCE: West Virginia Code §61-3C-3 and §61-3C-4 – amended

DATE OF PASSAGE: March 7, 2020

EFFECTIVE DATE: June 5, 2020

ACTION BY GOVERNOR: Signed March 24, 2020



Senate Bill 291

Requiring PEIA and health insurance providers provide mental health parity.

The purpose of this bill is to ensure mental health parity among the various types of insurance plans offered in West Virginia.

The bill defines the terms behavioral, mental health and substance use disorder. These are defined as a condition or disorder regardless of etiology that may be the result of a combination of genetic and environmental factors that falls under any of the diagnostic categories listed in the mental disorders section of the international statistical classification of diseases, the diagnostic and statistical manual of mental disorder or the diagnostic classification of mental health and developmental disorders of infancy and early childhood and includes autism spectrum disorder.

The Public Employees Insurance Agency and the enumerated insurance carriers are required to:

- Include coverage for behavioral health screenings with coverage and reimbursement no less extensive than coverage and reimbursement for the annual physical examination;
- Comply with nonquantitative treatment limitations requirements specified in federal regulations and precludes PEIA and the carriers from applying nonquantitative treatment limitations to behavioral health, mental health or substance use disorder that do not apply to medical and surgical benefits;
- Comply with financial requirements and quantitative treatment limitations in federal regulations and preclude carriers from applying quantitative limitations to behavioral health, mental health or substance use disorder that do not apply to medical and surgical benefits;
- Not apply any nonquantitative treatment limitations to benefits to behavioral health, mental health, and substance abuse that are not applied to medical and surgical benefits within the same class of benefits;
- Establish procedures to authorize treatment with a nonparticipating provider if a service is not available-network adequacy issues; and
- Authorize payment at the same rate used to pay for medical and surgical benefits.

The bill provides that coverage for behavioral health, mental health and substance use disorder will continue while a claim is under review until PEIA or the insurance carriers notify the covered person of the determination of the claim.

- The bill provides that unless the claim is denied for nonpayment of premium, a denial for reimbursement for the prevention of, screening for, or treatment of behavioral, mental health or substance use disorder by PEIA and the insurance carriers must include the following language:
- A statement explaining that covered persons are protected under this section, which provides that limitations placed on the access to mental health and substance use disorder benefits may be no greater than any limitations on access to medical and surgical benefits;
- A statement providing information about the Consumer Services Division of the Insurance Commissioner; and
- A statement that persons are entitled to a copy of the medical necessity criteria for any behavioral health, mental health, and substance use disorder.

The bill requires that PEIA and the Insurance Commissioner submit a parity report to the Joint Committee on Government and Finance. The report will be submitted June 21, 2021, and it will only be submitted in any year thereafter if significant changes on how they design and apply medical management

protocols. The report contains data to demonstrate parity compliance, medical necessity criteria used in determining benefits for behavioral health, mental health, and substance use disorder and the medical necessity in determining medical and surgical benefits. The report will also include identification of all nonquantitative treatment limitations that are applied to benefits for behavioral, mental health and substance use disorder and to medical and surgical benefits within each classification of benefits.

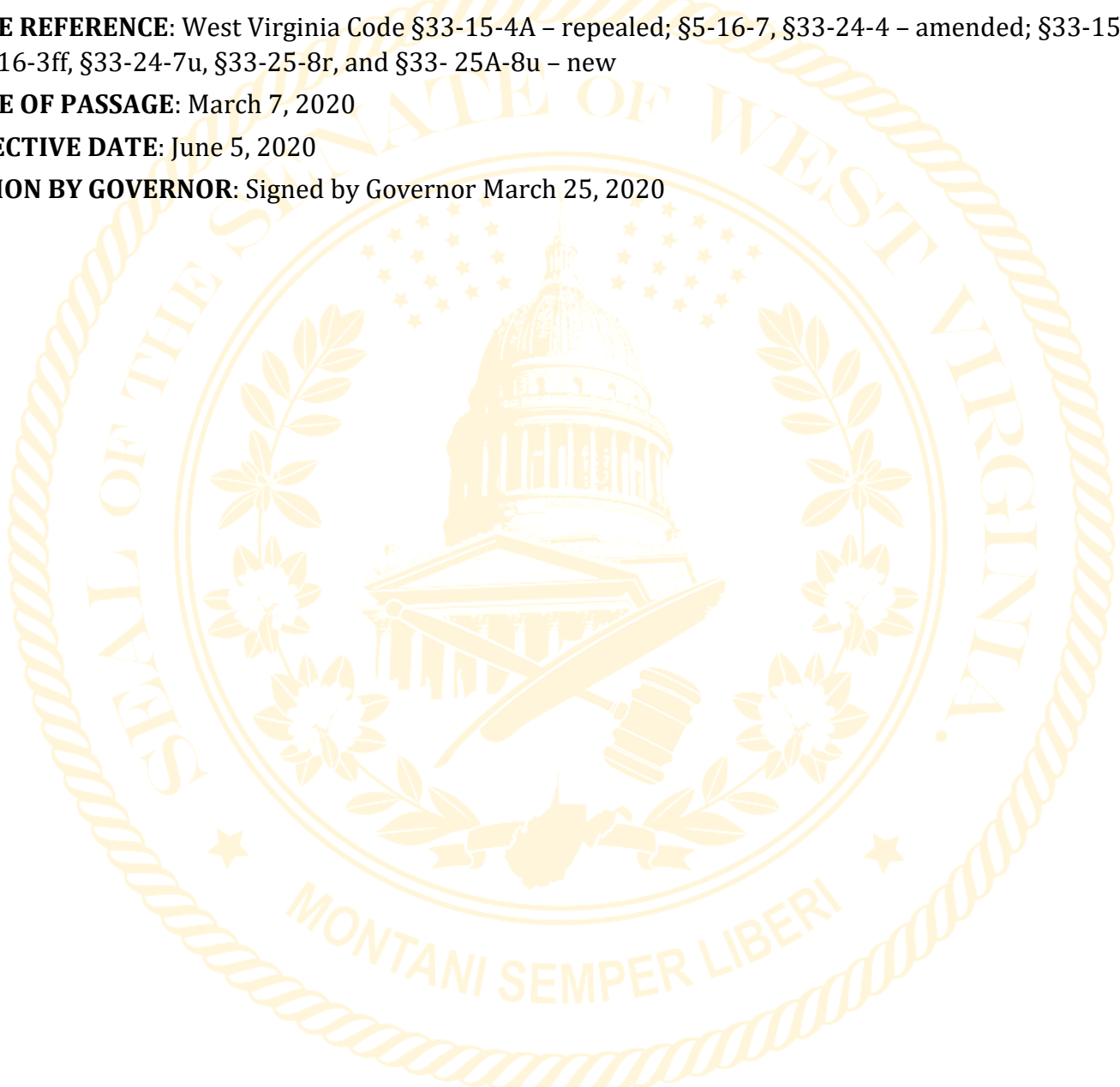
The bill provides that the Insurance Commission shall adopt legislative rules to implement the provisions of this bill and provides for an effective date of January 2, 2021.

CODE REFERENCE: West Virginia Code §33-15-4A – repealed; §5-16-7, §33-24-4 – amended; §33-15- 4u, §33-16-3ff, §33-24-7u, §33-25-8r, and §33- 25A-8u – new

DATE OF PASSAGE: March 7, 2020

EFFECTIVE DATE: June 5, 2020

ACTION BY GOVERNOR: Signed by Governor March 25, 2020



Senate Bill 303

Enacting Students' Right to Know Act

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

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

The Act also requires State Superintendent to distribute the information to every high school in the state for distribution to students by school guidance counselors no later than Oct. 15 of each year and requires the information to be available to the public through the Department of Education’s website. The State Board may execute a memorandum of understanding with any department, agency, or division for acquiring the required information and any department, agency, or division possessing any of the required information must provide it to the State Board. Requirements are effective on January 1, 2021.

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

DATE OF PASSAGE: March 7, 2020

EFFECTIVE DATE: January 1, 2021

ACTION BY GOVERNOR: Signed March 24, 2020

Senate Bill 490

Relating to criminal offenses against agricultural facilities

This bill criminalizes willful trespass upon an animal or crop facility, which means to trespass upon on the property of the facility with the intent to commit larceny, destroy property, or disrupt the operation of the facility. The bill also criminalizes conspiring to commit willful trespass upon an animal or crop facility.

A person convicted of a first offense of the new crime is guilty of a misdemeanor and is subject to a fine of \$500-\$1,000, confinement in jail for up to 30 days, or both the fine and confinement. A person convicted of a second or subsequent offense is guilty of a felony and is subject to a fine of \$5,000-\$10,000, imprisonment for one to five years, or both the fine and imprisonment. The bill also allows for injunctive relief against the offender and double damages for injury caused.

CODE REFERENCE: West Virginia Code §61-3B-7 – new

DATE OF PASSAGE: March 6, 2020

EFFECTIVE DATE: June 4, 2020

ACTION BY GOVERNOR: Signed March 25, 2020

Senate Bill 517

Creating State Parks and Recreation Endowment Fund

This bill creates a new Article 5A under Chapter 20 of the Code, which authorizes the Director of the Division of Natural Resources to “[s]ell or lease, with the approval in writing of the Governor, coal, oil, gas, sand, gravel and any other minerals that may be found in the lands under the jurisdiction and control of the director, except those lands that are designated as state parks. The proceeds arising from any such sale or lease shall be paid to the Treasurer of the State of West Virginia and shall be credited to the division and used exclusively for the purposes of this chapter.” The bill establishes a special revenue account called the State Parks and Recreation Endowment Fund which will hold the royalties received from leasing of state-owned gas, oil, and other mineral rights beneath the Ohio River and its tributaries.

An 11-member Board of Trustees is established to administer the fund and is required to invest the assets of the fund. Investment income is expended for either of two purposes: maintaining, repairing, and improving existing recreational facilities at state parks, forests, and rail trails; or maintaining, repairing, and procuring fixtures, furnishings, and equipment for state parks, forests, and rail trails. The Board of Trustees is comprised of 5 ex officio members and 6 voting members to be appointed by the Governor.

CODE REFERENCE: West Virginia Code §20-5A-1, §20-5A-2 – new

DATE OF PASSAGE: March 6, 2020

EFFECTIVE DATE: March 6, 2020

ACTION BY GOVERNOR: Signed March 24, 2020

Senate Bill 530

Relating to taxation of aircraft

This bill pertains to the taxation of aircraft. It creates a new exemption from consumer sales and service tax for any aircraft bought in this state and removed from this state within 60 days of the purchase. Necessary FAA forms to evidence the sale and removal are set out in the bill. There is clarifying language which states that the timeframe would also exempt the aircraft from any applicable use tax. The bill is effective July 1, 2020.

CODE REFERENCE: West Virginia Code §11-15-9 – amended

DATE OF PASSAGE: March 7, 2020

EFFECTIVE DATE: July 1, 2020

ACTION BY GOVERNOR: Signed March 25, 2020

Senate Bill 545

Authorizing transfer of moneys from Insurance Commission Fund to Workers' Compensation Old Fund

The bill would give the Insurance Commissioner the authority to transfer special revenue moneys contained in the Insurance Commission Fund to the Workers' Compensation Old Fund. The authority to transfer funds would be limited to any fiscal year in which the Insurance Commissioner has determined, and an independent auditor has attested, that a deficit balance existed in the Workers' Compensation Old Fund for the prior fiscal year.

CODE REFERENCE: West Virginia Code §23-2C-16 – amended

DATE OF PASSAGE: March 4, 2020

EFFECTIVE DATE: March 4, 2020

ACTION BY GOVERNOR: Signed March 24, 2020

Senate Bill 551

Water and Wastewater Investment and Infrastructure Improvement Act

The bill amends the provisions of the West Virginia Code relating to the sale of a utility. The bill amends the current provisions relating to the sale or lease of a municipal utility.

Current law provides that proceeds of such a sale or lease be applied to payment of any indebtedness of the utility; and if there is no indebtedness or if there is a surplus after the indebtedness is paid, the municipality may use the money to purchase firefighting equipment, land and buildings or to construct municipal buildings, paved streets or roads, sidewalks, sewers and other permanent improvements. The bill adds to these uses for the funds to include: (1) capital investments in public works projects, vehicles and equipment; (2) demolition of dilapidated and abandoned buildings; (3) construction of stormwater systems and floodwalls; and (4) fulfilling municipal pension and other post-employment benefit obligations.

The bill also adds a new section §24-2-4g relating to the valuation of utility assets when those assets are being sold. The bill authorizes a utility that provides water, sewer or stormwater services and is purchasing another utility's assets to propose, in its application for approval of the purchase by the Public Service Commission (PSC), a negotiated sale price for the utility assets. If the PSC finds the terms and conditions of the acquisition satisfies the requirements for approval, the bill provides for an addition to the rate base of the negotiated sale price.

The bill also authorizes a utility that provides both water and wastewater utility service to request both its water and wastewater revenues be used to determine its rates. If in the situation of the purchase of a utility's assets by a utility that provides both water and wastewater utility service, the PSC finds that the combined revenues will enable the acquisition and construction of wastewater infrastructure improvements or compliance with regulatory requirements at a more moderate rate impact, and will result in a combined rate that is just, reasonable and based primarily upon the cost of providing service, then the PSC may authorize the combined revenue to be used.

CODE REFERENCE: West Virginia Code §8-12-17 – amended; §24-2-4g – new

DATE OF PASSAGE: March 7, 2020

EFFECTIVE DATE: June 5, 2020

ACTION BY GOVERNOR: Signed March 25, 2020

Senate Bill 554

Relating to termination, expiration, or cancellation of oil or natural gas leases

This bill requires lessees to provide lessors with a recordable release for oil or natural gas leases, when the leases are expired, terminated, or cancelled under their terms. Unless a different time is required by the lease, within 60 days after an oil and gas lease is terminated, expired, or cancelled, the lessee shall deliver, without cost to the lessor, a properly executed and notarized release of the lease.

If the lessee fails to provide a timely release, the lessor may serve notice of the lessee's failure to provide the release. The notice shall contain a statement providing:

- That the lease is terminated, expired, or cancelled according to its terms and state the date;
- That the lessee has a duty to provide a release;
- That if the release or a written dispute from the lessee is not received by lessor within 60 days, that the lessor has the right to file an affidavit of termination, expiration, or cancellation in the office of the county clerk;
- The name and address of the lessor or his or her successors or assigns;
- A brief description of the land covered by the lease;
- If there is a well, the name or API number of the well, if known;
- If located in a unit, the name of the unit, if known;
- The specified recording information for the lease along with other identifying information; and
- A service sheet showing the names and addresses of all persons upon whom the notice has been served.

The notice of the lessee's failure must be sent to 1) the lessee, 2) any lessee's assignee, 3) all other lessors, and 4) all other persons who may have an interest in the leasehold estate, or the minerals leased thereunder.

The lessee has the right to dispute the contents of the notice within 60 days after receipt of the notice.

The lessor has the right to file an affidavit of termination, expiration, or cancellation in the office of the county clerk after the lessee's notice, if the lessor fails to receive a dispute from the lessee within 60 days after providing notice. The lessor must also provide notice of the affidavit to all persons to whom notice was required to be given for the notice of the lessee's failure to provide the release.

The county clerks are required to accept and record these affidavits.

CODE REFERENCE: West Virginia Code §36-4-9b – new

DATE OF PASSAGE: March 2, 2020

EFFECTIVE DATE: May 31, 2020

ACTION BY GOVERNOR: Signed March 25, 2020

Senate Bill 578

Recalculating tax on generating, producing, or selling electricity from solar energy facilities

This bill provides modification of the taxable generating capacity of units that generate, produce, and/or sell electricity from solar photovoltaic methods at 8%. Previously, solar photovoltaic methods were not addressed in code, and therefore are assigned a taxable generating capacity of 40%. The effect of the 40% rate created a disproportionately high tax burden, which disincentivized electricity generators from utilizing solar photovoltaic methods. The bill also provides a definition of “solar photovoltaic methods.”

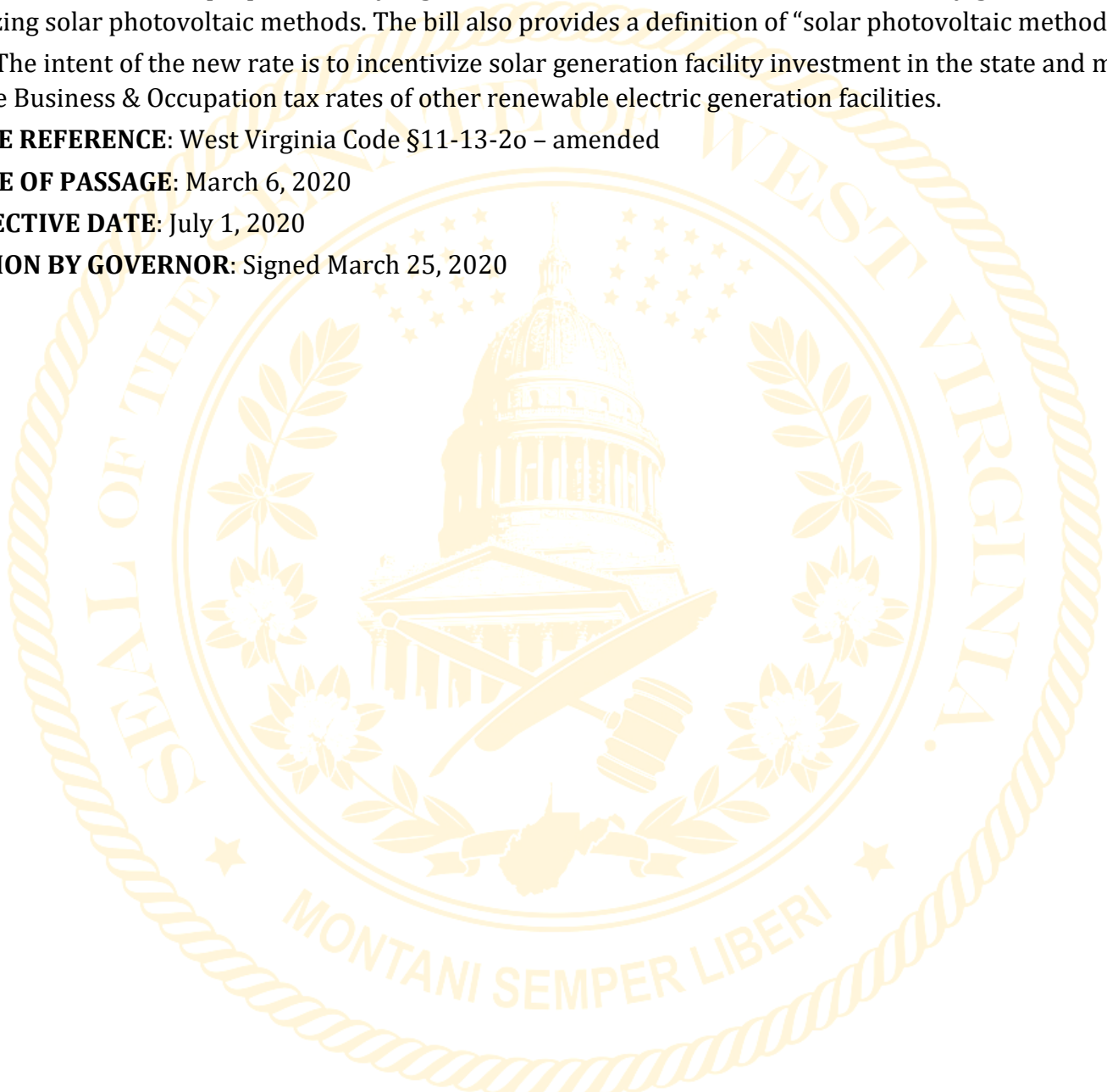
The intent of the new rate is to incentivize solar generation facility investment in the state and match those Business & Occupation tax rates of other renewable electric generation facilities.

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

DATE OF PASSAGE: March 6, 2020

EFFECTIVE DATE: July 1, 2020

ACTION BY GOVERNOR: Signed March 25, 2020



Senate Bill 583

Creating program to further development of renewable energy resources

This bill encourages the development of solar power in the state. The bill creates a program named Renewable Energy Facilities Programs to encourage retail solar projects, and also the bill expedites siting certificates to encourage new merchant solar plant construction for the wholesale market.

Under the bill, electric utilities may file an application with the PSC to build and operate solar generating facilities, energy storage resources, or both. The utilities must offer the energy for sale to residential, commercial, and industrial customers through renewable special contracts or renewable tariffs.

No facility shall have a capacity of more than 50 megawatts until 85% of that electric output is sold. After 85% of the first 50 megawatts is sold, the program can be expanded in increments of up to 50 megawatts per expansion. Further expansions may be made after 85% percent of the aggregate output is sold. No single facility or utility shall have a generating capacity greater than 200 megawatts and the statewide cumulative capacity may not exceed 400 megawatts for all utilities.

Applications made under this bill, are in lieu of an application for a certificate of public convenience and necessity, and utilities may petition the commission for accelerated cost recovery. The bill requires utilities to publish notice of an application and usually hold a public hearing. The commission is required to approve completed applications and allow concurrent cost recovery if expenses and rates are prudent, just, and reasonable.

The bill contains language limiting the cost recovered from customers, but also establishes that there are no such limits for renewable special contracts or renewable tariffs. The bill expires for new applications on December 31, 2025. The expiration does not affect projects with applications filed before this date.

Regarding wholesale solar generation, any entity who is not an electric utility; who intends to construct an electric generating facility as an exempt wholesale generator; who will generate electricity solely through solar methods; and who, if desired, intends to construct and operate energy storage, may file an application with the Public Service Commission, and after publication and a hearing the PSC shall issue a siting certificate or modification within 150 days of the application filing date.

CODE REFERENCE: West Virginia Code §24-2-1o – new

DATE OF PASSAGE: March 5, 2020

EFFECTIVE DATE: June 3, 2020

ACTION BY GOVERNOR: Signed March 25, 2020

Senate Bill 589

Creating Critical Needs and Failing Systems Sub Account

The bill amends the provisions of the West Virginia Code by adding a new section providing for a Critical Needs and Failing Systems Sub Account in the West Virginia Infrastructure Fund. The bill requires the Water Development Authority (WDA) to establish the new sub account. The bill authorizes the West Virginia Infrastructure and Jobs Development Council (IJDC) to direct the WDA to transfer from any uncommitted loan balances in the Infrastructure Fund up to \$4 million per Congressional district to the new sub account. The IJDC is authorized to direct the WDA to make loans or grants from the sub account after it determines that a project will address a critical immediate need. The bill provides that a critical immediate need may be addressed by: (1) the continuation of water or wastewater services; (2) the addressing of water or wastewater facility failure due to the age of a facility; or (3) providing extensions to water or wastewater facilities which add customers and cost less than \$1 million. The bill also provides that the current requirements that a grant for a water or wastewater facility project: (1) be for no more than 50% of the total project cost; and (2) meet a required mandatory end user utility rate, do not apply to grants from the new sub account.

CODE REFERENCE: West Virginia Code §31-15A-17c – new

DATE OF PASSAGE: March 7, 2020

EFFECTIVE DATE: June 5, 2020

ACTION BY GOVERNOR: Signed March 25, 2020

Senate Bill 648

Providing dental coverage for adult Medicaid recipients

The purpose of this bill is to provide certain dental services to adult Medicaid recipients. It contains definitions. The bill provides that the population to which the bill is applicable be adults age 21 and over who are also covered by Medicaid. The dental program shall be for diagnostic, preventative, and restorative services and shall exclude cosmetic services. Coverage is limited to \$1000.00 each budget year and anything over \$1000.00 shall be paid by the recipient. The bill provides that the department shall seek authority from the Centers for Medicare and Medicaid Services to implement this program and provides that the implementation of the program is contingent upon federal approval of the provider tax as set forth in West Virginia Code §11-27-10a.

CODE REFERENCE: West Virginia Code §9-5-12a – new

DATE OF PASSAGE: March 7, 2020

EFFECTIVE DATE: June 5, 2020

ACTION BY GOVERNOR: Signed March 25, 2020

Senate Bill 651

Relating to definition of "mortgage loan originator"

This bill amends the definition of the term "mortgage loan originator" in §31-17A-2(h) of the code to provide that the term "mortgage loan originator" does not include a retailer of manufactured or modular homes or an employee of the retailer if the retailer or employee:

- Does not receive compensation or gain for engaging in mortgage loan originator activities described in §31-17A-2(h) that is in excess of any compensation or gain received in a comparable cash transaction;
- Discloses to the consumer in writing:
- any corporate affiliation with any mortgage lender; and if the retailer has a corporate affiliation with any mortgage lender, at least one unaffiliated mortgage lender;
- Does not directly negotiate with the consumer or mortgage lender on loan terms; and
- Does not represent to the public that the individual can or will perform mortgage loan originator activities, described in §31-17A-2(h).

CODE REFERENCE: West Virginia Code §31-17A-2 – amended

DATE OF PASSAGE: March 7, 2020

EFFECTIVE DATE: June 5, 2020

ACTION BY GOVERNOR: Signed March 25, 2020

Senate Bill 657

Allowing designation of tourism development districts

The bill creates a new section of code to allow the West Virginia Development Office and its Development Office (DEVO) to designate a "tourism development district" encompassing the area where a qualified tourism project with aggregate projected costs of \$25 million or more is being developed in whole or in part within a Class IV municipality by a company that is qualified to receive a sales tax credit under the West Virginia Tourism Development Act and otherwise meets the criteria of this bill. If DEVO designates a tourism development district for a qualified project, the municipality is restricted from regulating the project in certain ways specified in the bill, and the bill also lists the state and municipal laws that the developer must comply with. DEVO may not designate more than 5 districts in the state, none of which may exist longer than 99 years. DEVO must adopt emergency rules and promulgate legislative rules.

CODE REFERENCE: West Virginia Code §5B-1-9 – new

DATE OF PASSAGE: February 25, 2020

EFFECTIVE DATE: May 25, 2020

ACTION BY GOVERNOR: Signed March 5, 2020

Senate Bill 668

Enacting Uniform Trust Decanting Act

This bill adds a new article to the Code, known as the “West Virginia Uniform Trust Decanting Act.” Trust decanting is the process of pouring the assets of one trust into a second trust. The bill applies to 1) express trusts that are irrevocable; and 2) trusts that are revocable by the grantor only with the consent of the trustee or a person holding an adverse interest.

The bill defines terms and establishes notice requirements for decanting a trust. An authorized fiduciary must give notice to certain interested parties of the intended use of the decanting power no later than 60 days before such use. The bill delineates when a court may become involved in the decanting process.

Additionally, the bill provides special requirements for trusts with disabled beneficiaries, charitable trusts, and trusts for the care of an animal. The bill limits the decanting power in certain circumstances; for example, a first trust may not be decanted if its original terms specifically prohibit decanting.

CODE REFERENCE: West Virginia Code §44D-8B-1 through §44D-8B-31 – new

DATE OF PASSAGE: March 6, 2020

EFFECTIVE DATE: July 1, 2020

ACTION BY GOVERNOR: Signed March 25, 2020

Senate Bill 670

Amending service of process on nonresident persons or corporate entities

This bill amends the manner of service of process on nonresident persons or corporate entities when the originally sent certified mail was returned but not rejected.

If the certified mail was returned by the United States Postal Service as “unclaimed,” “unable to forward,” or with any other notation other than “accepted” or “refused,” notice may be served as follows:

- In any manner accepted as service within the domiciled state of the nonresident, or otherwise; or
- In any manner otherwise permitted by rules 4(d)(7) or (8) of the West Virginia Rules of Civil Procedure for corporations, and any way permitted by rule 4(c) of the West Virginia Rules of Civil Procedure for individuals or noncorporate entities.

CODE REFERENCE: West Virginia Code §56-3-33 – amended

DATE OF PASSAGE: March 6, 2020

EFFECTIVE DATE: June 4, 2020

ACTION BY GOVERNOR: Signed March 24, 2020

Senate Bill 703

Increasing earning limit for employees who accept separation incentive

This Act increases the amount an employee granted a retirement or separation incentive from a state institution of higher education can earn through contract employment with the institution from \$5,000 to \$25,000 per fiscal year.

Numerous technical improvements are also made to the section.

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

DATE OF PASSAGE: February 28, 2020

EFFECTIVE DATE: February 28, 2020

ACTION BY GOVERNOR: Signed March 25, 2020

Senate Bill 707

Relating to nursing career pathways

This Act requires the State Superintendent, Higher Education Policy Commission Chancellor and the Community and Technical College Council Chancellor to establish a West Virginia Nursing Career Pathway Workgroup. This work group is charged with developing a career pathway to address the unmet need for nursing assistants, licensed practical nurses, registered nurses with an associate's degree in nursing, and registered nurses with a bachelor's degree in nursing. The pathway will begin in high school and progress through college, providing employment opportunities with industry partners and pathway re-entry at specified attainment points.

The Act sets forth a career pathway that shall be made available beginning with the cohort of students entering ninth grade during the 2021-2022 school year. The pathway shall include participating high school students enrolled in specified college preparatory courses, career and technical health science courses, dual-college-high school credit courses, or participating career experiences. The pathway requires that the student have the opportunity to apply for admission to the next step in the pathway.

The Superintendent, Chancellors, or any combination thereof, shall report to the Legislative Oversight Commission on Education Accountability (LOCEA) on the progress in implementing the career pathway up until this pathway has been fully implemented statewide.

CODE REFERENCE: West Virginia Code §18-2E-11a – new

DATE OF PASSAGE: March 7, 2020

EFFECTIVE DATE: March 7, 2020

ACTION BY GOVERNOR: Signed March 25, 2020

Senate Bill 719

Imposing health care-related provider tax on certain health care organizations

The bill as introduced updates the tax amounts in Tiers 1-3 as set forth in the code to permit additional federal match for health maintenance organizations known as HMO's. The tax will only take effect upon approval of the Centers for Medicare and Medicaid Services' approval. This approval has not been received and no tax has been implemented.

CODE REFERENCE: West Virginia Code §11-27-10a – amended

DATE OF PASSAGE: March 6, 2020

EFFECTIVE DATE: July 1, 2020

ACTION BY GOVERNOR: Signed March 25, 2020

Senate Bill 727

Relating to disbursement of funds for highway road repair

The purpose of this bill is to alter the Division of Highway's authority to spend certain funds to repair a different classification of roads. West Virginia Code §22-15-11 creates a special revenue fund called the "Gas Field Highway Repair and Horizontal Drilling Waste Study Fund." The Fund is administered by the DOH and may only be spent to improve and repair public roads of three lanes or less that:

- are located in the watershed from which the revenue was received;
- are identified as having been damaged by traffic associated with horizontal well drilling or the disposal of waste from the sites; and,
- have experienced traffic congestion which interferes with the local resident's use of the roads.

The money in the Fund is collected from a horizontal drilling waste assessment fee. This bill provides that the DOH may use the Fund to improve, maintain, and repair these types of public roads in the district where the waste is deposited, rather than in the watershed from which the revenue was received. The DOH has not been able to use the money in the Fund to repair roads because the state government cannot identify the watershed where the waste was generated, but the state can identify where the waste is deposited. This bill allows the DOH to use the money on negatively impacted roads in the District where the waste is deposited.

CODE REFERENCE: West Virginia Code §22-15-11 – amended

DATE OF PASSAGE: March 5, 2020

EFFECTIVE DATE: June 3, 2020

ACTION BY GOVERNOR: Signed March 25, 2020

Senate Bill 738

Creating Flatwater Trail Commission

This bill creates the Flatwater Trail Commission. The commission would fall within the Commerce Department. The bill sets out membership of the Commission who are appointed by the Governor with advice and consent of the Senate.

The commission's duties would include:

- Unifying and coordinating efforts to develop and establish successful flatwater trails in West Virginia;
- Standardizing procedures, programs, research, and support for the development and establishment of flatwater trails;
- Disseminating information to educate the public as to the existence and functions of the commission and as to the availability of state, federal, and nongovernmental resources and support for the development and establishment of flatwater trails; and
- Advising, consulting, and cooperating with other offices of the Commerce Department and other agencies of state government, and to receive assistance therefrom, in the development of activities and programs of beneficial interest to water recreation and flatwater trails.

The bill requires the Commerce Department to assist the commission in its functions and operations.

All commission members must be residents and citizens of West Virginia. At least two members must have knowledge of and experience with nonmotorized watercraft recreation. At least two members must have knowledge of and experience with motorized watercraft recreation.

Members would serve five-year terms. The initial appointments would be to staggered terms. Of the first appointed members, two would be appointed for a term ending December 31, 2021, and one each for terms ending one, two, and three years thereafter. Commission members may be reappointed to additional terms.

The commission chair would be appointed by the Governor from members then serving on the commission. Commission members are to meet at least quarterly as designated and scheduled by the chair. Members are not to be compensated for their service on the commission but are entitled to reimbursement for reasonable expenses incurred in the discharge of their official duties pursuant to guidelines of the Travel Management Office.

CODE REFERENCE: West Virginia Code §5B-9-1 – new

DATE OF PASSAGE: March 6, 2020

EFFECTIVE DATE: June 4, 2020

ACTION BY GOVERNOR: Signed March 25, 2020

Senate Bill 739

Authorizing PSC protect consumers of distressed and failing water and wastewater utilities

This bill amends WV Code to provide that when a utility is sold by a municipality that the funds received can be used “for capital investments in public works projects, vehicles and equipment and law-enforcement vehicles and equipment, for the demolition of dilapidated and abandoned buildings, storm water systems, floodwalls, and for fulfilling municipal pension and other post-employment benefit obligations, or for reducing taxes”. It further provides that when a municipal waterworks raises rates or charges “the notice given shall be provided by Class I legal advertisement in a newspaper of general circulation in its service territory not less than one week prior to the public hearing of the governing body of the municipality or the county commission required for the approval of the change in rates or charges.” It provides that any formal complaint filed that is based on the act or omission of the political subdivision shall be filed within 30 days of the act or omission complained of and the commission shall resolve the complaint within 180 days of filing and that whenever the commission finds any regulations, measurements, practices, acts or service to be unjust, unreasonable, insufficient or unjustly discriminatory, or otherwise in violation of any provisions of this chapter, or finds that any service is inadequate, or that any service which is demanded cannot be reasonably obtained, the commission shall determine and declare, and by order fix reasonable regulations to be followed in lieu of those found to be unjust or unreasonable, and that if the matter complained of would affect rates, the rates shall remain in full force and effect until altered by the commission in an order to be followed in the future.

It adds a new article adding provisions for the acquisition of distressed or failing water or wastewater utilities. It defines these terms and capable proximate utility. It requires the commission to prepare an annual list of water and wastewater utilities that appear to be financially unstable by reviewing annual reports, rate case filings and other financial data available to it. If an entity appears to be failing, the commission can order, after appropriate notice, a public evidentiary hearing, to hear evidence on this issue. After the commission receives evidence to determine if the utility is a distressed or failing utility and whether a capable proximate utility should acquire the utility. If there is more than one capable proximate utility, then sufficient evidence should be presented to allow the commission to determine the appropriate capable proximate utility to acquire the distressed or failing utility.

If the commission determines that an alternative to designating a utility as failing and ordering an acquisition is reasonable and cost effective, it may order the distressed utility and, if applicable to the alternative a capable proximate utility, to implement the alternative. Commission staff shall work with the utility to implement the alternative, as necessary. Alternatives that the commission may consider include, but are not limited to, the following:

- Reorganization of the utility under new management or a new board, subject to the approval of the applicable county commission(s) or municipal government;
- Operation of the distressed utility by another public utility or management or service company under a mutually agreed arms-length contract;
- Appointment of a receiver to assure the provision of adequate, efficient, safe and reasonable service and facilities to the public pursuant to §24-2-7(b) of this code;
- Merger of the water or wastewater utility with one or more other public utilities, subject to the approval of the applicable county commission(s) or municipal government;
- The acquisition of the distressed utility through a mutual agreement made at arms-length; and,

- Any viable alternative other than an ordered acquisition by a capable proximate utility. The commission shall provide a list of utilities designated by a final order of the commission as a distressed or failing utility to the Legislature as part of its annual Management Summary Report beginning in the 2021 reporting period and annually thereafter. The commission has final approval of any operating agreement and acquisition price paid by a capable utility. The acquiring utility may propose to the commission that it be permitted for a reasonable period of time after the date of acquisition, to charge and collect rates from the customers of the failing utility pursuant to a separate tariff which may be higher or lower than the existing tariff of the distressed or failing utility or may allow a surcharge on both the acquired and existing customers. The commission may approve an appropriate and reasonable cost recovery mechanism to allow the capable proximate utility to recover its acquisition costs and projected cost of service.

Finally, the Water Development Authority shall establish a separate restricted account within the infrastructure fund to be expended for the repair and improvement of failing water and wastewater systems, known as the “Distressed Utilities Account”, not to exceed \$5 million to the restricted account, to be used for up to 100 percent of the cost of failing utility acquisitions, repairs, replacements and improvements. And, the bill removes a whole series of obsolete provisions of Code.

CODE REFERENCE: West Virginia §8-12-17, §8-16-18, §8-19-4, §8-20-10, §16-13-16, §16-13A-9, §24-2-1, §24-2-4a, §24-2-11, and §31-15A-9 – amended; §24-2H-1 through §24-2H-9 – new

DATE OF PASSAGE: March 7, 2020

EFFECTIVE DATE: June 5, 2020

ACTION BY GOVERNOR: Signed March 25, 2020

Senate Bill 793

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

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

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

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

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

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

DATE OF PASSAGE: March 5, 2020

EFFECTIVE DATE: July 1, 2020

ACTION BY GOVERNOR: Signed March 25, 2020

Senate Bill 802

Relating to public utilities generally

This bill allows new large natural gas users (100 million cubic feet or more annually) to bypass local utilities and contract with natural gas producers in West Virginia.

The new facility must notify the utility that would otherwise provide service that it intends to receive service from a non-utility, and receive natural gas produced in West Virginia.

The new facility must certify to the Public Service Commission that it has notified the utility, that its projected annual gas usage will be at least 100 million cubic feet; and that it will receive natural gas produced in West Virginia. It must also provide the tax ID number of the direct supplier.

After the new facility makes the certification to the PSC, the new facility may proceed to obtain direct service; the PSC has no further input into the arrangement.

The bill will not affect the PSC's ability to regulate the safety of natural gas pipelines.

CODE REFERENCE: West Virginia Code §24-2-20 – new

DATE OF PASSAGE: March 7, 2020

EFFECTIVE DATE: June 5, 2020

ACTION BY GOVERNOR: Signed March 25, 2020

Senate Bill 810

Implementing federal Affordable Clean Energy Rule

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

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

DATE OF PASSAGE: March 4, 2020

EFFECTIVE DATE: June 2, 2020

ACTION BY GOVERNOR: Signed March 25, 2020

Senate Bill 816

Updating North American Industry Classification System code references

This bill updates the North American Industrial Code (NAIC) reference in the definition of “manufacturing” as used in West Virginia Code § 11-6F-2 and 11-13S-3. The previous code reference is 211112, and this bill changes it to the current code reference of 21130, but only to the extent the classification applies to the processing of raw natural gas or oil to recover the liquid hydrocarbons. This activity is now classified under 211130.

In 2011, the definition of “manufacturing” in West Virginia Code §11-6F-2 and §11-13S-3 was amended to include business activity classified under code 211112, which at that time included natural gas liquid extraction. In 2017, the United States Bureau of the Census updated the NAICS and moved natural gas liquid extraction to code 211130, which also applies to natural gas extraction.

This bill codifies in West Virginia Code the current NAIC classifications.

CODE REFERENCE: West Virginia Code §11-6F-2 and §11-13S-3 – amended

DATE OF PASSAGE: February 29, 2020

EFFECTIVE DATE: July 1, 2020

ACTION BY GOVERNOR: Signed March 25, 2020

House Bill 2086

Uniform Real Property Electronic Recording Act

The bill allows county clerks to accept documents for electronic recordation. It allows electronic documents to be considered “original,” allows electronic signatures, and has a mechanism for notary authentication of electronic documents.

Implementation of the Act by a county clerk is not required, and any county clerk who accepts electronic documents for recording is required to continue to accept paper documents and place entries for both types of documents in the same index.

CODE REFERENCE: §39A-4-1 through and §39A-4-7 – new

DATE OF PASSAGE: February 28, 2020

EFFECTIVE DATE: May 28, 2020

ACTION BY GOVERNOR: Signed March 25, 2020

NOTE: Originally passed on February 18, 2020, but was vetoed by Governor February 24, 2020 for technical issues. The bill was corrected and passed a second time.

House Bill 2149

Relating to the Farm-To-Food Bank Tax Credit

The bill amends the provisions of the West Virginia Code relating to the West Virginia Farm-to-Food Bank Tax Credit. This credit is available for farming taxpayers who make donations of edible agricultural products to nonprofit food programs in the state. The existing credit against West Virginia Personal Income or Corporate Net Income Tax is equal to 10% of the value of the donated food, not to exceed \$2,500 per year with an aggregate cap of no more than \$200,000 per year for all taxpayers qualifying for the credit. The bill would increase the amount of the credit to 30% of the value of the donated food but does not alter the caps.

CODE REFERENCE: West Virginia Code §11-163DD-3 – amended

DATE OF PASSAGE: February 29, 2020

EFFECTIVE DATE: May 29, 2020

ACTION BY GOVERNOR: Signed March 24, 2020

House Bill 2478

Modifying the Fair Trade Practices Act

Section 2 of the West Virginia Unfair Trade Practices Act provides that, “except as otherwise provided herein, it is unlawful for any person, partnership, firm, corporation or other entity engaged in business as a retailer or wholesaler within this state to sell, offer for sale, or advertise for sale any product or item of merchandise at a price less than the cost thereof with the intent to destroy or the effect of destroying competition.” This bill clarifies the exception by providing “except as otherwise provided in this article . . .” (instead of “herein”)

Section 6 defines “cost” as applied to the business of a retailer versus a wholesaler. For both the retailer and the wholesaler, the term “shall mean bona fide cost,” but is calculated differently. For both the retailer and the wholesaler, the markup is exclusive of federal and state motor fuel taxes. In *Alan Enterprizes LLC v. Mac’s Convenience Stores LLC*, 240 W.Va. 250, 810 S.E.2d 61 (2018), the Supreme Court of Appeals of West Virginia held that calculation of cost to the retailer did not include taxes because the statute specifically mentions applicable taxes are included with respect to wholesalers, but does not mention applicable taxes with respect to retailers.

This bill:

- Clarifies the invoice cost of the product or item of merchandise in the calculation of cost to the retailer by adding the words “each separate or distinct;”
- Makes the language regarding invoice cost in the calculation of cost to the retailer match the corresponding wholesaler language by adding the words “to include applicable taxes;”
- Removes the markup for the retailer by deleting (a)(2); and makes technical changes to same

Section 9 provides remedies for violation of the article. The statute currently allows an action to enjoin the violation and provides for recovery of actual damages if the violation is established and if damages are alleged and proven. The statute also allows an action for damages alone if no injunctive relief is sought or required and provides for recovery of actual damages if the violation is established and proven.

This bill:

- Clarifies to which provisions of the article these remedies apply by adding cross references to §2 (prohibiting selling below cost) and §3 (prohibiting rebates and special privileges); and, allows a court to award a plaintiff treble damages, court costs, litigation costs, and attorneys’ fees upon finding a violation of §2 or §3 (in addition to the remedies currently provided under the statute).

CODE REFERENCE: West Virginia Code §47-11A-2, §47-11A-6, and §47-11A-9 – amended

DATE OF PASSAGE: March 7, 2020

EFFECTIVE DATE: June 5, 2020

ACTION BY GOVERNOR: Signed March 25, 2020

House Bill 2497

Relating to the whistle-blower law

This bill mandates that employers may not deny a whistle-blower a promotion or pay increase because of his or her status as a whistle-blower. A civil service employee who alleges a violation of this article may bring a civil action in a court of competent jurisdiction for appropriate injunctive relief or damages, or both, within two years after the occurrence of the alleged violation. The bill codifies civil service employees' right to pursue grievances under the West Virginia Public Employees Grievance Procedure.

CODE REFERENCE: West Virginia Code §6C-1-3, §6C-1-4, and §6C-1-7 – amended

DATE OF PASSAGE: February 18, 2020

EFFECTIVE DATE: May 18, 2020

ACTION BY GOVERNOR: Signed February 28, 2020

House Bill 2646

Providing a safe harbor for employers to correct underpayment or nonpayment of wages and benefits due to separated employees

This bill provides a safe harbor for employers to correct underpayment or nonpayment of wages and fringe benefits due to employee separation prior to the filing of a lawsuit. The bill prohibits an employee from seeking liquidated damages or attorney's fees when bringing an action for the underpayment or nonpayment of wages and fringe benefits due upon the employee's separation from employment without first making a written demand to the employer. Upon separation or with issuance of the final paycheck, the employer must inform the employee who the employer's authorized representative is and where to send a written demand through both email and regular mail. If the employer fails to comply with this requirement, the employee is not subject to the requirements of the bill. After a written demand is received, the bill provides the employer seven calendar days to correct the alleged underpayment or nonpayment of wages and fringe benefits prior to the filing of a lawsuit. The bill prohibits an employee from seeking liquidated damages or attorney's fees without first making this written demand. This bill also states that if a class action is brought by multiple employees for the underpayment or nonpayment of wages and fringe benefits, the written demand should state that it is a demand for all similarly situated employees. However, if the employer corrects underpayment or nonpayment of wages and fringe benefits for only the named employee in a class action, then the rest of the members of the class may continue with their suit.

CODE REFERENCE: West Virginia Code §21-5-4a – new

DATE OF PASSAGE: March 6, 2020

EFFECTIVE DATE: June 4, 2020

ACTION BY GOVERNOR: Signed March 25, 2020

House Bill 2696

Creating an additional index system for state-owned lands

This bill creates an index system to reference lands purchased by the state that shall include the state agency purchasing the lands and the county or counties where the lands are located. The bill provides that the State Auditor shall have rule making authority over the index system.

CODE REFERENCE: Amends and reenacts §14-1-20 and §14-1-21

DATE OF PASSAGE: January 29, 2020

EFFECTIVE DATE: April 28, 2020

ACTION BY GOVERNOR: Signed February 7, 2020

House Bill 2967

Permitting a county to retain the excise taxes for the privilege of transferring title of real estate

This bill provides that beginning July 1, 2021, 10% of the excise tax on the privilege of transferring real property in this state would be directed to stay in the county where it is collected to be used for county purposes. A continuing 10% reduction would be applied each year until 2030, at which point the tax would be completely directed to the county where it is collected.

CODE REFERENCE: West Virginia Code §44-22-2 – amended

DATE OF PASSAGE: March 7, 2020

EFFECTIVE DATE: June 5, 2020

ACTION BY GOVERNOR: Signed March 25, 2020

House Bill 4001

Creating West Virginia Impact Fund

The bill creates the following:

- A special revenue account called the “West Virginia Impact Fund”;
- A new agency called the Investment Committee; and
- A new agency called the Mountaineer Impact Office.

The purpose of these agencies is to further economic development, infrastructure development and job creation in the State of West Virginia.

This is done through investment of the moneys of the fund in projects requiring at least \$25 million of capital “to further economic development, infrastructure development and job creation in the State of West Virginia for the public benefit.”

The Investment Committee consists of the Governor, the Secretary of Commerce and 5 non-government persons appointed by the Governor, with the advice and consent of the Senate, who “must have recognized competence and experience in finance, investments, or other business management-related fields.” The Senate President and the Speaker of the House are also ex-officio, non-voting members.

The Impact Fund holds any state funds made available for investments in final projects approved for those purposes by the Investment Committee. The Mountaineer Impact Office proposes investments for the Investment Committee’s consideration and process those investments that are approved. Returns on investments are returned to the Impact Fund for future approved final projects.

Expenses for administration of the Investment Committee and the Mountaineer Impact Office are paid from monies in the Impact Fund and the returns on investments.

The Mountaineer Impact Office provides audit reports of the Impact Fund moneys and the investments to the Legislature annually.

CODE REFERENCE: West Virginia Code §12-6E-1 through §12-6E-11 – new

DATE OF PASSAGE: March 5, 2020

EFFECTIVE DATE: March 5, 2020

ACTION BY GOVERNOR: Signed March 12, 2020

House Bill 4003

Relating to telehealth insurance requirements

The purpose of this bill is to establish statutory parameters concerning telehealth by defining terms and establishing minimum health care insurance requirements. Chapter 30 boards are required to promulgate a legislative rule to regulate telehealth practice for each applicable profession.

The bill sets forth the minimum insurance requirements for coverage for telehealth services, excluding audio-only services. All insurers providing health care insurance shall:

- Provide coverage of health care services provided through telehealth services if those same services are covered through face-to-face consultation by the insurance policy;
- Not exclude a service for coverage solely because the service is provided through telehealth services;
- Provide reimbursement for a telehealth service at a rate negotiated between the provider and the insurance company; and,
- Not impose any additional dollar maximum amounts, deductible amounts, or limitations that are not equally imposed on all terms and services covered by the policy, contract, or plan.

CODE REFERENCE: West Virginia Code §5-16-7b, §30-1-25, and §33-53-3 – new

DATE OF PASSAGE: March 7, 2020

EFFECTIVE DATE: June 5, 2020

ACTION BY GOVERNOR: Signed March 25, 2020

House Bill 4015

Relating to Broadband Enhancement and Expansion

The bill enacts the Vertical Real Estate Management and Availability Act. This requires the Department of Administration to coordinate with the Governor to seek proposals to manage state-owned vertical real estate. The bill then establishes how the vertical real estate is to be managed. The bill defines “vertical real estate” as any structure that is suitable for the mounting of communications equipment and associated ground facilities. It also reduces the tenure of members and chairs of the Broadband Enhancement Council.

CODE REFERENCE: West Virginia Code §31G-1-3 – amended; §31G-5-1 through §31G-5-4 – new

DATE OF PASSAGE: March 7, 2020

EFFECTIVE DATE: June 5, 2020

ACTION BY GOVERNOR: Signed March 25, 2020

House Bill 4019

Downstream Natural Gas Manufacturing Investment Tax Credit Act of 2020

This bill creates the Downstream Natural Gas Manufacturing Investment Tax Credit Act of 2020 with the goal of encouraging investment in downstream natural gas manufacturing businesses through the use of an income tax credit. This is similar to the Economic Opportunity Tax Credit (Currently any business in West Virginia that engages in downstream natural gas manufacturing would qualify for the Economic Opportunity Tax Credit).

The amount of credit allowable depends upon the cost of the qualified investment property and the number of new jobs created. This bill allows that on or after July 1, 2020, an eligible taxpayer for this credit would be any person subject to the Personal Income Tax or Corporation Net Income Tax who makes a qualified investment in a new or expanded downstream natural gas manufacturing facility located in West Virginia and creates at least five new jobs in the State. Downstream natural gas manufacturing refers to oil and gas manufacturing operations after the production and processing phases and includes, but is not limited to, facilities that use oil, natural gas liquids, or the products produced by ethane crackers as raw materials to manufacture industrial and commercial products.

The allowable credit is taken over a 10-year period at the rate of one-tenth per year. Unused credit may be carried forward for another 10 years. Property that qualifies for another tax credit in chapter 11 of the West Virginia Code is not eligible for credit under this bill. Similarly, qualified investment property under this bill is not eligible for another credit under chapter 11 of the Code.

This proposed credit cannot be taken in conjunction with another tax credit based on the same investment property. This bill requires a Tax Credit Review and Accountability Report related to this proposed credit to be submitted by the Tax Commissioner every three years to the Governor, President of the Senate, and the Speaker of the House of Delegates.

If the investment ceases to be used or is disposed of prior to the end of its useful life, the taxpayer must recalculate and refile for a revised credit. All previously calculated credits are forfeited above the new recalculated amount. The taxpayer must pay all additional taxes owed due to the reduction in the credit for the earlier years with interest. Also, if the number of employees falls below the level on which the annual credit is based, the taxpayer must recalculate the credit allowance at the new lower level and forfeit the difference for the current and remaining years, unless new employees are added bringing the taxpayer back to the higher level. If the taxpayer prematurely removes qualified investment property from service and the number of employees filling the new jobs created by the person falls below the number of new jobs required in order to qualify for the amount of credit being claimed, there are recapture provisions. The bill also allows for partial recapture in certain circumstances.

The bill defines what happens during the transfer of a qualified investment to a successor. The successor business is allowed to claim the remaining available credits, and the transferor is not required to recalculate the earlier years credit. The bill includes rules for administration and enforcement of the credit. It also includes provisions defining record keeping, the application process, burden of proof as being on the taxpayer at a level of clear and convincing evidence.

CODE REFERENCE: West Virginia Code §11-13FF-1 through §11-13FF-18 – new

DATE OF PASSAGE: March 5, 2020

EFFECTIVE DATE: June 3, 2020

ACTION BY GOVERNOR: Signed March 25, 2020

House Bill 4061

Health Benefit Plan Network Access and Adequacy Act

The purpose of this bill was to implement the Health Benefit Plan Network Access and Adequacy Model Act (“Act”).

The House Health and Human Resources Committee reported a strike and insert amendment to the House Judiciary Committee where the bill was again amended before passing the House. The Senate Committee on Health and Human Resources reported the bill to Senate Judiciary Committee without amendment. Senate Judiciary passed a strike and insert which passed both houses without further amendment.

As finally amended by the Senate, the bill creates the Health Benefit Plan Network Access and Adequacy Act. The bill requires a health carrier providing a network plan to maintain a network that is sufficient in numbers and appropriate types of providers, including those that service predominately low-income, medically underserved individuals; requires that covered persons have 24/7 access to emergency services. It is applicable to accident and sickness insurance, group accident and sickness insurance, hospital service corporations, medical service corporations, dental service corporations, health service corporations, health care corporations, and health maintenance organizations. It is not applicable to limited scope dental plans or limited scope vision plans.

The Insurance Commissioner must determine sufficiency and may establish sufficiency by reference to any reasonable criteria which may include but are not limited to: provider covered person ratios; primary care professional covered person ratios; geographic accessibility of providers; geographic variation and population dispersion; waiting times for an appointment with participating providers; hours of operations; the ability of the network to meet the needs of covered persons; other health care service delivery system options such as telemedicine; and the volume of technological and specialty care services.

The bill also requires a health carrier to have a process to assure that a covered person obtains a covered benefit at an in-network level of benefits, including in-network level of cost-sharing from a non-participating provider or make other arrangements acceptable to the commissioner. For example, when a health carrier has an insufficient number or type of participating provider available to provide the covered benefit to the covered person without unreasonable travel or delay or the participating provider does not have a participating provider of the required specialty with the professional training to treat or provide health care services for the condition or disease. The process is not a substitute for establishing and maintaining a sufficient provider network, nothing the bill prevents a person from an external or internal grievance or appeal process.

Beginning January 1, 2021, a health carrier is required to file with the commissioner for review a newly offered network and access plan. This access plan may be considered proprietary information. The bill specifies the contents of the access plan.

A health care provider is required to electronically post a current provider directory for each of its network plans, updated monthly. The directory shall describe in plain language how it tiers providers, noting that authorization is required to access some providers. Other specified information must be provided. Facilities must be accessible to persons with disabilities.

The bill sets forth requirements for contracts between a health carrier and an intermediary. A health carrier which delegates its responsibilities to an intermediary retains full responsibility for the

intermediary's compliance with Act. The bill provides rulemaking authority for the Insurance Commissioner; and, provides for civil penalties.

For insurers and lines of insurance that provide dental care coverage, the bill entitles an out-of-network provider to receive benefits directly from an insurer if the covered individual has provided a written assignment of benefits to the out-of-network provider. If an insurer provides dental care coverage to a covered person, it must honor that written assignment for payments due under the policy to a dentist or a dental corporation for services covered under the insurance policy. Upon notice of the assignment, the insurer would have to make payments directly to the provider of the covered services.

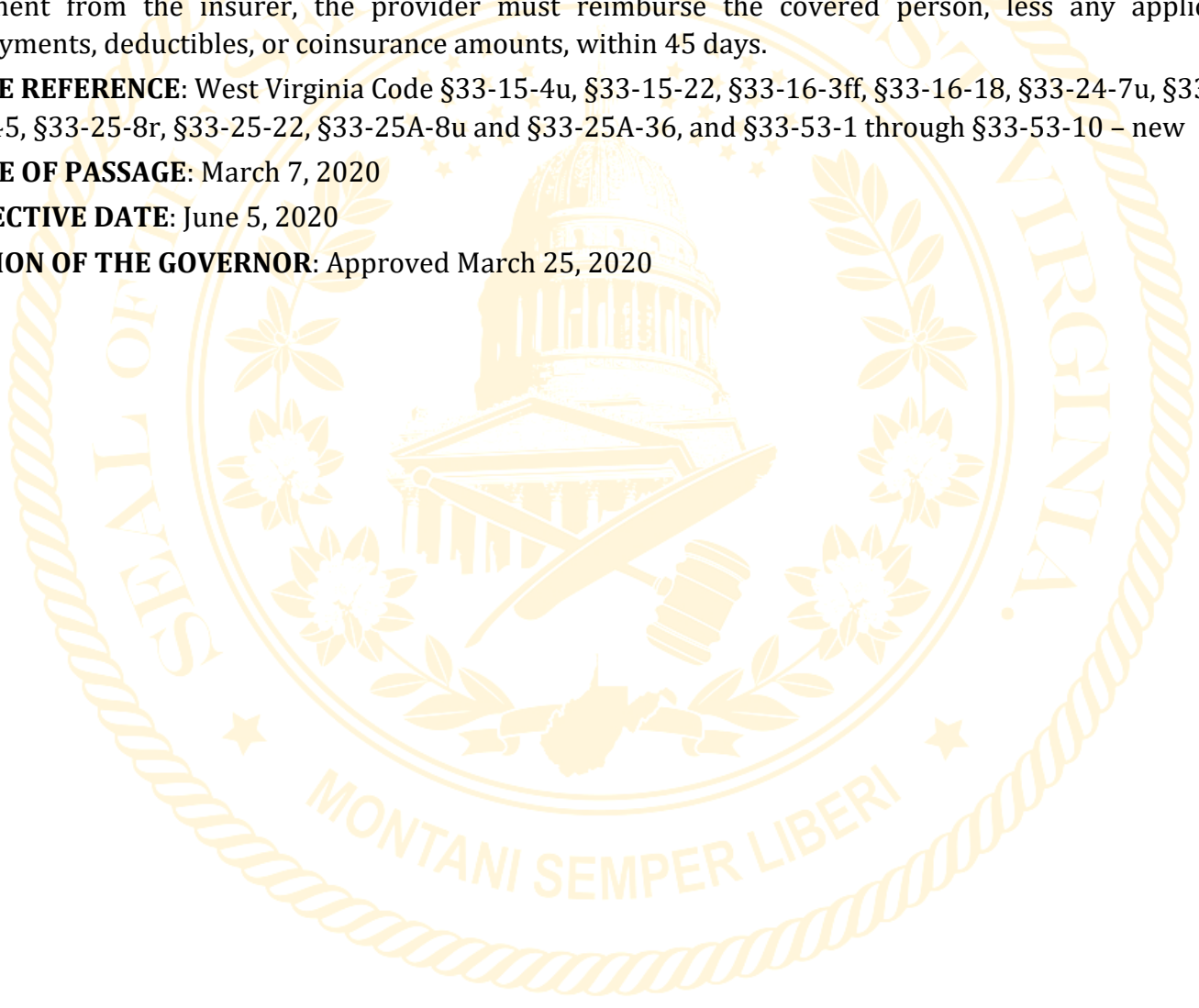
A provider with a valid assignment may bill and notify the insurer of the assignment. Upon request of the insurer, the provider must provide a copy of the assignment to the insurer. The bill also provides that if, under an assignment, a provider collects payment from a covered person and subsequently receives payment from the insurer, the provider must reimburse the covered person, less any applicable copayments, deductibles, or coinsurance amounts, within 45 days.

CODE REFERENCE: West Virginia Code §33-15-4u, §33-15-22, §33-16-3ff, §33-16-18, §33-24-7u, §33-24-45, §33-25-8r, §33-25-22, §33-25A-8u and §33-25A-36, and §33-53-1 through §33-53-10 – new

DATE OF PASSAGE: March 7, 2020

EFFECTIVE DATE: June 5, 2020

ACTION OF THE GOVERNOR: Approved March 25, 2020



House Bill 4088

Disposition of funds from certain oil and natural gas wells due to unlocatable interest owners.

This bill requires deposit of all unclaimed funds and proceeds due to an owner of real property interests to the Oil and Gas Reclamation Fund, if the owner's name or location is unknown and the owner does not make a claim for those funds for seven years after the date of the court order authorizing the distribution of the funds. The Oil and Gas Reclamation Fund is used to plug abandoned oil and gas wells and address associated environmental concerns throughout the state.

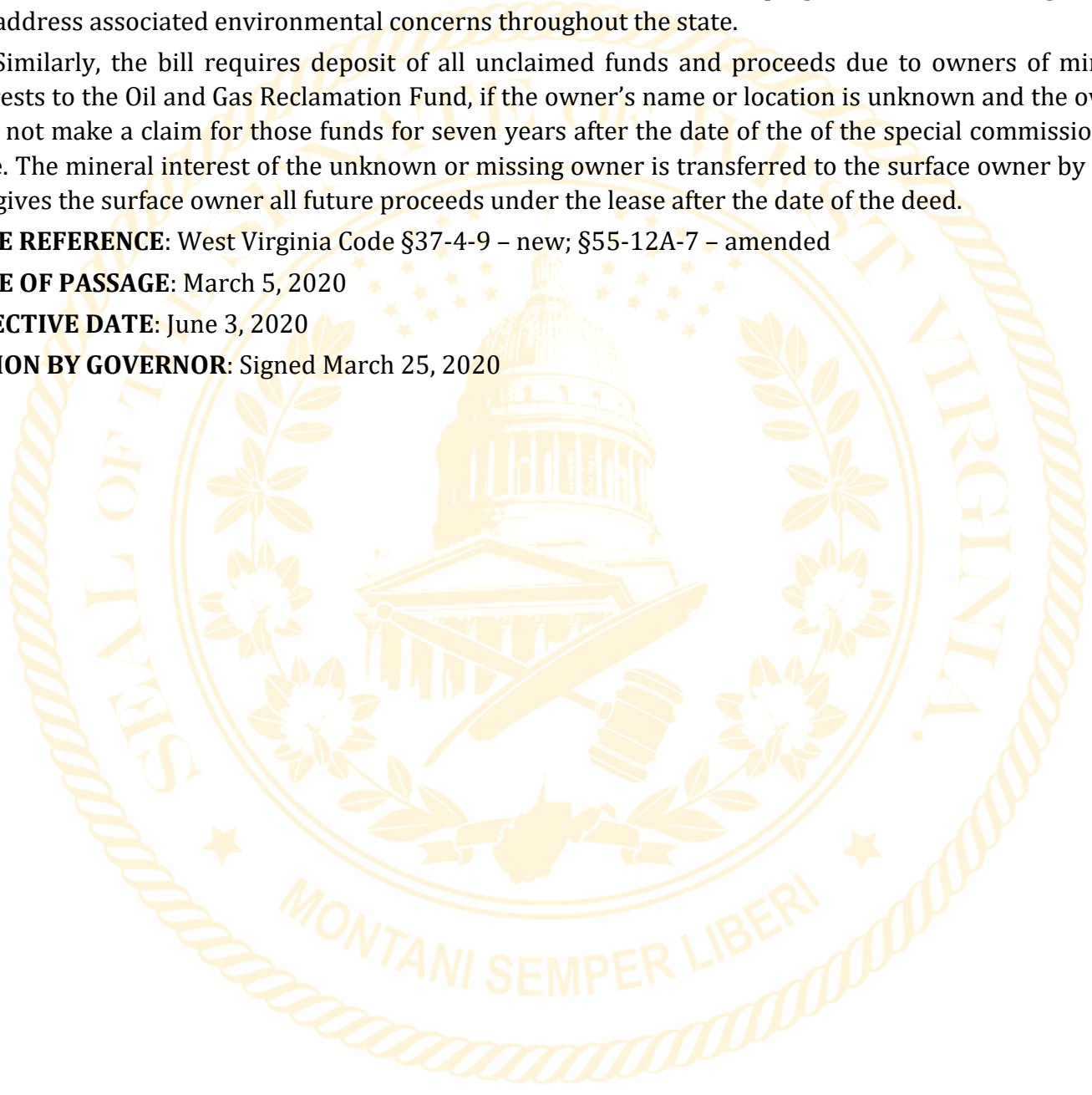
Similarly, the bill requires deposit of all unclaimed funds and proceeds due to owners of mineral interests to the Oil and Gas Reclamation Fund, if the owner's name or location is unknown and the owner does not make a claim for those funds for seven years after the date of the of the special commissioner's lease. The mineral interest of the unknown or missing owner is transferred to the surface owner by deed and gives the surface owner all future proceeds under the lease after the date of the deed.

CODE REFERENCE: West Virginia Code §37-4-9 – new; §55-12A-7 – amended

DATE OF PASSAGE: March 5, 2020

EFFECTIVE DATE: June 3, 2020

ACTION BY GOVERNOR: Signed March 25, 2020



House Bill 4090

Creating the Oil and Gas Abandoned Well Plugging Fund

This bill attempts to accomplish two goals. It reduces the severance tax on oil and gas produced from low-producing wells to reduce costs of production. The lower costs will help ensure the wells are kept in service longer. The bill then uses the reduced amount of taxes to plug and reclaim orphaned oil and gas wells that are polluting the environment.

Except for horizontal wells targeting shale formations, the bill reduces the 5% severance tax to 2.5% for wells producing natural gas at average levels between 5,000 cubic feet and 60,000 cubic feet of natural gas per day. The statutory exemption for all wells producing less than 5,000 cubic feet or less of natural gas per day remains unchanged. Except for horizontal wells targeting shale formations, the bill also reduces the 5% severance tax to 2.5% on oil production by wells at average levels between ½ barrel and 10 barrels of oil per day. The current exemption for all wells producing less than ½ barrel per day remains unchanged.

This bill also strikes the expired subsection (d) from this section of code and creates a new subsection (d) outlining the method by which the taxpayer determines the average amount of production.

This bill also creates a new fund into which the tax proceeds from the reduced 2.5% severance tax is paid. This fund is called the Oil and Gas Abandoned Well Plugging Fund, and it is administered by the DEP to be used only to plug orphaned oil and natural gas wells. The bill further specifies that these funds in the Oil and Gas Abandoned Well Plugging Fund cannot be transferred to general revenue and may only be used to plug orphaned wells.

The bill places a cap on the balance of the new fund at \$6 million. If the balance ever exceeds that amount on June 1 of any year, the 2.5% tax is reduced to 0% for the following year or until the balance is reduced to below 6 million on a later June 1 date. The initial date by which the fund must be less than 6 million is June 1, 2023.

The bill further requires the DEP to report to the governor and legislature every year regarding the balances in two well plugging funds, the number of wells that were plugged in the previous year, and a 5-year plan to plug additional wells.

CODE REFERENCE: West Virginia Code §11-13-3a – amended; §22-6-29a – new

DATE OF PASSAGE: March 3, 2020

EFFECTIVE DATE: Tax periods after January 1, 2020

ACTION BY GOVERNOR: Signed March 23, 2020

House Bill 4091

Allowing for expedited oil and gas well permitting upon payment of applicable expedited fees

This bill has been prepared to encourage the development of a faster oil and gas well permitting process for horizontal wells. This bill creates three new subsections to allow for an expedited oil and gas well permit application process which will cost the applicant special expedited fees. This process will only apply to shallow horizontal wells.

The current permitting fee is \$10,000 for an initial horizontal well drilled at a location and \$5,000 more for each additional leg drilled at the same location. In the bill, the additional expedited permitting fee will be \$20,000 for the initial horizontal well drilled at a location and \$10,000 more for each additional horizontal well drilled at the same location. The expedited permit modification fee is set at \$5,000 under the bill. A modification application currently has no fees.

The secretary must issue expedited permits within 45 days of the submission of a permit application, unless additional information is required, or the application is denied. The time requirement is extended if the DEP must ask for additional information. The DEP must refund to the applicant a daily pro-rated amount of the expedited permit fees for each day the permit is not approved after the 45th day through the 60th day which is the day when the fee is reduced to the normal permit fee amount. No refunds are due below the normal fee amount. The prorated amount is \$1333.33 per day.

With regard to permit modifications the procedures are the same, but the DEP must issue the expedited permit modifications within 20 days of the submission of a permit modification application. A similar prorated refund will be due for each day after 20 days and before the 30th day. The prorated amount is \$500 per day. Again the 30th day is when the fee is reduced to the normal permit fee of zero.

The bill provides that one half of the additional fees will be used for the DEP to process the applications, but not to exceed \$1,000,000 annually. The remaining one half of the expedited fees and all residuary above the \$1,000,000 cap is used for the reclamation and plugging of orphaned oil or gas wells.

CODE REFERENCE: West Virginia Code §22-6A-7 – amended

DATE OF PASSAGE: February 5, 2020

EFFECTIVE DATE: May 5, 2020

ACTION BY GOVERNOR: Signed February 17, 2020

House Bill 4108

Relating generally to certificates of need for health care services

The purpose of this bill is to exempt certain healthcare services from review from the West Virginia Health Care Authority. The bill eliminates a process which required the authority to review, if a health care service met the exemption criteria established in the statute. The entity is required to report performing the health care service to the Health Care Authority. This will permit the authority to track health services developed under these exemptions.

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

DATE OF PASSAGE: March 6, 2020

EFFECTIVE DATE: June 4, 2020

ACTION BY GOVERNOR: Signed March 24, 2020

House Bill 4146

Relating to credit for reinsurance

This bill amends W.Va. Code §33-4-15a relating to credit for reinsurance. This is an agency bill that is needed for the WV Offices of the Insurance Commissioner (OIC) to remain accredited. This bill adds language to our credit for reinsurance code from the National Association of Insurance Commissioners (NAIC) Model, Credit for Reinsurance Model Law (Summer 2019), Model No. 785. The language being added expands the group of assuming insurers to which reinsurance may be ceded. The bill requires that assuming insurers have their head office or be domiciled in a reciprocal jurisdiction. The bill defines “reciprocal jurisdiction.” The bill specifies assuming insurers’ minimum capital and surplus requirements and minimum solvency or capital ratios. The bill requires assuming insurers to inform the Insurance Commissioner if such minimum requirements are no longer met. Assuming insurers would have to consent to the jurisdiction of courts in West Virginia, agree to the OIC as agent for service of process, and would be bound to pay any final judgments. The bill sets forth other requirements, such as to provide documentation to the OIC as requested. In addition to the NAIC publishing a list of reciprocal jurisdictions, the OIC would be required to publish such a list. The bill provides when the OIC may add or subtract a jurisdiction from the list. The OIC would also be required to publish a list of assuming insurers that have met all requirements. If an assuming insurer’s eligibility is suspended, a reinsurance agreement with it would not qualify for credit. If an assuming insurer’s eligibility is revoked, no reinsurance credit is granted.

CODE REFERENCE: West Virginia Code §33-4-15a – amended

DATE OF PASSAGE: March 4, 2020

EFFECTIVE DATE: June 2, 2020

ACTION BY GOVERNOR: Signed March 25, 2020

House Bill 4149

Relating to insurance

This bill as amended, amends W.Va. Code §33-4-2. This article of the insurance code covers general insurance requirements. The section being amended lists the types of insurance that are specifically excluded from the provisions of the insurance code, Chapter 33. The section already specifies that warranties, service contracts, maintenance agreements, and certain entities are not subject to the insurance code.

The bill clarifies the definitions of “service contract” and “warranty” and adds definitions in connection with such terms. The bill amends the existing statutory definition of service contract to expressly include the following, which would now expressly state they are being exempted from the statutory requirements in Chapter 33:

- Repair or replacement of tires damaged by road hazards;
- Removal of dents repairable by paintless dent removal;
- The repair of chips or cracks in, or the replacement of, motor vehicle windshields as a result of damage caused by road hazards;
- Replacement of motor vehicle key-fob if the same becomes inoperable or is lost or stolen; and
- Coverage for excess wear and use of or damage to a leased vehicle.

This bill amends the definition of warranty to state that it includes a vehicle theft protection program warranty. The bill defines “vehicle protection product warranty,” “vehicle protection product,” “incidental costs,” and “road hazard.”

CODE REFERENCE: West Virginia Code §33-4-2 – amended

DATE OF PASSAGE: February 27, 2020

EFFECTIVE DATE: May 27, 2020

ACTION BY GOVERNOR: Signed March 7, 2020

House Bill 4159

Relating to the manufacture and sale of hard cider

This bill attempts to help create jobs in West Virginia in hard cider manufacturing and agriculture. The bill establishes an Agriculture Development Fund, and a fund for Cider Development, to be funded by such appropriation as the Legislature shall designate.

Next, the bill redefines hard cider as a subcategory of wine made from fruit or fruit juice that contains carbonation and measures between $\frac{1}{2}$ of 1 percent to $12\frac{1}{2}$ percent alcohol by volume, and includes certain cider makers as farm wineries. It also amends the definitions relating to the sale of wine for fortified wine, nonfortified dessert wine table wine, wine, and wine specialty shop to clarify that table wine alcohol by volume is up to 14%, nonfortified dessert wines may have an alcohol by volume between 14.1% and 17%, and fortified wine is wine which is up to 24% alcohol by volume.

The bill clarifies that wine may be sold by a wine specialty shop for off- premises consumption only, except where tasting and sampling have been authorized. It removes the bonding requirement for distributors and suppliers (and certain wineries or farm wineries acting in those capacities) and continues the penalties for a wine distributor or supplier who fails to pay taxes or maintain its good standing with the state and its agencies.

The bill transfers certain tax revenue from the sale of hard cider to Department of Agriculture to help grow the industry. Also, the bill lowers the current tax rate for cider that is currently the same as wine (98.6 cents per gallon) to a rate of 22.6 cents per gallon, which is closer to the tax rate of beer (17.74 cents per gallon).

The bill sets health and safety standards, operational guidelines, and packaging standards for cider manufacturers. It provides that an unlicensed winery, regardless of its designation in another state, but that is duly licensed in its domicile state, may pay a \$150 nonrefundable and nonprorated fee and submit an application for temporary licensure on a one-day basis for temporary sampling and sale of wine in sealed containers for off- premises consumption at a special one-day license nonprofit event.

Finally, the bill gives some rulemaking authority to ABCA to implement the bill's provisions.

CODE REFERENCE: West Virginia Code §60-1-5a, §60-8-2, §60-8-3, §60-8-4, §60-8-18, and §60-8-29 – amended; §19-2-12 and §19-2-13, §60-8A-1 through §60-8A-7 – new

DATE OF PASSAGE: March 7, 2020

EFFECTIVE DATE: June 5, 2020

ACTION BY GOVERNOR: Vetoed March 25, 2020

House Bill 4179

Enacting Recognition of Emergency Medical Services Personnel Licensure Interstate Compact

This bill enacts the Recognition of Emergency Medical Services Personnel Licensure Interstate Compact, entering West Virginia into the compact with all jurisdictions that have also enacted the compact. It states the purpose of the compact and defines terms, such as “member states,” “home states,” and “remote states.”

The bill permits member states to require a license under circumstances not covered by the compact, sets conditions for a home state’s license to authorize practice in a remote state under the compact, and requires member states to recognize licenses issued by another member state under certain circumstances. Among other things, the bill lists the requirements for individuals to exercise the privilege to practice, sets the scope of practice, and makes individuals practicing in remote states subject to the remote state’s laws.

The bill authorizes remote states to act against an individual’s privilege to practice within that state under certain circumstances; provides for the effect of license restrictions on compact privileges; and sets the conditions of practicing in a remote state under compact terms.

It defines the relationship of the compact to the Emergency Management Assistance Compact and sets terms and requirements for certification of veterans, certain service members, and their spouses. It codifies and recognizes the exclusive power of home states to take adverse action against a license issued by the home state and provides consequences for compact participation if an individual’s license is subject to adverse action by his or her home state.

The bill requires member states to report adverse actions against licenses, authorizes home states to take action against an individual’s privilege to practice within that state, requires a home state EMS authority to investigate and take appropriate action based on reported conduct in a remote state, authorizes alternative programs in lieu of adverse action, and authorizes a member state’s EMS authority to issue subpoenas and certain cease and desist orders.

It further establishes the Interstate Commission for EMS Personnel Practice and maintains state sovereign immunity. It provides for Commission membership and voting; requires public annual meetings; authorizes the Commission to prescribe bylaws and rules to govern conduct; and provides for financing for the Commission, by requiring an annual assessment against the state contingent upon funds being appropriated by the Legislature or otherwise being made available.

The bill directs state governments to enforce the compact and take necessary actions to effectuate its purposes and intent. It provides for legal venue in West Virginia and an implementation date for the compact, making any state joining after implementation subject to rules as they exist when the compact is adopted. Finally, it directs the Emergency Medical Services Advisory Council to review decisions of the Commission and authorizes the Emergency Medical Services Advisory Council to make recommendations to the Legislature regarding the compact.

CODE REFERENCE: West Virginia Code §16-56-1 through §16-56-15 – new

DATE OF PASSAGE: February 17, 2020

EFFECTIVE DATE: May 17, 2020

ACTION BY GOVERNOR: Signed March 5, 2020

House Bill 4352

Removing the use of post-criminal conduct in professional and occupational initial licensure or certification in decision making

This bill removes barriers to employment for individuals with criminal records who seek licensure or certification in an occupation regulated by the Fire Marshal and reduces the number of hours of necessary experience to qualify as a journeyman sprinkler fitter.

CODE REFERENCE: West Virginia Code §29-3B-4, §29-3B-7, §29-3C-4, §29-3D-2, and §29-3D-6 – amended

DATE OF PASSAGE: March 3, 2020

EFFECTIVE DATE: June 1, 2020

ACTION BY GOVERNOR: Approved March 25, 2020

House Bill 4353

Creating a rational nexus requirement between prior criminal conduct and initial licensure decision making

The purpose of this bill is to remove barriers to employment for individuals with criminal records who seek licensure or certification in an occupation governed by state laws, with certain exceptions.

CODE REFERENCE: West Virginia Code §17A-6-6, §19-23-8, §21-2-9, §21-5-5c, §21-14-6, §21-16-7, §29-22-8, §29-22A-7, §29-22B-502, §29-22C-15, §29-22C-16, §29-22D-10, §29-25-13, §31-17A-5, §32A-2-8, §33-13C-3, §33-13C-4 – amended; §21-1-6 – new

DATE OF PASSAGE: February 19, 2020

EFFECTIVE DATE: May 19, 2020

ACTION BY GOVERNOR: Signed March 5, 2020

House Bill 4359

Modifying the filing fees for insurers

This bill amends West Virginia Code §33-6-34 concerning the fee for form, rate, and rule filings for insurance policies. The bill streamlines the filing fee and defines the word “filing.”

Under existing law, a fee of \$50 applies for every form filing, and a fee of \$75 applies to every rate or rule filing. The bill replaces such fees with a \$100 filing fee that would apply for each filing for each insurer irrespective of the number of forms, rules, or rates included within or affected by the filing. The bill also clarifies existing language and deletes obsolete language.

This is a WV Offices of the Insurance Commissioner (OIC) agency bill. The proposed amendments contain technical changes approved by OIC’s counsel.

The purpose of this bill is to have a flat filing fee of \$100 apply to company filings, regardless of whether the company only files one rate, rule, or form, or files multiple forms together at one time. OIC intentionally set the fee at \$100 to be revenue neutral. If this bill passes and a company only files one thing (a rate, rule, or form), then the fee would increase from the current \$50 or \$75 (depending on the type of filing) to the new \$100 flat fee. However, if the company were to file multiple things, then the fee would stay the same or decrease.

Per OIC, the way the filings are currently priced can be confusing to insurance companies, and it is often that companies submit too much money to the OIC’s Rates & Forms Divisions. Refunding the money is challenging, but even more challenging is when the company does not want a refund but wants the OIC to hold the money as a credit against a future filing. OIC indicates that eliminating the different fees for the differently filings, and instituting a flat filing fee, will improve OIC efficiency and also encourage the insurance companies to be more accurate and efficient by grouping filings together. Fees are deposited into a special revenue funds that the OIC uses to fund operations; these fees do not go to general revenue, but to the OIC’s operating fund.

CODE REFERENCE: West Virginia Code §33-6-34 – amended

DATE OF PASSAGE: February 27, 2020

EFFECTIVE DATE: July 1, 2020

ACTION BY GOVERNOR: Signed March 7, 2020

House Bill 4361

Relating to insurance law violations

This bill amends the Insurance Fraud Prevention Act. It defines a “fraudulent insurance act,” which includes numerous acts or omissions, when committed knowingly and with intent to defraud.

The bill allows the Insurance Commissioner to accept proceeds from court ordered forfeiture proceedings which are to be deposited in a new special revenue fund, known as the Insurance Fraud Prevention Fund, which is subject to legislative appropriation. Mandatory reporting requirements are expanded to provide that any person with knowledge of insurance fraud may provide information requested by the Commissioner. It also is amended to require a person engaged in the business of insurance to report suspected insurance law violations to the Commissioner.

Under this bill, persons designated by the Commissioner that are trained and certified as law enforcement officers may execute search and arrest warrants and make arrests upon probable cause without a warrant for criminal violations of insurance law, if those persons meet the requirements of and are certified under W. Va. Code §30-29-5. It also allows the Insurance Fraud Unit to investigate and participate in the prosecution of workers’ compensation fraud.

This bill creates the criminal offenses of committing a fraudulent insurance act and interfering with the enforcement of the Act or investigations of violations. It prohibits persons convicted of a felony involving dishonesty or breach of trust related to the business of insurance from participating in the business of insurance and prohibits persons in the business of insurance from permitting such convicted felons from participating in the business of insurance. It also now requires insurers to have antifraud initiatives calculated to detect, prosecute, and prevent fraudulent insurance acts.

Finally, this bill provides for criminal penalties for violations of W. Va. Code §33-41-11. Persons convicted of an offense where the benefit sought is \$1,000 or more are guilty of a felony and can be imprisoned for one to 10 years, fined not more than \$10,000, or both fined and imprisoned. Persons convicted of an offense where the benefit sought is less than \$1,000 are guilty of a misdemeanor and can be confined for not more than one year, fined not more than \$2,500, or both confined and fined.

CODE REFERENCE: West Virginia Code §33-41-2, §33-41-5, §33-41-8, §33-41-11, and §33-41-12 – amended; §33-41-4a and §33-41-11a – new

DATE OF PASSAGE: March 7, 2020

EFFECTIVE DATE: June 5, 2020

ACTION BY GOVERNOR: Signed March 25, 2020

House Bill 4375

Speech-Language Pathologists and Audiologists Compact

This bill enters the state of West Virginia into the Audiology and Speech-Language Pathology Compact and facilitates interstate practice of audiology and speech-language pathology services.

The bill contains provisions for the following:

- Definitions;
- State participation in the compact;
- Establishing the privilege to practice in member states;
- Procedures relating to licensing for active duty military personnel and their spouses;
- Procedures relating to adverse actions;
- Establishing the Audiology and Speech-Language Pathology Compact Commission;
- A data system available for use among the member states;
- Rule-making authority of the Commission;
- Oversight, dispute resolution, and enforcement provisions of the Commission among the member states;
- Date of implementation among the member states;
- Applicability of the existing rules at the time a new member state joins the Commission;
- Withdrawal of any member states and conditions that must be met until withdrawal is effective;
- A six-month period before withdrawal is effective;
- Construction and severability of the provisions of the Compact; and
- A binding effect of the laws and rules of the Compact among the member states.

CODE REFERENCE: West Virginia Code §30-32A-1 through §30-32A-14 – new

DATE OF PASSAGE: March 7, 2020

EFFECTIVE DATE: June 5, 2020

ACTION BY GOVERNOR: Signed March 25, 2020

House Bill 4411

Relating to the West Virginia Residential Mortgage Lender, Broker and Servicer Act

This bill amends the state code by adding new language to Article 17, “WV Residential Mortgage Lender, Broker, and Server Act,” section 8, “Minimum interest rates of subordinate loans; payment rebate; maximum points, fees, and charges; overriding of federal limitations; limitations on lien documents; prohibitions on primary and subordinate loans; civil remedy”, all relating to adjusting the final amount of a final mortgage installment payment.

This bill allows the final payment installment of a mortgage to exceed by a de minimis amount not to exceed five dollars more than any previous mortgage installment payment.

CODE REFERENCE: West Virginia Code §31-17-8 – amended

DATE OF PASSAGE: February 27, 2020

EFFECTIVE DATE: May 27

ACTION BY GOVERNOR: Signed March 25, 2020

House Bill 4421

Natural Gas Liquids Economic Development Act

The purpose of this bill is to encourage the development, transportation, and use of natural gas liquids for the economic benefit of this state by providing certain tax credits related to the transportation and storage of natural gas liquids.

The bill has two components. It creates both the Natural Gas Liquids Economic Development Act and the West Virginia Natural Gas Liquids Property Tax Adjustment Act.

The Natural Gas Liquids Economic Development Act contains legislative findings for the purposes of the bill. It also finds that the West Virginia Economic Development Authority and the West Virginia Infrastructure and Jobs Development Council should assist and grow the natural gas liquids segment of the economy.

The West Virginia Natural Gas Liquids Property Tax Adjustment Act creates a tax credit for eligible taxpayers to be used against personal income taxes and corporate net income taxes. (Being §11-21-1 et seq. and §11-24-1 et seq. respectively.)

The amount of tax credit allowed to the eligible taxpayer is defined as the amount of West Virginia ad valorem property tax paid on the value of inventory and equipment of the eligible taxpayer during the applicable tax year.

An eligible taxpayer is defined as those who produce, store, use, or transport NGLs and who are subject to the personal income tax or the corporate net income tax.

The credit is to be applied under the personal income tax or corporate net income tax. Any credit remaining after application against these types of tax liabilities for the current taxable year is carried forward to a subsequent taxable year for up to three taxable years. These credits may not be used against any prior taxable year.

This tax credit is stackable in that, under the bill, the credits will be allowed even after application of all other applicable tax credits for these types of taxes.

The taxpayer must file an annual schedule showing the amount of tax paid for the taxable year and the amount of credit allowed under the article. The annual schedule shall be set forth in the form and contain all information prescribed by the Tax Commissioner.

Under certain conditions the tax credit is transferable to successor taxpayers and is apportioned between transferrer and successors for the year of the transfer. The tax credit also survives buyouts and mergers of entitled taxpayers. The credit itself is not alone transferable, only the rights to the credit may be transferred with the taxpayer or its assets.

If a taxpayer takes a credit against a tax under this article who was not entitled to the credit, the taxpayer must file amended returns and the improper credit will be recaptured. Moreover, all additional taxes must be paid with interest and applicable penalties paid as provided in §11-10-17 and other penalties and additions to tax as may be applicable as provided in §11-10-1 et seq. However, penalties and additional taxes may be waived at the discretion of the Tax Commissioner, but interest is not subject to waiver.

The bill creates a 5-year statute of limitations for the issuance of an assessment of tax by the Tax Commissioner from the date of filing of any tax return on which this credit was taken or from the date of payment, whichever is later.

The bill provides a sunset date of July 1, 2030. Credits will no longer be available for taxable years beginning after that date, and any remaining unused credits are forfeited.

The bill requires the Tax Commissioner to provide reports to the Joint Committee on Government and Finance detailing the amount of credits claimed for each type of taxes.

Taxpayers claiming the credit are required to provide any information the Tax Commissioner may require for the report, provided the information is subject to the confidentiality and disclosure provisions of §11-10-5d and §11-10-5s.

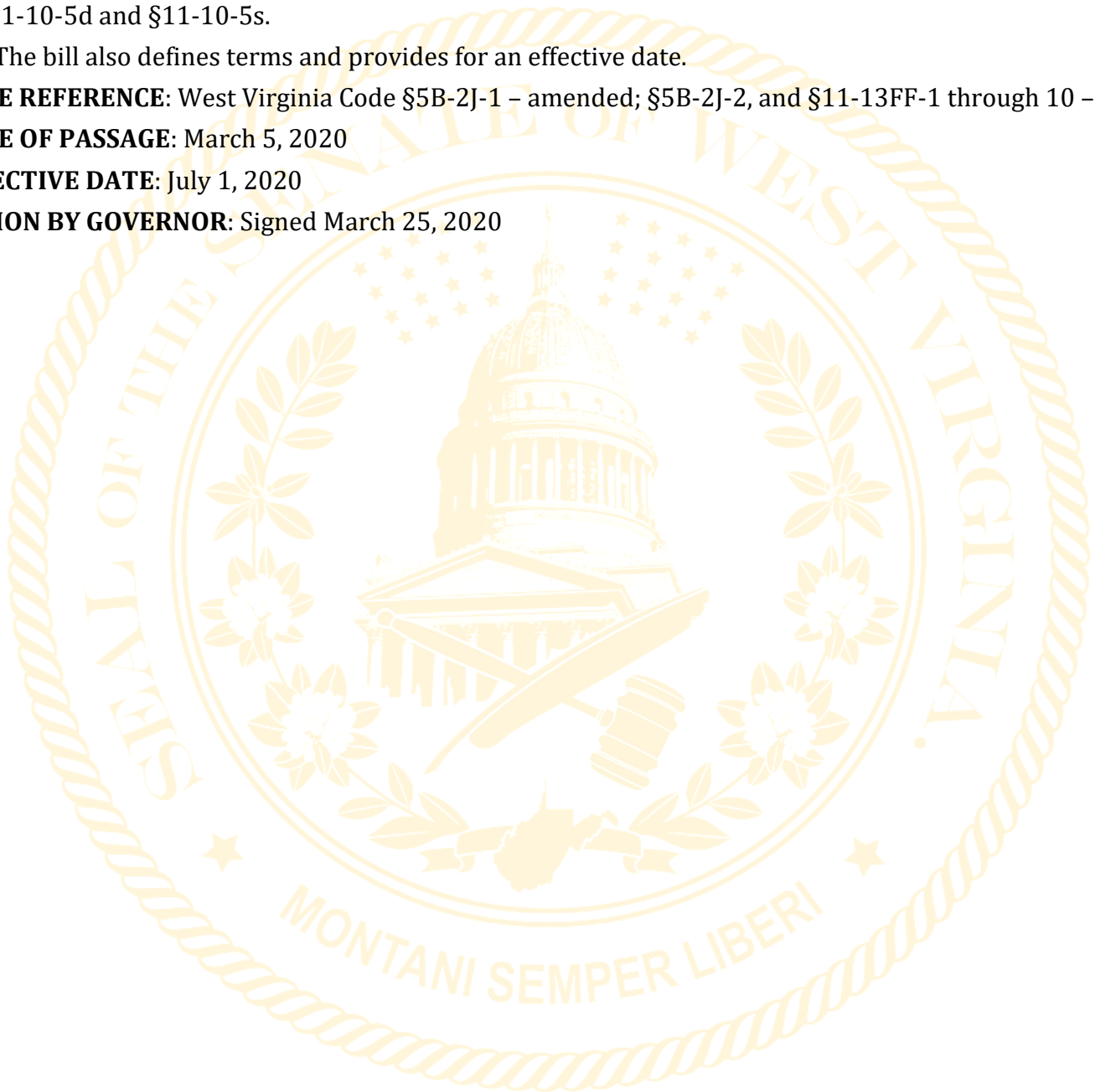
The bill also defines terms and provides for an effective date.

CODE REFERENCE: West Virginia Code §5B-2J-1 – amended; §5B-2J-2, and §11-13FF-1 through 10 – new

DATE OF PASSAGE: March 5, 2020

EFFECTIVE DATE: July 1, 2020

ACTION BY GOVERNOR: Signed March 25, 2020



House Bill 4422

The Patient Brokering Act

Patient brokering involves trading patients for money or other incentives. Patient brokers, (patient marketers), actively recruit patients and direct them to treatment facilities in exchange for a fee or some type of compensation.

The purpose of this bill is to prohibit patient brokering. The bill defines terms, prohibits causing or participating in acts that are intended to derive any benefit or profit from referral of a patient to a healthcare provider or health care facility, prohibits brokering related to a recovery residence, establishes criminal penalties for persons and business entities engaged in unlawful patient brokering, and provides exceptions.

It is unlawful for a person, health-care provider or facility to:

- induce the referral of a patient or patronage to or from a health care provider or health care facility with an offer;
- refer a patient or patronage to or from a health care provider or health care facility;
- solicit/receive in return for the acceptance or acknowledgment of treatment from a health care provider or health care facility; or,
- Aid, abet, advise, or otherwise participate in the conduct prohibited under this subsection. Violation is a felony with concomitant and progressively severe penalties. Several exceptions are identified.

CODE REFERENCE: West Virginia Code §16-59-1, §16-59-2, and §16-59-3 – new

DATE OF PASSAGE: March 7, 2020

EFFECTIVE DATE: June 5, 2020

ACTION BY GOVERNOR: Signed March 25, 2020

House Bill 4439

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

The purpose of House Bill 4439 is to establish the Coal Severance Tax Rebate. The bill sets out legislative findings and defines necessary terminology.

This rebate would be allowed for capital investments in new machinery and equipment directly used in severing coal for sale, profit or commercial use and coal preparation and processing facilities placed in service or use on or after the effective date of this article.

Any new company would have to be engaged in coal production for a period of two years prior to possibly qualifying for this investment tax credit. Any unused tax credit for any single year of investment would be carried forward for a period not to exceed ten years. There is also a provision for suspension if the taxpayer is delinquent in the payment of severance taxes.

Finally, there is a required report from the Tax Commissioner to the Joint Committee on Government and Finance by July 1, 2022 and on the first of July every year thereafter. There are also provisions regarding construction of the statute, severability and rulemaking for the Tax Commissioner.

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

DATE OF PASSAGE: March 7, 2020

EFFECTIVE DATE: June 5, 2020

ACTION BY GOVERNOR: Signed March 25, 2020

House Bill 4452

Modifying the notice requirements for the redemption of delinquent properties

This bill provides for purchasers of tax liens to receive a 30-day extension to comply with statutory notice requirements and permits the State Auditor to serve notice by types of delivery other than certified mail.

The bill gives a purchaser of such property an additional 30 days to comply with notice procedures after making a written request to the State Auditor and payment of either \$100 or 10 percent of the sale price of the property, whichever is greater. Extension fees are paid by the Auditor to the board of education for the county where the property is located.

Manner of service is also revised. Individuals outside the state are to be served by certified mail, return receipt requested. If an individual's address cannot be found despite due diligence on the part of the purchaser, service may be made by publication. A copy of the published notice is also to be sent to the last known address of the person to be served. Individuals who reside in the state are to be served in the manner used to commence a civil action, or by delivery courier service that provides a receipt.

CODE REFERENCE: West Virginia Code §11A-3-18, §11A-3-22, §11A-3-52, and §11A-3-55 – amended

DATE OF PASSAGE: March 7, 2020

EFFECTIVE DATE: June 5, 2020

ACTION BY GOVERNOR: Signed March 25, 2020

House Bill 4466

Certificates of Insurance Act

This bill amends the Code of West Virginia by adding a new article, §33-53-1 through §33-53-7 to give the Insurance Commissioner authority over certain certificates of insurance for certain types of insurance; and addressing form requirements, limitations on use, notice requirements, applicability, enforcement, penalties and rulemaking. Specifically, this bill adds definitions for “certificate of insurance”, “insurance producer”, “insurer” and “person”. The bill prohibits misleading and deceptive certificates of insurance and makes clear that a certificate of insurance is not an insurance policy.

Under the bill, persons are prohibited from preparing and issuing false or misleading certificates concerning the underlying insurance, or from making a certificate purport to extend the policy coverage described in the certificate. The bill also establishes that a certificate of insurance does not warrant that the insurance policy comports to contractual requirements for insurance or indemnification. The bill also establishes that any notice a person is entitled to is limited to such notice rights as set forth in the policy itself and these may not be altered by the certificate. The bill applies to all certificates of insurance related to property, operations, or risks located in this state, regardless of where the policyholder, insurer, insurance producer, or person requesting or requiring the issuance of a certificate of insurance is located. Any certificate issued that is not in compliance with the bill’s requirements will be void. The insurance commissioner is charged with examining and investigating persons reasonably believed to be engaging in practices prohibited by the bill. The commissioner can enforce the provisions by cease and desist orders and by civil penalties of up to \$1,000. The commissioner may propose rules to implement the provisions of the bill.

CODE REFERENCE: West Virginia Code §33-53-1, §33-53-2, §33-53-3, §33-53-4, §33-53-5, §33-53-6 and §33-53-7 – new

DATE OF PASSAGE: March 4, 2020

EFFECTIVE DATE: July 1, 2020

ACTION BY GOVERNOR: Signed March 25, 2020

House Bill 4474

Relating to peer-to-peer car sharing programs

This bill governs peer-to-peer car sharing programs. The bill imposes insurance requirements on the parties and provides for certain exceptions to these requirements.

Peer to peer car sharing programs must notify a vehicle owner of the implications of a lien on a peer to peer agreement. The program must obtain an insurable interest in a shared vehicle during the car sharing period. Programs must maintain certain records and complete driver's license verification. The program is responsible for the equipment installed in or on the vehicle to facilitate a car sharing transaction. The bill also provides registration, notification, and benchmarks for safety for automobiles used in peer-to-peer car sharing programs. Programs are responsible for collecting and paying applicable state and local taxes.

Peer-to-peer car sharing programs and the shared vehicle owners are exempt from vicarious liability. The bill authorizes a motor vehicle insurer of the shared vehicle to seek contribution against the motor vehicle insurer of the peer-to-peer car sharing program in certain circumstances. The bill provides consumer protections to shared vehicle owners, in the form of minimum disclosures.

The bill gives airports the authority to regulate peer-to-peer car sharing activity at airports.

CODE REFERENCE: West Virginia Code §17A-6F-1 through §17A-6F-15 – new

DATE OF PASSAGE: March 7, 2020

EFFECTIVE DATE: June 5, 2020

ACTION BY GOVERNOR: Signed March 25, 2020

House Bill 4477

West Virginia Mutual to Mutual Insurance Holding Company Act

This bill creates the West Virginia Mutual to Mutual Insurance Holding Company Act, which prescribes a method whereby a mutual insurance company may reorganize its business and create a multi-level insurance holding company system. In a reorganization, two new entities would be created:

- A mutual insurance holding company, a non-stock corporate entity, which is the holding company system parent; and
- An intermediate stock holding company, which is a subsidiary of the mutual holding company.

The original mutual insurance company is then converted into a stock insurance company, which is controlled by its new shareholder, the intermediate stock holding company. At all times, at least 51% or more of the ownership rights of the stock holding company must be held by the mutual holding company.

The policy holder's rights in the original mutual insurance company are converted into membership rights in the larger and more diversified mutual insurance holding company. The policy holder's contractual rights do not change as the converted stock company remains responsible for the payment of claims.

The bill contains the following provisions:

- §33-27A-3:
 - A reorganization plan may only be adopted by the affirmative vote of not less than two-thirds of the mutual insurance company's Board of Directors;
 - The reorganization plan shall provide for the incorporation of a mutual insurance holding company and shall also provide for the continuation of the corporate existence of the original mutual insurance company as a stock insurance company;
 - The reorganization plan shall provide that the membership interests of the policy holders of the original mutual insurance company shall become membership interests in the mutual insurance holding company;
 - The reorganization plan shall provide that the mutual insurance holding company shall at all times own a majority of the stock of the reorganized stock company; and
 - On approval of the reorganization plan, notice must be given to the Insurance Commissioner's office within 90 days.
- §33-27A-4:
 - The reorganization plan adopted by the mutual insurance company's board of directors, shall be voted on by the mutual insurance company's policy holders at a policy holder's meeting;
 - The reorganization plan must be approved by affirmative vote of at least a majority of the votes that are cast by policy holders; and
 - The Insurance Commissioner may conduct one or more public hearings on the reorganization plan.
- §33-27A-5:
 - The mutual insurance company cannot proceed with the reorganization plan until it has been reviewed and approved by the Insurance Commissioner; and
 - The Insurance Commission may only approve a reorganization plan if the plan complies with the provisions of this article, all documents were properly filed, and the Insurance

Commissioner determines that the reorganization plan is fair and equitable to the mutual insurance company's policy holders.

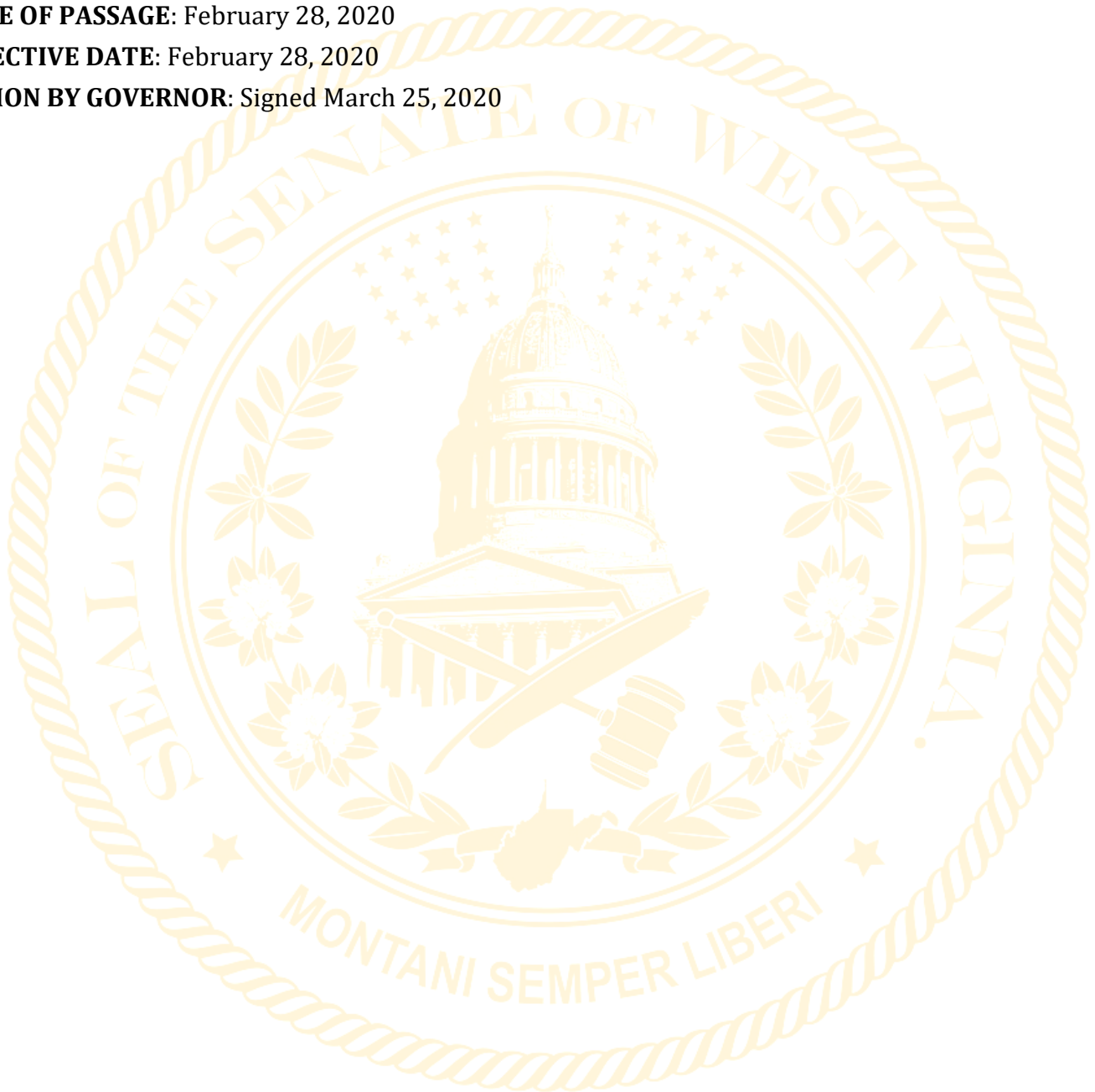
- §33-27A-14:
 - The West Virginia Insurance Commissioner may adopt rules necessary to carry out the purposes of the new article.

CODE REFERENCE: West Virginia Code §33-27A-1 through §33-27A-14 – new

DATE OF PASSAGE: February 28, 2020

EFFECTIVE DATE: February 28, 2020

ACTION BY GOVERNOR: Signed March 25, 2020



House Bill 4478

Creating a lifetime ban for commercial drivers involved in human trafficking.

This bill will bring the state of West Virginia into compliance with Federal Motor Carrier Safety Administration regulations, by providing that:

- An individual who uses a commercial motor vehicle in committing a felony involving manufacturing, distributing, or dispensing a controlled substance, or possession with intent to manufacture, distribute, or dispense a controlled substance shall be disqualified from operating a commercial motor vehicle for life and is not eligible for reinstatement.
- An individual who uses a commercial motor vehicle in committing a felony involving an act or practice described in paragraph (9) of section 103 of the Trafficking Victims Protection Act of 2000 (22 U.S.C. 7102(9)) shall be disqualified from operating a commercial motor vehicle for life and is not eligible for reinstatement.

CODE REFERENCE: West Virginia Code §17E-1-13 – amended

DATE OF PASSAGE: March 5, 2020

EFFECTIVE DATE: June 3, 2020

ACTION BY GOVERNOR: Signed March 25, 2020

House Bill 4484

Relating to the Hazardous Waste Management Fund

The Hazardous Waste Management Act creates the Hazardous Waste Management Fund which is used to regulate and manage hazardous waste use and storage in this state. The act creates an annual certification fee for facilities that manage hazardous waste. The fees generated by the act are matched by federal grants which support the hazardous waste management program.

The fee and the fund will terminate on June 30, 2020. As a result, the state will lose the federal matching funds. The fees generate about \$700,000 in annual revenue which allows the state to receive about \$1,630,000 annually in matching funds.

The bill merely changes the date and extends the program through June 30, 2025. There are no other changes.

CODE REFERENCE: West Virginia Code §22-18-22 – amended

DATE OF PASSAGE: March 5, 2020

EFFECTIVE DATE: June 3, 2020

ACTION BY GOVERNOR: Approved March 25, 2020

House Bill 4502

Relating to insurance adjusters

The purpose of this bill is to update the requirements for insurance adjusters to become licensed, and maintain licensure, in this state.

The bill defines relevant terms including business entity, company adjuster, independent adjuster, and public adjuster; provides licensure requirements for company, independent, and public adjusters; provides exemptions from license requirements; permits temporary licensure for emergency company or independent adjusters; repeals current code addressing license exemptions; establishes qualifications for a resident adjuster license as well as related examination and exemption provisions; authorizes the Insurance Commissioner to conduct criminal history checks for prospective adjusters with related fee provisions; provides for adjuster lines of authority; establishes an annual fee for individual adjuster, business entity adjuster, and temporary emergency adjuster licenses with fees to be used in accordance with §33-3-13 (for operation of the Dept. of Insurance); allows the commissioner to verify adjuster license status through NAIC databases; establishes discretion in the commissioner to set adjuster license expiration dates; establishes violations of this article, including fraud, cheating, license suspension or revocation, unfair trade practices, and failure to comply with administrative or court orders, among others; repeals current code regarding emergency adjuster and insurance emergencies; authorizes the commissioner to promulgate related rules; and, requires adjusters to complete continuing education.

The Senate amended the bill to modify definitions, exemptions from licensing, temporary licensures for company or independent adjusters, qualifications for resident adjuster licenses including license examination requirements, criminal history checks, fees, license status verification processes for nonresident adjuster license, expiration of licenses, and provided the commissioner's rule making authority was discretionary.

CODE REFERENCE: West Virginia Code §33-12B-4a and §33-12B-11a – repealed; §33-12B-1 through §33-12B-11 and §33-12B-13 – amended; §33-12B-15 – new

DATE OF PASSAGE: March 7, 2020

EFFECTIVE DATE: July 1, 2021

ACTION BY GOVERNOR: Signed March 25, 2020

House Bill 4543

Relating to insurance coverage for diabetics

The bill provides that cost sharing for a 30-day supply of a covered prescription insulin drug shall not exceed \$100 for a 30-day supply, regardless of the quantity or type of prescription insulin used to fill the covered person's prescription needs.

The bill states that no contract between an insurer or its pharmacy benefits manager or contracting manager shall contain a provision that authorizes the insurers the PBM or pharmacy to charge, requires the pharmacy to collect or requires the covered person to make a cost-sharing payment (co-insurance, deductible, copayment) for a covered prescription that exceeds the amount set forth in the section not to exceed one twelfth for a thirty day supply.

The bill mandates coverage for equipment and supplies for the treatment of diabetes for both insulin dependent and noninsulin dependent persons: blood glucose monitors, monitor supplies, insulin, injection aids, syringes, insulin infusion devices, pharmacological agents for controlling blood sugar and orthotics.

The bill mandates coverage for diabetes self-management to ensure that person with diabetes are educated for diabetes as to the proper self-management and treatment of their diabetes. The bill states that all health plans must offer an appeal process for persons who are not able to take one or more of the offered prescription insulin drugs noted in the bill.

The bill mandates coverage for diabetes self-management provided by a health care practitioner. There is a provision in the bill that provides a pharmacy benefits manager, a health plan, or any other third party shall not reimburse a pharmacy at a lower rate and shall not assess any charge back or adjustment upon a pharmacy on the basis that a covered person's cost sharing is being impacted.

CODE REFERENCE: West Virginia Code §33-15C-1 and §33-16-16 – repeal; §5A-16-7 and §33-53-1 – new

DATE OF PASSAGE: March 7, 2020

EFFECTIVE DATE: March 7, 2020

ACTION BY GOVERNOR: Signed March 25, 2020

House Bill 4560

Relating to deliveries by a licensed wine specialty shop

This bill eliminates the requirement that orders of gift baskets containing wine, from wine specialty shops, be done by face-to-face transaction. The bill allows online, telephonic, and electronic orders of gift baskets containing wine from wine specialty shops.

CODE REFERENCE: West Virginia Code §60-8-6b – amended

DATE OF PASSAGE: March 7, 2020

EFFECTIVE DATE: June 5, 2020

ACTION BY GOVERNOR: Signed March 25, 2020

House Bill 4573

Relating to Medicaid subrogation liens of the Department of Health and Human Resources.

The purpose of this bill is to harmonize Medicaid subrogation law with recent changes to federal laws by removing restrictions on amounts subject to recovery by the Department of Health and Human Resources (DHHR). The bill redefines terms, including amending the definition of “third-party” to include any insurer that may be liable under an uninsured or underinsured motorist policy covering injuries to the recipient.

The bill provides that the Department has a priority right to intervene and to be fully reimbursed for any payments made for past medical care before a recipient can recover any of their own costs for medical care from a third party. When determined to be cost effective, DHHR may negotiate for reduction in the lien amount to incentivize Medicaid members to pursue actions against liable third parties.

Within 30 days of receipt of the notice of a proposed settlement by a recipient, DHHR must notify the recipient of its consent or rejection of the proposed allocation. If the Department consents, the recipient or his or her legal representative must issue payment out of the settlement proceeds in a manner directed by the Secretary or his or her designee within 30 days of consent to the proposed allocation. If the Department rejects the proposed allocation, the recipient or legal representative must petition the court for a determination within 30 days regarding the appropriateness of the proposed settlement. The court must give due consideration to DHHR’s interests in being fairly reimbursed for purposes of the operation of the Medicaid program. The bill exempts a lien of less than \$1,500 from requirements of the article.

The bill provides that a recipient that fails to notify DHHR of a settlement is liable for settlement amounts to which DHHR is entitled plus interest from date of settlement.

CODE REFERENCE: West Virginia Code §9-5-11 – amended

DATE OF PASSAGE: March 7, 2020

EFFECTIVE DATE: June 5, 2020

ACTION BY GOVERNOR: Vetoed March 25, 2020

House Bill 4576

Establishing a procedure for correcting errors in deeds, deeds of trust and mortgages

This bill provides that obvious description errors in a recorded deed, deed of trust, or mortgage may be corrected by recording a corrective affidavit in the office of the clerk of the county commission of the county where the property is situated or where the deed, deed of trust, or mortgage needing correction was recorded. An obvious description error includes:

- An error transcribing courses and distances, including the omission of one or more lines of courses and distances or the omission of angles and compass directions;
- An error incorporating an incorrect recorded plat or a deed reference;
- An error in a lot number or designation; or
- An omitted exhibit supplying the legal description of the real property thereby conveyed.

Prior to recording a corrective affidavit, notice of the intent to record the affidavit, of each party's right to object, and a copy of the affidavit must be sent to specified persons. The notice and a copy of the affidavit shall be delivered by personal service, sent by certified mail, return receipt requested, or delivered by a commercial overnight delivery service or the United States Postal Service, and a receipt obtained, to the last known address of each party to the deed, deed of trust, or mortgage to be corrected.

If no written objection is received within 30 days, the corrective affidavit may be recorded by the attorney, and all parties to the deed, deed of trust, or mortgage shall be bound by the terms of the affidavit. The county clerk shall record the corrective affidavit and index the affidavit in the names of the parties to the deed, deed of trust, or mortgage. An affidavit recorded in compliance with the new code section shall be prima facie evidence of the facts stated in such affidavit.

The bill sets forth the content requirements of a corrective affidavit and provides that a corrective affidavit recorded pursuant to the new code section operates as a correction of the deed, deed of trust, or mortgage and relates back to the date of the original recordation of the instrument as if the instrument was correct when first recorded. The bill requires a title insurance company to issue an endorsement to reflect the corrections made by the corrective affidavit upon request. All costs associated with the recording of a corrective affidavit are to be paid by the party that records the corrective affidavit, and any person who wrongfully or erroneously records a corrective affidavit is liable for actual damages sustained by any party due to such recordation, including reasonable attorney fees and costs. The bill provides that the remedies under the new code section are not exclusive and do not abrogate any right or remedy under the laws of the State of West Virginia. Lastly, the bill sets forth the form of corrective affidavit and notice.

CODE REFERENCE: West Virginia Code §36-3-11 – new

DATE OF PASSAGE: March 7, 2020

EFFECTIVE DATE: June 5, 2020

ACTION BY GOVERNOR: Signed March 25, 2020

House Bill 4615

West Virginia Critical Infrastructure Protection Act

This bill provides numerous protections for critical infrastructure. The bill defines critical infrastructure and critical infrastructure facility and creates new criminal offenses.

The bill provides that any person who willfully and knowingly trespasses or enters property containing a critical infrastructure facility without permission by the owner of the property or lawful occupant thereof is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than \$250 nor more than \$1,000, confined in jail not less than 30 days nor more than one year, or both fined and confined. If the intent of the trespasser is to willfully damage, destroy, vandalize, deface, or tamper with equipment, or impede or inhibit operations of the critical infrastructure facility, the person is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$100 nor more than \$1,000, confined in a jail for not more than one year, or both fined and confined.

If a person who willfully damages, destroys, vandalizes, defaces, or tampers with the equipment in a critical infrastructure facility causes damage in excess of \$2,500, the person is guilty of a felony and, upon conviction thereof, shall be fined not less than \$1,000 but not more than \$5,000, imprisoned in a state correctional facility for not less than one year nor more than five years, or both fined and imprisoned.

Additionally, any person or organization who conspires with any person to commit the offense of trespass against a critical infrastructure facility is guilty of a misdemeanor and, upon conviction thereof shall be fined in an amount of not less than \$2,500 nor more than \$10,000. Any person or organization who conspires with any person or organization to willfully damage, destroy, vandalize, deface, or tamper with equipment in a critical infrastructure facility and who does cause damages in excess of \$2,500 is guilty of a felony and, upon conviction thereof, shall be fined not less than \$5,000 but not more than \$20,000. Finally, any person who is arrested for or convicted of the new offenses may be held civilly liable for any damages to personal or real property while trespassing, in addition to the penalties imposed by the bill, and any person or entity that compensates, provides consideration to, or remunerates a person for trespassing as described in this section may also be held liable for damages to personal or real property committed by the person compensated or remunerated for trespassing.

CODE REFERENCE: West Virginia Code §61-10-34 – amended

DATE OF PASSAGE: March 7, 2020

EFFECTIVE DATE: June 5, 2020

ACTION BY GOVERNOR: Signed March 25, 2020

House Bill 4619

Approving plans proposed by electric utilities to install middle-mile broadband fiber

Authorizes the Public Service Commission to approve plans proposed by electric utilities to install middle-mile broadband fiber and provide expedited cost recovery. It amends §24-2- 1(a) to exclude electric utilities that have installed middle-mile fiber broadband infrastructure under the provisions of §24-2-1n from being considered a public utility engaged in the transmission of messages by telephone, telegraph or radio.

It creates a new §24-2-1o which finds that broadband expansion into unserved and underserved rural areas of the state continues to be an issue of importance, and progress is hindered by lack of full development of middle-mile broadband fiber infrastructure; and notes further that regulated electric utilities have existing distribution infrastructure that could be utilized in construction of middle-mile broadband fiber assets; thus, it establishes a Broadband Infrastructure Expansion Program; authorizes electric utilities having distribution infrastructure in this state may participate in the program; grants the PSC powers and duties in connection with the program including to review and approve or reject plans, to review and approve or reject amendments; and perform other duties necessary to effectuate the provisions of the bill. It requires the utility to publish anticipated monthly and annual rate increases (if any) and actual rates; and allows for expedited recovery of costs related to the expenditures if the commission finds they are just, reasonable, not contrary to the public interest and will provide safe, reliable and reasonably priced middle- mile fiber broadband service and allows for a return on expense via planned net incremental increase to rates and subject to taxes, depreciation, and operations and maintenance.

It allows a PSC approved surcharge for return recovery; and permits the utility, subject to these provisions, to have control of the scope, scheduling and execution of the project to construct, install, operate, maintain and repair middle-mile fiber assets, including fiber build route selection and build and splice schedules. It forbids the Broadband Council or PSC from acting to limit the number of last-mile broadband Internet providers eligible to be contracted to utilize the middle-mile fiber infrastructure constructed as part of a project proposed pursuant to this section, and provides that an electric cooperative organized pursuant to state and federal law, including the Rural Electrification Act of 1936, may utilize its distribution system, poles, or rights of way to provide for critical infrastructure of a broadband infrastructure project consisting of middle mile or last mile services.

Finally, it allows the utility to lease broadband capacity and provide access for connection outside the utility's power supply zone and that all of the aforementioned provisions shall not apply only to the one pilot project now being undertaken, but to all similar ones in future.

CODE REFERENCE: West Virginia Code §24-2-1 – amended; §24-2-1o – new

DATE OF PASSAGE: March 7, 2020

EFFECTIVE DATE: June 5, 2020

ACTION BY GOVERNOR: Signed March 25, 2020

House Bill 4621

West Virginia FinTech Regulatory Sandbox Act

This bill creates the West Virginia FinTech Regulatory Sandbox Program within the Division of Financial Institutions (“DFI”) in consultation with the W.Va. Development Office. The sandbox program seeks to provide economic development opportunities enabling individuals or entities to partner with existing financial service providers operating within the state to obtain limited market access to test an innovative product or service without obtaining a license or other authorization that might otherwise be required.

Relevant definitions are provided including applicant, applicable agency, consumer and financial product or services, innovation, and regulatory sandbox, among others.

The DFI is authorized to promulgate rules, establish the program, encourage partnerships with existing financial service providers, and obtain limited market access. The DFI may investigate consumer complaints; may enter into cooperative agreements with other federal and state agencies as circumstances require; may issue any order necessary to enforce any bond, distribute bond proceeds to affected consumers, examine the books and records of every sandbox participant and issue any orders necessary to enforce the article. The DFI has broad discretion to impose limitations on the number of consumers and the amount of loans made or money transmitted during the testing period.

Applicants to the regulatory sandbox program must be WV residents; have a physical location in the state; provide for location of documents, proof of affiliation with a bank or financial institution in W.Va., contact information, criminal records; demonstrate competence and capital to perform required duties and obligations; describe the innovative product including - benefits to consumers, differences from products already in the state, risks, and testing plans. The applicant must also provide information related to prior investigation, sanction or legal action; demonstrate registration with the W. Va. Secretary of State; and, provide an exit plan to limit consumer harm at the end of the sandbox period. An application process is provided, subject to no more than a \$1,000 application fee.

Sandbox participants must post a consumer protection bond in an amount determined by the DFI, but not less than \$5,000; this bond may be increased or decreased at any time based on risk profile. After prior written notice the commissioner may use bond proceeds to offset losses suffered by consumers as a result of an innovative product or service. The bond shall expire two years after the conclusion of the testing period. The commissioner may also accept electronic bonds from any participant.

Sandbox participants are also required to retain records; provide specific information such as their name and contact, licensing status, and advice of innovative product testing status. No immunity from civil liability is provided; and, there is no state endorsement. Sandbox participants are not subject to state laws that regulate financial products or services but are subject to the West Virginia Consumer Credit and Protection Act and the Collection Agency Act and statutory limits on interest rates. The bill expressly provides that sandbox participants do not have immunity related to criminal offenses committed during the testing period, and the DFI may end a sandbox participant’s participation at any time.

Once an application has been approved, the participant has 24 months to test the product or service. All innovative products tested within the regulatory sandbox must involve residents of West Virginia, subject to regulation and control of the DFI.

At least 30 days before the end of the regulatory testing period a sandbox participant must notify the DFI of their exit, discontinue the test and stop offering any product or service in the sandbox within prescribed timeframes. A testing period may be extended under specified conditions.

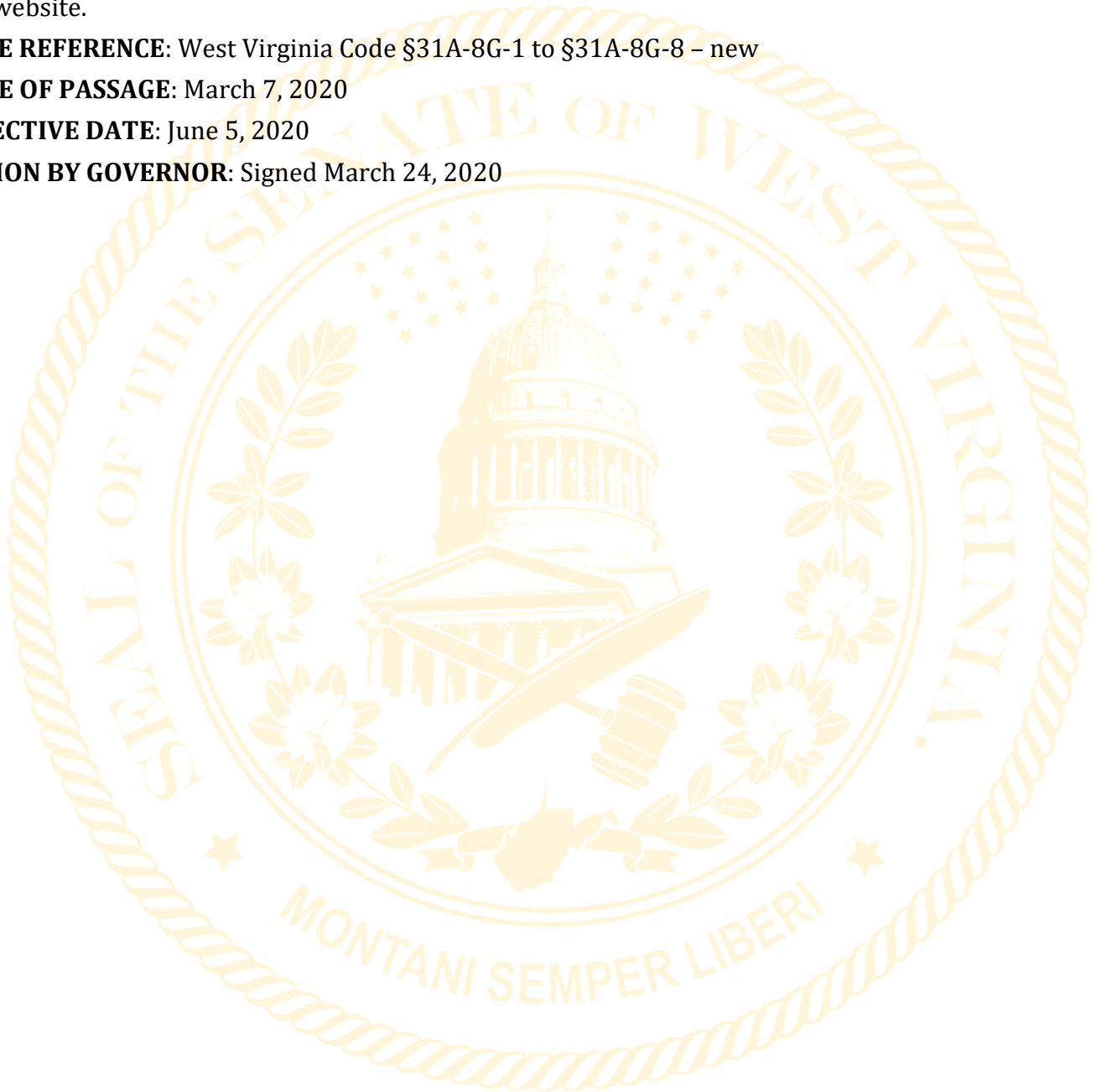
The DFI is authorized to establish periodic reporting requirements; required to report annually to the Joint Committee on Government and Finance; provide participant information; and, must provide recommendations regarding the effectiveness of the program. The report must be made available on the DFI website.

CODE REFERENCE: West Virginia Code §31A-8G-1 to §31A-8G-8 – new

DATE OF PASSAGE: March 7, 2020

EFFECTIVE DATE: June 5, 2020

ACTION BY GOVERNOR: Signed March 24, 2020



House Bill 4633

Expanding county commissions' ability to dispose of county or district property

The purpose of this bill is to expand county commissions' ability to dispose of county or district property to a nonprofit community or senior center organization without conducting a public sale.

When county commissions dispose or sell property, both real and personal, they must do so by public auction. There are exceptions, however, for sale or disposal of property for public use, such as to the United States, the State of West Virginia or its political subdivisions, volunteer fire departments and ambulance services, and county boards of education.

HB4633 adds nonprofit community center organizations and nonprofit senior center organizations to the list of recipients of county property to which the public auction requirement does not apply.

The bill also provides that if a nonprofit community center organization or a nonprofit senior center to which county property is sold proposes to sell or dispose of the property, the property will revert back to the county commission unless the commission expressly disclaims that right.

The Senate amended the bill to remove "nonprofit community center organization" and insert in lieu thereof an existent "community center organization."

CODE REFERENCE: West Virginia Code §7-3-3 – amended

DATE OF PASSAGE: March 7, 2020

EFFECTIVE DATE: June 5, 2020

ACTION BY GOVERNOR: Signed March 15, 2020

House Bill 4661

Relating to the powers of the Public Service Commission and the regulation of natural gas utilities

This bill changes the regulation of natural gas utilities in two ways:

- The bill empowers gas utilities to seek proposals to increase natural gas production and recover the resulting costs through the gas utility's purchased gas adjustment (PGA) mechanism. This will allow for new wells to be drilled and older wells to be properly maintained or reworked to increase dwindling supplies of gas to certain consumers whose supply is becoming depleted.
- A gas utility may petition the PSC for approval of the related costs to serve such customers. Upon a finding by the Commission that (1) the process of determining the costs and expected additional natural gas supply is reasonable; (2) the expected additional supply is dependable; and (3) the costs of the additional supply are reasonable and not contrary to the public interest; the Commission may approve the petition.
- If new supplies of natural gas are unavailable, the bill provides an option that empowers gas utilities to recover the costs to convert customers to other energy sources, like propane or electric. Under the bill, the utilities may defer reasonable and prudent costs to convert customers. The utility will recover its reasonable and prudent conversion costs in a future base rate case through recovery of the deferred expenses amortized over a reasonable time to be determined by the commission.

As this is a regulated market, under both parts of the bill, the PSC will have the final say on whether costs are reasonable under the circumstances. Also, the extra costs incurred will be spread across the whole of the utility's customer base and will not be carried entirely by the small communities who receive the benefit.

CODE REFERENCE: West Virginia Code §24-2-4c and §24-3-7 – amended

DATE OF PASSAGE: February 27, 2020

EFFECTIVE DATE: May 27, 2020

ACTION BY GOVERNOR: Signed March 25, 2020

House Bill 4668

Creating the misdemeanor crime of trespass for entering a structure that has been condemned

Currently, a person who trespasses upon or under a structure or conveyance is guilty of a misdemeanor and shall be fined up to \$100. Additionally, if the offender has a firearm or other dangerous weapon while in the structure or conveyance and has an unlawful and felonious intent to do bodily injury to a human, they are guilty of a misdemeanor and shall be fined \$100-\$500, confined in jail for up to one year, or both fined and confined.

This bill adds an offense that specifically applies to trespass in a condemned structure. Any person who, without permission, knowingly and willfully enters a structure which has a clear posting that the structure has been condemned as unfit for habitation or use, is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$100, confined in jail for up to six months, or both fined and confined.

Additionally, the bill provides that for any first offense of trespass on a condemned property, a judge or magistrate may substitute community services or pretrial diversion alternatives, or both, before imposing the criminal penalties.

CODE REFERENCE: West Virginia Code §61-3B-2 – amended

DATE OF PASSAGE: March 6, 2020

EFFECTIVE DATE: June 4, 2020

ACTION BY GOVERNOR: Signed March 25, 2020

House Bill 4797

Authorizing municipalities to enact ordinances that allow the municipal court to place a structure, dwelling or building into receivership

This bill allows a municipality which has passed an ordinance requiring the owner of a dwelling or building to pay the costs of repairing, altering, improving, vacating, closing, removing, or demolishing the dwelling or building to authorize the municipal court to place the structure, dwelling, or building under receivership if:

- The owner cannot be located after reasonable inquiry by the code enforcement agency, as required by this section, or if the owner refuses entry;
- The code enforcement agency obtains an administrative search warrant from either the municipal court or the magistrate court located in the jurisdiction of the municipality or county where the structure, dwelling, or building is located;
- Upon entry, the code enforcement agency determines that the structure, dwelling, or building is salvageable and does not require demolition; and
- The code enforcement agency proffers to the court that the structure, dwelling, or building will require demolition or presents a substantial threat to nearby structures, property, or residents due to risk of fire, structural instability, or attractive nuisance if it is not repaired, altered, or improved in the near future.

An owner may petition the municipal court at any time to end the receivership. If the owner shows he or she will make the necessary repairs, alterations, and improvements, the municipal court may end the receivership.

CODE REFERENCE: West Virginia Code §8-12-16 – amended

DATE OF PASSAGE: March 7, 2020

EFFECTIVE DATE: June 5, 2020

ACTION BY GOVERNOR: Signed March 25, 2020

House Bill 4882

Authorizing limited sampling and limited sale of wine for off-premises consumption to wineries not licensed in the state

This bill permits temporary licenses for unlicensed wineries, not currently licensed or located in West Virginia, to do limited sampling and limited sales of wine for off-premises consumption at certain fairs and festivals and at certain one-day special licensed nonprofit events. The bill limits the number of the temporary licenses that a winery may receive to four licenses per winery, per year. The fee for the temporary license is \$150.

CODE REFERENCE: West Virginia Code §60-8-3 – amended

DATE OF PASSAGE: March 2, 2020

EFFECTIVE DATE: March 2, 2020

ACTION BY GOVERNOR: Signed March 25, 2020

House Bill 4959

Relating to clarifying the ability of the Economic Development Authority Board of Directors to enter into any contracts necessary to carry out its duties

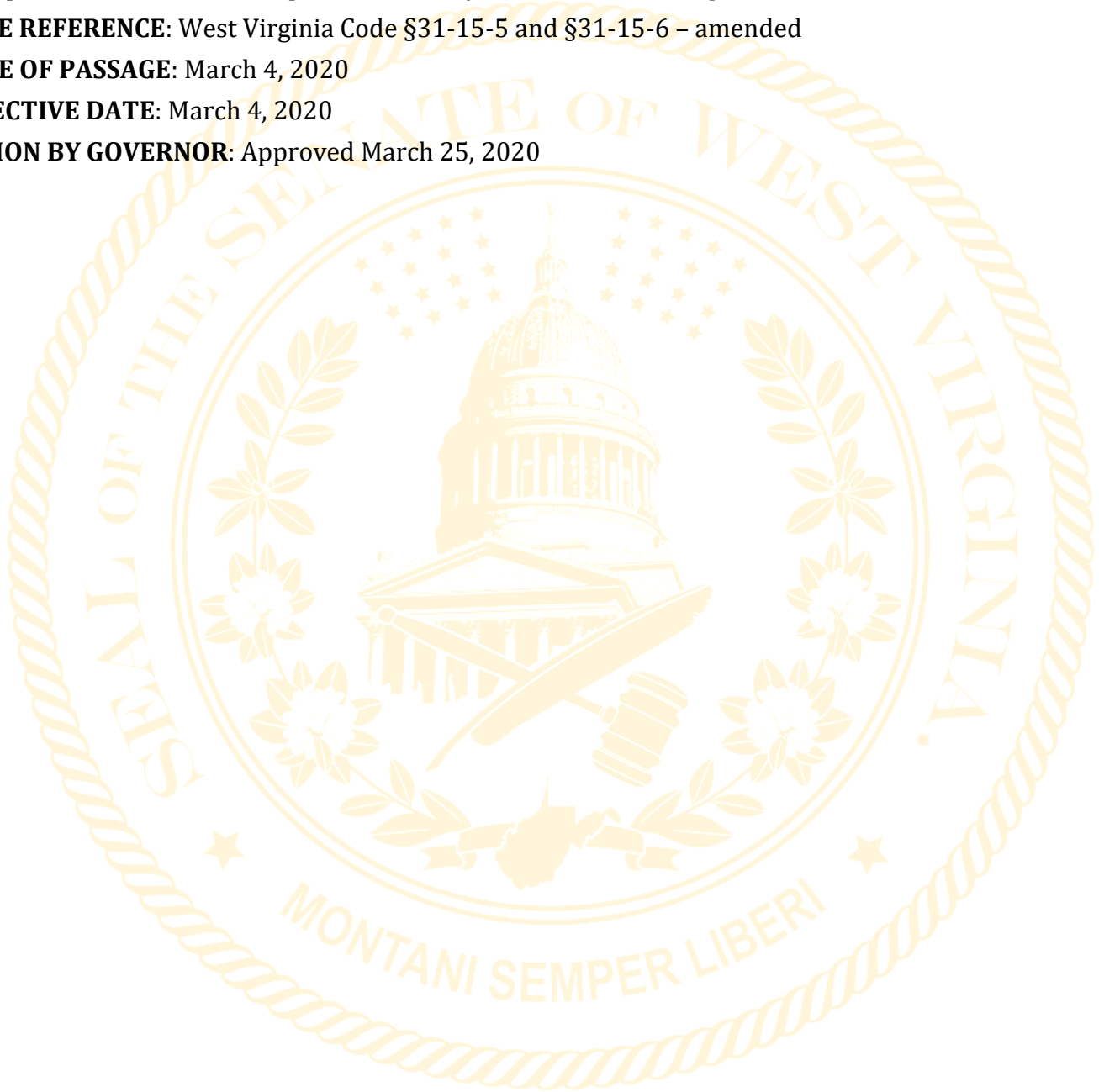
This bill clarifies that the West Virginia Economic Development Authority may execute all contracts and other instruments necessary to carry out its purposes independent of the Purchasing Division and exempts the Economic Development Authority from the Purchasing Division.

CODE REFERENCE: West Virginia Code §31-15-5 and §31-15-6 – amended

DATE OF PASSAGE: March 4, 2020

EFFECTIVE DATE: March 4, 2020

ACTION BY GOVERNOR: Approved March 25, 2020



2019 Regular Session



Senate Bill 1

Increasing access to career education and workforce training

The purpose of this bill is to establish an Advanced Career Education (ACE) program and create the WV Invests Grant Program, both of which are for the purpose of increasing access to career education and workforce training.

The purpose of ACE programs (§18-2E-11) is to: 1) Connect secondary schools with community and technical colleges and four-year colleges that offer associate degrees to prepare secondary students for success in post-secondary education and the workforce; and 2) to provide more opportunities for secondary students to earn post-secondary college credits, certifications, and associate degrees. [§18-2E-11(b)(1) and (2)]

The community and technical colleges, public baccalaureate institutions, career technical education centers, county boards of education, or both are required to establish partnerships that establish ACE programs. An ACE program would feature multiple defined pathways that begin when a student is in high school and end with the student obtaining a credential or an associate degree. The bill also requires that the ACE programs be available to public, non-public, and home school students. [§18-2E-11(c)]

An ACE program is required to include of a curriculum of courses leading to an associate degree or advanced certification that has been determined to satisfy an area of workforce need as determined the Department of Commerce. The Department of Commerce is required to at least annually provide written notification to the State Board of Education and the WV Council for Community and Technical College Education of a determination of areas of workforce need within the state. These areas of workforce need could be determined on a statewide basis or regional basis. [§18-2E-11(d)]

The State Superintendent, the Chancellor of the Council for Community and Technical College Education, the Chancellor of the Higher Education Policy Commission, or their designees, are required to facilitate the ACE programs. [§18-2E-11(e)(1 through 5)] At a minimum, an ACE program must satisfy the following objectives:

- Provide additional opportunities to students to attain college credentials through ACE pathways;
- Increase the number of students in this state that attain college credentials through ACE pathways;
- Allow students to attain college credentials through ACE at little or no cost;
- Ensure that ACE provides a clear roadmap to the courses and requirements necessary to attain college credentials; and
- Ensure that course requirements within ACE pathways are not duplicated.

The State Board and the Council are required to jointly promulgate guidelines for the administration of ACE programs and pathways. [§18-2E-11(f) (1 through 5)] The guidelines are required to be adopted by both the State Board and the Council. At a minimum, the guidelines are required to include the following:

- That ACE program partnerships be reduced to written partnership agreements;
- The information required to be in the partnership agreements;
- That ACE programs and pathways must meet the requirements of the accrediting entity for the community and technical college or the baccalaureate institution awarding the associate degrees;
- That partnership agreements must be approved by the State Superintendent, the Chancellor for the Council for Community and Technical College Education and he Chancellor of the Higher Education Policy Commission; and
- Any other necessary provisions.

Additionally, the bill requires that the Division of Vocational Education and the Council annually report certain information to the Governor and LOCEA. The reporting requirements are set out in the bill. [§18-2E-11 (g)]

This bill also provides that students that have completed a secondary education program in a public, private, or home school and have continued to be enrolled in a program leading to an advanced certification or an ACE program are considered adults enrolled in regular secondary programs under the definition of “net enrollment” for state aid purposes. The number of adults enrolled in secondary vocational programs that may be included in “net enrollment” for state aid purposes is increased from 1,000 to 2,500. The bill also provides that, beginning with the 2021 fiscal year, a career technical education center can only receive funding for enrollment if the center has satisfied certain ACE requirements including the requirement to partner with at least one community and technical college. [§18-9A-2(I)(1)(A)]

This bill also creates the WV Invests Grant Program (§18C-9-1 et seq.) which is to be administered by the vice chancellor for administration. Necessary terms are defined. [§18C-9-3] Under the program, the Council is to award grants pursuant to the following:

- A grant can only be awarded to applicants satisfying the eligibility requirements;
- The maximum amount of the grant is the cost of tuition charged to all students for coursework leading to completion of the chosen associate degree or certificate, less all other state and federal aid for which the student is eligible;
- Grant payments are to be made directly to the eligible institutions;
- In the event that a grant recipient transfers from one eligible institution to another, the grant is transferable only with approval of the vice chancellor for administration;
- The grant can be used at any eligible institution to seek an associate degree or certificate in an eligible post-secondary program; and
- If the grant recipient terminates enrollment for any reason during the academic year, the unused portion must be returned by the institution to the council for return to the WV Invests Grant Fund for allocation and expenditure. [§18C-9-4]

The bill also requires the Council to report to the Legislature and Governor on the WV Invests Grant Program, which must include research and data concerning student success and grant retention. [§18C-9-4(c)] The Council is required to propose legislative rules to implement the provisions of this article that provide for: (1) Application requirements and deadlines; (2) appeal procedures for the denial or revocation of the grant; and (3) any other necessary provisions. Authority for an emergency rule is also included. [§18C-9-4(d) and (e)]. To be eligible for a WV Invests Grant, an individual must satisfy the following requirements [§18C- 9-5 (a)(1 through11)]:

- Be a citizen or legal resident of the United States and have been a resident of West Virginia for at least one year immediately preceding the date of application;
- Have completed a secondary education program in a public, private, or home school;
- Have not been previously awarded a post-secondary degree;
- Be at least 18 years of age (except that individuals younger than 18 can qualify upon completion of a secondary education program in a public, private, or home school);
- Meet the admission requirements of, and be admitted into, an eligible institution;
- Satisfactorily meet any additional qualifications of financial need, enrollment, academic promise, or achievement as established by the Council through rule;
- Have filed a completed FAFSA;

- Be enrolled in an eligible post-secondary program;
- Be enrolled in at least six credit hours per semester;
- Have completed a WV Invests Grant application as provided by the Council in accordance with a schedule established by the Council; and
- Have, prior to the start of each semester, satisfactorily passed a drug test administered by the eligible institution with the applicant being responsible for the actual cost of the drug test.

Also, each grant can be renewed until the course of study is completed, as long as the following qualifications, as determined by the vice chancellor for administration and Council, are satisfied[§18C-9-5(b)(1 through 5)]:

- Maintaining satisfactory academic standing, including a cumulative GPA of at least 2.0;
- Making adequate progress toward completion of the eligible post-secondary program;
- Satisfactory participation in a community service program authorized by the Council (Council is required to promulgate rules to provide for the administration of this requirement, including, but not limited to, requiring completion of at least eight hours of unpaid community service during the time of study, which may include, but is not limited to, participating with nonprofit, governmental, institutional or community-based organizations designed to improve the quality of life for community residents, meet the needs of community residents or foster civic responsibility);
- Continued satisfaction of the initial eligibility requirements; and
- Satisfaction of any additional eligibility criteria established by the Council through legislative rule.

The bill also requires that each recipient of a WV Invests Grant enter into an agreement with the vice chancellor for administration, which requires repayment of an amount of the grants awarded to the recipient, in whole or in part, if a recipient chooses to reside outside the state within two years following obtainment of the degree or certificate for which the grant was awarded. The Council is prohibited from requiring a recipient to repay grants, in whole or in part, unless the prospective recipient has been informed of this requirement in writing before initial acceptance of the grant award.

Each WV Invests Grant agreement must include the following:

- Disclosure of the full terms and conditions under which assistance under this article is provided and under which repayment can be required; and
- A description of the appeals procedure.

Recipients who are not in compliance with the agreement must be required to repay the amount of the grant awards received, plus interest, and where applicable, reasonable collection fees on a schedule and at a rate of interest, prescribed in the Council's rules. The Council also must provide for proration of the amount to be repaid by a recipient who maintains employment in the state for a period of time within the two-year time period.

The bill further provides that a recipient is not in violation of the agreement during any period in which the recipient is meeting any of the following conditions:

- Pursuing a half-time course of study at an accredited institution of higher education;
- Serving as a member of the armed forces of the United States;
- Failing to comply with the terms of the agreement due to death or permanent or temporary disability as established by sworn affidavit of a qualified physician; or
- Satisfying the provisions of any additional repayment exemptions prescribed by the Council through rule.

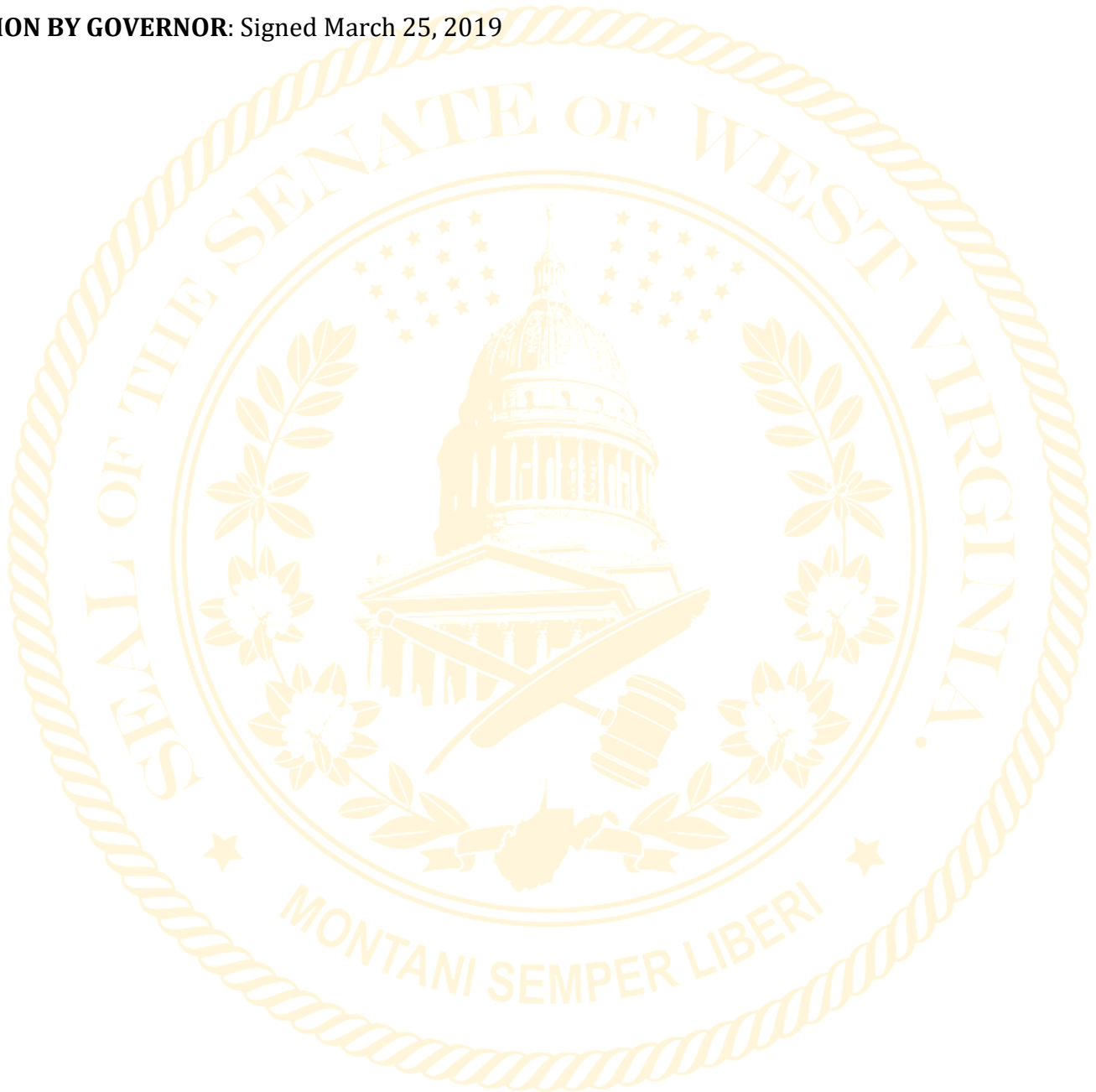
Lastly, the bill creates in the State Treasury a special revenue fund to be known as the “WV Invests Fund” which is to be expended for the purpose of administering the WV Invests Grant Program.

CODE REFERENCE: West Virginia Code §18-2-6 and §18-9A-2 – amended; §18-2E-11 and §18C-9-1 through §18C-9-6 – new.

DATE OF PASSAGE: March 7, 2019

EFFECTIVE DATE: June 5, 2019

ACTION BY GOVERNOR: Signed March 25, 2019



Senate Bill 3

Establishing WV Small Wireless Facilities Deployment Act

The purpose of this bill is to establish the West Virginia Small Wireless Facilities Deployment Act. This bill is another step in aiding the deployment of reliable small wireless facilities and other next-generation wireless and broadband network.

The first provision in the bill provides for mandated salvage valuation for property tax purposes of tangible personal property directly used in certain wireless technology businesses. It provides for a mandated salvage valuation for property tax purposes of tangible personal property directly used in certain wireless technology businesses and is intended to increase the expansion and availability of wireless coverage throughout the state by providing tax relief to businesses who invest in regions which have been heretofore underserved. In layman's terms this allows for new tower construction to be valued at salvage valuation for five years following construction.

The second provision allows for WV to take charge of the regulation of pole attachment. This was contemplated by our original broadband bill which passed the House in 2017. Language in this issue was removed in last year's bill, as there was a question of Federal preemption, but the more explicit language included in this bill passed the Senate with strong support last year. It is our understanding that PSC now wants this primacy and it is believed this will provide for state primacy in enforcement, with PSC functioning with regard to this area of law essentially as DEP does with regard to EPA rules and regulations.

The third provision is a section empowering the conduct of a feasibility study by electrical power providers to determine the likelihood and effectiveness of the installation of broadband fiber within the so-called "hot zone" of the electrical provider, and the leasing of that fiber to broadband entities. This copies a feasibility study undertaken in Virginia, and which has already entered the second stage preparatory to deployment in that state.

The latter portion of the bill is essentially the small cell bill which passed the House last year and deals with the regulatory authority for the collocation of small wireless facilities. It pre-empts the manner in which an authority may prohibit, regulate, or charge for the collocation of small wireless facilities. It forbids an authority entering into an exclusive arrangement with any person for use of the right-of-way for the collocation of small wireless facilities or the installation, operation, marketing, modification, maintenance, or replacement of utility poles.

Authorities are limited to only charge a wireless provider a rate or fee for the use of the right-of-way with respect to the collocation of small wireless facilities or the installation, maintenance, modification, operation, or replacement of a utility pole in the right-of-way, if the authority charges other entities for use of the right-of-way.

The rate for occupancy and use of the right of way may not exceed \$20 per year per small wireless facility. Wireless providers have the right, as a permitted use not subject to zoning review or approval, to collocate small wireless facilities and install, maintain, modify, operate and replace utility poles along, across, upon, and under the right-of-way, so long as they do not obstruct or hinder the usual travel or public safety on such right-of-way or to obstruct the legal use of such right-of-way by utilities, with certain permitted exceptions.

A wireless provider is permitted to replace decorative poles when necessary to collocate a small wireless facility, but any replacement pole shall reasonably conform to the design aesthetics of the decorative poles being replaced. Additionally, they must comply with reasonable and nondiscriminatory

requirements that prohibit communications service providers from installing structures in the right-of-way in an area designated solely for underground or buried cable and utility facilities.

Also, an authority may require “reasonable, technically feasible, nondiscriminatory and technologically neutral design or concealment measures” in a historic district. Also, authorities must be competitively neutral with regard to other users of the right-of-way but may require a wireless provider to repair all damage to the right-of-way directly caused by the activities of the wireless provider in the right-of-way.

Small wireless facilities are generally exempted from zoning review or approval. Within 10 days of receiving an application for installation, an authority must determine and notify the applicant in writing whether the application is complete and it will be deemed approved if the authority fails to approve or deny the application within 60 days of receipt of the application.

Applications may be denied for certain enumerated reasons, but the applicant may cure the deficiencies identified by the authority and resubmit the application within 30 days of the denial without paying an additional application fee. The authority shall approve or deny the revised application within 30 days. Any subsequent review shall be limited to the deficiencies cited in the denial.

An authority shall allow the collocation of small wireless facilities on authority utility poles but may not enter into an exclusive arrangement with any person for the right to attach small wireless facilities to authority utility poles.

The rates and fees for collocations on authority utility poles shall be nondiscriminatory regardless of the services provided by the collocating person but they may charge an annual recurring rate of the lower of \$20 per year or the actual, direct, and reasonable costs related to the wireless provider's use of space on the authority utility pole.

An authority shall provide a good faith estimate for any make-ready work necessary to enable the pole to support the requested collocation by a wireless provider, including pole replacement if necessary, within 60 days after receipt of a complete application.

Make-ready work including any pole replacement shall be completed within 60 days of written acceptance of the good faith estimate by the applicant. Fees for make-ready work may not include costs related to preexisting or prior damage or noncompliance, nor exceed the actual costs or the amount charged to other communications service providers for similar work and may not include any consultant fee or expense.

For the purposes of a state-owned right-of-way maintained by the division, the commissioner shall propose rules for legislative approval. Application fees are also subjected to a series of requirements. Finally, a series of savings clauses are included.

CODE REFERENCE: §11-6L-1 through §11-6L-6, §31G-4-4, and §31G-4; §31H-1-1, §31H-1-2 and §31H-2-1 through §31H-2-4 – new

DATE OF PASSAGE: March 5, 2019

EFFECTIVE DATE: March 5, 2019

ACTION BY GOVERNOR: Signed March 27, 2019

Senate Bill 4

Relating generally to Municipal Home Rule Program

This bill permanently established the Municipal Home Rule Program. The bill allows municipalities to pass ordinances, acts, resolutions, rules, or regulations that comply with state and federal law. Municipalities are prohibited from passing laws that conflict with environmental law, laws governing bidding on construction, the Freedom of Information Act, laws governing wages for construction of public improvements, the municipality's written plan, laws governing pensions or retirement plans, laws governing annexation, laws governing increment financing, laws governing professional licensing and certification, the West Virginia Workplace Freedom Act and Labor-Management Relations Act, and laws governing the sale of firearms.

CODE REFERENCE: West Virginia Code §8-1-5a – amended

DATE OF PASSAGE: March 9, 2019

EFFECTIVE DATE: June 7, 2019

ACTION BY GOVERNOR: Signed, March 25, 2019

Senate Bill 28

Removing hotel occupancy tax limit collects for medical care and emergency services

The purpose of this bill is to remove the current \$200,000 limitation on the amount collectable by a county via the hotel occupancy tax that may be used for medical care and emergency services. The change also added economic development and infrastructure projects to the list of allowable uses for the funds, but limits those to \$200,000.

CODE REFERENCE: West Virginia Code §7-18-14 – amended

DATE OF PASSAGE: March 9, 2019

EFFECTIVE DATE: June 7, 2019

ACTION BY GOVERNOR: Signed March 25, 2019

Senate Bill 30

Eliminating tax on annuity considerations collected by life insurer

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

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

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

DATE OF PASSAGE: March 9, 2019

EFFECTIVE DATE: June 7, 2019

ACTION BY GOVERNOR: Signed March 27, 2019

Senate Bill 36

Allowing adjustment of gross income for calculating personal income liability for certain retirees

The bill would provide protections for any person who retires under an employer-provided defined benefit pension plan. If that pension plan terminates prior to or after the retirement of that person and the pension plan is covered by a guarantor whose maximum benefit guarantee is less than the maximum benefit to which the retiree was entitled, the protection triggers. That protection is in the form of the retiree being able to adjust their income tax by an amount equal to the difference from the money that retiree should have received, and the maximum annual pension benefit received.

Furthermore, if the Tax Commissioner determines that this adjustment reduces the revenue of the state by 2 million or more in any one year, then the Tax Commissioner must reduce the percentage of the reduction to a level at which the Tax Commissioner believes will reduce the cost of the adjustment to 2 million for the following year.

This section of the code sunset for taxable year starting on January 1, 2015. The bill will re-effectuate this provision for the taxable years beginning on and after January 1, 2020, and then sunset the section again, making it inapplicable to taxable years after December 31, 2023.

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

DATE OF PASSAGE: March 9, 2019

EFFECTIVE DATE: July 1, 2019

ACTION BY GOVERNOR: Signed March 22, 2019

Senate Bill 147

Shifting funding from Landfill Closure Assistance Fund to local solid waste authorities

This bill removes \$1 per ton from the Landfill Closure Assistance Fund, making it \$2.50 per ton, and authorizes an additional \$1 per ton charged by local solid waste authorities, making the maximum \$1.50.

CODE REFERENCE: West Virginia Code §7-5-22 and §22-16-4 – amended

DATE OF PASSAGE: March 9, 2019

EFFECTIVE DATE: June 7, 2019

ACTION BY GOVERNOR: Vetoed on March 27, 2019

Senate Bill 153

Providing greater flexibility for making infrastructure project grants

This bill makes changes regarding the current limitations on the use of moneys in the West Virginia Infrastructure Fund (hereinafter “Fund”).

§31-15A-10 of West Virginia Code provides that, after a recommendation from the West Virginia Infrastructure and Jobs Development Council (hereinafter “Council”), the Water Development Authority shall use money in the infrastructure fund to make loans (with or without interest), loan guarantees, or grants, or provide “other assistance” to finance all or part of infrastructure projects or projects to be undertaken by a project sponsor. The bill amends this section to make three changes to the current limitations of the use of moneys in the Fund:

- Increases the maximum amount of money that may be dispersed as grants from 20% to 25% of the total funds available for funding of project grants;
- Provides that, if on January 1 of any year, the amount available for grants in any congressional district is below \$150,000, the Council may convert up to 30 percent of the funds available for loans in that congressional district to be used for grants within the congressional district, if and when needed to make an award; and
- Increases the maximum amount of funding assistance for engineering studies and requirements imposed by the Council for preliminary applications necessary for the Council to determine economic feasibility for a project that may be provided to all project sponsors in the aggregate, from \$100,000 annually to \$500,000 annually.

CODE REFERENCE: West Virginia Code §31-15A-10 – amended

DATE OF PASSAGE: March 7, 2019

EFFECTIVE DATE: June 5, 2019

ACTION BY GOVERNOR: Signed March 25, 2019

Senate Bill 241

Permitting county court clerks scan certain documents in electronic form

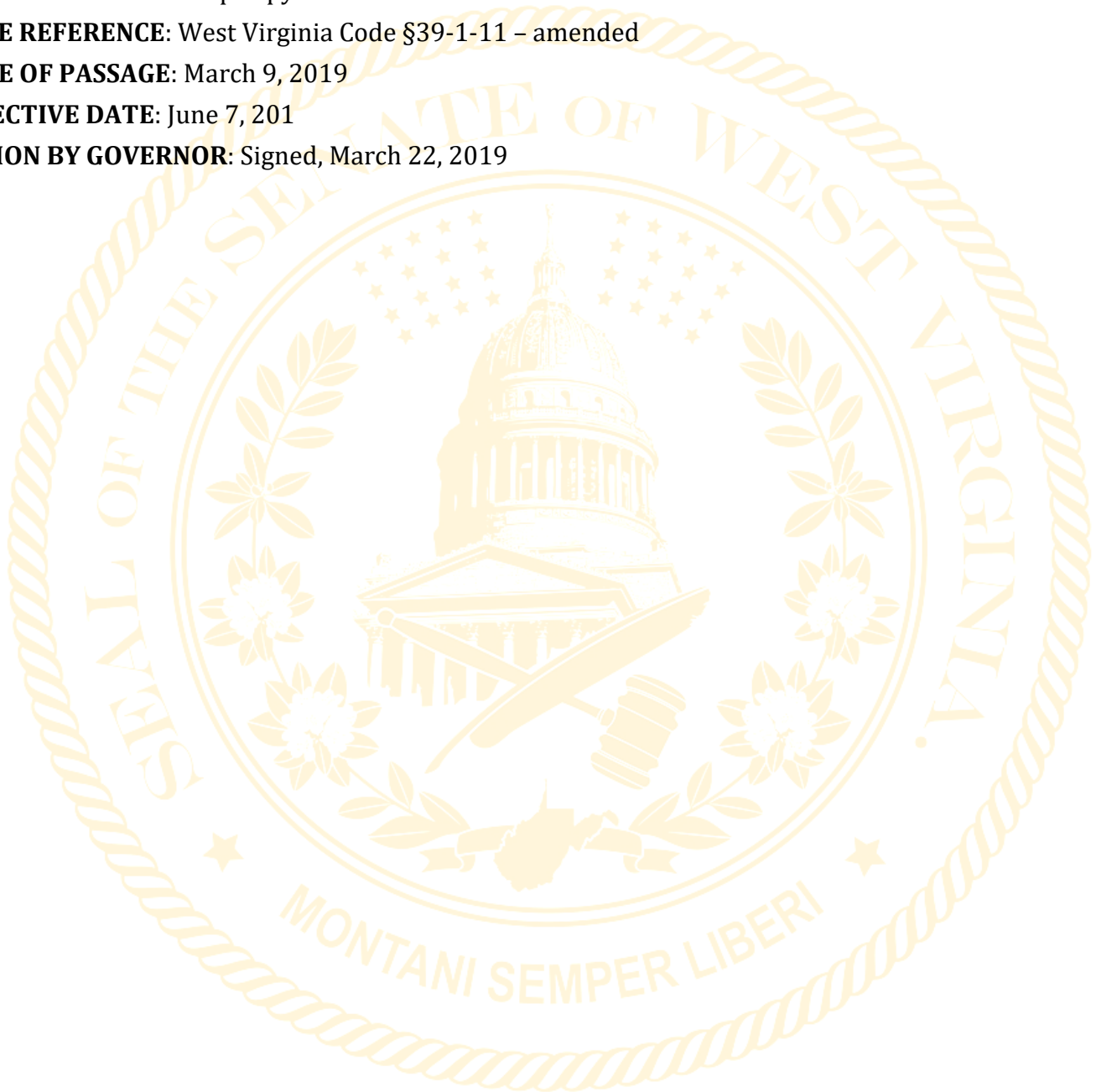
This bill allowed county commissions to authorize the county clerk to record documents by scanning them in electronic format and required records to be scanned, recorded, and made available when determined to be financially feasible. The bill requires that all electronic documents are stored on a server off site to retain a backup copy of all documents.

CODE REFERENCE: West Virginia Code §39-1-11 – amended

DATE OF PASSAGE: March 9, 2019

EFFECTIVE DATE: June 7, 2019

ACTION BY GOVERNOR: Signed, March 22, 2019



Senate Bill 285

Relating to sale of homemade food items

This bill creates a procedure for selling homemade food items and allows for certain exemptions from licensing, permitting, inspections, and packaging laws. The term “homemade food item” is defined as a nonpotentially hazardous food item, including a nonalcoholic beverage, which is produced and/or packaged at the private residence of the producer. It also allows for third-party distribution of those items. This bill provides that the production and sale of homemade food items are exempt from licensing, permitting, inspection, packaging, and labeling laws of the state when done in conformity with the new code section §19-35-6.

The following conditions apply to the sale and delivery of homemade food items:

- The items must be sold by the producer to the consumer, whether in person or remotely, or by an agent of the producer or a third-party vendor; and
- The items must be delivered to the consumer by the producer, an agent of the producer, a third-party vendor, or a third-party carrier.

The following information must be provided to the consumer:

- The producer’s name, home address, and telephone number;
- The common or usual name of the item;
- The ingredients of the item; and
- The following statement: “This product was produced at a private residence that is exempt from State licensing and inspection. This product may contain allergens.”

The above information must be provided:

- On a label affixed to the package (if the item is packaged);
- On a label affixed to the container (if the item is offered for sale from a bulk container);
- On a placard displayed at the point of sale (if the item is neither packaged nor offered for sale from a bulk container);
- On the webpage on which the item is offered for sale (if the item is offered for sale on the Internet); or,
- On a receipt or other document provided to the customer with the item. The homemade food item must not be meat, meat byproduct, meat food product, poultry, poultry byproduct, or poultry food product.

The bill provides that the act shall not be construed to:

- Impede the authority of a local health department or the Dept. of Agriculture to investigate a reported foodborne illness;
- Preclude the Dept. of Agriculture from providing assistance, consultation, or inspection at the request of the producer of a homemade food item;
- Preclude the production or sale of food items otherwise allowed by law;
- Exempt a producer, seller, third-party vendor, or third-party agent from any applicable tax law;
- Exempt producers or sellers of homemade food items from any law that requires the producer, seller, third-party vendor, or third-party agent to register its business name, address, and other identification information with the state;

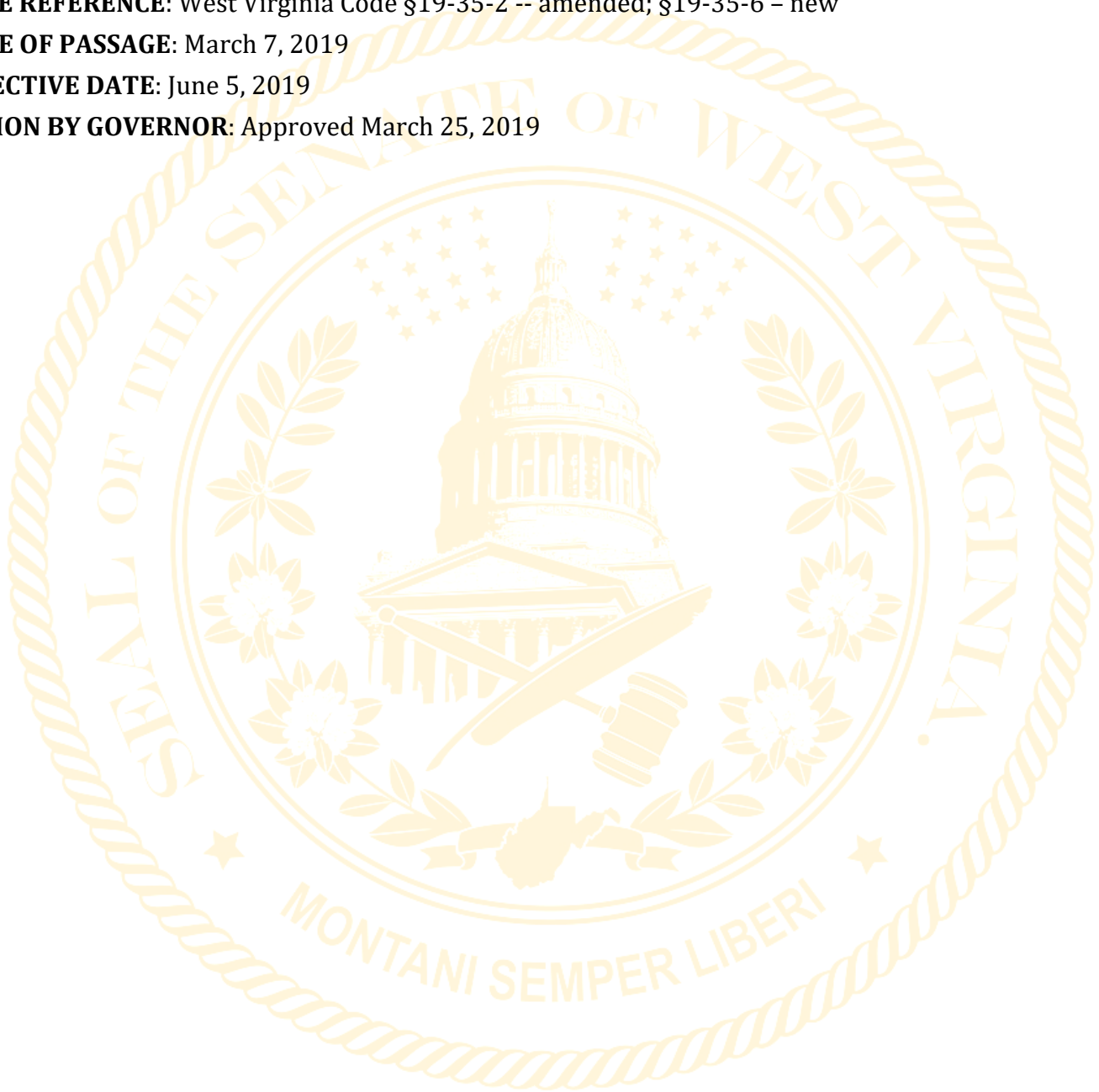
- Exempt producers or sellers of homemade food items from any applicable law of the federal government, including any federal law prohibiting the sale of certain food items in interstate commerce; or
- Exempt producers or sellers of homemade food items from any applicable law of another state. Finally, the bill provides that the act preempts county, municipal, and other political jurisdictions from prohibiting and regulating the production and sale of homemade food items.

CODE REFERENCE: West Virginia Code §19-35-2 -- amended; §19-35-6 – new

DATE OF PASSAGE: March 7, 2019

EFFECTIVE DATE: June 5, 2019

ACTION BY GOVERNOR: Approved March 25, 2019



Senate Bill 291

Relating generally to survivor benefits for emergency response providers

The purpose of this bill is to rewrite the West Virginia Emergency Responders Survivor Benefits Act to include Division of Forestry personnel. The new law provides that Division of Forestry personnel who die during an emergency wildland fire response are eligible to receive statutory survivor benefits of \$100,000.00 in the same manner as EMS and other first responders.

CODE REFERENCE: West Virginia Code 5H-1-1; §5H-1-2; and §5H-1-3 – amended

DATE OF PASSAGE: March 9, 2019

EFFECTIVE DATE: July 1, 2019

ACTION BY GOVERNOR: Signed March 22, 2019

Senate Bill 310

Establishing certain requirements for dental insurance

The purpose of this bill is to prohibit a health insurance contractor that covers dental services or a participating provider that has an agreement with a dentist from setting fees unless the services are covered services.

The bill provides that a health care service contractor or other person providing third party administrator services to a dentist may not require a participating provider provide services at a fee set by the health care services contractor unless the dental services are covered services.

The bill provides that a dentist may not charge more for services and materials that are noncovered under a dental benefits policy than his or her usual customary rate.

Finally, the bill provides that reimbursement paid by a dental plan for covered services and materials shall be reasonable and may not be nominal in order to claim that services are covered services.

There is an effective date on or after July 1, 2019.

CODE REFERENCE: West Virginia Code §33-6-39 – new

DATE OF PASSAGE: March 4, 2019

EFFECTIVE DATE: July 1, 2019

ACTION BY GOVERNOR: Signed March 25, 2019

Senate Bill 317

Authorizing three or more adjacent counties form multicounty trail network authority

The purpose of the bill is to create two new articles of codes, authorizing three or more contiguous counties to form a multi-county trail network authority. The new article is loosely modeled after the article creating the Hatfield McCoy Regional Recreation Authority and allows multi-county trail network authorities to incorporate private land into authority-managed trail systems. The bill provides legislative findings, highlighting the economic benefits that increased and well-managed trail-oriented recreation could bring to the state.

Creation of an Authority; Board

A multi-county trail authority organized pursuant to the new article will be a public corporation and a joint development entity. The bill allows adjacent counties to join existing authorities, upon approval of the board of an authority and the newly joining county's commission. Additionally, two existing authorities may merge into one authority, upon approval of the boards of both merging authorities.

A multi-county trail authority is authorized to negotiate and enter into agreements with private landowners to acquire property rights or permission from landowners necessary to incorporate private land into the trail network. Each authority will be governed by a board. Each participating county must appoint two board members, to represent specified local interests related to the trail network. Board members will serve for four-year terms, with one member from each county being appointed to a two-year term for the initial appointment, to stagger terms. An authority is a public body for purposes of the Freedom of Information Act.

The board must meet quarterly and is required to elect officers. A majority of board members constitutes a quorum, and the board is authorized to promulgate rules and bylaws governing the use of the trail system and the business of the board. The board must review and approve an annual budget for an authority. The board is authorized to employ an executive director, who may hire and oversee other personnel necessary to carry out the business of an authority. The executive director must submit an annual budget and appropriate accounting records to the board and to each participating county.

An authority is required to contract for and obtain an annual independent financial audit. If an authority receives any state funds by appropriation or otherwise, the authority is subject to audit by the Legislative Auditor.

As a joint development entity and public corporation, an authority is authorized, among other things, to exercise basic property rights (own, lease, mortgage, etc.); procure insurance; maintain sinking funds and reserves; sue and be sued; enter into contracts; accept grants and gifts; maintain offices; borrow money; and issue notes. An authority is also authorized to construct and maintain trails; to enter into agreements with the Division of Natural Resources for law-enforcement services; to enter into contracts and agreements with landowners; to collect fees for use of the trail network; to operate and manage recreational activities in the network; and to carry out other tasks necessary to operate the project.

Prohibited Acts for Trail Users; Criminal Penalties

The bill prohibits certain acts by trail users on trail network land. Trail users are prohibited from the following: entering land without a permit (with an exception for owners and authorized agents); operating or riding on a bike without an appropriate helmet; failing to obey traffic standards; failing to remain on designated trails; igniting a fire outside of a designated area; or operating a motor vehicle or utility terrain

vehicle on a trail. A person who violates the above prohibitions is guilty of a misdemeanor and shall be fined not more than \$100.

Limited Liability for Landowners

The bill limits liability of landowners participating in the trail network. The bill states that a landowner owes no duty of care to keep premises safe or to post warnings of conditions. A landowner does not incur a liability, extend any assurances of safety, or assume responsibility for injuries occurring on the land by participating in the trail network. The landowner does not confer any duty of care on landowners to any person entering the land as a trail user, whether person is trespasser or permitted.

Purchasing Requirements; Criminal Penalties

The bill establishes purchasing requirements for an authority. For purchases of services or commodities for \$25,000 or more, a contract must be based on competitive bid, by public notice of solicitation for sealed or electronic bids. For purchases under \$25,000, the executive director may solicit bids in any appropriate manner so long as he or she obtains the lowest (responsible) bid. Purchasing requirements do not apply to leases of real property for trails. A person who violates the purchasing requirements of the new article is guilty of a misdemeanor and upon conviction, shall be confined in jail for 10 days to one year, or fined \$10-\$1,000, or both fined and confined. The bill also specifies that provisions of the Ethics Act and the criminal code, prohibiting county officials from having a pecuniary interest in a contract over which they have control, apply to multi-county trail board members and personnel. A county commission of a participating county may challenge the validity of contracts for commodities or services that violate the purchasing requirements of the article, and a court may declare such contracts or purchases to be void. The bill provides that the provisions of the new article are severable, in event of a legal challenge.

Mountaineer Trail Network Authority

The bill also includes a new article of Code, §20-17A-1 et seq., which creates the Mountaineer Trail Network Authority, comprised of the counties of Barbour, Grant, Harrison, Marion, Mineral, Monongalia, Preston, Randolph, Taylor, and Tucker. As a multi-county trail network authority, the Mountaineer Trail Network Authority is subject to the requirements contained in 20-17-1 et seq.

CODE REFERENCE: West Virginia Code §20-17-1 et seq., and §20-17A-1 et seq. – new

DATE OF PASSAGE: March 9, 2019

EFFECTIVE DATE: June 7, 2019

ACTION BY GOVERNOR: Signed March 25, 2019

Senate Bill 318

Transferring Medicaid Fraud Control Unit to Attorney General's office.

This bill transfers the Medicaid Fraud Control Unit from the Department of Health and Human Resources (DHHR) to the Office of the Attorney General and continues its operation in the Office of the Attorney General after October 1, 2019.

All employees of the Medicaid Fraud Control Unit will be transferred and become employees of the Office of the Attorney General at their existing hourly rate or salary and with all accrued benefits. The Medicaid Fraud Control Unit's authorities, powers, and duties will remain unchanged by the transfer.

The bill provides that on or before December 31, 2022, the Legislative Auditor shall study and report to the Joint Committee on Government and Finance regarding the performance of the Medicaid Fraud Control Unit within the Office of the Attorney General during the previous three years in comparison to the performance of the unit while it operated within DHHR.

The bill provides that after the effective date the Secretary and DHHR must fully cooperate with the Office of the Attorney General on any investigation, prosecution, or civil action and that the Secretary must promptly provide the Attorney General with any information or document requests. If the Attorney General declines to prosecute a civil action brought by the Medicaid Fraud Control Unit, the civil action shall be maintained either by a prosecuting attorney or by any attorney in contract with or employed by DHHR.

Section §9-7-6a limits the liability of DHHR, the Office of the Attorney General, or any of their employees or agents for any action taken under this article so long as it was taken in good faith.

CODE REFERENCE: West Virginia Code §9-7-1, §9-7-3, §9-7-6, and §9-7-6a – amended

DATE OF PASSAGE: March 7, 2019

EFFECTIVE DATE: October 1, 2019

ACTION BY GOVERNOR: Signed March 25, 2019

Senate Bill 360

Relating to third-party litigation financing

This bill provides consumer protections with regard to third-party litigation financing transactions.

Section §46A-6N-1 defines various terms. A “litigation financing transaction” is defined as “a non-recourse transaction in which financing is provided to a consumer in return for a consumer assigning to the litigation financier a contingent right to receive an amount of the potential proceeds of the consumer’s judgment, award, settlement, or verdict obtained with respect to the consumer’s legal claim.” Persons or entities engaged in litigation financing are bound by the requirements of the new Article 6N.

Section §46A-6N-2 requires all litigation financiers to register with the Secretary of State. The section provides for certain registration requirements, including securing a bond or irrevocable letter of credit in the amount of \$50,000 from the office of the West Virginia Attorney General.

Section §46A-6N-3 provides certain requirements for litigation financiers, including:

- Consumer must be provided a completed, written agreement;
- The contract must contain a right of rescission within five days of receiving funds; and
- The contract must contain certain written acknowledgements.

Section §46A-6N-4 prohibits a litigation financier from paying, offering to pay, or accepting any commissions or referral fees to or from any attorney, law firm, medical provider, chiropractor, or physical therapist. The litigation financier may not use false or misleading advertisements, may not refer a consumer to a specific attorney, law firm, medical provider, chiropractor, or physical therapist, nor may they attempt to waive any of the consumer’s remedies or right to jury trial. Litigation financiers are not permitted to assign the litigation financing contract to other third-parties, except to a wholly owned subsidiary of the litigation financier, or an affiliate of the litigation financier that is under common control with the litigation financier.

Section §46A-6N-5 provides certain form disclosures that must be incorporated into every contract.

Section §46A-6N-6 provides that unless otherwise stipulated or ordered by the court a party shall, without awaiting a discovery request, provide to the other parties any agreement under which any litigation financier, other than an attorney permitted to charge a contingent fee representing a party, has a right to receive compensation that is contingent on and sourced from any proceeds of the civil action, by settlement, judgment, or otherwise. Section §46A-6N-7 provides that any violation shall render the litigation financing contract unenforceable. A court may award a successful plaintiff costs and attorneys’ fees. Section §46A-6N-8 provides for the assignability of the contingent right to receive an amount of the potential proceeds of a legal claim for the purposes of obtaining litigation financing from a litigation financier, and for priority of liens attaching to the legal proceeds.

Section §46A-6N-9 states that a litigation financier may not charge a consumer an annual fee of more than 18 percent of the original amount of money provided to the consumer. The annual fees may not be charged more than once per year with regard to any single legal claim, and the fees may not compound more frequently than semiannually. Finally, fees may not be assessed for a period exceeding 42 months.

CODE REFERENCE: West Virginia Code §46A-6N-1 et seq. – new

DATE OF PASSAGE: March 7, 2019

EFFECTIVE DATE: June 5, 2019

ACTION BY GOVERNOR: Signed March 25, 2019

Senate Bill 369

Relating to generic drug products

This bill adds definitions for the terms “covered entity” and “covered individual.” It provides that if a pharmacist substitutes a generic drug, the patient pays only the cost of the substituted drug. This provision may not apply if the patient is a covered individual.

CODE REFERENCE: West Virginia Code §30-5-12b – amended

DATE OF PASSAGE: March 8, 2019

EFFECTIVE DATE: June 6, 2019

ACTION BY GOVERNOR: Signed March 25, 2019

Senate Bill 377

Relating to minimum wage and maximum hour standards

Currently seasonal employees of recreational establishments are not exempt from overtime laws. West Virginia Code does however already contain numerous exceptions to the definition of “employee” for the purposes of minimum wage and maximum hours laws that are “seasonal” in nature including legislative per diem workers and seasonal employees of commercial whitewater outfitters. This bill excludes any seasonal employee of an amusement park who works for the park for less than seven months in any calendar year from the definition of the term “employee” for the purposes of the Minimum Wage and Maximum Hours Standards law. The bill also adds a definition for “amusement park.”

CODE REFERENCE: West Virginia Code §21-5C-1 – amended

DATE OF PASSAGE: February 20, 2019

EFFECTIVE DATE: May 21, 2019

ACTION BY GOVERNOR: Signed March 1, 2019

Senate Bill 393

Protecting right to farm

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

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

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

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

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

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

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

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

DATE OF PASSAGE: March 5, 2019

EFFECTIVE DATE: June 3, 2019

ACTION BY GOVERNOR: Signed March 27, 2019

Senate Bill 396

Waiving occupational licensing fees for low-income individuals and military families

This bill would add a new section to the general provisions of Chapter 30 dealing with regulated boards. The bill waives the initial license fees, and only the initial license fees, for any chapter 30 license for low-income individuals and military families. Each of those terms is defined under the section.

CODE REFERENCE: West Virginia Code §30-1-22 – new

DATE OF PASSAGE: March 8, 2019

EFFECTIVE DATE: June 6, 2019

ACTION BY GOVERNOR: Signed March 25, 2019

Senate Bill 421

Relating to annual legislative review of economic development tax credit

The purpose of this bill is to add reporting requirements to the currently required report by the Development Office that is due annually to the Joint Commission on Economic Development. The new requirements would include the identify of each eligible company, whether the eligible company is claiming the development project credit or the development expansion project credit, or both, a description of the project and whether the projects are certified multiple year projects.

CODE REFERENCE: West Virginia Code §5B-2E-10 – amended

DATE OF PASSAGE: March 7, 2019

EFFECTIVE DATE: June 5, 2019

ACTION BY GOVERNOR: Signed March 22, 2019

Senate Bill 453

Relating to background checks of certain financial institutions

This bill will allow the Commissioner of the Division of Financial Institutions (“DFI”) to determine alternate acceptable forms for background check information for certain groups of applicants. Specifically, the Commissioner will be permitted to receive alternate forms for background check information for principals (who are not residents of the US) of an applicant for: (1) a mortgage lender license; or (2) a broker license; or (3) a money transmission license if the applicant also has owners or principals who are residents of the US and DFI has been provided with adequate background information for the US residents.

CODE REFERENCE: West Virginia Code §31A-2-4 – amended

DATE OF PASSAGE: March 1, 2019

EFFECTIVE DATE: May 30, 2019

ACTION BY GOVERNOR: Signed March 25, 2019

Senate Bill 485

Clarifying notification requirements for property insurance purposes

This bill relates to the notification requirements for property insurance. The bill permits insurers to provide a notice of intention to renew a property insurance policy with a new policy that includes changes made by the insurer, which result in a removal of coverage, diminution in the scope or reduction in coverage, change in deductible or addition of an exclusion. The notice of intention to renew must be accompanied by an explanation of the changes made by the insurer.

CODE REFERENCE: West Virginia Code §33-17A-3 and §33-17A-4 – amended

DATE OF PASSAGE: March 7, 2019

EFFECTIVE DATE: June 5, 2019

ACTION BY GOVERNOR: Signed March 25, 2019

Senate Bill 487

Relating to admissibility of health care staffing requirements in litigation

This bill clarifies that meeting minimum staffing requirements in a health care facility includes the provision of adequate supervision in any action brought alleging inappropriate staffing or inadequate supervision. The bill creates, for health care facilities or health care providers, a conclusive presumption that appropriate staffing was provided and a rebuttable presumption that adequate supervision to prevent accidents were provided, if the health care facility or health care provider has demonstrated compliance with the minimum staffing requirements under state law. The jury must be instructed regarding the presumption.

The bill also provides that if staffing does not meet the requirements dictated by state law, there is a rebuttable presumption that there was inadequate supervision of patients and that inadequate staffing or inadequate supervisions was a contributing cause of the patient's fall and injuries or death arising therefrom. The jury must be instructed regarding the presumption.

CODE REFERENCE: West Virginia Code §55-7B-7a – amended

DATE OF PASSAGE: March 9, 2019

PROPOSED EFFECTIVE DATE: June 7, 2019

ACTION BY GOVERNOR: Vetoed March 27, 2019

Senate Bill 489

Relating to Pharmacy Audit Integrity Act

This bill regulates pharmacy benefit managers.

First, it requires licensure of pharmacy benefit managers with the Insurance Commissioner. Standard licensure authority is provided to the Insurance Commissioner and rulemaking authority is provided to the insurance commissioner to further implement those provisions.

The license is active for a term of two years from the date of issuance. The Insurance Commissioner shall determine the licensure fee, not exceed \$10,000. The PBM shall demonstrate insurance coverage of \$1,000,000. In addition to standard licensing requirements the PBM must demonstrate to the insurance commissioner an adequate network, this network may not only be mail order, therefore its network shall include local pharmacies.

The Insurance Commissioner is given enforcement authority over this section and may examine or audit the books and records of a pharmacy benefit manager to ensure compliance with the legislative rules and the statute. Any information that is proprietary and confidential is exempt from FOIA.

The bill prohibits PBMs from engaging in certain practices.

First, it prohibits a pharmacy benefit manager from engaging in specified reimbursement practices with respect to 340B pharmacies. The 340B Drug Discount Program is a US federal government program created in 1992 that requires drug manufacturers to provide outpatient drugs to eligible health care organizations and covered entities at significantly reduced prices. A pharmacy benefit manager that reimburses a 340B Entity for drugs that are subject to an agreement under federal law shall not reimburse the 340B Entity at a rate lower than that paid for the same drug to pharmacies similar in prescription volume that are not 340B Entities, and shall not assess any fee, chargeback, or other adjustment upon the 340B Entity.

Second, it limits when the PBM may perform a charge-back or recoupment involving a dispensed product. It limits a charge back to the following:

- Fraud or other intentional and willful misrepresentation as evidenced by a review of the claims data, statements, physical review, or other investigative methods;
- Dispensing in excess of the benefit design, as established by the plan sponsor;
- Prescriptions not filled in accordance with the prescriber's order; or
- Actual overpayment to the pharmacy

Finally, it requires the PBM that contracts with PEIA to provide quarterly reports to the Governor and Legislature. PEIA contracts with a PBM to administer its drug benefit program, process and pay prescription drug claims, to create PEIA's drug formulary.

The following information shall be reported:

- The amount paid to the pharmacy provider per claim; including the cost of drug reimbursement
- Dispensing fees
- Copayments
- The amount charged to the plan sponsor for each claim

If there is a difference between these amounts, the PBM shall report an itemization of all administrative fees, rebates, or processing charges associated with the claim. PEIA is required to compile the data and

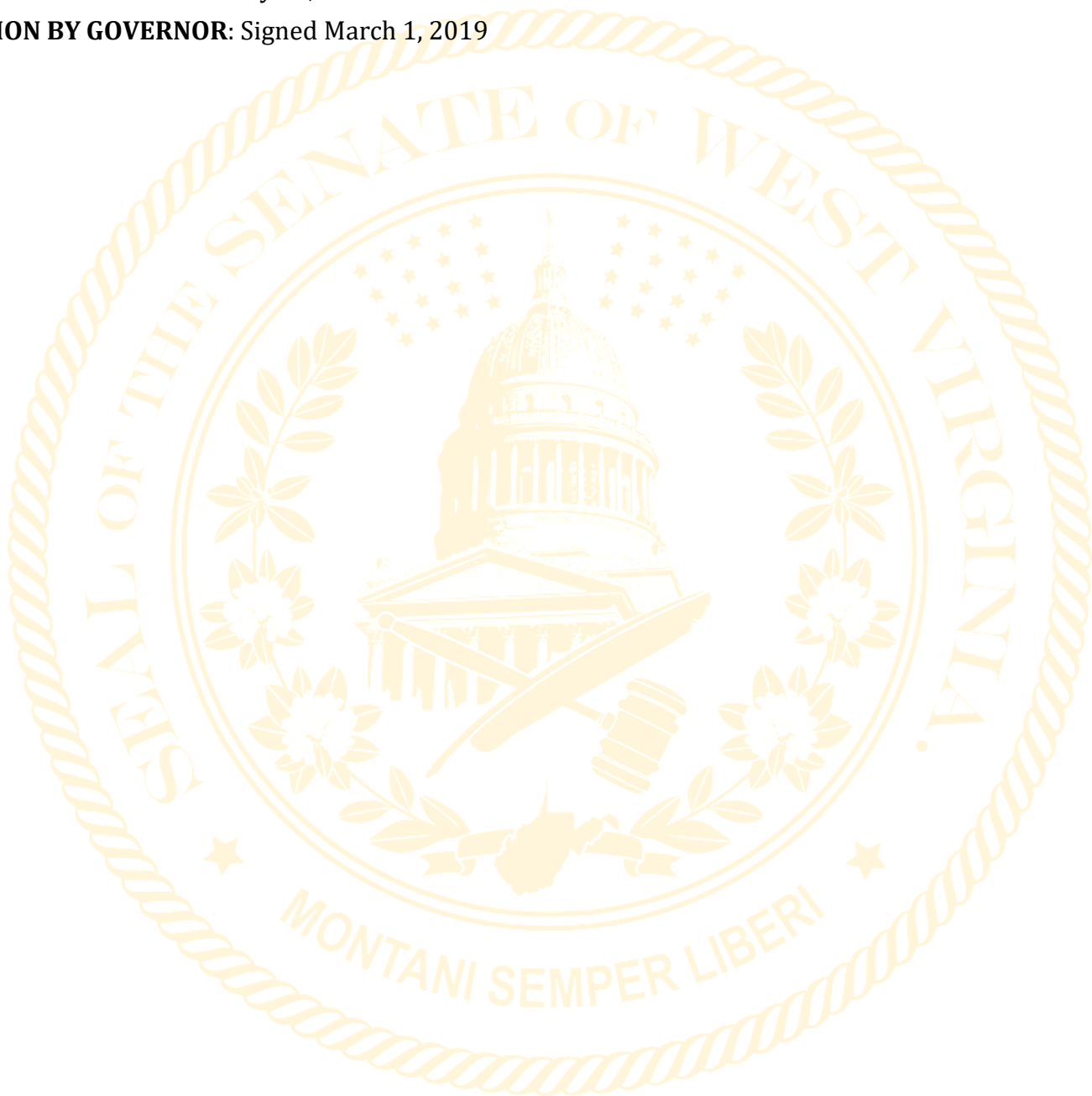
protect and not disclose proprietary information contained in the data. If the information is not provided, PEIA may terminate the contract.

CODE REFERENCE: West Virginia Code §5-16-9, §33-51-3, §33-51-4, §33-51-7, §33-51-8, §33-51-9 – amended; §33-51-10 – new

DATE OF PASSAGE: February 26, 2019

EFFECTIVE DATE: February 26, 2019

ACTION BY GOVERNOR: Signed March 1, 2019



Senate Bill 499

Amending WV tax laws to conform to changes in partnerships for federal income tax purposes.

The purpose of this bill is to modify West Virginia's tax code as it relates to taxation of partnerships due to changes made to federal law. The United States Congress changed how the Internal Revenue Service will audit and collect additional federal income taxes owed by partners and equity owners of other pass-through entities for federal income tax purposes. This became effective for tax years beginning on and after January 1, 2018.

In the past, when a federal audit changed the distributive share a partner or equity owner of a pass-through entity, the partner or equity owner was required by W. Va. Code § 11-21-59 or W. Va. Code § 11-24-20 to report the federal audit adjustments to the Tax Commissioner and pay any additional West Virginia income taxes due. Under the new federal partnership audit regime, the Internal Revenue Service will assess the partnership, or other pass-through entity, an imputed federal income tax liability. The partners, and equity owners of other passthrough entities, will not be reporting federal audit adjustments to the Tax Commissioner and paying additional West Virginia income taxes.

This bill would update the West Virginia Personal Income Tax and Corporation Net Income Tax sections of our code to allow the Tax Commissioner to collect revenue the State would have received prior to the changes in the federal partnership audit regime, but not with the federal changes and the current structure of our code. These amounts will not be collected without enactment of this legislation.

CODE REFERENCE: West Virginia Code §11-10-3, §11-10-4, §11-10-7, §11-10-14, §11-10-15, §11-10-16, §11-21-3, §11-21-51a, §11-21-59, §-21-71a and §11-24-20 – amended; and §11-10- 18c, §11-21-37a, §11-21-37b, §11-21-37c, §11-21-59a, and §11-21A-1 through §11-21A-12 – new

DATE OF PASSAGE: March 9, 2019

EFFECTIVE DATE: July 1, 2019

ACTION BY GOVERNOR: Signed March 25, 2019

Senate Bill 510

Relating to medical professional liability

This bill amends the prerequisites for filing a medical professional liability claim. Prior to filing a medical professional liability claim in West Virginia, a 30-day notice is required to be signed by a health care provider qualified as an expert under the West Virginia Rules of Evidence. This is known as a certificate of merit. The bill also makes a number of changes to that process, including:

- It requires that the 30-day notice for filing a claim include specified information about any agents, servants, employees, or officers of the health care provider who is to be named in the potential suit if the suit is premised on the act or failure to act of the agents, servants, employees, or officers of the health care provider.
- It requires that a health care provider who signs a certificate of merit is qualified as an expert under the West Virginia Rules of Evidence, meets the requirements of W. Va. Code §55-7B-7(a)(5) and W. Va. Code §55-7B-7(a)(6), and devotes, at the time of medical injury, 60 percent of his or her professional time annually to the active clinical practice in his or her medical field or specialty, or to teaching in his or her medical field or specialty in an accredited university.
- If the health care provider who signs the certificate of merit meets the above qualifications, it establishes a presumption that the health care provider is qualified as an expert for the purposes of executing a certificate of merit.
- It updates the requirements for what a certificate of merit shall state with particularity and include, specifically that a list of all medical records and other information reviewed by the expert executing the certificate of merit be included.
- It provides that no challenge to the notice of claim may be raised prior to receipt of the notice of claim and the executed screening certificate of merit.

CODE REFERENCE: West Virginia Code §55-7B-6 – amended

DATE OF PASSAGE: February 28, 2019

EFFECTIVE DATE: May 29, 2019

ACTION BY GOVERNOR: Signed March 25, 2019

Senate Bill 511

Creating alternating wine proprietorships

The bill does the following:

- Permits farm wineries and wineries to enter into alternating wine proprietorship agreements, allowing other farm entities to use the same physical plant to produce separate brands of wine;
- Clarifies that a fair or festival may be held on the premises of a winery or farm winery;
- Provides that a winery or farm winery may to conduct tastings, samplings, and sales at off-site festivals;
- Clarifies that wine specialty shops can conduct samplings with a limit of three samples of two fluid ounces per person in any one day;
- Permits charities with a one-day license to auction wines with an annual event limit of six;
- Permits Division II and III colleges to have sports stadium wine sales;
- Allows curbside web-based purchases of wine at grocery stores;
- Allows delivery of wine by wine specialty shops according to similar requirements of direct shipping law, which ensure the age of the purchaser; and
- Clarifies licensing requirements and imposes a \$150 late registration fee.

CODE REFERENCE: §60-4-3b, §60-8-3, and §60-8-17 – amended; §60- 1-5c, §60-8-3a, and §60-8-6b – new

DATE OF PASSAGE: March 7, 2019

EFFECTIVE DATE: June 5, 2019

ACTION BY GOVERNOR: Signed March 25, 2019

Senate Bill 522

Creating Special Road Repair Fund

The bill would create a new special revenue account and a new program relating to road repair.

§17-3-11 – This new section would create a new sub-account in the State Road Fund, to be known as the “Special Road Repair Fund.” The moneys in the fund must be expended solely for the purposes of the new program described below “for the maintenance and repair of the state’s roads and highways.” Funding would be from funds which the Commissioner is authorized to transfer into the fund. He or she is given authority to transfer no more than \$80 million to this sub- account from the State Road Fund in any fiscal year for the sole purpose of repairs of non-federal aid eligible roads.”;

§17-30-1 et seq. – This new article would create a new program, to be known as the “Enhanced Road Maintenance Program,” to be administered by the Division of Highways (DOH). Under Section 2, the DOH “county supervisor in each county in consultation with the county commission of each county and any currently elected member of the Legislature whose district overlaps any portion of the county may submit to the Division of Highways a list of road repair and maintenance projects in need of repair in their county . . . listed in priority order according to [DOH] average daily traffic counts and the county commission’s determination of the roads’ level of disrepair.” DOH may award funding for these projects.

Subsection (d) of Section 2 provides that the DOH “shall contract with a private contractor or private contractors to perform nonfederal aid road repairs and maintenance activities if 70 percent of the core maintenance projects proposed for completion in the previous year have not been completed and based upon the award allocation and for the projects as submitted to the Division of Highways . . .” Subsection (e) provides that DOH “shall contract with vendor contractors to complete repair and maintenance activities for any district if 70 percent of the core maintenance projects proposed in that district for completion in the previous year have not been completed.”

Subsection (f) provides that DOH “shall ensure that, alongside roads being paved, all drainage work, including any necessary ditching and installation of culverts, if necessary, has been performed in the state’s rights-of-way prior to such paving work.”

Section 3 requires that funding for “the grants shall be proportionately based upon the total mileage of nonfederal aid eligible county routes in each district, excluding where core maintenance was completed within the previous year, as those figures are maintained by the Division of Highways: Provided, That no county shall receive less than \$1,000,000 of the available funding” and DOH must promulgate emergency rules “to develop a funding mechanism proportionately based upon the nonfederal aid mileage in each county.”

Section 4 requires the Commissioner of DOH to allocate the funds in the new Special Road Repair Fund “for the payment of vendor contracts among the districts for repair and maintenance of nonfederal aid roads.” It also provides that DOH “must use the funds for the purpose of contracting with a vendor to perform certain repair and maintenance activities in the district as set forth in this article.”

The section also allows DOH to “provide supplemental funds to a district in need if additional funds are available in the Special Road Repair Fund. Any additional funds shall be used for completion of the projects originally submitted by the county commission.”

Section 5 requires DOH to report annually on the program to the Joint Committee on Government and Finance and requires the Legislative Auditor to conduct biennial audit reports that review the program.

The bill also has a provision which directs the State Auditor to develop a public website that provides information as to all state road repair projects and the money allocated to pay for them.

CODE REFERENCE: West Virginia Code §17-3-11, §17-30-1 through §17-30-5 – new

DATE OF PASSAGE: March 9, 2019

EFFECTIVE DATE: July 1, 2019

ACTION BY GOVERNOR: The Governor vetoed this bill on March 27, 2019. The Governor stated:

“The purpose of the bill, while well-intentioned, is problematic because it represents a legislative encroachment into executive functions. The bill would have the county supervisor, with consultation of the county commission and the legislators representing that county to compile a list of secondary roads projects in the county and prioritize those projects.

Maintaining our state and secondary roads system, including assigning priority to particular projects, is without question an executive function. “The separation of powers provision of the State Constitution, which prohibits any one department of the State government from exercising the powers of the others, is not merely a suggestion; it is part of the fundamental law of the State, and as such, it must be strictly construed and closely followed.” State ex rel West Virginia Citizens Action Group v. West Virginia Economic Development Grant Committee, 213 W.Va. 255 (2003). Much like the authority of presiding officers of both houses to appoint members to the Economic Development Grant Committee, which the court found to be a legislative assertion of post-enactment control over executive branch decisions, allowing sitting legislators to assume an executive role and assist in making decisions about which roads deserve attention and in what order certainly Violates the separation of powers.”

Senate Bill 529

Clarifying provisions of Nonintoxicating Beer Act

The bill does the following:

- Authorizes temporary events license, for existing Class A licensee's, through a nonintoxicating beer floor plan extension to utilize extra space for one day extension;
- Allows growlers no larger than 128 fluid ounces to be sold and filled and removes growler limit;
- Allows a fee for late license applications and adds a fee schedule therefore;
- Authorizes a 30-day requirement to issue or deny a license;
- Authorizes licenses for one-day charitable nonintoxicating beer events, and sets fees therefore;
- Allows certain grocery stores to sell and deliver beer to persons pre-ordering and picking up the beer at the retail site and adds a license fee;
- Allows for licensing of representatives and delivery vehicles;
- Removes certain bond requirements for brewers, resident brewers, and distributors;
- Adds a \$100 fee for licensees and establishes a special revenue account;
- Raises alcohol by volume limits from 11.9 – 15%;
- Generally, sets out and updates requirements for certain licenses; and
- Authorizes rulemaking.

CODE REFERENCE: West Virginia Code §11-16-3, §11-16-5, §11-16-6a, §11-16-6b, §11-16-8, §11-16-9, §11-16-10, §11-16-12, and §11-16-17a – amended; §11-16-6c and §11-16-11b – new

DATE OF PASSAGE: March 8, 2019

EFFECTIVE DATE: June 6, 2019

ACTION BY GOVERNOR: Signed March 25, 2019

Senate Bill 531

Relating generally to workers' compensation claims

This bill removes the requirement that workers' compensation claimants who are settling their medical claim for occupational hearing loss or hearing impairment must be represented by counsel. Those specific claimants will no longer be required to hire an attorney to settle the medical portion of their workers' compensation claim.

CODE REFERENCE: West Virginia Code §23-5-7 – amended

DATE OF PASSAGE: March 6, 2019

EFFECTIVE DATE: June 4, 2019

ACTION BY GOVERNOR: Signed March 25, 2019

Senate Bill 538

Relating to WV Highway Design-Build Pilot Program

This bill amends §17-2D-2 of the Code of West Virginia, relating to the Highway Design-Build Program. The bill changes wording in multiple instances, including from “expend” to “contractually obligate.” This is to clarify that annual spending limitations under the design-build program relate to money that is contractually obligated and not actually expended by the DOH in a given year.

The bill does not change current monetary limits for the program which are:

- No more than \$200 million on any one project;
- No more than \$400 million in each year in the program; and
- No more than \$500 million in the total aggregate amount in any one year.

The bill provides that for projects financed without bonds for fiscal years beginning after June 30, 2019, the DOH may contractually obligate in the program:

- No more than \$200 million on any one project;
- No more than \$200 million in each year; and
- No more than \$300 million in the total aggregate amount in any one year.

The bill further provides that for projects financed with bonds for fiscal years beginning after June 30, 2018, the DOH may contractually obligate in the program:

- No more than \$300 million on any one project;
- No more than \$600 million in each year; and
- No more than \$700 million in the total aggregate amount in any one year.

The bill also moves a current exception to its own subsection and makes the exception applicable to projects financed with or without bonds. The exception provides that contractual obligations made for projects that are necessitated by a declared state of emergency shall not be included in calculating contractual obligation limits.

CODE REFERENCE: West Virginia Code §17-2D-2 – amended

DATE OF PASSAGE: March 9, 2019

EFFECTIVE DATE: March 9, 2019

ACTION BY GOVERNOR: Approved on March 27, 2019

Senate Bill 543

Relating generally to automobile warranties and inspections

This bill deals with the applicable warranties that relate to used cars and provides for “As Is” sales of used motor vehicles. The bill would allow all used motor vehicles to be sold “As Is” if:

- The vehicle is inoperable and a total loss;
- The vehicle has been custom built or modified for show purposes or racing; or
- The vehicle is the following:
 - Sold for less than \$4,000;
 - Driven more than 100,000 miles at the time sold; or
 - Seven years of age or older as calculated from January 1 of the designated model year of the vehicle.

If the vehicle meets the criteria of (3) above, i.e., is sold for less than \$4,000; driven more than 100,000 miles at the time sold; or 7 years of age or older, then the buyer has the right to cancel the sale if he or she returns the vehicle to the point of sale by the end of the dealer’s third business day following the sale; but in order to cancel, the vehicle must also “have a significant mechanical issue or issues that can be reasonably expected to have existed at the time of the sale.” There are no provisions for cancelling a sale of a vehicle that meets the criteria of (1) or (2) above, i.e., the vehicle is inoperable and a total loss; or the vehicle has been custom built or modified for show purposes or racing.

The bill provides the “disclaimer” language that the seller must provide on the front page of the contract of sale. The “merchant” must “describe in writing any defects or malfunctions, if any, disclosed to the merchant by a previous owner of the used motor vehicle or discoverable by the merchant after an inspection of the used motor vehicle; and provide the consumer a copy of a nationally recognized vehicle history report for the used motor vehicle.

The bill also states that an “as is” sale of a used motor vehicle waives implied warranties but does not waive any express warranties upon which the consumer relied in entering into the transaction.

CODE REFERENCE: West Virginia Code §46A-6-407a – amended

DATE OF PASSAGE: March 9, 2019

EFFECTIVE DATE: July 1, 2019

ACTION BY GOVERNOR: Signed March 25, 2019

Senate Bill 546

Creating tax on certain acute care hospitals

This bill imposes a tax increase on specified acute care hospitals to maximize federal funding in order to increase practitioner payment for employed practitioners.

The bill applies to providers of inpatient and outpatient hospital services, this bill imposes an additional tax of 0.13 percent on the gross receipts received or receivable by eligible acute care hospitals and health systems that provide inpatient and outpatient hospital services in the state. The bill excludes:

- A state owned or designed facility
- A critical access hospital
- A licensed long-term acute care hospital

The term practitioner means a physician licensed pursuant to the provisions of §30-3-1 and §30-14-1 of this code.

The tax may not be collected until each of the following:

- WV BMS incorporates the payment methodology into the appropriate contracts and agreements; and,
- The WV BMS receives the necessary approvals from CMS
- All fees shall be deposited into a dedicated eligible acute care practitioner enhancement fund.

Disbursements from the eligible acute care fund may only be used to support increasing practitioner payment fee schedules for practitioners employed by eligible acute care hospitals and health systems.

The collection of the tax shall be suspended on any of the following:

- The effective date of any action by Congress that would disqualify the taxes imposed by this section from counting toward state Medicaid funds to be used to determine federal participation;
- The effective date of any decision or other determination by the Legislation, court, or other body that disqualifies the tax from counting toward state Medicaid funds to be used to determine federal participation; And
- If the funds are not used to effectuate the provisions of this section

If the fund is suspended, then the funds are transferred to the Medical services fund and subject to the discretion of BMS. The bill contains an internal effective date of on or after July 1, 2019, and a sunset date of on or after June 30, 2021.

CODE REFERENCE: West Virginia Code §11-27-39 – new

DATE OF PASSAGE: March 7, 2019

EFFECTIVE DATE: July 1, 2019

ACTION BY GOVERNOR: Signed March 25, 2019

Senate Bill 561

Permitting Alcohol Beverage Control Administration request assistance of local law enforcement

This bill does the following:

- Creates a county option election on forbidding nonintoxicating beer, wine, or alcoholic liquors to be sold, given, or dispensed after 10 am on Sundays in lieu of a county option election to permit such sales.
- Permits the Alcohol Beverage Control Administration (ABCA) to request and obtain the assistance of local law enforcement in enforcing liquor laws. ABCA limits the jurisdiction of such requested law enforcement assistance, similar to existing law regarding the State Police.
- Implements a \$100 operations fee for vendors, manufacturers, distributors, and retailers, similar to what was done for beer in Senate Bill 529. Establishes a special revenue account.
- Clarifies laws against public consumption of alcoholic liquors;
- Clarifies that the sale of liquor by the drink is lawful while clearly prohibiting bottle sales of liquor;
- Permits sale of bottles of wine at Class A retailers, distinguishing wine from liquor;
- Authorizes pre-mixed frozen drink machines to contain alcohol and sets sanitation standards for the machines;
- Creates a private fair and festival license for sale of liquor, wine, and beer at such events. This is similar to the current wine and beer festival license;
- Creates a private hotel license for hotels of one to three acres;
- Creates a private nine-hole golf course license;
- Allows private resort hotel licensees to operate an interconnected resident brewery and brew pub;
- Requires the ABCA to act on license applications within 30 days of receipt;
- Adds reactivation/late fee of \$150, same as the current fee for beer and wine;
- At the Commissioner's discretion, allows a business with a Class A and Class B license to operate both on same premises if under one owner;
- Clarifies that state licensed gaming is lawful in a private club, which syncs the law up with the Lottery Act;
- Permits minors to attend a private hotel, private nine-hole golf course, and a private fair or festival under certain conditions.

CODE REFERENCE: West Virginia Code §7-1-3ss, §11-16-18, §60-6-7, §60-6-8, §60-6-9, §60-7-2, §60-7-3, §60-7-4, §60-7-5, §60-7-6, §60-7-12, §60-8-34, and §60-8-27 – amended; §60-2-17a, §60-2-17b, §60-7-6a, and §60-7-8a – new

DATE OF PASSAGE: March 9, 2019

EFFECTIVE DATE: June 7, 2019

ACTION BY GOVERNOR: Signed March 25, 2019

Senate Bill 564

Expanding comprehensive coverage for pregnant women through Medicaid

This bill comprehensive benefit plan for pregnant women under the Children's Health Insurance Program – CHIP – for women between 185% of the federal poverty and up to 300% of the federal poverty level. The Committee on Health and Human Resources added the provision that this would occur if funding is available after all children up to 300 percent of the federal poverty level are covered. A similar change is made to the Medicaid Program by expanding coverage from the current level of 150% of the federal poverty level to 185% of the federal poverty level. The bill also provides for 60 days postpartum care as part of the coverage.

CODE REFERENCE: West Virginia Code §5-16B-6d and §9-5-12 – amended

DATE OF PASSAGE: March 9, 2019

EFFECTIVE DATE: June 7, 2019

ACTION BY GOVERNOR: Signed March 25, 2019

Senate Bill 587

Relating to PEIA reimbursement of air ambulance providers

This bill establishes the amount the West Virginia Public Employees Insurance Agency will reimburse air-ambulance providers for the transportation of individuals covered by its plans, consistent with *Air Evac EMS, Inc. v. Cheatham*, 910 F.3d 751 (4th Cir. 2018). The bill provides that the plan reimburse a provider the amount in effect for the federal Medicare Program, including any Geographic Practice Cost Index. Further, the bill clarifies that where 49 U.S.C. §41713(b) (the ADA fee schedule) applies to reimbursement of a provider under §5-16-8a, any administrative, civil, or criminal penalties of the WV Code are inapplicable.

CODE REFERENCE: West Virginia Code §5-16-8a – amended

DATE OF PASSAGE: March 6, 2019

EFFECTIVE DATE: June 4, 2019

ACTION BY GOVERNOR: Signed March 25, 2019

Senate Bill 593

Permitting critical access hospital become community outpatient medical center

The bill provides for critical access hospital to apply to convert to a community outpatient medical center if it has been designated as a critical access hospital for at least one year and, it is designated as a critical access hospital at the time of the application to convert to a community outpatient medical center.

CODE REFERENCE: West Virginia Code §16-5b-14 – amended

DATE OF PASSAGE: March 1, 2019

EFFECTIVE DATE: May 30, 2019

ACTION BY GOVERNOR: Signed March 9, 2019

Senate Bill 597

Conforming state law to federal law for registration of appraisal management companies

This bill brought state law into conformity with federal law for registration of Appraisal Management Companies. The bill broadened who must verify and report certain statements to the Real Estate Appraiser Licensing and Certification Board by requiring that each owner of the Appraisal Management Company must report and meet the standards for registration.

CODE REFERENCE: §30-38A-7, §30-38A-12, and §30-38A-17 – amended

DATE OF PASSAGE: March 7, 2019

EFFECTIVE DATE: June 5, 2019

ACTION BY GOVERNOR: Signed March 25, 2019

Senate Bill 622

Relating generally to regulation and control of financing elections

The bill makes numerous changes to article eight, chapter three of the code of West Virginia, relating to the state's regulation and oversight of campaign finance.

Definitions

The bill updates and adds certain definitions to the code. Most notably, the bill amends the definition of "political action committee" (PAC) to mean a committee organized by one or more persons, the primary purpose of which is to support or oppose the nomination or election of one or more candidates. The bill also amends the definition of "independent expenditure" to include expenditures expressly advocating the election or defeat of the candidates of a political party, rather than just those expressly advocating the election or defeat of a particular candidate.

"Last Minute" Independent Expenditure Reporting

The bill raises the dollar threshold for reporting of "last minute" pre-election independent expenditures for statewide, legislative, or multicounty judicial candidate elections, from \$1,000, in current code, to \$5,000. "Last minute" refers to expenditures or electioneering communications occurring after the 15th day preceding an election, but more than 12 hours before the election. The bill would require persons making "last minute" independent expenditures aggregating \$5,000 or more to file expenditure disclosure reports, within 24 hours of making the expenditure(s) meeting the threshold, with the Secretary of State. After the person files a first "last minute" expenditure disclosure report, the bill would also require the person to file additional "last minute" expenditure disclosure reports, within 24 hours of making any additional expenditures aggregating \$5,000 or more for the same election.

Contribution Limitations

The bill raises the state's campaign contribution limits to mirror the federal campaign contribution limits:

- The bill permits contributions to a candidate in a primary or general election campaign up to \$2,800 per election. Current code permits contributions up to \$1,000.
- The bill permits contributions to a state party executive committee, or a local subsidiary thereof, or to a caucus campaign committee of up to \$10,000 per calendar year. Current code permits contributions up to \$1,000 in a calendar year.
- The bill permits contributions to a PAC, of up to \$5,000 per election. Current code permits contributions up to \$1,000.

The bill also provides that a person seeking nomination may receive general election contributions during the pre-candidacy period but cannot expend any such funds until after the date that the candidate's nomination is declared.

Foreign Nationals

The bill completely prohibits any contributions or donations, or independent expenditure, by foreign nationals, and prohibits any person from soliciting or accepting such a contribution or donation. The definition of foreign national mirrors the Federal Election Commission (FEC) definition.

Reporting; Filing Requirements

The bill makes numerous modifications to existing code regarding requirements for filing various reports with the Secretary of State.

Financial Reporting Deadlines

The bill changes the schedule for the filing of all financial reports, including independent expenditure reports and PAC financial statements, to a quarterly schedule. Currently, the Code requires an initial report at the end of March, a pre-primary election report, a post-primary election report, and a pre-general election report.

The bill also requires a candidate or candidate's committee to file detailed, itemized financial pre-primary election and pre-general election statements, within four business days after the 15th day preceding the election.

Clarifying Federal Exemption

The bill clarifies that PACs registered with the FEC are exempt from the requirement to file financial statements with the State Election Commission (SEC) but must still file independent expenditure disclosure reports and electioneering disclosure reports when engaging in activity subject to those requirements.

Statements of Organization

The bill removes the requirement that statements of organization for PACs, candidate committees, or political party committees must be filed at least 28 days before an election. These statements would still be required to be filed before a person could act as a treasurer for any PAC, candidate committee, or political party committee, but the bill would remove the deadline for filing such statements.

Electronic Filing

The bill requires that political committees and candidates for state-level offices, circuit judgeships, and family judgeships file all financial statements, required to be filed with the Secretary of State, electronically. The bill also requires that electioneering communication reports and independent expenditure reports be filed electronically.

Late Filing

The bill reduces the fee charged per day for each day that passes after the deadline before a person files required statements or reports with the Secretary of State, from \$25 per day to \$10 per day, but makes the fee mandatory (it is a discretionary fee in current Code). The bill requires the Secretary to publish a list of late filers online.

Recordkeeping

The bill increases the length of time for which persons must maintain records related to activity that must be reported to the Secretary of State from six months to two years, the period of time in which a person may be audited by the Secretary. The bill increases the length of time for which persons must maintain records related to electioneering activity from six months to five years.

Membership Organizations

The bill provides that membership organizations (unions, etc.) are subject to the contribution restrictions on corporations, meaning that these organizations must set up separate, segregated funds for the solicitation and making of contributions. These segregated funds are PACs and must meet all financial disclosure requirements for PACs.

Lawful Election Expenses of Political Committee

The bill adds to the permitted expenditures by political committees, to include:

- Payment for legal and accounting services rendered to a candidate or candidate committee if the services are solely related to the candidacy or campaign;
- Payment for food and drink for campaign-related purposes; and
- Payment of any fees associated with the campaign, except for fines.

Coordinated Expenditures

The bill provides that a coordinated expenditure is considered to be a contribution for the purposes of the campaign finance laws and is subject to contribution limits. A coordinated expenditure is an expenditure made in concert with, in cooperation with, or at the request or suggestion of a candidate, candidate committee, or party committee, if the communication resulting from the expenditure is paid for by another person and the candidate, candidate committee, or party committee meets certain criteria indicating that the candidate or committee was involved in the creation or distribution of the communication.

One of the criteria indicating candidate/committee involvement in a communication, is a situation in which a person making, or otherwise involved in, the communication has been an employee or vendor of campaign services for the candidate, candidate committee, or party committee in the preceding four months. The bill provides a “safe harbor” provision, whereby a committee can implement a “firewall” to effectively screen the employee from the flow of information involving the communication, eliminating the involvement of the employee that would otherwise make the communication a coordinated expenditure.

The bill provides an exception for the state committee of a political party and a caucus campaign committee, allowing such committees to make coordinated expenditures up to \$5,000 in connection with the general election campaign for each state-level candidate and legislative candidate for the party with such expenditures being treated as contributions.

Joint Fundraising

The bill permits joint fundraising efforts by political committees, pursuant to a written joint fundraising agreement filed with the Secretary of State. The agreement must provide terms for the allocation of proceeds between or among committees involved in the effort. Any person soliciting funds for the joint fundraising effort must disclose the political committees involved. The Secretary of State is authorized to promulgate rules regarding joint fundraising efforts.

Miscellaneous

The bill allows unlimited transfers between or among state party executive committees, legislative caucus campaign committees, and national committees of the same party for get-out-the vote activities.

CODE REFERENCE: West Virginia Code §3-8-1a, §3-8-2, §3-8-4, §3-8-5, §3-8-5b, §3-8-5e, §3-8-7, §3-8-8 §3-8-9, and §3-8-12 – amended; §3-8-5c, 3-8-5g, §3-8-9a, §3-8-9b, and §3-8-9c – new

DATE OF PASSAGE: March 9, 2019

EFFECTIVE DATE: June 7, 2019

ACTION BY GOVERNOR: Signed March 27, 2019

Senate Bill 627

Relating generally to Rural Rehabilitation Loan Program

The Rural Rehabilitation Loan Program permits the Department of Agriculture to issue loans to aid the retention, expansion, or development of new or existing agricultural enterprises.

In the case of a default on a loan, this bill permits the Department of Agriculture to repossess and dispose of property without being required to utilize the State Agency for Surplus Property.

The bill also allows the commissioner to transfer the servicing of a loan to other governmental entities. Currently, the service must be done by private institution or by the State Treasurer.

CODE REFERENCE: West Virginia Code §19-1-11 – amended

DATE OF PASSAGE: March 8, 2019

EFFECTIVE DATE: March 8, 2019

ACTION BY GOVERNOR: Signed March 22, 2019

Senate Bill 633

Authorizing Board of Physical Therapy conduct criminal background checks on applicants for licenses

This bill authorized the Board of Physical Therapy to require applicants submit to a criminal history record check and provides the rule making authority for the board to implement the policy.

CODE REFERENCE: West Virginia Code §30-41-4 – new

DATE OF PASSAGE: March 8, 2019

EFFECTIVE DATE: June 6, 2019

ACTION BY GOVERNOR: Vetoed March 27, 2019

Senate Bill 635

Relating generally to coal mining activities

The purpose of this bill is to provide a series of changes to our current mining laws. This bill is broken down into four essential parts: 1) Economic Development, 2) Environmental, 3) Underground Coal Mining, and 4) Crimes and Their Punishment.

- Economic Development
 - Within the article dealing with the Coalfield Community Development Office, it abolishes the requirement that a community impact statement be provided; requires now that the office consult with the department's Office of Mining and Reclamation on a quarterly basis to review the permit application databases to determine if newly proposed surface mines present economic opportunities for mine operators to cooperate with landowners and local governmental officials; and, states that an operator only need to prepare and submit certain information upon request by the Office.
- Environmental
 - Within the article dealing with the Surface and Coal Mine Reclamation Act, it requires the Secretary of the DEP to promulgate rules relating to surface owner protection from material damage due to subsidence. States that the Secretary shall consider the federal standards.
 - Within the article dealing with the Water Pollution Control Act, it requires the Secretary of the DEP to promulgate rules relating to surface coal mine operations. The rules should relate to categories of permitting actions and permitting fees.
 - Within the article dealing with the Aboveground Storage Tank Act, it requires the Secretary of the DEP to promulgate rules relating to incorporating relevant provisions of the Groundwater Protection Rules for Coal Mining contained in 38 CFR 2F for tanks and devices located at coal mining operations.
- Underground Coal Mining
 - Within the article dealing with Office of Miners' Health, Safety and Training; Administration; Enforcement, it requires any miner issued a personal assessment to either appeal or pay the fine within 30 days of receipt of the violation; requires that the state's Mine Rescue Team be provided as a backup mine rescue team to operation that cannot secure a backup, and requires that the Office of Miners' Health, Safety and Training use surplus special revenue funds to pay for the rescue team or teams; and, the Act holds harmless the mine owner and the State of West Virginia. If they refuse to effect a rescue for persons in the act of mine trespass due to safety concerns.
 - Within the article dealing with the OMHST's Substance Abuse Enforcement, it allows any employee involved in an accident involving physical injuries or damage to equipment to be drug tested by the employer; and, requires that any miner that fails a drug test to be suspended for at least six months.
 - Within the article dealing with Underground Mines, for ventilation, it requires that a mine operator submit a copy of the MSHA-approved ventilation plan to the director of OMHST once approved. That this shall serve as the state-approved plan as well. For apprentice miners, the director of the OMHST shall promulgate rules to establish a course of instruction. That apprentice miners work within sight and sound of an experienced miner for 90 days instead of 120 days. For tracking data, it allows the director of the OMHST to use the

employers tracking data for the purpose of decertifying any examiner who fails to perform his/her duties. And, finally, it requires that all existing rules under this article be revised to reflect any changes enacted during the 2019 Regular Session.

- Within the article dealing with Use of Diesel-Powered Equipment in Underground Coal Mines, it eliminates the requirement that an operation measure Nitrogen Oxide (NO) unless they are measuring the ambient air (close to the equipment).
- Within the article dealing with Certification of Underground and Surface Coal Miners, it allows a competent miner to supervise up to two red hat miners instead of limiting it to one; and, removes the certification for any miner convicted of mine trespass.
- Crimes and Their Punishment
 - Within the article dealing with Crimes Against Property, it removes the provision for entry into an underground coal mine from the section dealing with entry into a building.
 - Within the article dealing with Trespass, it establishes the offense of mine trespass with criminal penalties for first, second, and third offenses upon conviction. First offense is a misdemeanor and jail not less than one week and pay a fine of not less than \$1,000 or more than \$5,000; second offense is a felony and jail not less than five years and not more than 10 years and fined not less than \$5,000 or more than \$10,000; and third offense is a felony and jail not less than five years or more than 10 years and fined not less than \$10,000 or more than \$25,000. The bill creates additional graduated criminal penalties for those who cause bodily injury or death to others while trespassing, provides for double damages for property damages created during a mine trespass; and provides for certain protections insuring the right to demonstrate is not violated.

CODE REFERENCE: West Virginia Code §22A-2A-405, §22A-8-5, §22A-8-10, §61-3-12, and §61-3B-6 – amended; §5B-2A-5, §5B-2A-6, §5B-2A-8, §5B-2A-9, §22-3-14, §22-11-10, §22-30-3, §22-30-24, §22A-1-21, §22A-1-35, §22A-1A-1, §22A-1A-2, §22A-2-2, §22A-2-12, §22A-2-13, §22A-8-5, §22A-2-80 – new

DATE OF PASSAGE: March 9, 2019

EFFECTIVE DATE: March 9, 2019

ACTION BY GOVERNOR: Signed March 27, 2019

Senate Bill 653

Relating generally to practice of medical corporations

The proposed bill concerns the who may form medical corporations. Under current law, a medical corporation may only be comprised of individual physicians licensed to practice medicine and surgery in this state. The bill permits podiatric physicians and physician assistants to become shareholders in a medical corporation along with physicians. This change is reflected throughout the document. Additionally, the bill replaces references to the practice of podiatry with podiatric practice. Licensees of the WV Board of Osteopathic Medicine may join with licensees of the board to receive a certification of authorization. The bill provides that hospitals are not required to obtain a certificate of authorization so long as the hospital does not exercise control of the independent medical judgment of physicians and podiatric physicians. Similar provisions were added to the osteopathic medicine law.

CODE REFERENCE: West Virginia Code §30-3-15 and §30-14-9a – amended

DATE OF PASSAGE: March 7, 2019

EFFECTIVE DATE: June 5, 2019

ACTION BY GOVERNOR: Signed March 25, 2019

Senate Bill 656

Relating to electronic filing of tax returns

The purpose of this bill is to increase the threshold at which a taxpayer is required to pay a tax liability electronically (“if the amount owed for the tax during the preceding tax year was less than \$25,000), or at which a taxpayer is required to file a tax return electronically (“any person...who had total annual remittance for any single tax equal to or greater than \$25,000 during the immediately preceding tax year”), from \$25,000 to \$50,000. Senate Bill 656 also removed reference in the code to taxes no longer being imposed.

CODE REFERENCE: West Virginia Code §11-10-5t, §11-10-5z, and §11-13V-7 – amended

DATE OF PASSAGE: March 9, 2019

EFFECTIVE DATE: July 1, 2019

ACTION BY GOVERNOR: Signed March 25, 2019

Senate Bill 658

Relating to motor vehicle salesperson licenses

This bill eliminated the blanket restriction on issuing a motor vehicle salesperson license to an individual who has previously committed a felony on “any financial matter.” The restriction only applies when an applicant has committed a felony involving a financial transaction involving the sale or purchase of a motor vehicle.

CODE REFERENCE: West Virginia Code §17A-6E-4 – amended

DATE OF PASSAGE: March 7, 2019

EFFECTIVE DATE: June 5, 2019

ACTION BY GOVERNOR: Signed March 25, 2019

Senate Bill 667

Creating WV Motorsport Committee

This bill established the West Virginia Motorsports Committee. The purpose of the committee is to enhance racing motorsports, develop strategies that create further opportunities, encourage racing training schools, conduct special events, promote economic growth and manufacturing jobs related to motor sports. The committee will report on the status of its duties, goals and accomplishments to the Legislature at least annually.

CODE REFERENCE: West Virginia Code §5B-2-17 – new

DATE OF PASSAGE: March 5, 2019

EFFECTIVE DATE: June 3, 2019

ACTION BY GOVERNOR: Signed, March 25, 2019

Senate Bill 669

Allowing appointment of commissioners to acknowledge signatures

This bill creates a new article authorizing the Secretary of State to appoint a person, commissioned by the Secretary of State as a notary public, to acknowledge signatures outside the state on documents such as deeds, leases, and other writings pertaining to West Virginia property for recordation in the state. The bill authorizes the Secretary of State to promulgate legislative rules to implement this law.

To be qualified for an appointment, a person must be commissioned as a notary public. The term of the commission is 10 years. Every certificate of such commissioner shall be authenticated by his signature and official seal.

The bill includes provisions related to the application for a commission and the authority for the Secretary of State to deny, refuse to renew, revoke, suspend, or impose a condition on a commission for any act or omission that demonstrates the individual lacks the honesty, integrity, competence, or reliability to act as a commissioner. The bill specifically sets out sanctionable acts or conduct.

An application for a commission requires the submission of a non-refundable fee of \$500. One-half of the fee is to be deposited in the General Revenue Fund and one-half may be retained by the Secretary of State for the operation of the Office of the Secretary of State.

Commissioners are prohibited from:

- Assisting persons in drafting legal records, giving legal advice or otherwise practicing law;
- Acting as an immigration consultant or an expert on immigration matters; or
- Representing a person in a judicial or administrative proceeding relating to immigration to the United States, United States citizenship, or related matters.

Finally, all requirements, duties, prohibitions, penalties, and procedures for notaries public also apply to commissioners, and the Secretary of State must include all active commissioners in its database of notaries and clearly distinguish commissioners from notaries public. No provision of this section shall be construed to prohibit the practice of law by a duly licensed attorney.

CODE REFERENCE: West Virginia Code §39-4A-1 et seq. – new

DATE OF PASSAGE: March 9, 2019

EFFECTIVE DATE: June 7, 2019

ACTION BY GOVERNOR: Signed March 25, 2019

Senate Bill 670

WV College Prepaid Tuition and Savings Program

The bill amends the provisions of the West Virginia Code relating to the West Virginia College Prepaid Tuition and Savings Program Act. This program is administered by the State Treasurer's Office. The bill adds to the eligible educational institutions where moneys from a savings plan may be used private or religious primary, middle or secondary schools. Current law includes only an institution of higher education.

The bill also changes the membership of the Board of the College Prepaid Tuition and Savings Program by:

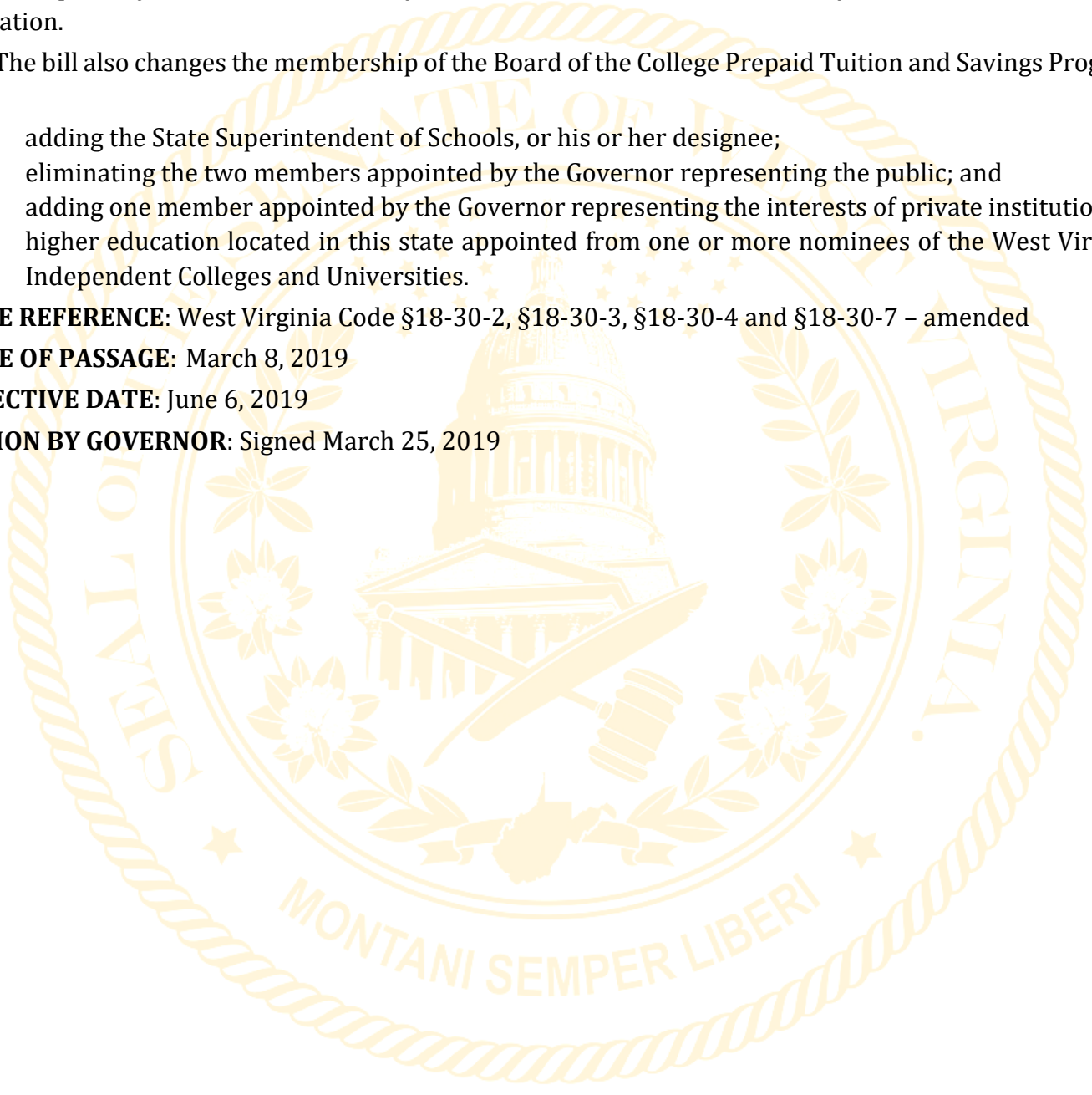
- adding the State Superintendent of Schools, or his or her designee;
- eliminating the two members appointed by the Governor representing the public; and
- adding one member appointed by the Governor representing the interests of private institutions of higher education located in this state appointed from one or more nominees of the West Virginia Independent Colleges and Universities.

CODE REFERENCE: West Virginia Code §18-30-2, §18-30-3, §18-30-4 and §18-30-7 – amended

DATE OF PASSAGE: March 8, 2019

EFFECTIVE DATE: June 6, 2019

ACTION BY GOVERNOR: Signed March 25, 2019



Senate Bill 673

Relating to public higher education accountability and planning

The Act eases the burden on high education institutions to respond to data requests by requiring the Higher Education Policy Commission (HEPC) and Community and Technical College Council (CTCC) to use data generated from more readily available sources.

The Act allows the HEPC and CTCC to reduce cost and improve access to higher education data to students, parents and citizens by maximizing online accessibility of higher education information, minimizing the requirement for published reports, and by requiring the HEPC and CTCC to enhance and expand the level of information available on their websites.

It eliminates the requirement for multiple, redundant planning documents by repealing the statewide master plan, the system and institutional compacts, and the human resources report card.

The bill refines and focuses the data elements into the statewide data reporting system, including information previously reported in the higher education report card and the financial aid comprehensive report. Requirements to collect and report the information online and to the LOCEA are retained.

CODE REFERENCE: §18B-1D-2, §18B-1D-3, §18B-1D-4, and §18B-1D-5 and §18B-7-8 – repealed; §18B-1D-1, §18B-1D-8, and §18C-1-1 – amended

DATE OF PASSAGE: March 9, 2019

EFFECTIVE DATE: June 7, 2019

ACTION BY GOVERNOR: Signed March 25, 2019

House Bill 2001

Relating to exempting social security benefits from personal income tax

This bill eliminates taxation on social security benefits starting with tax year January 1, 2020. The implementation would be phased in over the next three years as follows:

- In tax years beginning after 1/1/2020 qualified taxpayers are permitted to modify their federal adjusted gross income for the taxable year by 35%;
- In tax years beginning after 1/1/2021 qualified taxpayers are permitted to modify their federal adjusted gross income for the taxable year by 65%;
- In tax years beginning after 1/1/2022 qualified taxpayers are permitted to modify their federal adjusted gross income for the taxable year by 100%.

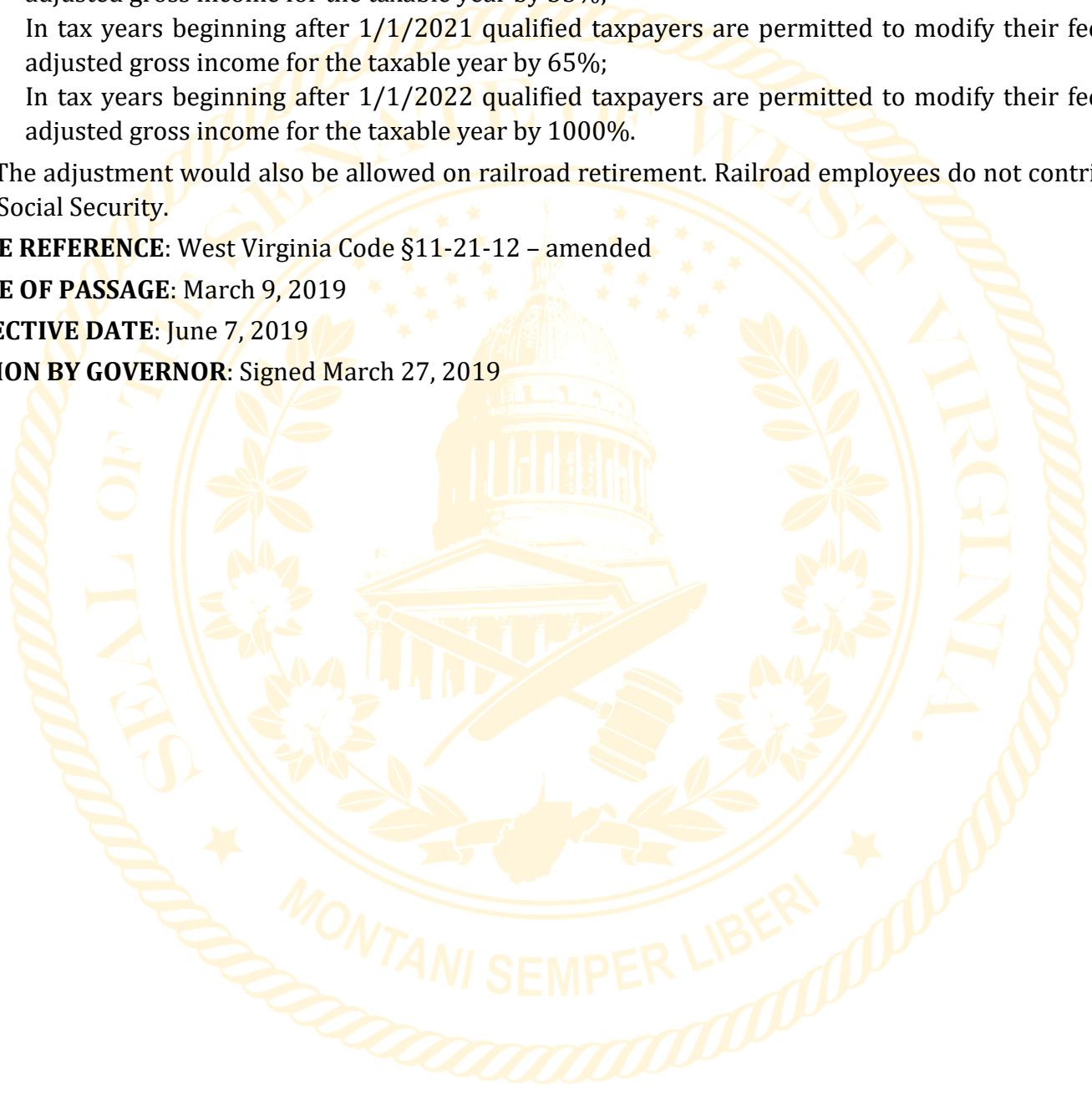
The adjustment would also be allowed on railroad retirement. Railroad employees do not contribute into Social Security.

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

DATE OF PASSAGE: March 9, 2019

EFFECTIVE DATE: June 7, 2019

ACTION BY GOVERNOR: Signed March 27, 2019



House Bill 2004

Providing for a program of instruction in workforce preparedness

The following is a brief section by section summary of this Act:

- §18-2-7d – Requires the State Board to adopt by rule a program of instruction in general workforce and career preparedness for all students. The program must include guidelines for schools working through their Local School Improvement Councils and business partners to communicate the common skills and attributes sought by employers in prospective employees.
- §18-2-40 – Requires the State Board, Council on Community and Technical College Education and Department of Commerce to coordinate efforts to collect and disseminate information easily accessible to students and their parents beginning in the middle school grades regarding the career and technical cluster and major programs of study. This information relates to the:
 - Integrated secondary and post- secondary programs that lead to industry recognized credentials, certificates of applied science or associate degrees that meet workforce needs;
 - Secondary programs of study and courses that satisfy a portion of the requirements for an apprenticeship, other employer sponsored training program or occupational licensing, and the associated postsecondary programs for an associate degree; and the EDGE (Earn a Degree Graduate Early) program.
 - The section also requires that students receive an official college transcript listing all college credits earned by the student while in high school and that career tech students who fulfil the high school graduation requirement are eligible to participate in the graduation ceremony in the same manner as other students.
- §18B-3C-4 – Amends responsibilities of the existing Career and Technical Education Consortia Planning Districts to identify high-demand, high wage occupations within their service area and the state and to develop integrated secondary and post-secondary programs of study that lead to an industry recognized credential, certificate of applied science degree or associate's degree in those areas. The Department of Commerce is required to provide notice of the state areas of workforce need. The State Board and the Council for Community and Technical College Education must jointly promulgate guidelines which must be affirmatively adopted by both. The State Superintendent and the Chancellor CTCCE must both approve the partnership agreements for integrated secondary and post-secondary programs and are both responsible for evaluating the progress and reporting to the Governor and Legislature.
- §21-1E-1, 2, 3 and 4; and §30-1E-1, 2, 3, and 4 – Require the Commissioner of Labor, the State Fire Commission, the State Fire Marshall, and the licensing boards and commissions authorized under Chapter 30 of Code to each respectively consult with the State Superintendent of schools and promulgate rules on the standards and procedures for recognizing training hours acquired through career and technical education provided by West Virginia public schools and applying them toward the certification, licensure, and other programs under their respective jurisdictions.

CODE REFERENCE: West Virginia Code §18B-3C-4 and §29-3-9 – amended; §18-2-7d, §18-2-40, §21-1E-1, §21-1E-2, §21-1E-3, §21-1E-4, §30-1E-1, §30-1E-2, §30-1E-3, and §30-1E-4 – new

DATE OF PASSAGE: March 9, 2019

EFFECTIVE DATE: June 7, 2019

ACTION BY GOVERNOR: Signed March 26, 2019

House Bill 2009

Creating a new category of Innovation in Education grant program

This Act creates a special category under the Innovation in Education grant program entitled Innovation in Education/Mastery-Based. The application and selection processes are modified to accommodate a multi-step process of capacity-building prior to the implementation grant award and continuing support during implementation through an incubator network.

The State Board must establish an advisory committee to assist it in carrying out the activities under the section including building awareness of mastery-based models, identifying potential roadblocks and solutions, establishing evaluative criteria to assess readiness of schools to undertake transition to mastery-based, reviewing applications and making recommendations, and developing an incubator process to support a network of not more than 20 schools.

The application open to all schools interested in initial consideration, including those currently designated as Innovation In Education schools and the readiness of applicants to undertake the transition to mastery- based education will be assessed to identify an initial network of not more than 20 schools. Although schools may opt-out of further participation, those that elect to proceed with implementation will receive further technical assistance in preparing an Innovation In Education/Mastery-Based plan and operational agreement with their county board.

CODE REFERENCE: West Virginia Code §18-5E-8 – new

DATE OF PASSAGE: March 7, 2019

EFFECTIVE DATE: June 5, 2019

ACTION BY GOVERNOR: Signed March 27, 2019

House Bill 2049

Relating to a prime contractor's responsibility for wages and benefits

This bill amends W. Va. Code §21-5-7, providing that when a contract employee is seeking redress for unpaid wages and benefits, the employee must: (1) notify the prime contractor by certified mail only that wages or fringe benefits have not been paid within 100 days of the date the wages or fringe benefits become payable to the employee and (2) commence the action within one-year of the date the employee delivered notice to the prime contractor.

Subsection (c) requires employers of employees to whom wages and benefits are owed to whenever feasible provide immediately upon request by the employee or the prime contractor complete payroll records relating to work performed under the contract with the prime contractor.

Subsection (d) requires a union or other plan administrator that represents an employee to whom wages and benefits are owed to, whenever feasible, immediately, upon notice of a claim cooperate with the employee and prime contractor, identify and quantify wages and benefits owed for work performed under the contract with the prime contractor. Further, if the union or any of its agents or other plan administrators become aware that an employer is not timely in the payment of wages and benefits, the union or other plan administrator shall immediately notify the affected employee and the prime contractor from whom the affected employee provided work.

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

DATE OF PASSAGE: March 9, 2019

EFFECTIVE DATE: June 7, 2019

ACTION BY GOVERNOR: Signed March 26, 2019

House Bill 2079

Removing certain limitations on medical cannabis grower, processor and dispensary licenses.

This bill amends and adds new language to the West Virginia Medical Cannabis Act. The bill:

- Merges definitions of “practitioner and physician” which are used as synonyms in the Act;
- Adds duties for practitioners certifying patients as eligible for medical cannabis; and reduces the number of allowable dispensaries from 165 to 100, and allows up to 10 dispensary licenses per person; and, eliminates regional dispersion requirement for growers, processors, dispensaries;
- Establishes criteria for choosing the locations of dispensary permittees;
- Allows vertical integration, i.e. growers and processors can operate and own dispensaries;
- Deals with lab testing of medical cannabis products, providing that:
 - The test must be done under direction of the Bureau of Public Health;
 - The Department of Agriculture must do testing, to the extent practicable;
 - Testing fees shall be deposited in the Agriculture Fee Fund; and
 - The Bureau of Public Health may utilize testers other than the Department of Agriculture, if it determines that the Department is unable perform testing to Bureau requirements;
- Adds language to modify tax provisions to accommodate changes in vertical integration;
- Extends the period for emergency rule-making to July 1, 2021;
- Adds two osteopath physicians to the Advisory Board;
- Indemnifies state employees for attorneys’ fees if criminal charges or civil actions are brought by the federal government, as long as the employee is within the law and scope of employment;
- Requires the Bureau to establish a fair and objective criteria for permit applicants based upon a numeric scoring system;
- Allows for pre-registration of patients prior to July 1, 2019; and
- Removes the requirement that a dispensary have a physician or pharmacist on- site.

CODE REFERENCE: West Virginia Code §16A-2-1, §16A-4-3, §16A-6-13, §16A-7-4, §16A-8-1, §16A-9-1, §16A-10-6, §16A-11-1 – amended; §16A-9-3, 16A-9-4, 16A-15-10 – new

DATE OF PASSAGE: March 9, 2019

PROPOSED EFFECTIVE DATE: March 9, 2019

ACTION BY GOVERNOR: Vetoed March 27, 2019

House Bill 2204

Prohibiting state licensing boards from hiring lobbyists

This bill prohibits a Chapter 30 board from employing any person whose job functions include lobbying on behalf of the board. Instead, the director and appointed board members are permitted to lobby on behalf of the board. The bill does not prohibit professional boards from lobbying. Instead, it designates that only the director or the appointed board members may lobby on the board’s behalf.

CODE REFERENCE: West Virginia Code §30-1-22 – new

DATE OF PASSAGE: March 1, 2019

EFFECTIVE DATE: May 30, 2019

ACTION BY GOVERNOR: Signed March 19, 2019

House Bill 2311

Exempting short-term license holders to submit information to the State Tax Commission once the term of the permit has expired

The purpose of this bill is to exempt short-term holders of a permit or license to sell items from being required to submit additional information to the Tax Commissioner after the term of the permit, so long as they have submitted all appropriate information during the term of the permit. The bill provides that the Tax Commissioner may audit the books and records of the permit holder to ensure compliance. The Tax Commissioner is granted rulemaking authority to comply with the terms of the statute.

CODE REFERENCE: West Virginia Code §11-1-9 – new

DATE OF PASSAGE: March 6, 2019

EFFECTIVE DATE: June 4, 2019

ACTION BY GOVERNOR: Signed March 25, 2019

House Bill 2351

Relating to regulating prior authorizations

The purpose of this bill is to require health insurers specified as the Public Employees Insurance Agency, managed care organizations, and private commercial insurers to develop prior authorization forms. The bill establishes timeframes to develop the form, timeframes for the health insurers to accept and respond to the prior authorization requests, timeframes to submit additional information and provides an effective date.

Health insurers shall accept electronic prior authorization requests by July 1, 2020 and provide that if the health insurer is currently accepting electronic prior authorization requests, then the compliance deadline is January 1, 2020.

Only one prior authorization is required for an episode of care, but excludes from this process out of network care. A separate prior authorization would need to be submitted for out of network care.

The deadline for the health insurer to respond to an electronic prior authorization with complete information is within 7 days from the time on the electronic receipt of the request. This timeframe is decreased to 2 days where is request for care could either jeopardize the life, health of safety of the patient of others due to the patient's psychological state or the patient would be subject to adverse health consequences. The health insurer must identify all deficiencies within 2 business days and the health care practitioner shall respond within 3 business days.

Any inpatient prescription written at the time of discharge shall not be subject to prior authorization requirements and shall be immediately approved for not less than 3 days. After that timeframe a prior authorization shall be submitted.

CODE REFERENCE: West Virginia Code §5-16-7f, §33-15-4s, §33-16-3dd, §33-24-7s, §33-25-8p, and §33-25A-8s – new

DATE OF PASSAGE: February 20, 2019

EFFECTIVE DATE: February 20, 2019

ACTION BY GOVERNOR: Signed March 1, 2019

House Bill 2362

Ardala Miller Memorial Act

The bill provides that a county may adopt a policy extending emergency absentee voting procedures to persons who become confined, within the seven days preceding the election, to any location in a county because of illness, injury, physical disability, immobility due to extreme advanced age, or other medical reason. Currently, emergency absentee voting is only available to persons confined to a hospital or nursing home.

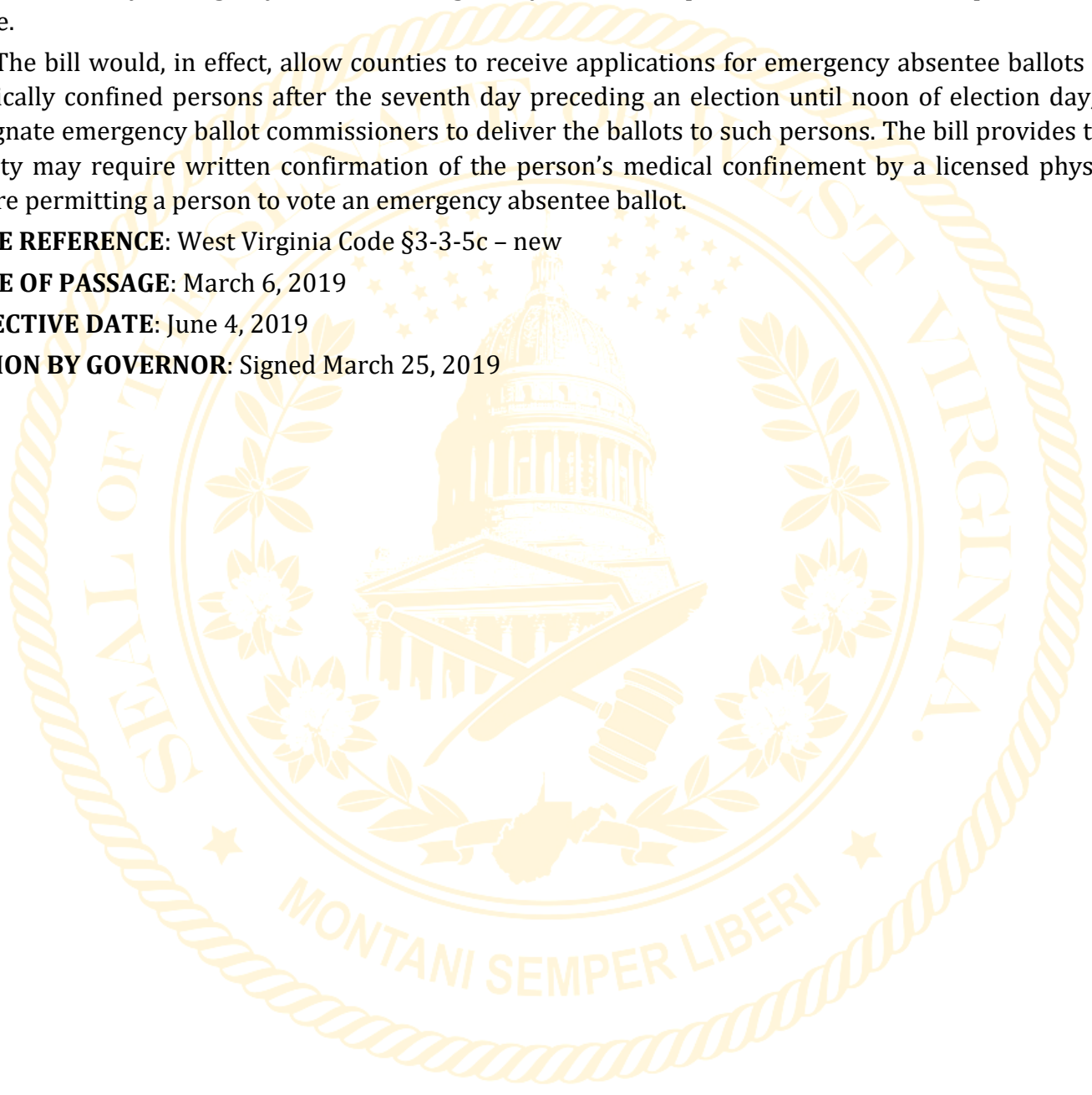
The bill would, in effect, allow counties to receive applications for emergency absentee ballots from medically confined persons after the seventh day preceding an election until noon of election day, and designate emergency ballot commissioners to deliver the ballots to such persons. The bill provides that a county may require written confirmation of the person's medical confinement by a licensed physician before permitting a person to vote an emergency absentee ballot.

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

DATE OF PASSAGE: March 6, 2019

EFFECTIVE DATE: June 4, 2019

ACTION BY GOVERNOR: Signed March 25, 2019



House Bill 2363

Relating to the Upper Kanawha Valley Resiliency and Revitalization Program

This Act broadens the definition of “Upper Kanawha Valley” (UKV) and extends the duration of the Program from June 6, 2021, to June 30, 2024.

It adds a provision that the duties of the revitalization council include prioritizing requests for funding such that economic development efforts of UKV communities are supported and provides a definition of “prioritizing” for the purposes of the Act.

The Act requires that the revitalization council’s report to the Legislature be made to the Joint Committee on Government and Finance no later than October 1 of each year, and that copies of the report be provided to the county commission and county school boards of Kanawha and Fayette counties and the mayors of the Upper Kanawha Valley. A final report due to the Joint Committee on Government and Finance no later than October 1, 2024.

It further requires that as part of the UKV Resiliency and Revitalization Program, the council assess the option of using the authority granted in §18-5-11, relating to the joint establishment of schools, to allow Kanawha County and Fayette County to jointly create or maintain schools that serve the UKV; requires the State Superintendent and any local community and technical college to participate in the assessment; prohibits any option arising out of the assessment from impacting the plans adopted in Fayette County regarding other schools in the county; provides that the goal of the assessment is to determine whether students in the Upper Kanawha Valley can receive their education in the UKV; requires the assessment take into consideration options for high school students to take a combination of high school courses and college courses to meet the requirements to graduate from high school and earn college credits that can be applied toward meeting the requirements of a degree or credential; and requires the results of the assessment be included in the annual report to the Legislature.

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

EFFECTIVE DATE: June 5, 2019

DATE OF PASSAGE: March 7, 2019

ACTION BY GOVERNOR: Vetoed March 27, 2019

House Bill 2396

West Virginia Fresh Food Act

The bill states that it will encourage and stimulate economic activity for West Virginia's farmers.

Beginning July 1, 2019, all state-funded institutions, such as schools, colleges, correctional facilities, governmental agencies and state parks, shall purchase a minimum of five percent of its fresh produce, meat and poultry products from in-state producers: Provided, that such produce, meat and poultry products can be grown or are available from in-state producers.

Rulemaking and enforcement authority are responsibility of the Commissioner of Agriculture.

CODE REFERENCE: West Virginia Code §19-37-1, §19-37-2, & §19-37-3 – new

EFFECTIVE DATE: July 1, 2019

DATE OF PASSAGE: March 8, 2019

ACTION BY GOVERNOR: Approved on March 22, 2019

House Bill 2405

Imposing a healthcare related provider tax on certain health care organizations

The purpose of this bill is to impose a tiered tax on Healthy Maintenance Organizations in a manner that will permit the maximization of federal matching dollars for use in the state Medicaid program.

The tax would be imposed as follows based upon the total Medicaid member months within Tiers I, II and III and to non-Medicaid members months in Tiers IV and V:

- Tier I — \$17.00 for each Medicaid member month under 250,000;
- Tier II — \$15.00 for each Medicaid member month between 250,000 and 500,000;
- Tier III - \$7.00 for each Medicaid member month greater than 500,000;
- Tier IV — \$0.25 for each non-Medicaid member month under 150,000; and
- Tier V — \$0.10 for each non-Medicaid member month of 150,000 or more.

CODE REFERENCE: West Virginia Code §11-26-1 through §11-26-17 and §11-26-19 – repealed; §11-27-3 – amended; and §11-27-10a – new

DATE OF PASSAGE: March 6, 2019

EFFECTIVE DATE: June 4, 2019

ACTION BY GOVERNOR: Signed March 27, 2019

House Bill 2412

Relating to criminal acts concerning government procurement of commodities and services

This bill moves certain criminal provisions related to state purchasing laws from Chapter 5A to Chapter 61. The bill also updates the language to make requirements applicable to all persons engaging in purchasing for state entities, not just the Division of Purchasing. Specifically, it creates new sections which do the following:

- Section §61-5B-1 defines terms.
- Section §61-5B-2 creates following offenses:
 - A state purchasing agent may not have an interest in a business doing business or attempting to do business with the entity for which the person is an agent;
 - Agents may not take things of value from business selling, attempting to sell, or contracting to sell items to the governmental entity for which the person is an agent; and
 - Sellers or potential sellers may not give agents anything of value without receiving fair value therefor.

All three offenses include ethics law exceptions as to gifts and ownership interest. The offenses are classified as misdemeanors with fines of \$50 to \$500, up to one year in jail, or both a fine and jail.

Section §61-5B-3 criminalizes conduct by business entities doing business with the state, creating the following offenses:

- Obtaining things of value from the state by knowingly delivering inferior commodities or services; and
- Knowingly accepting inferior commodities or services on behalf of the state.

Both offenses are classified as felonies with fines of not more than \$10,000, one to five years in prison, or both a fine and prison. This provision expressly exempts change orders made in good faith.

CODE REFERENCE: §5A-3-28, §5A-3-30, and §5A-3-31 – repealed; §61-5B-1, §61-5B-2, and §61-5B-3 – new

DATE OF PASSAGE: March 8, 2019

PROPOSED EFFECTIVE DATE: June 6, 2019

ACTION BY GOVERNOR: Vetoed March 27, 2019

House Bill 2452

Creating the West Virginia Cybersecurity Office

The bill would enact a new article of code that creates the West Virginia Cybersecurity Office within the state Office of Technology. The state's Chief Technology Officer appoints the Chief Information Security Officer to supervise the office. The powers and duties of that person are set out in the bill.

The office is to set standards for cybersecurity and is charged with managing the cybersecurity framework to assess and eliminate, reduce and recover from cyber threats to the state for all state agencies, excluding higher education institutions, the county boards of education, the State Police, state Constitutional officers, the Legislature and the judiciary. The bill defines key terms.

The affected agencies would be required to undergo a cyber risk assessment as directed by the Chief Information Security Officer; adhere to cybersecurity policies and standards; submit a cyber risk self-assessment report to the Chief Information Security Officer by December 31, 2020; and manage a plan of action and milestones going forward. Information that could threaten the technology infrastructure critical to government operations and services, public safety or health would be exempt from FOIA.

The bill would allow the Chief Information Security Officer to enter into agreements with state government entities exempted from this article to voluntarily participate in the cybersecurity program.

The bill would also repeal an existing code section that charges the state's Chief Technology Officer with developing policies and taking actions to ensure the security of state government information and the data communications infrastructure from unauthorized uses, intrusions or other security threats.

The Department of Administration and the Chief Technology Officer have provided the following statement with regard to this legislation:

"West Virginia was selected last year as one of four states to participate in the National Governors Association (NGA) first policy academy on cybersecurity. The Policy Academy provided resources to refine strategic goals to improve the cybersecurity protection of vital government technology resources, with a specific objective of establishing a cyber risk management service within the Executive Branch of government. This service will establish the foundation of strong cybersecurity protection to meet a growing cyber threat. The NGA Policy Academy included input from the National Guard, Division of Homeland Security, Tech Connect WV, West Virginia Forward, the WV State Privacy Office, the WV Board of Risk and Insurance Management, the WV Office of Technology, the WV Association of Counties, and national experts in the cyber security arena and private industry, as well as lawmakers and personnel from other states that have implemented similar programs."

CODE REFERENCE: West Virginia Code §5A-6-4a – repealed; §5A-6B-1 through 6 – new

DATE OF PASSAGE: March 7, 2019

EFFECTIVE DATE: June 5, 2019

ACTION BY GOVERNOR: Signed March 25, 2019

House Bill 2474

Relating to a reserving methodology for health insurance and annuity contracts

This bill amends West Virginia Code §33-7-9, West Virginia's "Standard Valuation Law," which authorizes a principle-based reserving methodology for life, annuity, and health policies.

West Virginia adopted the National Association of Insurance Commissioners' (NAIC) updated, model-based Standard Valuation Law in 2014. However, a small section of the model law pertaining to the minimum standard for accident and health insurance contracts was inadvertently omitted in the 2014 update.

The bill ensures that West Virginia Code §33-7-9 is internally consistent and that life insurance companies are properly calculating their reserves for accident and health insurance contracts.

In this context, the term "accident and health insurance" refers to contracts that incorporate morbidity risk and provide protection against economic loss resulting from accident, sickness, or medical conditions. These are not comprehensive health insurance policies. These are limited benefit type policies written by life insurers, such as disability, accident, and sickness plans.

This is a revision or update to a NAIC Model Law that is an accreditation standard for state insurance departments effective January 1, 2020.

CODE REFERENCE: West Virginia Code §33-7-9 – amended

DATE OF PASSAGE: March 9, 2019

EFFECTIVE DATE: June 7, 2019

ACTION BY GOVERNOR: Signed March 26, 2019

House Bill 2476

Relating to the valuation of a motor vehicle involved in an insurance claim

This bill amends W.Va. Code §33-6-33, which sets forth the valuation of motor vehicles involved in an insurance claim for a total loss of a motor vehicle.

This section currently provides that when an insurer settles a claim for a motor vehicle arising out of a of a motor vehicle accident, that the insurer also pay the claimant an additional amount equal to the 5% excise tax imposed on the sale of a motor vehicle, which is applied to the value of the settlement. The excise tax was discontinued in 2008 and replaced with the imposition of the consumer sales tax on sales of motor vehicles; however, this section has never been amended to reflect this tax change.

This bill updates the section by replacing the excise tax requirement with a requirement of paying to the claimant the consumers sales tax on the value of a settlement for the total loss of a motor vehicle. The bill also clarifies that such valuation relates only to claims arising from the total loss of a vehicle, which is the way the applicable Insurance Commissioner rule has construed this provision in the past.

CODE REFERENCE: West Virginia Code §33-6-33 – amended

DATE OF PASSAGE: March 4, 2019

EFFECTIVE DATE: June 2, 2019

ACTION BY GOVERNOR: Signed March 22, 2019

House Bill 2479

Corporate Governance Annual Disclosure Act

This bill improves the Insurance Commissioner's surveillance of the financial conditions of insurers. The bill requires insurers writing more than \$500 million or insurance groups writing more than \$1 billion in annual premium to maintain an internal audit function providing independent, objective, and reasonable assurance to the insurer's or insurance group's audit committee regarding the insurer's governance, risk management, and internal controls. In order to ensure objectivity, the internal audit function must be organizationally independent.

The internal audit function will not defer ultimate judgment on audit matters to others and shall appoint an individual to head the internal audit function who will have direct and unrestricted access to the Board of Directors. The head of the internal audit function must report to the audit committee regularly, but no less than annually on the periodic audit plan, factors that may adversely impact the internal audit function's independence or effectiveness, material findings from completed audits, and the appropriateness of corrective actions implemented by management as a result of audit findings.

Article §33-52-1 et seq., the Corporate Governance Annual Disclosure Act, institutes a requirement that an insurer or insurer group must annually provide a confidential disclosure regarding its corporate governance practices. This law does not prescribe new corporate governance standards, but rather requires tailored, confidential reporting to ensure appropriate policies and procedures of insurers' Boards of Directors and internal oversight are in place and effective. The Model Act and Regulation together require an insurer or group of insurers to provide a detailed corporate governance annual disclosure (CGAD) allowing for more frequent review, consideration, and assessment of corporate governance practices. Currently, most of this information is only subject to review during periodic onsite examinations.

The insurer or group of insurers may choose to provide information on governance activities that occur at the ultimate controlling parent level, an intermediate holding company level, and/or the individual legal entity level, based on its determination of the level at which decisions are made, oversight is provided, and governance accountability is assessed in relation to the insurance activities of the insurer.

This bill's passage ensures that the State of West Virginia will remain accredited with the National Association of Insurance Commissioners (NAIC).

CODE REFERENCE: West Virginia Code §33-33-2, §33-33-12, and §33-33-16 – amended; §33-33-12a and §33-52-1 et seq. – new

DATE OF PASSAGE: March 9, 2019

EFFECTIVE DATE: June 7, 2019

ACTION BY GOVERNOR: Signed March 26, 2019

House Bill 2480

Relating to the regulation of an internationally active insurance group

This bill provides legal authority to a designated state to act as a group-wide supervisor for an internationally active insurance group (IAIG) as well as the authority for domestic regulators to cooperate in requiring certain action by the insurance holding company system and engage in group-wide supervision activities such as requesting group level information, assessing enterprise risks affecting the group and communicating and sharing group-wide information with other regulators. For a holding company to be considered an IAIG, it must meet various criteria, including:

- premiums written in at least 3 countries;
- at least 10% of premiums written outside the US; and,
- total assets greater than \$50 billion or total premiums greater than \$10 billion.

CODE REFERENCE: West Virginia Code §33-27-2 and §33-27-7 – amended; §33-27-6b – new

DATE OF PASSAGE: March 8, 2019

EFFECTIVE DATE: June 6, 2019

ACTION BY GOVERNOR: Signed March 26, 2019

House Bill 2481

Permitting retail sale of alcoholic beverages on Sundays after 1 p.m.

This bill permits retail sales of liquor on Sundays from 1:00 p.m. to 12:00 a.m., with the exception of Easter Sunday and Sundays on which Christmas falls. The bill amends §60-3A-25, which currently criminalizes Sunday sales, to conform that section to the new provisions permitting Sunday sales.

CODE REFERENCE: West Virginia Code §60-3A-18 and §60-3A-25 – amended

DATE OF PASSAGE: February 19, 2019

EFFECTIVE DATE: February 19, 2019

ACTION BY GOVERNOR: Signed February 28, 2019

House Bill 2486

Using records of criminal conviction to disqualify a person from receiving a license for a profession or occupation

Currently, the various Chapter 30 boards do not address prior criminal convictions in a uniform manner for purposes of initial licensure or certification applications. This bill does the following:

- Prohibits a board from disqualifying an applicant for licensure because of a prior criminal conviction unless that conviction is for a crime that bears a rational nexus to the occupation requiring licensure;
- Prohibits boards from using criteria such as moral character, moral turpitude, or other undefined standards in making licensure determinations;
- Requires boards to afford an applicant to submit competent evidence of sufficient rehabilitation and present fitness;
- Requires boards to allow an applicant to reapply five years from the date of conviction or date of release, if the applicant has not been convicted of any other crime during that time period;
- Permits a person with a criminal record to petition a board for a determination of whether the individual's criminal record will disqualify the individual from obtaining a license; requires the licensing authority to inform the individual of his or her standing within 60 days of receiving the petition; and permits the boards to charge a fee not to exceed \$25 for each petition;
- States that nothing in the article alters the standards and procedures each licensing authority uses for evaluating licensure renewals;
- Requires boards and licensing authorities to update legislative rules within the applicable time limit to be considered by the Legislature during its Regular Session in 2020.
- Excludes Articles 2, 3, 3E, 14, 18 and 29 from the new requirements; and
- Exempts articles, otherwise included, from the new requirements where there is a conflict with existing compacts or model acts.

CODE REFERENCE: West Virginia Code §30-5-11, §30-5-11a, §30-10-8, §30-10-10, §30-13A-9, §30-13A-12, §30-20-8, §30-20-10, §30-21-7, §30-22-10, §30-23-9, §30-23-15, §30-23-17, §30-23-20, §30-25-8, §30-26-5, §30-26-13, §30-30-8, §30-30-10, §30-30-12, §30-30-14, §30-30-26, §30-31-8, §30-31-9, §30-38-12 and §30-39-6 – amended §30-1-22 – new

DATE OF PASSAGE: March 9, 2019

EFFECTIVE DATE: June 7, 2019

ACTION BY GOVERNOR: Vetoed March 27, 2019

House Bill 2538

Providing banking services for medical cannabis

This bill provides banking services for medical cannabis by establishing a new section that does the following:

- Provides definitions;
- Provides that the Treasurer shall select, by competitive bid, one or more financial institutions to provide banking services for the fees, penalties, and taxes collected under the Medical Cannabis Act;
- Authorizes the Medical Cannabis Program Fund to receive civil penalties;
- Authorizes the Treasurer to hold the Medical Cannabis Program Fund in one or more accounts at a selected financial institution until the Treasurer is able to transfer the moneys to the main disbursement account of the state;
- Permits moneys in the Medical Cannabis Program Fund to be invested and provides that earnings shall accrue to the Medical Cannabis Program Fund;
- Permits the Treasurer to charge fees for providing banking services;
- Creates the Treasurer's Medical Cannabis Fund to receive all fees charged by the Treasurer;
- Provides that moneys in the Treasurer's Medical Cannabis Fund, shall be expended for expenses occurred, oversight, and compliance;
- Prohibits the Commissioner of Financial Institutions from penalizing, incentivizing, or impairing a financial institution which processes medical cannabis funds for medical cannabis licensees;
- Prohibits a cause of action against the Treasurer, other officials, and employees for compliance with the Medical Cannabis Act; and
- Indemnifies officials and employees against legal costs due to complying with the Medical Cannabis Act.

CODE REFERENCE: West Virginia Code §12-1-14 – new

DATE OF PASSAGE: March 5, 2019

EFFECTIVE DATE: March 5, 2019

ACTION BY GOVERNOR: Signed March 26, 2019

House Bill 2550

Creating a matching program for the Small Business Innovation and Research Program and the Small Business Technology Transfer Program

This bill would allow the Department of Commerce to provide 3 types of grants to eligible businesses to use as matching funds for Small Business Innovation and Research (SBIR) or Small Business Technology Transfer (SBTT) funding. To be eligible, the business must:

- Be a for-profit WV based business;
- Received a Phase I or Phase II award from the appropriate federal agency and indicate that they have filed the necessary final report for Phase I and fully intend to apply for Phase II;
- Meet all SBIR and SBTT requirements;
- May not be in receipt of duplicate funding from other sources to use as a match;
- That at least 51% of the research for the project would be conducted in WV and that the business will remain in WV throughout the duration of the project; and
- Must demonstrate the ability to conduct the necessary research

The bill sets out an application process and includes necessary elements to be included on the application.

The Secretary may award a WV Phase Zero grant of \$2500 upon successful submission of an approved Phase I SBIR and SBTT proposal. A business is only eligible for one grant per federal submission, up to a maximum of five over the lifetime of the entity.

The Secretary may award grants up to a maximum of \$100,000 to match funds received through a SBIR and SBTT Phase I proposal. Seventy-five percent is granted to the business upon receipt of the SBIR and SBTT Phase I award. The additional 25% upon submission of the Phase II application. A business is only eligible for one grant per federal submission, up to a maximum of five over the lifetime of the entity.

The Secretary may award grants up to a maximum of \$100,000 to match funds received through a SBIR and SBTT Phase II proposal. Seventy-five percent of the yearly match is granted to the business upon receipt of the SBIR and SBTT Phase II award. In year two 75% of the yearly amount is awarded. The additional 25% upon submission of the Phase II final report. A business is only eligible for one grant per federal submission, up to a maximum of five over the lifetime of the entity.

CODE REFERENCE: West Virginia Code §5B-8-1 through §5B-8-5 – new

DATE OF PASSAGE: March 8, 2019

EFFECTIVE DATE: June 6, 2019

ACTION BY GOVERNOR: Signed March 27, 2019

House Bill 2579

Relating to the collection of tax and the priority of distribution of an estate or property in receivership

This bill clarifies conflicts within the code and creates uniformity relating to the collection of taxes, the priority of distribution of an estate, and the limitation of liability of a fiduciary charged with the distribution of an estate.

Currently, West Virginia law holds trustees, receivers, administrators, executors, or persons charged with the administration of an estate personally liable for taxes accrued and unpaid under Article 10 of Chapter 10.

The bill amends W. Va. Code §11-10-11, by adding language that makes all taxes due and unpaid to the state subject to: (1) the priority of liens in W. Va. Code §38-10C-1 and (2) the priority of taxes and debts due to the United States. The bill also removes the provision that imposes personal liability for any unpaid taxes on any trustee, receiver, administrator, executor, or person charged with the administration of an estate.

The bill rewrites W. Va. Code §11-15-18a to provide that consumers sales tax due and unpaid shall be paid from the first money available for distribution, subject to: (1) the priority of liens in W. Va. Code §38-10C-1 and (2) the priority of taxes and debts due to the United States. W. Va. Code §11-15-18a also imposes personal liability for any taxes accrued and unpaid under this article for any person responsible for the administration of an estate of a decedent who violates the provisions of this section.

CODE REFERENCE: West Virginia Code §11-10-11 and §11-15-18a – amended

DATE OF PASSAGE: March 7, 2019

PROPOSED EFFECTIVE DATE: June 5, 2019

ACTION BY GOVERNOR: Vetoed March 27, 2019

House Bill 2600

Relating to publication of sample ballots

This bill amends current requirements for the printing of sample ballots, as class I-0 legal advertisements, ahead of elections, as well as the order in which races appear on primary election ballots.

The bill provides that in counties where electronic voting has been adopted, the ballot commissioners may print sample ballots in the form of photographic reproduction of the absentee ballot. Currently, the Code requires that sample ballots be printed no smaller than 65% percent of the size of the actual ballot. Additionally, the bill provides that when sample ballots for the precincts within a county contain different districts for certain offices or municipal wards, the facsimile shall be altered to include each of the various districts in the appropriate order. If a sample ballot must be divided onto more than one page, the arrangement and order shall be made to conform as nearly as possible to the arrangement of the ballot. The bill requires that the publisher of the newspaper containing the sample ballot submit a proof and arrangement of the ballot to the ballot commissioners for approval prior to publication.

The bill also provides that, beginning in 2020, the nonpartisan judicial ballot in primaries shall appear after the state ticket and before the county ticket. The nonpartisan ballot includes the races for Justice of the Supreme Court of Appeals, judge of the circuit court, family judge, magistrate nonpartisan elections for board of education, conservation district supervisor, any question to be voted upon. The bill also places the nonjudicial nonpartisan ballot after the county ticket and immediately before the district ticket, moves the national convention ticket to the end of the ballot, and places the candidates for congressional district delegates to the national convention after the at-large candidates.

CODE REFERENCE: West Virginia Code §3-4A-11a, §3-4A-15, §3-5-10, §3-5-13, §3-5-13a, and §3-6-3 – amended

DATE OF PASSAGE: March 8, 2019

EFFECTIVE DATE: June 6, 2019

ACTION BY GOVERNOR: Signed March 26, 2019

House Bill 2601

Relating to the review and approval of state property leases

This bill requires the review and approval of state property leases by requiring two signatures and review and approval of leasing of state property to nongovernment entities by the Real Estate Division.

CODE REFERENCE: West Virginia Code §5A-10-4 – amended; §5A-10-12 – new

DATE OF PASSAGE: March 8, 2019

EFFECTIVE DATE: June 6, 2019

ACTION BY GOVERNOR: Signed March 22, 2019

House Bill 2607

Relating to the licensure of nursing homes

The bill defines a variety of terms as they relate to the licensing of nursing homes. Throughout the bill the word director was replaced with the word secretary.

The bill clarifies rule requirements including the following: The process to be followed by applicants seeking a license; The clinical, medical, resident, and business records to be kept by the nursing home; The procedures and inspections for the review of utilization and quality of resident care and The procedures for informal dispute resolution, independent informal dispute resolution and administrative due process, and when such remedies are available

The secretary shall amend his or her legislative rule to exempt federally certified Medicare and Medicaid nursing facilities from provisions addressed in the federal regulations.

A licensee no longer is required to file a balance sheet, a statement of operations or financial disclosure when seeking license renewal.

The bill clarifies that the Board of Review and not the director issued a final order regarding an assessment.

The bill provides the Secretary with authority to deny or limit a license if he or she finds upon inspection that there has been a substantial failure to comply with the provisions of this article or the standards or rules promulgated pursuant hereto.

The bill provides for a standard administrative process as contemplated by the administrative procedures act. Judicial review is within 30 days after receiving notice of the decision in Kanawha County circuit court. An appeal from an adverse decision may be appealed to the WV Supreme Court of appeals.

The bill removes several employment restrictions and provides that all employees must be subject to the WV Cares screening.

CODE REFERENCE: West Virginia Code §16-5C-16 and §16-5C-17 – repealed; §16-5C-2, §16-5C-4, §16-5C-5, §16-5C-6, §16-5C-7, §16-5C-8, §16-5C-9, §16-5C-9a, §16-5C-10, §16-5C-11, §16-5C-12, §16-5C-12a, §16-5C-13, §16-5C-14, §16-5C-15, §16-5C-18, §16-5C-20, §16-5C-21, and §16-5C-22 – amended

DATE OF PASSAGE: February 20, 2019

EFFECTIVE DATE: May 21, 2019

ACTION BY GOVERNOR: April 1, 2019

House Bill 2608

Repealing the requirement of printing the date a consumer deposit account was opened on paper checks

The purpose of this bill is to repeal the requirement to print the date a consumer deposit account was opened on paper checks for the account. Currently, §61-3-39l of the WV Code requires that all checks, drafts or similar negotiable or nonnegotiable instruments or orders of withdrawal used for drawing against funds held in a consumer deposit account by a supervised financial institution shall have printed on the face thereof the date the account was opened. A consumer deposit account which has been open for one year or more shall have "1 Yr. +" printed on checks for the account. This bill repeals this section of the Code, thereby removing these requirements. *Note:* The provisions of this section were adopted in the 1980s to prevent check kiting which occurred most commonly on accounts that were less than one year old. The provisions are no longer necessary because modern technology enables real-time verification of funds, the use of paper checks has significantly decreased, unenforceability, and because the cost of compliance falls upon the consumer.

CODE REFERENCE: West Virginia Code §61-3-39l – repeal

DATE OF PASSAGE: March 1, 2019

EFFECTIVE DATE: May 30, 2019

ACTION BY GOVERNOR: Signed March 19, 2019

House Bill 2609

Relating to presumptions of abandonment and indication of ownership in property

Currently, financial organizations are required to file an annual report with the Treasurer concerning property that is presumed abandoned. This report must contain information about demand, savings, or time deposits five years after the last indication by the owner of interest in the property.

This bill prevents unnecessary reporting and administrative costs associated with reporting of accounts held by a financial organization for active customers of the financial organization.

The bill adds a new subdivision ((d)(5)) regarding an indication of an owner's interest in property. Specifically, any indication of an owner's interest in "any demand, savings, and time deposit" held by the financial organization for that owner is an indication of the owner's interest in all demand, savings, and time deposits held by that financial organization.

CODE REFERENCE: West Virginia Code §36-8-2 – amended

DATE OF PASSAGE: March 4, 2019

EFFECTIVE DATE: June 2, 2019

ACTION BY GOVERNOR: Signed March 25, 2019

House Bill 2647

Self Storage Limited License Act

This bill creates the Self-Service Storage Limited License Act which allows owners of self-service storage facilities to sell personal property insurance in connection with the lease or rental of space at their self-service storage facility under the supervision of a licensed insurance producer or an insurer.

Employees and authorized representatives of an owner may sell self-service storage insurance without a license if the owner obtains a limited lines license and the insurer issuing the insurance appoints a supervising entity to supervise the administration of the program including development of a training program, which is delivered to all employees and authorized representatives. An owner may bill and collect the charges for self-service storage insurance, which if not included in the cost associated with the lease, must be itemized separately on the occupant's bill. If included in the costs of the lease, the owner must clearly and conspicuously disclose that fact to the occupant. Owners may receive compensation for billing and collection services. Lastly, if an owner, his or her employee, or his or her authorized representative violates any of these provisions, the Insurance Commissioner may impose fines, suspend privileges at locations where violations occur, or invoke further penalties.

CODE REFERENCE: West Virginia Code §33-12-38 – new

DATE OF PASSAGE: March 7, 2019

EFFECTIVE DATE: June 5, 2019

ACTION BY GOVERNOR: March 26, 2019

House Bill 2661

Relating to natural gas utilities

This bill changed the regulation of natural gas utilities in two ways:

- The bill empowered gas utilities to ask the PSC for permission to implement programs to incentivize producers to increase natural gas production and recover the resulting costs through the gas utility's purchased gas adjustment (PGA) mechanism. This option allows for new wells to be drilled and older wells to be properly maintained or reworked to increase dwindling supplies of gas to certain consumers.
- The bill provided a second option that empowers gas utilities to recover the costs to convert customers to other heating fuels, like propane or electric, and recover the costs through the PGA mechanism. Utilities may also choose to defer the cost recovery to a rate case.

This bill allows for cost recovery of projects by utilities without expensive, time consuming, and complicated rate cases. Under both options, the PSC will have the final say on whether costs are reasonable under the circumstances. Also, the extra costs incurred will be spread across the whole of the utility's customer base and will not be carried entirely by the small communities who receive the benefit.

CODE REFERENCE: West Virginia Code §24-2-4c and §24-3-7 – amended

DATE OF PASSAGE: March 8, 2019

EFFECTIVE DATE: June 6, 2019

ACTION BY GOVERNOR: Vetoed on March 27, 2019

House Bill 2673

Creating the Oil and Gas Abandoned Well Plugging Fund

This bill amends and reenacts §11-13A-3a and enacts a new section §22-6-29a of the Code. The bill does two things. The bill reduces the severance tax on oil and gas produced from low producing wells to reduce costs of production, helping to ensure the wells are kept in service longer. The bill then uses the reduced amount of funds paid to plug and reclaim orphaned oil and gas wells that are polluting the environment.

In §11-13A-3a, the tax exemption begins for all taxable periods on or after January 1, 2019. The bill creates an exemption for wells producing natural gas at average levels of less than 60,000 cubic feet of natural gas per day during the calendar year immediately preceding a given taxable period. The current exemption is for wells producing less than 5,000 cubic feet of natural gas per day.

The proposed bill also creates an exemption for wells producing oil at average levels of less than 10 barrels of oil per day during the calendar year immediately preceding a given taxable period. There is currently an exemption for wells producing less than ½ barrel per day.

This bill strikes the expired subsection (d) from the code and then exempts the operators from filing severance tax returns for wells producing less than an average 60,000 cubic feet per day for natural gas and 10 barrels per day for oil.

In §22-6-29a, After creating the tax exemption and filing exemption, the bill then implements a fee of 2.5% of gross proceeds, calculated as though it was being taxed under §11-13A-1 et seq. The current severance tax rate is 5%. The fee is paid to a new fund known as the Oil and Gas Abandoned Well Plugging Fund which is to be administered by the DEP and used only to plug orphaned oil and natural gas wells. Under the statutory scheme, the DEP must first use the funds from the sister fund known as the Oil and Gas Reclamation Fund. When these funds are expended, then the DEP can begin using the newly created fund.

If on June 1 of any year, the newly created fund has a balance of more than 4 million dollars, the 2.5% fee is suspended for the following calendar year, thus effectively eliminating all taxes on these wells producing an average of less than 60,000 cubic feet and 10 barrels of oil per day. The DEP must spend the money to plug wells or temporarily lose the revenue stream.

The bill further specifies that these funds in the Oil and Gas Abandoned Well Plugging Fund cannot be transferred to general revenue and may only be used to plug orphan wells to eliminate pollution to the environment. The bill further requires the DEP to report to the governor and legislature every year regarding the balances in the two funds and the number of wells that were plugged in the previous year. Lastly, there is a civil penalty of \$1500 dollars maximum to be paid by any operator that fails to pay the required 2.5% fee by March 31st each year.

CODE REFERENCE: West Virginia Code §11-13A-3a – amended; §22-6-29a – new

DATE OF PASSAGE: March 9, 2019

EFFECTIVE DATE: June 7, 2019

ACTION BY GOVERNOR: The Governor vetoed this bill on March 27, 2019. The Governor stated:

“The goal of providing additional needed funding to the Department of Environmental Protection to plug abandoned oil and gas wells and reclaim property disturbed by the plugging is a goal that needs to be pursued and achieved. However, this needed funding should come from general revenues generated by the current severance tax rate, among other sources, rather than from significantly

diminished revenues generated by a 50% tax rate cut, which, under the bill, effectively becomes a 100% tax rate cut when \$4 million is in the Fund. I believe it would be to the detriment of the State and to the many causes to which general revenues are put to allow for such an increase in the amount of natural gas and oil produced with an effective tax rate of 0% once \$4 million has been deposited to the Fund, in order to direct funding to a purpose more efficiently funded from general revenues.

Further, there is potential conflict regarding the dedication of the severance tax proceeds from the privilege of producing oil and natural gas. Currently, 10% of the severance tax attributable to the severance tax on oil and natural gas is dedicated for the use and benefit of the counties and municipalities of the State, and of that amount 75% is to go to the oil and natural gas producing counties. As enacted, this bill would affect the amount available for these distributions needed to provide funds to counties and municipalities throughout the State.”



House Bill 2690

Relating to guaranty associations

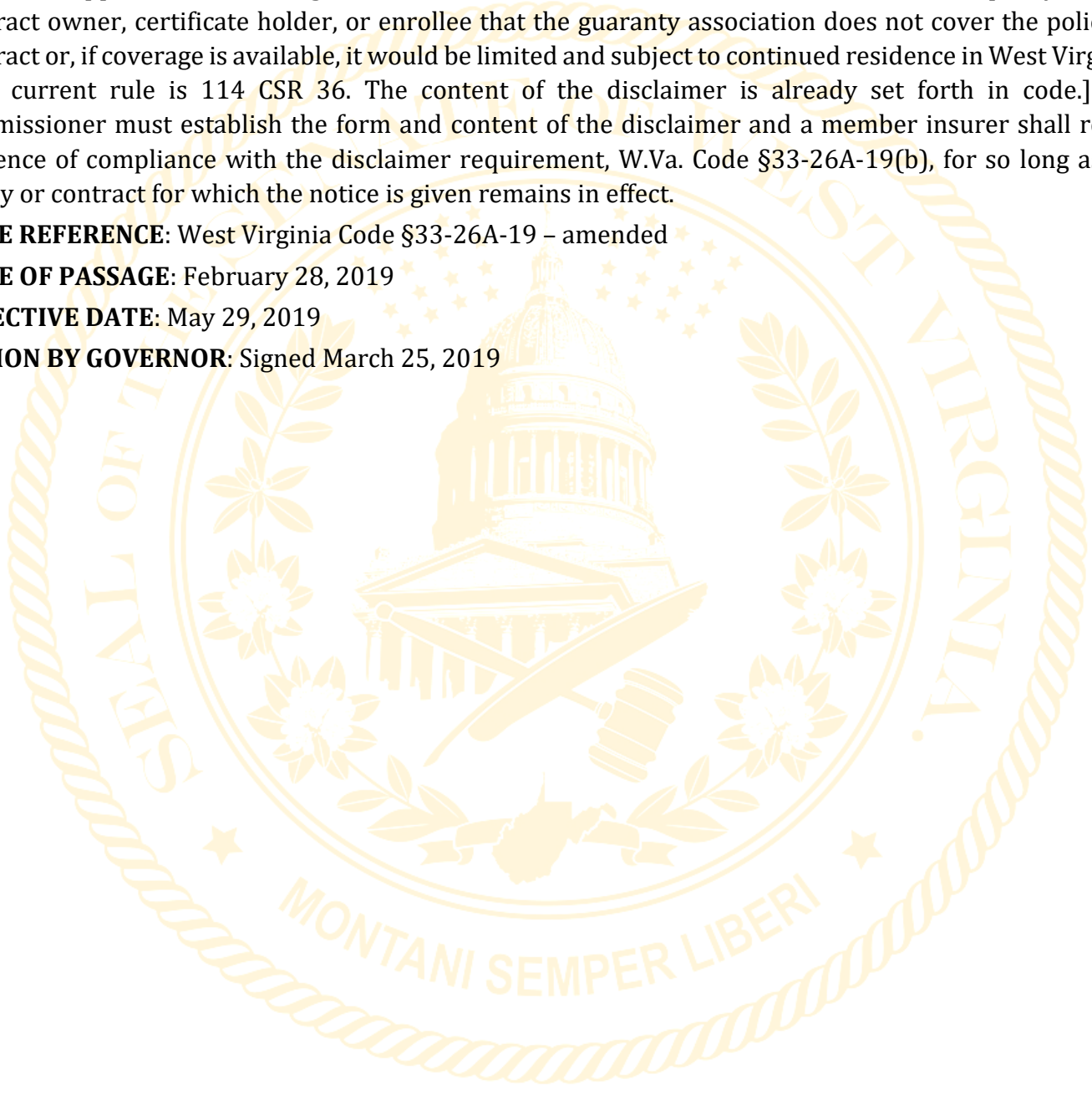
This bill would increase consistency of our code with the National Association of Insurance Commissioners' (NAIC) Life and Health Insurance Guaranty Association Model Act [Model Regulation Service—4th Quarter 2017]. The bill removes the requirement that the commissioner propose rules for legislative approval establishing the form and content of the disclaimer that advises a policy owner, contract owner, certificate holder, or enrollee that the guaranty association does not cover the policy or contract or, if coverage is available, it would be limited and subject to continued residence in West Virginia. [The current rule is 114 CSR 36. The content of the disclaimer is already set forth in code.] The commissioner must establish the form and content of the disclaimer and a member insurer shall retain evidence of compliance with the disclaimer requirement, W.Va. Code §33-26A-19(b), for so long as the policy or contract for which the notice is given remains in effect.

CODE REFERENCE: West Virginia Code §33-26A-19 – amended

DATE OF PASSAGE: February 28, 2019

EFFECTIVE DATE: May 29, 2019

ACTION BY GOVERNOR: Signed March 25, 2019



House Bill 2694

Relating to the state's ability to regulate hemp

This bill adds definitions to the Industrial Hemp Development Act, including changing the maximum THC content to reflect federal requirements. The section relating to criminal history record checks has been rewritten to allow the Commissioner to establish requirements relating to criminal history record checks for other persons involved with the industrial hemp program. The applicant must pay all costs relating to the record check. This bill specifically provides that a license is not necessary to possess, handle, transport, or sell hemp products or extracts and sets standards for the sale of industrial hemp products.

Section 10, which is new, authorizes the Commissioner to submit a plan under which the state monitors and regulates the production of industrial hemp to the Secretary of the United States Department of Agriculture for his or her approval. Industrial hemp may be produced in this state whether or not the Commissioner submits a plan or whether or not the Secretary approves the plan.

Section 11, which is also new, provides that an industrial hemp producer failing to comply with any approved plan is subject to the penalties set forth in W. Va. Code §19-12E-11, if the Department of Agriculture determines the industrial hemp producer has negligently violated the state plan by:

- Failing to provide a legal description of the land on which the producer produces hemp;
- Failing to obtain a license or other required authorization from the West Virginia Department of Agriculture; or
- Failing to produce industrial hemp containing 0.3% or less of THC.

An industrial hemp producer in negligent violation of the above provisions must comply with any requirements established by the West Virginia Department of Agriculture to correct the violation.

The bill provides that an industrial hemp producer that negligently violates the approved plan three times in a five-year period is ineligible to produce hemp for a period of five years, beginning on the date of the third violation.

CODE REFERENCE: West Virginia Code §19-12E-10 and §19-12E-11 – new

DATE OF PASSAGE: March 9, 2019

EFFECTIVE DATE: June 7, 2019

ACTION BY GOVERNOR: Signed March 27, 2019

House Bill 2703

Relating to refunds of excise taxes collected from dealers of petroleum products

This bill increases the cap on the amount of tax that may be refunded to a dealer of petroleum products for gallons lost due to evaporation from $\frac{1}{2}$ of 1% to a full 1%.

CODE REFERENCE: West Virginia Code §11-14C-30 – amended

DATE OF PASSAGE: March 7, 2019

EFFECTIVE DATE: June 5, 2019

ACTION BY GOVERNOR: Vetoed on March 27, 2019

House Bill 2746

Relating to administration of estates

This bill provides a procedure to allow the county commission to administratively close unprogressed or dormant estates. If the county commission administratively closes an estate, the personal representative is still liable in a civil action to heirs, beneficiaries, or interested parties for property or assets of the decedent or the estate.

CODE REFERENCE: West Virginia Code §44-2-19a – new; §44-3A-24 – amended

DATE OF PASSAGE: February 28, 2019

EFFECTIVE DATE: May 29, 2019

ACTION BY GOVERNOR: Signed March 25, 2019

House Bill 2759

Providing for the ancillary administration of West Virginia real estate owned by nonresidents by affidavit and without administration

This bill simplifies the procedure by which a West Virginia real estate property owned by a nonresident decedent is probated. The bill allows for the ancillary administration of the estate of nonresident decedents. The bill permits a personal representative to file an affidavit to evidence the probate of a will in another jurisdiction. The bill also provides a procedure for property passing intestate.

CODE REFERENCE: West Virginia Code §41-5-13 and §44-1-4 – amended; §44-1-14b – new

DATE OF PASSAGE: March 1, 2019

EFFECTIVE DATE: May 30, 2019

ACTION BY GOVERNOR: Signed March 26, 2019

House Bill 2761

Modernizing the self-service storage lien law

This bill defines several new terms and redefines others. It allows an operator to have a lien for late fees and changes the reference to destruction of property to disposition of property.

The bill provides that a rental agreement must contain a statement advising the occupant that personal property stored in the leased space may be towed or removed from the self-service storage facility if the personal property is a motor vehicle, trailer, or watercraft and the occupant is in default for more than 60 days.

The agreement must contain a statement advising the occupant that a sale of personal property stored in the leased space to satisfy the lien, if the occupant is in default, may be advertised in a newspaper of general circulation in the jurisdiction where the sale is to be held or where the self-service storage facility is located. The notice may be published by electronic mail or on an online website.

Under current law, the owner may charge a monthly late fee not to exceed \$10 or 10% of the monthly rental fee, whichever is greater, for each month the occupant defaults for a period of 15 days or more. This bill permits the owner to charge a monthly late fee not to exceed \$20 or 20% of the monthly rental fee, whichever is greater, for each month the occupant defaults for a period of five days or more.

Default notice can be given by hand delivery, verified mail, or electronic mail. A sale may be held at the self-service storage facility where the personal property is stored, on an online auction website, or at any other location reasonably determined by the operator. Current law does not provide for an online auction. The occupant may satisfy the lien and redeem the personal property any time before the sale.

Finally, the bill removes the prohibition on insurance sales. The operator is no longer required to maintain inventory two years after disposition of property. Language requiring the operator to notify law enforcement of stored hazardous materials is removed.

CODE REFERENCE: West Virginia Code §38-14-2, §38-14-3, §38-14-4, §38-14-5, §38-14-7, §38-14-8, and §38-14-9 – amended

DATE OF PASSAGE: March 9, 2019

EFFECTIVE DATE: June 7, 2019

ACTION BY GOVERNOR: Signed March 26, 2019

House Bill 2770

Fairness in Cost-Sharing Calculation Act

This bill requires certain insurers and pharmacy benefit managers to include any cost sharing amounts paid by the insured or on behalf of the insured by another person toward that insured's deductible/copay amounts. This bill will prevent certain insurers and pharmacy benefit managers from using a copay accumulator approach.

CODE REFERENCE: West Virginia Code §33-15-4t, §33-16-13ee, §33-24-7t, §33-25-8q, §33-25A-8t – new

DATE OF PASSAGE: March 9, 2019

EFFECTIVE DATE: 90 Days

ACTION BY GOVERNOR: Signed March 27, 2019

House Bill 2813

Relating generally to collection of use tax

The bill would provide definitions for the administration of the collection of West Virginia use taxes from out-of-state retailers that do not have a physical presence in this state and who have not voluntarily agreed to collect West Virginia use taxes but have an economic nexus with this State, as defined in this bill, on sales to consumers in this State. The bill would also require certain out-of-state retailers known as “marketplace facilitators” to collect West Virginia use tax. A marketplace facilitator, in essence, contracts with third party sellers to promote their sale of physical property, digital goods, and services through the marketplace. The bill specifically provides an exclusion for marketplace facilitators who serve simply as a payment pass through and does not deal specifically with the sale of goods or services.

CODE REFERENCE: West Virginia Code §11-15A-1 – amended; §11-15A-6b – new

DATE OF PASSAGE: March 9, 2019

EFFECTIVE DATE: June 7, 2019

ACTION BY GOVERNOR: Signed March 27, 2019

House Bill 2828

Relating to Qualified Opportunity Zones

Newly enacted federal law provides tax incentives to investors in Qualified Opportunity Zones. Under the federal program, a taxpayer may invest capital gains from a prior venture in an opportunity zone project; the taxpayer then defers those gains. The governor of each state designates the opportunity zones. West Virginia has 55 separate opportunity zones in the state.

This bill will incentivize these investments by exempting all income derived from an opportunity zone business from state taxable income for a ten-year period.

Businesses seeking to enjoy the benefit of this bill must qualify as a “Qualified Opportunity Zone Business” under federal law. Accordingly, substantially all of the company’s physical assets must be located in an opportunity zone. Further, a qualifying business must be a newly formed, having registered in the state after January 1, 2019. The bill also establishes the West Virginia New Markets Jobs Act. This implements a tax credit program which works in conjunction with the Federal New Markets Program in an effort to drive private capital investment into small businesses to expand businesses and create jobs.

Private money is raised and collected into an investment fund. Some of this private money comes from insurance companies who may receive a tax credit for participation. The fund is privately managed to invest in existing businesses located within qualified areas with a poverty rate over 20% or median family income below 80% of the metropolitan median family income.

There are no tax benefits to the private entities during the first two years of the program and the program must be reauthorized after 7 years. The bill begins with definitions many of which are tied directly to the United States Code. The bill puts limitations on when and to whom a tax credit may be transferred and contains certain defined limits on businesses participating in the program.

The West Virginia Economic Development Authority will accept applications beginning on July 1, 2019. The applications will contain information including a business plan, investment amounts, certificates, and agreements. Procedures are defined and the WVEDA is granted authority to accept or reject applications. There is a maximum limit of \$60 million dollars in a qualified equity investment.

The reporting requirements provide that qualified community development entities must submit a report to the WVEDA and outlines the information which must appear in the report including the location of business, a bank statement evidencing the investments, the number of new jobs created and retained as a result of the investment, and the information regarding average salaries. The bill defines penalties for under performance of job creation (reimbursement to state and deposited in general revenue fund).

The bill creates a new section under the Insurance Chapter concerning credits against premium tax for investments. Additional terms are defined and an allowable tax credit against the states premium tax liability is created. The bill defines certain situations which allow the tax commissioner to recapture an allowed tax credit and reissue the tax credit. Other provisions in the bill concern enforcement of recapture and the determinations of the insurance commissioner.

CODE REFERENCE: West Virginia Code §11-21-12j, §11-24-6b, §31-15D-1, §31-15D-2, §31-15D-3, §31-15D-4, §31-15D-5, §31-15D-6, §31-15D-7, §33-3-14e – new

DATE OF PASSAGE: March 9, 2019

EFFECTIVE DATE: June 7, 2019

ACTION BY GOVERNOR: Vetoed on March 27, 2019

House Bill 2829

Relating to the termination of severance taxes on limestone and sandstone

The purpose of this bill is to terminate the severance tax on limestone and sandstone. The elimination would be effective on July 1, 2019.

A review of the Severance Tax on limestone and sandstone mining the past three fiscal years shows that the state collected an average of \$1.2 million in revenue. It is estimated the General Revenue Fund will lose roughly \$1.1 million in funding from the loss of Severance Tax on sandstone and limestone mining in FY2020 and \$1.2 million for each fiscal year, thereafter.

CODE REFERENCE: West Virginia Code §11-136A-3 – amended

DATE OF PASSAGE: March 1, 2019

EFFECTIVE DATE: May 30, 2019

ACTION BY GOVERNOR: Signed March 27, 2019

House Bill 2848

Relating to the West Virginia ABLÉ Act

This bill amends various provisions of the West Virginia Code relating to savings accounts created pursuant to the “Achieving a Better Life Experience in West Virginia Act”, or ABLÉ accounts.

The bill amends the definition section by adding definitions for the terms “ABLE Act” and “attorney in fact.” “Eligible individual” is amended to take out the specific age requirement of 26 by when the disability must have occurred, but instead uses the age requirement that is in the federal ABLÉ Act (which is currently 26). The bill also authorizes a parent or attorney to open and manage an ABLÉ account for a beneficiary who lacks capacity to enter a contract. Previously, only beneficiaries, conservators and guardians to open and manage accounts. The bill specifically excludes DHHR from being eligible to manage an account. The federal employer identification number is required of the person or entity opening or managing an ABLÉ account on behalf of a beneficiary.

The bill also removes provisions which allowed moneys in an ABLÉ account to be subject to a claim by Medicaid after the beneficiary’s death, and instead states that moneys in the account, as well as, qualified withdrawals are to be disregarded for purposes of determining eligibility for public assistance; are not subject to claims by DHHR; and upon the death of the beneficiary, any moneys left in the account shall be transferred to the estate of the beneficiary.

Lastly, the bill creates a new exemption from federal adjusted gross income for purposes of calculating WV personal income tax equal to the amounts contributed to an ABLÉ account, but only to the extent the amount is not allowed as a deduction in determining federal adjusted gross income in the first place. Any unused amount may be carried forward to the next 5 tax years. In addition, amounts deposited in an ABLÉ account which are subsequently withdrawn and not used for a qualified disability expense are to be added to federal adjusted gross income for use in determining WV personal income tax liability.

CODE REFERENCE: West Virginia Code §11-21-12i – new; §16-48-3 and §16-48- 6 – amended

DATE OF PASSAGE: March 1, 2019

EFFECTIVE DATE: May 30, 2019

ACTION BY GOVERNOR: Signed March 27, 2019

House Bill 2854

Exempting sales from the consumers sales and service tax and use tax by not for profit volunteer school support groups raising funds for schools

This bill exempts sales by not-for-profit volunteer school support groups from the consumers sales and service tax and the use tax when the sale is for the purpose of raising funds for schools, regardless of whether the organization holds, or does not hold, an exemption under §501(c)(3) or

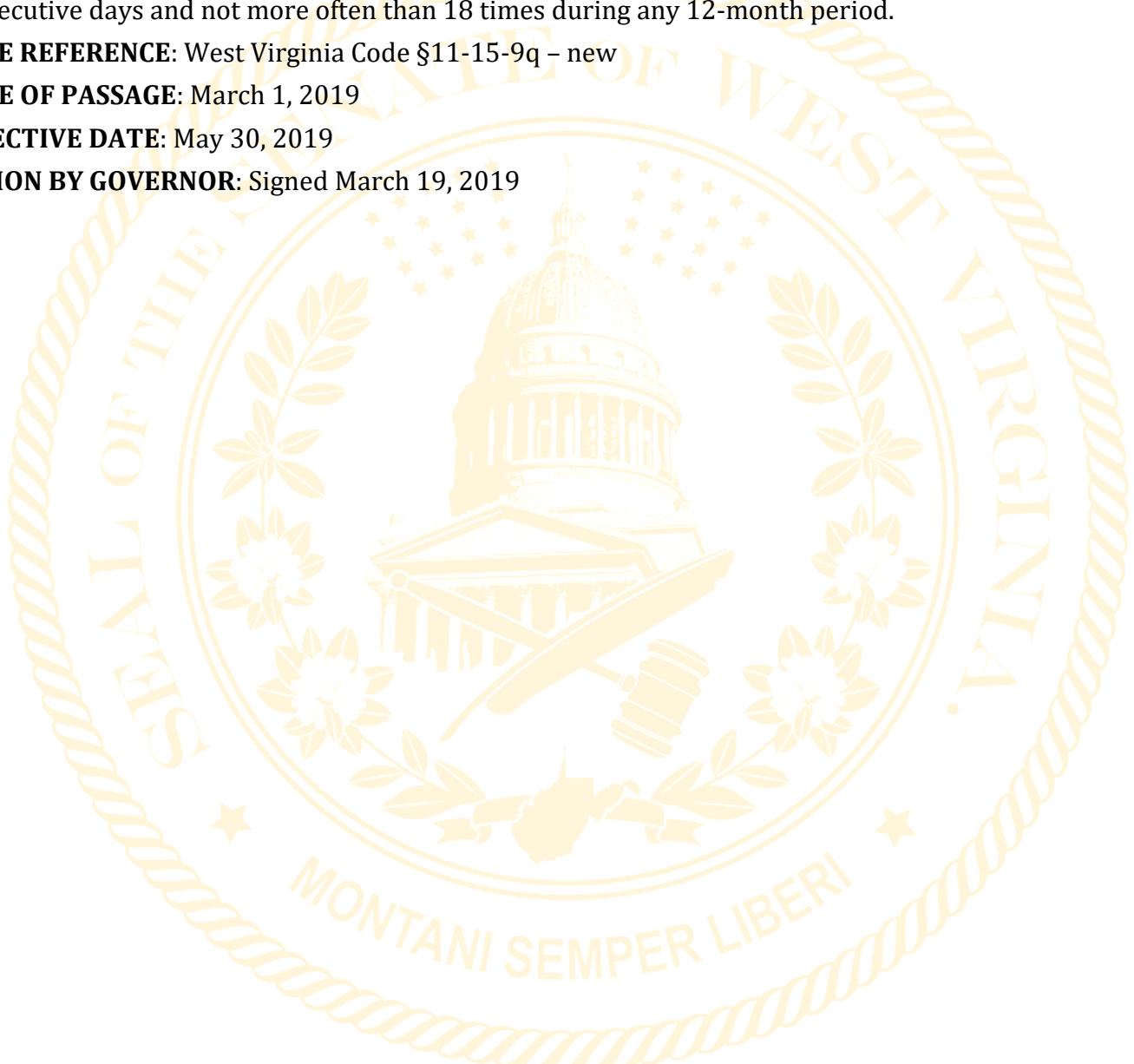
§501(c)(4) of the Internal Revenue Code. The bill limits the fundraisers to no longer than 14 consecutive days and not more often than 18 times during any 12-month period.

CODE REFERENCE: West Virginia Code §11-15-9q – new

DATE OF PASSAGE: March 1, 2019

EFFECTIVE DATE: May 30, 2019

ACTION BY GOVERNOR: Signed March 19, 2019



House Bill 2934

West Virginia Lottery Interactive Wagering Act

The purpose of this bill is to enact a new article, permitting and regulating interactive gaming, or interactive wagering, through the existing casinos in the state. Interactive wagering refers to the offering of any games traditionally available on the casino floor through digital or mobile platforms or applications.

Authority of the Lottery Commission

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

Licenses and Duties

Licenses that will be required under the new article are: Operator Licenses (\$250,000 application fee; five-year fee); Supplier Licenses (\$10,000 application fee; annual fee); Occupational Licenses (\$100 application fee; annual fee); and Management Services Licenses (\$100,000 application fee; annual fee).

An applicant for any of these licenses must apply to the Lottery Commission and submit to a state and federal background check. In addition to applicants, persons having “control” of an applicant must meet licensing eligibility requirements, i.e. corporate holding companies, key executives, holders of proprietary interest in an entity.

A license may not be granted to applicants who have committed certain crimes or committed other malfeasance related to wagering. A commission employee may not hold a license. The Lottery Commission may deny, suspend, or revoke a license on certain grounds, such as commission of crimes or malfeasance.

- Operator’s Licenses
 - Operator’s licenses are required of those gaming facilities operating West Virginia Lottery interactive wagering. Operators are considered to be agents of the Lottery, and all interactive wagering games will be West Virginia Lottery games owned by the state. The Lottery may only issue up to five operator licenses. The fee for an operator’s license will be \$250,000 for application and for renewal every fifth year. Licensed operators must comply with numerous Lottery Commission requirements, including:
 - Execute a surety bond with the Commission.
 - Submit to an annual financial audit.
 - Provide office space for the Lottery Commission to perform its regulatory duties.
 - Provide an accessible facility that complies with state and federal laws.
 - In addition to licensing requirements, Operators have numerous duties, including:
 - Adopt commission approved house rules. Rules must be posted and available to patrons.
 - Report monitor and report suspicious activities in volume or odds swings.
 - Report suspicious betting or any violations of state or federal laws.
 - Hold the commission harmless in claims arising from the operator’s acts or omissions.
 - Prevent tampering with wagering and wagering equipment.

- Provide for the security of wagering equipment.
- Maintain sufficient cash and other supplies for interactive wagering.
- Maintain adequate records.
- Conspicuously post minimum and maximum wagers permitted.
- Management Services Providers Licenses
 - An entity providing management services on behalf of a licensed operator must pay an application fee of \$100,000, and an annual renewal fee of \$100,000.
 - Operators are required to seek the Commission's approval of management services contracts, prior to entering into the contract.
- Supplier Licenses
 - These licenses are required for persons or entities wishing to sell or lease interactive wagering equipment. There is an application fee of \$10,000 and a \$10,000 annual renewal fee.
 - A licensed supplier must submit inventory lists to the commission, as required by the commission, and ensure that all equipment, systems and service must comply with lottery regulations.
- Occupational Licenses
 - All employees engaged in interactive wagering activities must hold an occupational license. The application fee and annual renewal fee for an occupational license is \$100, which may be paid by an employer.

Fees and Taxes

The commission is required and authorized to collect all fees, surcharges, civil penalties, and weekly taxes on interactive wagering receipts for deposit into the West Virginia Interactive Wagering Fund, created by this article.

The Interactive Wagering Fund is a non-appropriated, special account.

The state will collect 15% of an operator's adjusted gross interactive wagering receipts, on a weekly basis. Proceeds will be deposited in the Interactive Wagering Fund.

The 15% privilege tax is in lieu of all other taxes, other than the property tax. The purchase and use of services and equipment directly used in the operation of interactive wagering is exempt from sales and use tax, as well as similar municipal or county taxes.

Expenditures by operators on interactive wagering systems and equipment qualifies for recoupment from the Racetrack and Historic Hotel Modernization Funds.

Tax credits cannot be taken against the privilege tax, or for any interactive wagering investment.

Distribution of the Interactive Wagering Fund is as follows:

- The actual costs and expenses of Commission are deducted.
- The commission retains up to 15% for administrative expenses. A surplus to what is needed may accumulate up to \$250,000. Any amount above \$250,000 is remitted as net profit.
- One percent of the net profit (after the above deductions) is distributed evenly among the pension funds maintained by racetrack licensees, and the remaining net profit is deposited in the State Lottery Fund.

Agreements with Other Governments

The bill authorizes the Lottery Commission to enter into agreements with other governments allowing persons in the other government's jurisdiction to participate in interactive wagering conducted by operators in this state. Agreements must provide for the sharing of revenue with the other governments and comply with other Lottery Commission requirements.

Miscellaneous Wagering Requirements

- Only persons of 21 years of age or older may wager.
- The bill expressly allows the Lottery to approve participation in wagering through a licensed gaming facility, using electronic devices and mobile applications or platforms, by persons physically located in this state or in a state participating in an interactive wagering agreement with the Commission,
- Gaming facility employees are prohibited from wagering at an employer's facility.
- Lottery Commission employees are prohibited from wagering at all.
- The Commission may enter into a memorandum of understanding with the West Virginia State Police for law enforcement services related to gambling, including interactive wagering, at the casinos.
- The new article expressly preempts any local laws preventing interactive betting.

Civil Penalties

For a violation of the article, a person is subject to a fine not to exceed \$50,000.

Crimes and Penalties

The bill creates several new crimes related to interactive wagering:

- The committee substitute makes it a felony for an organization, person, or commercial enterprise, other than a licensed gaming facility, to conduct interactive betting. The felony is punishable: as a first offense, by a fine of \$10,000 or confinement for no more than 90 days, or both; as a second offense, by a fine of no more than \$50,000 and imprisonment for no more than 6 months, or both; and as a third offense, for a fine of \$25,000 to \$100,000 or confinement for 1 to 5 years, or both.
- The bill makes it a misdemeanor, for a licensee to do any of the following:
 - Operate interactive wagering without authority or by an unauthorized means.
 - Knowingly allow interactive wagering to occur on device that has been tampered with
 - Employ an individual to conduct wagering who does not have an occupational license.
 - Employ a person to act as though he or she is not an agent of the licensee and to encourage participation in wagering.
 - Knowingly permit a person under 21 to wager.
 - Exchange tokens or other credit for wagering for anything of value, other than money or credits to an interactive wagering account.
- The misdemeanor is punishable by a fine of up to \$1,000 and up to six months confinement for a person, or a fine of up to \$25,000 if the crime is not committed by a natural person (commercial entity, etc.)
- The bill makes it a felony, for a person to do any of the following:
 - Change or alter the normal outcome or reporting of a game result.
 - Manufacture, sell, possess or distribute a device to violate wagering laws.
 - Fraudulently collect any of value from a gaming facility.
 - Wager with counterfeit currency or credit.

- The felony is punishable by fine of \$5,000 to \$10,000 and confinement for at least one year, but no more than five years, or by both fine and confinement.

CODE REFERENCE: West Virginia Code §29-22E-1 et seq. – new

DATE OF PASSAGE: March 9, 2019

EFFECTIVE DATE: June 7, 2019

ACTION BY GOVERNOR: Became Law Without Signature



House Bill 2945

Relating to vendors paying a single annual fee for a permit issued by a local health department

This bill provides greater freedom to vendors selling food products at temporary locations for festivals, events, and similar activities, while still regulating the safety of the food being sold. Vendor permits issued by a local or county health department for non-potentially hazardous foods will be good for one year and may be used in counties adjoining the vendors county of residence or 25 air miles whichever is greater. The other health departments may place limitations on an issued permit to assure compliance with that health department's rules for the type of permit. Non-potentially hazardous foods do not require time or temperature control for safety to limit microorganism growth or toxin formation.

The law regarding potentially hazardous foods will remain unchanged and each local or county health department may continue to require separate permits and fees for events. Examples of these foods include meat, fish and poultry. Each vendor must provide notice to the local health department at least 14 days prior to the start of the festival, event or activity. The permit must be visibly posted, or the permit is not valid. Finally, the secretary must review and modernize legislative rules regarding local boards of health fees found in 64 CSR 30 in the next filing period.

CODE REFERENCE: West Virginia Code §16-2-17 – new

DATE OF PASSAGE: March 9, 2019

EFFECTIVE DATE: June 7, 2019

ACTION BY GOVERNOR: Signed March 26, 2019

House Bill 2947

Relating generally to telemedicine prescription practice requirements and exceptions

The purpose of this bill is to permit a telemedicine physician prescription/order for a Schedule II pharmaceutical in the hospital setting for immediate administration in the hospital. This practice is prohibited in an emergency room.

CODE REFERENCE: West Virginia Code §30-3-13a, §30-14-12d – amended

DATE OF PASSAGE: March 9, 2019

EFFECTIVE DATE: June 7, 2019

ACTION BY GOVERNOR: Signed March 26, 2019

House Bill 2954

Defining certain terms used in insurance

This bill clarified that a valid license includes a temporary permit issued by the Board of Medicine or the Board of Osteopathic Medicine.

CODE REFERENCE: West Virginia Code §33-45-1 – amended

DATE OF PASSAGE: March 7, 2019

EFFECTIVE DATE: June 5, 2019

ACTION BY GOVERNOR: Signed March 25, 2019

House Bill 2968

Adding remote service unit to the definition of customer bank communications terminals

This bill permits the installation and operation of “remote service units” (RSUs) by adding “remote service units” to the definition of “customer bank communication terminal.” W. Va. Code §31A-8-12b governs customer bank communication terminals, which include ATMs and Automated Loan Machines.

An RSU is defined as an automated facility, operated by a customer of a bank, that conducts banking functions such as receiving deposits, paying withdrawals, or lending money, and includes an unmanned or automated teller machine, an automated loan machine, and an automated device for receiving deposits. An RSU may be equipped with a telephone or video device that allows contact with bank personnel.

This bill also requires operators of RSUs to maintain a physical location in this state.

CODE REFERENCE: West Virginia Code §31A-8-12b – amended

DATE OF PASSAGE: March 9, 2019

EFFECTIVE DATE: June 7, 2019

ACTION BY GOVERNOR: Signed March 26, 2019

House Bill 2982

Amending and updating the laws relating to auctioneers

This bill amended and updated the laws relating to auctioneers that provided for exemptions to license requirements, provided for June 30 as the date for all licenses to expire, established certain conditions for auctioneers to continue working after license expiration, provided for auctioneers to submit criminal history record checks, provided for penalties for an unlicensed auctioneer and additional circumstances to revoke a license, provided for written contracts with auctioneers and owners of property, and provided for auction houses and business entities to enter into contracts with auctioneers.

CODE REFERENCE: West Virginia Code §19-2C-1, §19-2C-2, §19-2C-3, §19-2C-5, §19-2C-5a, §19-2C-6, §19-2C-6a, §19-2C-6c, §19-2C-8, §19-2C-8a, and §19-2C-9 – amended; §19-2C-5b – new

DATE OF PASSAGE: March 9, 2019

EFFECTIVE DATE: June 7, 2019

ACTION BY GOVERNOR: Signed March 26, 2019

House Bill 3021

Disposition of permit fees, registration fees and civil penalties imposed against thoroughbred horse racing licensees

The bill changes the way certain civil penalties imposed in thoroughbred or greyhound racing activities are distributed. Under current law, all such civil penalties are to be paid into a fund administered by the Racing Commission and used, as ordered by the Racing Commission, for “hospitalization, medical care and funeral expenses occasioned by injuries or death resulting from an accident sustained by any permit holder while in the discharge of his or her duties under the jurisdiction of the Racing Commission.” Any “balance in the relief fund in excess of \$5,000, less any outstanding obligations, shall thereupon be transferred by the Racing Commission . . . for deposit to the” state’s General Revenue Fund.

The bill removes provisions requiring the deposit of any excess balance into the state’s General Revenue Fund, separates the revenues and the allocation of those revenues into those generated from thoroughbred horse racing activities and those generated from greyhound racing activities, and repurposes the uses of those revenues.

The civil penalties imposed on thoroughbred horse racing licensees or permit holders are to be paid into a fund and used for “expenses associated with the post-mortem examination of thoroughbreds that suffer breakdowns on a racetrack, in training or in competition, and that are euthanized, or thoroughbreds that expire while stabled on a racetrack under the jurisdiction of the Racing Commission.” Any “balance in the fund at the end of any fiscal year in excess of \$10,000, less any outstanding obligations, shall be divided equally and may be expended by the Racing Commission” for two purposes:

- To aid in the rescue, retraining, rehabilitation and aftercare of thoroughbred racehorses that are no longer able to compete on the racetracks in this state.
- To aid in the payment of hospitalization, medical care and funeral expenses occasioned by injuries or death sustained by a thoroughbred racing permit holder at a licensed thoroughbred racetrack in this state.

The civil penalties imposed on greyhound racing licensees or permit holders are to be paid into a fund and used for greyhound adoption programs involving West Virginia whelped dogs owned by residents of this state.

CODE REFERENCE: West Virginia Code §19-23-14 – amended

DATE OF PASSAGE: March 5, 2019

EFFECTIVE DATE: June 3, 2019

ACTION BY GOVERNOR: Signed March 25, 2019

House Bill 3045

Exempting certain complimentary hotel rooms from hotel occupancy tax.

This bill would exempt from the hotel occupancy tax any room that is provided complementary to guests by a hotel operator. The State Auditor believes the bill will reduce local governmental tax collections related to the Hotel Occupancy Tax.

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

DATE OF PASSAGE: March 5, 2019

EFFECTIVE DATE: June 3, 2019

ACTION BY GOVERNOR: Signed March 19, 2019

House Bill 3139

Relating to funding of the Public Employees Health Insurance Program

This bill creates the Public Employees Insurance Agency (PEIA) Rainy Day Fund. It begins by requiring the PEIA Finance Board to maintain in the reserve fund an actuarially recommended amount of no less than 10% of projected plan costs. It also removes the requirement to transfer moneys resulting from plan savings into the reserve fund as well as the cap in reserve fund of 15% before a transfer to the Retiree Health Benefit Trust Fund. The bill also creates a special revenue account administered by the Secretary of Revenue. He or she is granted authority to transfers funds in the account to PEIA for specified purposes. These purposes are set out in the bill. These include:

- Reduce or prevent benefit cuts;
- Reduce premium increases; or
- Any combination thereof.

The Secretary is given the authority to seek assistance from the Investment Management Board and the Board of Treasury Investments.

CODE REFERENCE: West Virginia Code §5-16-25 – amended; §5-16-27 and §11B-2- 15a – new

DATE OF PASSAGE: March 9, 2019

EFFECTIVE DATE: March 9, 2019

ACTION BY GOVERNOR: Signed March 14, 2019

House Bill 3142

Relating to reducing the severance tax on thermal or steam coal

The bill would reduce the regular severance tax on thermal or steam coal to 2% over a three-year period. The first year of reduction would be at 35% of the 2%, the second year would be at 65% of 2% and in the final year it would increase to the full 2%.

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

DATE OF PASSAGE: March 9, 2019

EFFECTIVE DATE: June 7, 2019

ACTION BY GOVERNOR: Signed March 27, 2019

House Bill 3143

Relating to requirements for consumer loans in West Virginia

This bill adjusts limits on consumer loans in West Virginia where certain finance charges may be imposed.

On a loan of \$3,500 or less which is unsecured by real property, the loan finance charge may not exceed 31 percent per year on the unpaid balance of the principal amount. On a loan of greater than \$3,500 up to a loan of \$15,000 or which is secured by real property, the loan finance charge may not exceed 27 percent per year on the unpaid balance of the principal amount. However, the loan finance charge on any loan greater than \$15,000 may not exceed 18 percent per year on the unpaid balance of the principal amount. If the loan is nonrevolving and greater than \$3,500, the permitted finance charge may include a charge of not more than a total of two percent of the amount financed for any origination fee, points, or investigation fee.

A regulated consumer lender may, on a loan not secured by real estate of \$3,500 or less, contract for and receive interest at a rate of up to 31 percent per year on the unpaid balance of the principal amount, together with a nonrefundable loan processing fee of not more than two percent of the amount financed.

The licensing provisions of the bill do not pertain to any “collection agency” as defined in, and licensed by, the “Collection Agency Act of 1973.”

CODE REFERENCE: West Virginia Code §46A-4-101 and §46A-4-107 – amended

DATE OF PASSAGE: March 9, 2019

EFFECTIVE DATE: June 7, 2019

ACTION BY GOVERNOR: Signed March 26, 2019

House Bill 3144

North Central Appalachian Coal Severance Tax Rebate Act

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

CODE REFERENCE: West Virginia Code §114-13EE-1 through §114-13EE-16 – new

DATE OF PASSAGE: March 9, 2019

EFFECTIVE DATE: June 7, 2019

ACTION BY GOVERNOR: Signed March 27, 2019

2019 First Extraordinary Session

House Bill 207

Exempting from business and occupation tax certain merchant power plants

The bill would provide that on or after July 1, 2020, a merchant power plant is exempt from the business and occupation tax on the generating capacity of its generating units located in this State that are owned or leased by the taxpayer and used to generate electricity. When the July 1, 2020, date falls during a taxpayer's taxable year, the tax liability for that year shall be prorated based upon the number of months before and the number of months beginning on and after July 1, 2020, in that taxable year.

For purposes of the bill, the term "merchant power plant" means an electricity generating plant in this state that:

- is not subject to regulation of its rates by the West Virginia Public Service Commission;
- sells electricity it generates only on the wholesale market;
- does not sell electricity pursuant to one or more long-term sales contracts; and,
- does not sell electricity to retail consumers.

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

DATE OF PASSAGE: July 24, 2019

EFFECTIVE DATE: October 21, 2019

ACTION BY GOVERNOR: Signed July 30, 2019

2018 Regular Session



Senate Bill 10

Relating generally to PSC jurisdiction

This bill updates several sections of code related to the jurisdiction of the Public Service Commission. It excludes the setting and adjustment of rates, fees, and charges of municipal power systems from the jurisdiction of the Public Service Commission; provides for a right of appeal by customers; provides public service districts may accept payments for all fees and charges due by credit or check card, and provides procedures and guidance for utilization of this method of payment.

The bill also clarifies the commission's jurisdiction as modified by chapters 161 and 209, Acts of the Legislature, regular session, 2017, over Internet protocol-enabled service, voice-over Internet protocol-enabled service, stormwater services by a public service district, political subdivisions providing separate or combined water and/or sewer services, and certain telephone company transactions.

CODE REFERENCE: West Virginia Code §8-19-2, §16-13A-9, §24-2-1, §24-2-2, §24-2-3, and §24-2-4b – amended; §8-19-2a and §8-19-2b – new

DATE OF PASSAGE: March 10, 2018

EFFECTIVE DATE: March 10, 2018

ACTION BY GOVERNOR: Signed March 27, 2018

Senate Bill 46

Permitting pharmacists to inform customers of lower-cost alternative drugs

This bill provides that a pharmacy, pharmacist, or pharmacy technician may inform consumers of lower cost alternatives and cost share to assist health care consumers in making informed decisions. It prohibits pharmacy benefit managers from penalizing a pharmacy, pharmacist, or pharmacy technician for discussing certain information with consumers and from collecting cost shares exceeding the total submitted charges by a pharmacy, pharmacist, or pharmacy technician.

The bill also sets forth limitations on pharmacy benefit managers when charging certain adjudicated claim fees to a pharmacy, pharmacist, or pharmacy technician, and it excludes an employee benefit plan under the Employee Retirement Income Security Act of 1974 or Medicare Part D from this code section.

CODE REFERENCE: West Virginia Code §33-51-9– new

DATE OF PASSAGE: March 10, 2018

EFFECTIVE DATE: June 8, 2018

ACTION BY GOVERNOR: Signed March 21, 2018

Senate Bill 82

Including rebuttable presumptions in certain cases for firefighters with regard to workers' compensation

This bill amends one section of the West Virginia Code to create a rebuttable presumption for certain occupational diseases, including cancer. Subsection (h) is amended to include a rebuttable presumption for volunteer firefighters who have “developed leukemia, lymphoma or multiple myeloma arising out of and in the course of employment as a firefighter” if certain criteria have been met.

First, the injury or onset of disease must have occurred within six months of firefighting. Second, for purposes of the cancer presumption, the person must have been actively employed by a fire department for a minimum of five years in the State of West Virginia prior to the onset of the disease. Third, the person may not have used tobacco products for at least ten years. Fourth, he or she cannot be over the age of sixty-five. Finally, the person must have completed cancer screenings during the applicable periods. Subdivision (h)(2) and subsection (j), which required studies and reports to the Legislature be made by deadlines that have already passed, are eliminated.

CODE REFERENCE: West Virginia Code §23-4-1 – amended

DATE OF PASSAGE: March 9, 2018

EFFECTIVE DATE: June 7, 2018

ACTION BY GOVERNOR: Signed March 27, 2018

Senate Bill 102

Creating WV Uniform Fiduciary Access to Digital Assets Act

The purpose of this bill is to create the West Virginia Uniform Fiduciary Access to Digital Assets Act. This uniform act has been adopted in all but 13 states. A fiduciary is a person appointed to manage the property of another person, subject to strict duties to act in the other person’s best interest. Common types of fiduciaries include executors of a decedent’s estate, trustees, conservators, and agents under a power of attorney. This act extends the traditional power of a fiduciary to manage tangible property to include management of a person’s digital assets. The act allows fiduciaries to manage digital property like computer files, web domains, and virtual currency, but restricts a fiduciary’s access to electronic communications such as email, text messages, and social media accounts unless the original user consented in a will, trust, power of attorney, or other record.

CODE REFERENCE: West Virginia Code §39B-2-101, §39B-3-101, and §44-5B-1 et seq. – amended

DATE OF PASSAGE: March 7, 2018

EFFECTIVE DATE: June 5, 2018

ACTION BY GOVERNOR: Signed March 27, 2018

Senate Bill 261

Transferring certain powers and programs of WV Affordable Housing Trust Fund to WV Housing Development Fund.

The bill amends the provisions of the West Virginia Code relating to the Affordable Housing Trust Fund. The bill repeals the article creating the Affordable Housing Trust Fund. The bill amends the provisions of the Code relating to the West Virginia Housing Development Fund (WVHDF), adding to its corporate authority the authority to “provide funding to increase the capacity of nonprofit community housing organizations to serve their communities.” In addition, the bill requires the WVHDF to include in its annual report to the Joint Committee on Government and Finance the work done pursuant to its new authority as authorized by the bill.

The bill creates the Affordable Housing Fund to replace the Affordable Housing Trust fund. The new fund will receive the moneys currently administered by the Affordable Housing Trust Fund, namely fees on the sale of mobile or factory-built homes and the affordable housing fee assessed on the sale of real property in the state. The new fund is to be administered by the WVHDF. Moneys in the fund are to be used in the same manner as the funds are currently used by the Affordable Housing Trust Fund except that, none of the moneys collected from the fees deposited may be used to pay for administrative or operating costs and expenses of the program. Current law allows up to 10% of these moneys to be used for these costs. The WVHDF is to wind down the operations of the Affordable Housing Trust Fund and pay all outstanding debts, obligations or expenses. Any assets of the Affordable Housing Trust Fund remaining are to be transferred to the WVHDF with monetary assets deposited into the new Affordable Housing Fund.

CODE REFERENCE: West Virginia Code §31-18D-1 through §31-18D-15 – repealed; §11-15-4c, §11-22-2, §31-18-3, §31-18-6, §31-18-22 and §31-18-24 – amended; §11-18-20d and §11-18-29 – new

DATE OF PASSAGE: March 10, 2018

EFFECTIVE DATE: June 8, 2018

ACTION BY GOVERNOR: Signed March 21, 2018

Senate Bill 271

Creating centralized Shared Services Section of Department of Administration

The bill amends the provisions of the West Virginia Code relating to accounting and financial reporting services of state agencies. It creates a centralized Shared Services Section within the Finance Division of the Department of Administration to provide accounting, payroll, accounts payable, accounts receivable, budgeting and financial reporting services to state spending units who enter an agreement to have the services provided. The current Accounting Section of the Finance Division is eliminated. The Shared Services Section is to be supervised by a Deputy Director appointed by the Secretary of the Department of Administration. The Deputy Director is authorized to charge a reasonable charge for the services.

On or before July 1, 2018, the Department is to develop a cost-performance assessment for use by spending units to measure the cost of their accounting and financial reporting services. Beginning April 1, 2019, and annually thereafter, each spending unit is to report to the Shared Services Section its costs of providing accounting and financial reporting services based upon the assessment. The Deputy Director is to evaluate the cost information to determine if the same services could be done by the Shared Services Section at a lower cost and in a more efficient manner. The Deputy Director is to report his or her findings by July 1, 2019, to the Governor and the Joint Committee on Government and Finance and make recommendations for providing the services through the new section. The Deputy Director is to report annually on the savings of having the new section perform the services. The Department of Administration is authorized to promulgate legislative rules, including emergency rules, to implement the article. The bill requires spending units that either have cost-performance assessments greater than the baseline cost set by the Shared Services Section; or no more than one full-time employee dedicated to providing these services, to enter agreements with the Shared Services Section to provide the services for them. Other spending units are authorized to voluntarily enter agreements if the deputy director finds that providing the services would result in efficiencies or cost savings.

The bill places a spending unit that fails to provide information to the Department of Administration necessary for federal reports by the Department's deadlines on a one-year probationary period with a plan of corrective action. If the spending unit fails to meet the deadlines by the end of the probationary period, the spending unit would be required to enter an agreement with the Shared Services Section to provide services. The bill creates a special revenue account designated the Shared Services Section Fund into which payments for services would be deposited, as well as any appropriation, gift, grant or donation. Subject to legislative appropriation, the Deputy Director is authorized to use the funds for the purposes of the new article.

CODE REFERENCE: West Virginia Code §5A-2-1 – amended; §5A-2B-1 through §5A-2B-4 – new

DATE OF PASSAGE: March 10, 2018

EFFECTIVE DATE: June 8, 2018

ACTION BY GOVERNOR: Signed March 21, 2018

Senate Bill 272

Relating generally to drug control

This bill changes to existing law regarding reporting of drug overdoses, creates a overdose response pilot project, and requires initial responders to carry an opioid antagonist.

Reporting requirements

§16-5T-4 contains a list of entities required to report suspected or reported drug overdose: pharmacies, health care providers, medical examiners, law enforcement agencies, and emergency responders. SB 272 modifies this section by (1) clarifying that “confirmed” overdoses must also be reported; and (2) adding emergency rooms to the list of entities required to report overdoses.

Pilot Project

The bill also establishes the Community Overdose Response Demonstration Pilot Project, whose purpose is to develop community programs that focus on existing resources of government agencies to create outreach programs to educate the community, including first responders, on recognizing and responding to opioid overdoses. Communities that experience a high frequency of drug overdoses compared to national averages as determined by the Office of Drug Control Policy are eligible to participate. Participants in the program are required to report progress made under the pilot project to the Director.

First Responders

Currently, the law authorizes administration of an opioid antagonist by initial responders who have been properly trained, but does not require antagonist training or even that first responders carry opioid antagonists. The bill mandates antagonist training for first responders and also requires that local and state agencies who employ first responders provide them with opioid antagonists. Current law provides that initial responders “acting in good faith” shall not be subject to civil liability or criminal prosecution arising from administration of an opioid antagonist unless the actions or omissions were the result of gross negligence or willful misconduct. This bill states that nothing in it shall be construed as imposing civil or criminal liability when “ordinary care” is used in administering an opioid antagonist.

CODE REFERENCE: West Virginia Code §16-5T-4 and §16-46-4 – amended; §16-5T-6 and §16-46-7 – new

DATE OF PASSAGE: March 7, 2018

EFFECTIVE DATE: June 5, 2018

ACTION BY GOVERNOR: Signed March 27, 2018

Senate Bill 273

Reducing use of certain prescription drugs

This bill creates the Opioid Reduction Act. The bill defines terms. The bill provides for an advance directive to allow persons to voluntarily request not to be prescribed or treated with an opioid. The bill further requires that a practitioner must counsel a patient prior prescribing to inform them of the option to request a lesser quantity of any opioid prescribed and to inform them of the risks associated with the prescribed opioid.

The bill sets forth the following limitations regarding opioid prescription:

- After an Emergency Room visits, a four-day supply may be prescribed;
- After an urgent care visit, a four-day supply may be prescribed, but a seven-day supply may be prescribed if there is a medical rationale for more than a four-day supply. The medical rationale must be documented in the medical record.
- For a minor, a three-day supply may be prescribed after a required discussion with the parents or guardian;
- A dentist or optometrist may prescribe a three-day supply;
- A physician may not issue more than an initial seven-day supply; and
- A veterinarian may not issue more than an initial seven-day supply.

The bill also codifies a current legislative rule requirement, that Schedule II drugs may be prescribed for 30 days at a time with two additional prescriptions for 30 days; however, for each subsequent prescription, the prescribing practitioner must access the Controlled Substances Monitoring Database and examine the patient after 90 days.

There is also a requirement that the practitioner and a patient execute a narcotics contract for prescribing any Schedule II drugs. The contract is required to provide that the patient will only seek these drugs from the physician who is prescribing them, that they will only have them filled at one pharmacy of their choosing, that if in emergency situations they are administered a Schedule II drug, they will notify the doctor within 24 hours. Breaking the contract could result in the termination of the patient/doctor relationship or in the physician discontinuing prescription of Schedule II drugs.

Definition of a Pain Clinic

Current law provides that if more than 50% of the patients of a medical practice are being prescribed a controlled substance, the medical practice is classified as a pain clinic. To make certain drugs that are alternatives to opioids available, this bill provides that only the percentage of patients prescribed Schedule II controlled substances counts toward a medical practice's classification as a pain clinic.

Initial Prescription

Prior to issuing an initial prescription, a practitioner is required to conduct and document a complete medical history. The practitioner must also conduct and document a physical examination, develop a treatment plan, and access the Controlled Substances Monitoring Database.

Subsequent Prescription

The bill sets out requirements for subsequent prescription. These requirements include that the patient has knowledge that a prescription is not an initial prescription, that the practitioner determines the opioid is necessary and appropriate, and that the prescription does not present undue risk of abuse or addiction. The practitioner is also required to discuss the risks of addiction and overdose, the reasons why

the prescription is necessary, and alternative treatments and general risks including potential drug and alcohol interactions. Compliance with these requirements must be recorded in the patient's medical record.

Third Prescription

A third prescription requires a practitioner to consider referral to a pain clinic or a pain specialist, however, the patient may opt to remain a patient of the practitioner. If the relationship continues, the practitioner is required to review the course of treatment every three months to assess new information and progress, assess the patient for dependence and document the same, make efforts to stop using or decrease the dosage of the controlled substance unless contraindicated, try other drugs or treatment options and document the same, and review the Controlled Substances Monitoring Database.

Exceptions

There are specific exceptions to limitations on opioid prescription for new patients who are in active cancer treatment, hospice care, residents of long-term care facilities, or being prescribed medication in rehabilitation. There is also an exception which allows for a seven-day supply of opioids after surgery, within the medical discretion of the practitioner.

The bill provides that alternative methods shall be prescribed or recommended as an alternative to prescribing an opioid. These methods include physical therapy, occupational therapy, massage therapy, and chiropractic services. There is also a provision requiring insurance coverage for these therapies.

Finally, the bill provides that a violation of the article by a practitioner may be grounds for a professional disciplinary action.

Controlled Substances Monitoring Database (CSMD)

The CSMD has been updated to require reporting of Schedule V drugs. Additionally, the Board of Pharmacy is required to share a quarterly report with the licensing boards of all prescribers who have been granted prescriptive authority and the Office of Drug Control Policy, identifying abnormal or unusual prescribing practices. Any practitioner prescribing a benzodiazepine is required to access the database prior to writing the prescription. Any veterinarian who prescribes an opioid is also required to access the database.

Miscellaneous Provisions

The bill exempts Board of Pharmacy expenditures of grant money in relation to substance use or controlled substances from the state's general purchasing laws.

Finally, the bill clarifies that auricular acupuncture is not considered acupuncture when used in chemical dependency treatment programs. The procedure is an alternative medicine based on the theory that the ear reflects the entire body and treatment is centered on the auricle or outer portion of the ear.

CODE REFERENCE: West Virginia Code §30-3-14, §30-3A-1 through §30-3A-4, §30-4-19, §30-5-6, §30-7-11, §30-8-18, §30-14-12a, §30-36-2, §60A-2-21, §30-60A-9-4, §30-9-5 and §60A-9-5a – amended; §16-52-4 through §16-52-9 – new

DATE OF PASSAGE: March 9, 2018

EFFECTIVE DATE: June 7, 2018

ACTION BY GOVERNOR: Signed March 27, 2018

Senate Bill 275

Relating to tax on purchases of intoxicating liquors

The bill requires that, effective July 1, 2018, the five percent excise tax on the sale of intoxicating liquors and wine be remitted to a municipality when the sale is sourced within the corporate boundaries of the municipality, and to a county when the sale is sourced within a county, but outside of the corporate limits of a municipality. Under current law, tax collected within a mile of the corporate limits of a municipality is remitted to the municipality.

The bill requires the Tax Commissioner to make records available to a county related to alcohol excise tax collected in or remitted to the county or a municipality within the county. The bill also requires the Tax Commissioner to make records available to a municipality related to: 1) alcohol excise tax collected in and remitted to the municipality, and 2) alcohol excise tax that is collected in the county, but outside the corporate boundaries of another municipality, and alcohol excise tax remitted to that county.

Finally, the bill applies the Code's local sourcing rules for collection and payment of sales tax to the collection and sale of the excise tax.

CODE REFERENCE: West Virginia Code §11-10-5d, §60-3-9d, and §60-3A-21 – amended

DATE OF PASSAGE: March 10, 2018

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

ACTION BY GOVERNOR: Signed March 27, 2018

Senate Bill 283

Relating generally to procurement by state agencies

The bill revises many of the statutory provisions governing the regulatory processes through which government agencies in this state are permitted to purchase or lease goods and services (“procurements”), whether by competitive bid or otherwise. The bill includes:

- §5-22-1 is amended to include a new definition for “construction project”; to permit repair and maintenance of existing public improvement to be procured on an open-ended basis in amounts up to \$500,000; and change provisions relating to how additive options or alternative designs (“alternatives”) included in a solicitation for competitive bids are addressed.
- §5A-3-10b is amended to modify the process by which “best value” procurements may be obtained through competitive bidding.
- §5A-3-10c is amended to modify the process by which the “direct award” of contracts (now known as “sole source procurement”) may be obtained without competitive bidding.
- §5A-3-10e is amended to modify the process by which awards of contracts may be made to vendors preapproved by the state Purchasing Division.
- §5A-3-33d is amended to revise the grounds under which vendors may be “debarred.”
- §5A-3-33f is amended to revise the list of the actual persons who may be debarred when a vendor is “debarred.”
- §5A-3-37 is amended to replace provisions for all (except as noted below) the various preferences for resident vendors when bidding on a purchasing contract with provisions of “reciprocal preferences” through which a resident vendor only gets a preference against a non-resident vendor from a state that gives its own residents a preference. The amount of the resident vendor’s preference is equal to the amount of preference the out-of-state vendor’s state gives to its own residents. The amendments continue resident exemptions for vendors seeking contracts for the state purchases of motor vehicles, or for construction and maintenance equipment and machinery used in highway and other infrastructure projects.
- §5A-3-45 is amended to substitute “an independent automotive pricing guide” as the source for determining the fair market value of motor vehicles that the Purchasing Division’s State Agency for Surplus Property wants to sell for the NADA Official Used Care Guide. It also allows the proceeds from the sale of an agency’s property to be placed into the agency’s fund(s) of its choice if the fund from which the property was purchased no longer exists.
- §5A-3-61 is a new section that would create a new process by which a government agency may purchase commodities on a repeated basis, known as “standardization.”
- §5G-1-3 is amended to provide a process for a government agency to avoid competition for the procurement of architectural and engineering services costing \$250,000 or more if “seeking competition could result in a compromise to public safety, significantly increase costs, or an extended interruption of essential services.”
- §5G-1-4 is amended to create an exception for the Division of Highways in its procurement of services of architectural and engineering firms. This section imposes certain requirements for other state agency procurement of services of architectural and engineering firms estimated to cost less than \$250,000. The amendment imposes those requirements on the Division of Highways’ procurement of services of architectural and engineering firms “in an amount not to exceed \$750,000 for the services per project.”

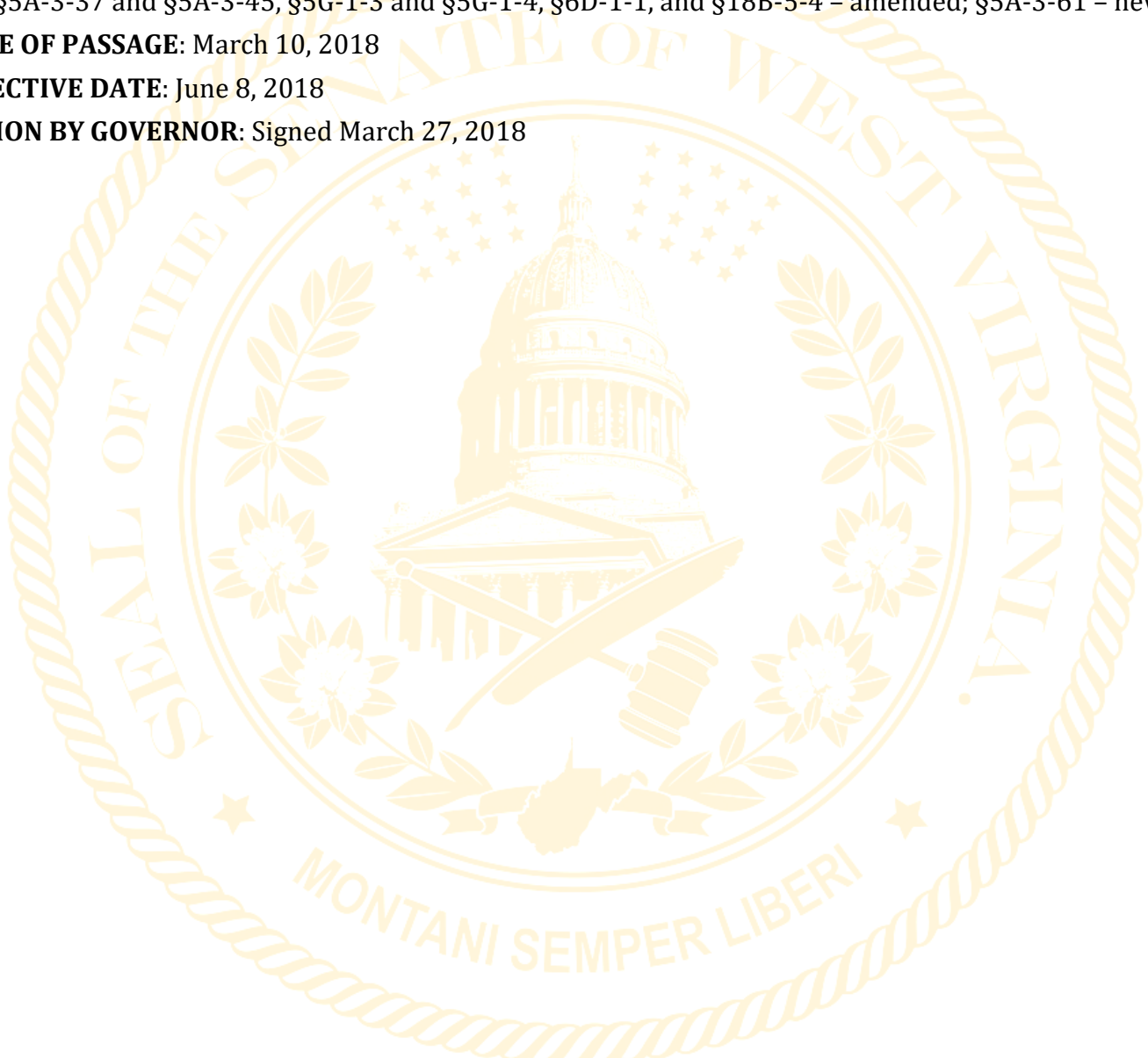
- §6D-1-1 is amended to revise provisions that require the disclosure of “interested parties” by the “business entity” entering into any “state contract.” The threshold for what is a “state contract” is increased from \$100,000 to \$1 million. “Publicly traded companies listed on a national or international stock exchange” is excluded from the definition of “business entity” required to make the disclosures. “Interested party” is expanded to include publicly traded companies.
- §18B-5-4 is amended to remove a cross reference by which higher education agencies and institutions are now required to give instate vendor preferences.

CODE REFERENCE: West Virginia Code §5-22-1, §5A-3-10b, §5A-3-10c, §5A-3-10e, §5A-3-33d, §5A-3-33f, §5A-3-37 and §5A-3-45, §5G-1-3 and §5G-1-4, §6D-1-1, and §18B-5-4 – amended; §5A-3-61 – new

DATE OF PASSAGE: March 10, 2018

EFFECTIVE DATE: June 8, 2018

ACTION BY GOVERNOR: Signed March 27, 2018



Senate Bill 290

Relating to DEP standards of water quality and effluent limitations

This bill prevents the DEP from setting benchmarks for substances or conditions present in storm water discharges that are more restrictive than the water quality criterion, the federal benchmark, the chronic aquatic life water quality criterion or the ambient aquatic life advisory concentration. The bill also requires the DEP to set benchmarks for storm water with the permittee that utilize mixing zones appropriate for relevant conditions. Finally, the bill requires the DEP to develop guidance for determining how benchmarks in permits demonstrate the adequacy of storm water best management practices.

CODE REFERENCE: West Virginia Code §22-11-6 – amended

DATE OF PASSAGE: March 8, 2018

EFFECTIVE DATE: June 6, 2018

ACTION BY GOVERNOR: Signed March 27, 2018

Senate Bill 298

Authorizing county assessors make separate entries in landbooks when real property is partly used for exempt and partly for nonexempt purposes

The bill will require additional information to be entered into county assessors' land books relating to real property owned by organizations that are exempt from federal income taxes under 26 U. S. C. §501(c)(3) or 501 (c)(4). The assessor will record the portion of each organization's real property that is used primarily and immediately for a purpose that is exempt from tax under WV Code §11-3-9, and will also record the portion of that organization's real property that is not used primarily and immediately for a purpose that is exempt from tax under WV Code §11-3-9. *Note:* WV Code §11-3-9 provides an extensive list of purposes for which the Legislature has exempted real property from taxation as permitted or required by the West Virginia Constitution.

CODE REFERENCE: West Virginia Code §11-4-2 – amended

DATE OF PASSAGE: March 8, 2018

EFFECTIVE DATE: June 6, 2018

ACTION BY GOVERNOR: Signed March 22, 2018

Senate Bill 338

Changing date for employers to file annual reconciliation and withholding statements

The bill amends the provisions of the West Virginia Code relating to employer withholding payments and returns. The bill makes technical changes to remove obsolete language and the following substantive changes:

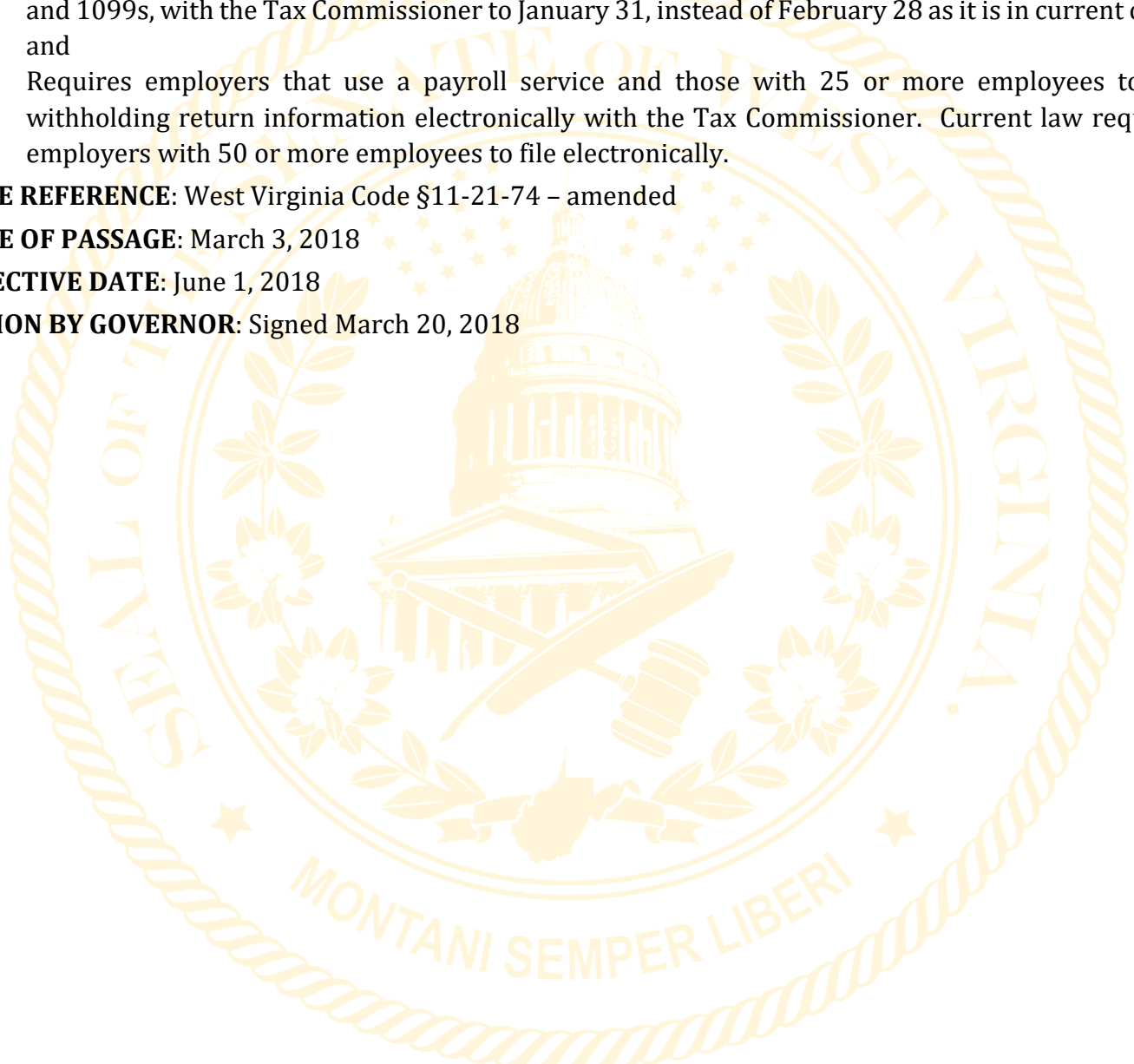
- Changes the date by which employers are to file their annual reconciliation of West Virginia personal income tax withheld and state copies of all withholding statements, including W-2s, W-2Gs and 1099s, with the Tax Commissioner to January 31, instead of February 28 as it is in current code; and
- Requires employers that use a payroll service and those with 25 or more employees to file withholding return information electronically with the Tax Commissioner. Current law requires employers with 50 or more employees to file electronically.

CODE REFERENCE: West Virginia Code §11-21-74 – amended

DATE OF PASSAGE: March 3, 2018

EFFECTIVE DATE: June 1, 2018

ACTION BY GOVERNOR: Signed March 20, 2018



Senate Bill 360

Clarifying oil and gas permits not be on flat well royalty leases

In 1982, the West Virginia legislature enacted West Virginia Code §22-6-8, more commonly known as the “flat-rate statute.” The flat-rate statute governs oil and gas leases that provide for flat-rate royalties. The legislature found that such leases provided “wholly inadequate compensation,” were “unfair, oppressive, [and] work[ed] an unjust hardship on” owners of mineral interests, and “unreasonably deprive[d] the economy of the state of West Virginia of the just benefit of the natural wealth of th[e] state.”

To remedy that unfairness, the statute provides that a natural gas company cannot obtain a drilling permit unless it files an affidavit certifying that “it shall tender to the owner of” the mineral interests “not less than one eighth of the total amount paid to or received by or allowed to the owner of the working interest at the wellhead for the oil or gas so extracted, produced or marketed.” The term “at the wellhead” has been subject to several judicial interpretations.

Recently, in *Leggett v. EQT Production Co.*, 800 S.E.2d 850 (W.Va. 2017), the West Virginia Supreme Court interpreted “at the wellhead” to permit the deduction of post-production expenses from a lessor’s royalty under old flat-rate leases.

Under this bill, the language of the statute is revised to read that a permit applicant shall pay to the owner of the oil or gas in place not less “than one eighth of the gross proceeds, free from any post-production expenses, received at the first point of sale to an unaffiliated third-party purchaser in an arm’s length transaction for the oil or gas so extracted, produced or marketed before deducting the amount to be paid to or set aside for the owner of the oil or gas in place, on all such oil or gas to be extracted, produced or marketed from the well.”

The bill nullifies the *Leggett* decision. The new statutory language more closely resembles the “marketable product doctrine” rather than “net back method.”

CODE REFERENCE: West Virginia Code §22-6-8 – amended

DATE OF PASSAGE: March 2, 2018

EFFECTIVE DATE: May 31, 2018

ACTION BY GOVERNOR: Signed March 9, 2018

Senate Bill 365

Relating to Young Entrepreneur Reinvestment Act

The Legislature established the “Young Entrepreneur Reinvestment Act” in 2016 (HB2897), which included a two-year sunset date of June 30, 2018. This bill would extend the sunset date for five years, until June 30, 2023. The Act as originally passed waives the filing fee paid to the Secretary of State upon the formation of a new business. The individual claiming the waiver must be under the age of 30 and reside in West Virginia and must be an incorporator, member, or partner in the new business.

The Act waives five fees as set forth in §59-1-2(a)(1)(A) through (E), relating to filing articles of incorporation as a for-profit or non-profit corporation, filing articles of organization as a limited liability company (LLC), filing a general partnership agreement, or filing a certificate of limited partnership (LP). The amounts of those fees in current code are \$100, \$25, \$100, \$50, and \$100, respectively. This bill makes the waivers permanent.

CODE REFERENCE: West Virginia Code §59-1-2c – amended

DATE OF PASSAGE: March 7, 2018

EFFECTIVE DATE: June 5, 2018

ACTION BY GOVERNOR: Signed March 20, 2018

Senate Bill 395

Providing for judicial review of appealed decisions of Air Quality Review Board, Environmental Quality Board and Surface Mine Board

Current law provides that judicial review of an order issued by an environmental board following an appeal hearing will take place in the Circuit Court of Kanawha County. This bill would by-pass the circuit court and send appeals directly to the West Virginia Supreme Court of Appeals. The bill requires that a perfected petition of appeal must be filed with the Supreme Court within 30 days of the order’s entry. The bill also states that an order is not stayed pending appeal.

This bill eliminates the requirement for use of the Attorney General as counsel and allows the hiring of outside counsel without approval of the Attorney General. Finally, this bill amends the sections of the Code relating to the Air Quality Board, the Environmental Quality Board, and the Surface Mine Board to reflect that appeal will be made directly to the Supreme Court.

CODE REFERENCE: West Virginia Code §22B-1-9, §22B-2-3, §22B-3-3, and §22B-4-3 – amended

DATE OF PASSAGE: March 6, 2018

EFFECTIVE DATE: March 6, 2018

ACTION BY GOVERNOR: Signed March 20, 2018

Senate Bill 401

Requiring specified coverage in health benefit plans for treatment of substance abuse disorders.

The purpose of this bill is to require insurance carriers offering policies in this state to provide coverage for substance use recovery. The Public Employees Insurance Agency is not subject to the provisions of this bill.

The bill defines key terms. These include terms such as “insurer,” “physician or psychiatrist,” and “substance use disorder.” The bill provides that after January 1, 2019, all policies issued in this state shall provide for in and outpatient treatment for substance use disorder. There are some parameters:

- The services must be in-network – with exceptions;
- The services must be at the same level as other medical services;
- The services must be prescribed by an appropriate medical professional; and
- The services must be provided by licensed health care professional or certified substance use disorder providers.

Prior authorization and prepayment is not permitted for the first 180 days of a plan year. If there is no in-network facility, the insurer is required to provide exceptions in an out-of-network facility. If an in-network facility becomes available, the person may be transferred. Benefits are subject to concurrent or retrospective review of medical necessity.

There are required procedures for when the insurer determines that inpatient care is no longer needed. These include notice within 72 hours and the right to file for an internal expedited review which must take place within 72 hours. If the internal review is adverse to the patient, he or she may seek review by an independent utilization review organization, which also has 72 hours to make a decision. There are provisions to continue the inpatient care until all appeals are settled.

The Insurance Commissioner is granted rulemaking authority to set up a procedure for the expedited review. There are provisions and timelines for retrospective review of medical necessity for outpatient or partial hospitalization.

Finally, the bill provides that medically necessary outpatient prescription drugs to treat substance use disorder are permitted without any prior authorization. There is also a provision stating that other related or unrelated diagnoses beyond substance use disorder may not be used to reduce or deny benefits.

CODE REFERENCE: West Virginia Code §33-15-4p, §33-24-7q, §33-16-3bb, §33-25-8n, and §33-25A-8p – new

DATE OF PASSAGE: March 10, 2018

EFFECTIVE DATE: June 8, 2018

ACTION BY GOVERNOR: Signed March 27, 2018

Senate Bill 415

Permitting wagering on certain professional or collegiate sports events authorized as West Virginia Lottery Sports Wagering activities

The purpose of this bill is to enact a new article, permitting and regulating sports wagering, or “sports betting” at existing casinos in the state. Sports betting refers to wagering on the results of professional or collegiate sports or athletic events, as well as certain motor races or other special events designated by the Lottery Commission.

Trigger provision: repeal of PASPA

One of the key provisions in Senate Bill 415 provides “that it is the intent of the Legislature to authorize sports wagering when federal law is enacted or repealed or a federal court decision is issued that permits a state to regulate sports wagering, as such power is reserved to the states.” §29-22D-2(b)(3). This provision is an acknowledgement that the West Virginia Lottery Sports Wagering Act cannot become effective until the U.S. Supreme Court clears the way by ruling the Professional and Amateur Sports Protection Act unconstitutional.

- In 1992, Congress enacted the Professional and Amateur Sports Protection Act (“PASPA”), 28 U.S.C. §3701 et seq., “to stop the spread of State-sponsored sports gambling.” S. Rep. No. 248, 102d Cong., 1st Sess. 4 (1991) (Senate Report). PASPA’s key provision provides that States may not: sponsor, operate, advertise, or promote, license, or authorize by law or compact [. . .] a lottery, sweepstakes, or other betting, gambling, or wagering scheme based directly or indirectly (through the use of geographical references or otherwise), on one or more competitive games in which amateur or professional athletes participate, or are intended to participate, or on one or more performances of such athletes in such games. [28 U.S.C. § 3702.]
- PASPA’s restrictions apply separately to states and to private parties. States (and other governmental entities) may not “sponsor, operate, advertise, promote, license, or authorize by law or compact,” sports gambling schemes. [28 U.S.C. §3702(1).]
- A separate provision prohibits private parties from sponsoring, operating, advertising, or promoting such schemes “pursuant to the law or compact of a governmental entity.” [28 U.S.C. §3702(2).]
- Both restrictions apply to any “lottery, sweepstakes, or other betting, gambling, or wagering scheme” based on “competitive games in which amateur or professional athletes participate.” [28 U.S.C. §3702.]
- PASPA is not actually a federal ban on sports betting. Instead, it effectively freezes in time state laws in place, as of 1992, by prohibiting states from amending their laws to affirmatively authorize sports betting. Even the individual prohibition only prohibits sports betting “schemes” from operating “pursuant to the law or compact of a governmental entity.”
- PASPA contains three relevant exceptions—a “grandfathering” clause that releases Nevada entirely from PASPA’s grip, see *id.* § 3704(a)(2), a clause that permitted New Jersey to license sports wagering in Atlantic City had it chosen to do so within one year of PASPA’s enactment, see *id.* § 3704(a)(3), and a grandfathering provision permitting states like Delaware and Oregon to continue the limited “sports lotteries” that they had previously conducted, see *id.* § 3704(a)(1), which did not include single-game wagering. PASPA provides for a private right of action “to enjoin a violation [of the law] . . . by the Attorney General or by a . . . sports organization . . . whose competitive game is alleged to be the basis of such violation.” *id.* § 3703.

- New Jersey revised its law in 2014 to partially repeal the state's ban on sports betting. The 2014 law lifted the betting prohibition only as to certain entities, such as casinos, but the Third Circuit Court of Appeals held the law invalid under PASPA. New Jersey filed a petition for writ of certiorari with the U.S. Supreme Court of Appeals on October 7, 2016, which the Court granted on June 27, 2017. A number of states, including West Virginia, filed amicus briefs in support of New Jersey, arguing that PASPA violates the 10th Amendment under the anti-commandeering doctrine. The Supreme Court heard oral argument on December 4, 2017.
- Upon the lifting of PASPA, this new article will permit sports betting to take place. When the federal ban is lifted, the Commission will publish notice of the event in the State Register. Sports wagering is not permitted in this state until such notice is published.

Authority of the Lottery Commission

The article gives the Lottery Commission the power and authority to regulate sports betting. Included in this authority is the ability to adopt rules, including emergency rules, regulating sports wagering. Regulation of sports wagering operations may include: wagering systems for sporting events; licensing; accounting by operators; record-keeping by operators; payment form for wagers; and promotion of social responsibility in gambling. The commission is required to established minimum internal control standards (MICS) that operators must implement for all sports wagering operations.

Licenses

- Operator's License – §29-22D-6
 - The commission may issue no more than five operator's licenses, and those licenses may only be issued to the five existing casinos in West Virginia, which includes four racetrack casinos (Hollywood Casino at Charles Town Races; Mardi Gras Casino & Resort; Mountaineer Park & Racetrack; and Wheeling Island) and the historic Greenbrier Resort. The application fee for an operator's license is \$100,000. The license lasts for five years and may be renewed upon payment of a \$100,000 renewal fee.
 - Licensed operators must comply with numerous Lottery Commission requirements, including to:
 - Execute a surety bond with the Commission.
 - Submit to an annual financial audit.
 - Provide office space for the Lottery Commission to perform its regulatory duties.
 - Provide an accessible facility that complies with state and federal laws.
 - In addition to licensing requirements, operators have numerous duties, including to:
 - Adopt commission approved house rules. Rules must be posted and available to patrons.
 - Report monitor and report suspicious activities in volume or odds swings.
 - Report suspicious betting or any violations of state or federal laws.
 - Hold the commission harmless in claims arising from the operator's acts or omissions.
 - Prevent tampering with wagering and wagering equipment.
 - Provide for the security of wagering equipment.
 - Ensure that wagering is conducting under employee observation.
 - Maintain sufficient cash and other supplies for sports wagering.
 - Maintain adequate records.
 - Conspicuously post minimum and maximum wagers permitted.

- Management services license – §29-22D-7
 - If an operator chooses to contract with an entity to conduct its sports wagering operation or shares revenue with a non-licensed entity, that entity must obtain a management services license (\$1,000 application fee; annual).
- Suppliers license – §29-22D-8
 - Any entity supplying sports wagering equipment, systems, or other gaming equipment must obtain a supplier’s license (\$1,000, annual).
- Occupational license – §29-22D-9
 - Anyone employed to be engaged directly in wagering-related activities must obtain an occupational license (\$100; annual).
- License prohibitions – §29-22D-10
 - The Act forbids the commission from granting any license to an applicant who:
 - Has knowingly made a false statement to the commission;
 - Has been suspended from operating a gambling operation or had a license revoked;
 - Has been convicted of a crime of moral turpitude, a gambling-related offense, a theft or fraud offense, or has demonstrated, either by police record or other satisfactory evidence, a lack of respect for law and order; or
 - Is a company or individual who has been directly employed by any illegal or offshore book that serviced the United States, or otherwise accepted black-market wagers from individuals located in the United States.
- The commission may deny, suspend, or revoke a license:
 - If the applicant or licensee has not demonstrated financial responsibility sufficient to meet the requirements of the proposed enterprise;
 - If the applicant or licensee is not the true or sole owner and has not disclosed the other persons who have an ownership interest; or
 - If the applicant or licensee sells more than five percent of its voting stock to any person not already determined to have met the qualifications of a licensee.
- The commission may not grant a license until it determines that the applicant and each person who controls the applicant meets all the qualifications for licensure. Control is presumed of corporate holding companies, parent companies, and subsidiaries who have the ability to control the applicant’s activities or to elect a majority of the applicant’s board of directors; persons who hold a beneficial proprietary interest; and key personnel, including any executive, employee, or agent who has power to exercise significant influence over the applicant’s operation. Control is not presumed of lending institutions which hold mortgages or liens acquired in the ordinary course of business.

Fees and Taxes

The commission is required and authorized to collect all fees, surcharges, civil penalties, and weekly taxes on sports wagering receipts for deposit into the Sports Wagering Fund, created by this article.

The Sports Wagering Fund is a non-appropriated, special account.

The state will collect 10% of an operator’s gross sports wagering receipts, on a weekly basis. Proceeds will be deposited in the Sports Wagering Fund. Negative receipts (due to winnings) may be carried forward.

The 10% privilege tax is in lieu of all other taxes, other than the property tax. The purchase and use of services and equipment directly used in the operation of sports wagering is exempt from sales and use tax, as well as similar municipal or county taxes.

Expenditures by operators on sports wagering systems and equipment qualifies for recoupment from the Racetrack and Historic Hotel Modernization Funds.

Tax credits cannot be taken against the privilege tax, or for any sports wagering investment.

Distribution of Sports Wagering Fund is as follows:

- The actual costs and expenses of Commission are deducted.
- The commission retains up to 15% for administrative expenses. A surplus to what is needed may accumulate up to \$250,000. Any amount above \$250,000 is remitted as net profit.
- The net profit (after the above deductions) is distributed to the State Lottery Fund up to \$15 million.
- The profit above \$15 million is deposited into the General Fund.

Agreements with Other Governments

The bill authorizes the Lottery Commission to enter into agreements with other governments allowing persons in the other government's jurisdiction to participate in sports wagering conducted by operators in this state. Agreements must provide for the sharing of revenue with the other governments and comply with other Lottery Commission requirements.

Miscellaneous Wagering Requirements

- Only persons of 21 years of age or older may wager.
- The bill expressly allows the Lottery Commission to approve participation in wagering through a licensed gaming facility, using electronic devices and mobile applications or platforms, by persons physically located in this state or in a state participating in a sports wagering agreement with the Lottery Commission.
- Gaming facility employees are prohibited from wagering at an employer's facility.
- Lottery Commission employees are prohibited from wagering at all.
- The Lottery Commission may enter into a memorandum of understanding with the West Virginia State Police for law enforcement services related to gambling at the casinos.
- The new article expressly preempts any local laws preventing sports betting.
- Fantasy sports are specifically exempted from the purview of this article, meaning the new article neither makes participation in fantasy sports a crime or expressly permits it.

Civil Penalties

For a violation of the article, a person is subject to a fine not to exceed \$50,000. This is not applicable to office pools.

Crimes and Penalties

The bill creates several new crimes related to sports betting. The committee substitute makes it a felony for an organization, person, or commercial enterprise, other than a licensed gaming facility, to conduct sports betting. The felony is punishable: as a first offense, by a fine of \$10,000 or confinement for no more than 90 days, or both; as a second offense, by a fine of no more than \$50,000 and imprisonment for no more than six months, or both; and as a third offense, for a fine of \$25,000 to \$100,000 or confinement for one to years, or both.

The bill makes it a misdemeanor, for a licensee to do any of the following:

- Operate sports wagering without authority.
- Operate sports wagering in unauthorized location.
- Knowingly allow sports wagering to occur on device that has been tampered with
- Employ an individual to conduct wagering who does not have an occupational license.
- Employ a person to act as though he or she is not an agent of the licensee and to encourage participation in wagering.
- Knowingly permit a person under 21 to enter or remain in a wagering area.
- Exchange tokens or other credit for wagering for anything of value, other than money or credits to a sports wagering account.

The misdemeanor is punishable by a fine of up to \$1,000 and up to six months confinement for a person, or a fine of up to \$25,000 if the crime is not committed by a natural person (commercial entity, etc.)

The bill makes it a felony, for a person to do any of the following:

- Attempt to use a thing of value to influence the result of a wagering event.
- Change or alter the normal outcome or reporting of a wagering event.
- Manufacture, sell, possess or distribute a device to violate wagering laws.
- Fraudulently collect any of value from a gaming facility.
- Wager with counterfeit currency or credit.
- Place or aid in placement of wagers using unlawfully acquired knowledge of the outcome of an event.

The felony is punishable by fine of \$5,000 to \$10,000 and confinement for at least one year, but no more than five years, or by both fine and confinement.

Anything of value used to bribe or as incentive to violate the provisions of the article is subject to forfeiture.

Preemption

The Act preempts local rules, regulations, or ordinances in conflict with the Article.

Exemption from federal law

15 U.S.C. § 1172 makes it illegal to import gambling devices to a State unless the State has enacted a law providing for an exemption from the prohibition. The bill specifies the requisite exemption to allow import of sports wagering gambling devices.

CODE REFERENCE: West Virginia Code §29-22D-1 through §29-22D-24 – new

DATE OF PASSAGE: March 3, 2018

EFFECTIVE DATE: March 3, 2018

ACTION BY GOVERNOR: Became Law Without Governor's Signature

Senate Bill 434

Specifying documents not subject to discovery in certain proceedings

Generally, a patient may pursue a civil claim against physicians or other health care providers, called medical liability or medical malpractice claims, alleging a health care provider caused injury or death to the patient through a negligent act or omission.

Peer review privilege precludes disclosure of the proceedings and reports of a medical facility's peer-review committee, which evaluates and oversees quality of patient care and medical services provided by the medical staff and facility.

Peer review doctrine reflects a legislative judgment that external access to peer investigations conducted by staff committees stifles candor and inhibits objectivity. It reflects a legislative judgment that the quality of in-hospital medical practice will be elevated by armoring staff inquiries with a measure of confidentiality.

This privilege prevents patient-plaintiffs from obtaining the hospital records prepared in quality review proceedings. All 50 states and the District of Columbia have privilege statutes that protect peer review records of medical staff members. Some states, like Georgia and California, also provide statutory immunity to discovery of peer review records. This protection excludes from discovery, records containing performance reviews and assessments of physicians by their peers, primarily in connection with their practices at hospitals.

Federal Regulations

In the context of long-term care (nursing homes), the federal government has promulgated quality assurance and performance improvement program parameters that focuses on indicators of the outcomes of care and quality of life, 42 CFR 483.75 (a)(1), and asserts a state or HHS may not require disclosure of these records except to confirm compliance.

The Health Insurance Portability and Accountability Act (HIPAA), 45 CFR 164.514(b)(2)(i), is also cited as protecting disclosure of peer review documents.

West Virginia Doctrine of Medical Peer Review Privilege

The primary state statutory authority on whether peer review privilege excludes discovery of medical record materials is W.Va. Code §30-3C-1 et seq. Confidentiality for peer review organization records stems from W.Va. Code §30-3C-3, which provides that:

The proceedings and records of a review organization are confidential and privileged; not subject to subpoena or discovery proceedings or admissible as evidence in any civil action arising out of the matters which are subject to evaluation and review by such organization; and no person who was in attendance at a meeting of such organization shall be permitted or required to testify in any such civil action as to any evidence or other matters produced or presented during the proceedings of such organization or as to any findings, recommendations, evaluations, opinions or other actions of such organization or any members thereof: Provided, That information, documents or records otherwise available from original sources are not to be construed as immune from discovery or use in any civil action merely because they were presented during proceedings of such organization[.]

The "original source" exception provides that documents or records otherwise available from original sources are not immune from discovery because they were merely presented during per review proceedings. Determination of which materials are privileged under W.Va. Code §30-3C-1 et seq. is

essentially a factual question, and the party asserting the privilege has the burden of demonstrating that the privilege applies.

The general procedure for discovering peer review privileged documents requires:

- that the party seeking documents submits a Rule 34(b) request;
- if the responding party asserts a privilege, that they file a privilege log identifying the document by name, date, custodian, source, and the basis for the privilege;
- that the log be provided to the court and opposing party; and
- that if a motion to compel or motion for protective order is filed, the trial court must hold an in camera proceeding to make an independent determination.

Changes to Law

The bill amends W.Va. Code §30-3C-1 to define terms related to Health Care Peer Review Organization Protection:

- “Document” (new term) means any information, data, reports, or records prepared by or on behalf of a health care provider and includes mental impressions, analyses, and/or work product.
- Current definition of “health care professionals” is deleted.
- “Healthcare facility” (new term) means any clinic, hospital, pharmacy, nursing home, assisted living facility, residential care community, end-stage renal disease facility, home health agency, child welfare agency, group residential facility, behavioral health care facility or comprehensive community mental health center, intellectual/developmental disability center or program, or other ambulatory health care facility, in and licensed, regulated, or certified by the State of West Virginia under state or federal law and any state-operated institution or clinic providing health care and any related entity to the health care facility as that term is defined in §55-7B-1 et seq. of this code.
- “Health care provider” (new term) means a person, partnership, corporation, professional limited liability company, health care facility, entity or institution licensed by, or certified in, this state or another state, to provide health care or professional health care services, including a physician, osteopathic physician, physician assistant, advanced practice registered nurse, health care facility, dentist, registered or licensed practical nurse, optometrist, podiatrist, chiropractor, physical therapist, speech-language pathologist, audiologist, occupational therapist, psychologist, pharmacist, technician, certified nursing assistant, emergency medical service personnel, emergency medical services authority or agency, any person supervised by or acting under the direction of a licensed professional, any person taking actions or providing service or treatment pursuant to or in furtherance of a physician’s plan of care, a health care facility’s plan of care, medical diagnosis or treatment; or an officer, employee or agent of a health care provider acting in the course and scope of the officer’s, employee’s or agent’s employment.
- “Peer review” (amended) means the procedure for evaluation by health care professionals providers of the quality, delivery, and efficiency of services ordered or performed by other health care professionals, including practice analysis, inpatient hospital and extended care facility utilization review, medical audit, ambulatory care review, claims review and patient safety review, preparation for or simulation of audits or surveys of any kind, and all forms of quality assurance/performance improvement whether or not required by any statute, rule, or regulation applicable to a health care facility or health care provider.
- “Professional society” is deleted.

- “Review organization” (amended) means any committee or, organization, individual or group of individuals engaging in peer review, including, without limitation, a hospital medical executive committee and/or subcommittee thereof, a hospital utilization review committee, a hospital tissue committee, a medical audit committee, a health insurance review committee, a health maintenance organization review committee, hospital, medical, dental and health service corporation review committee, a hospital plan corporation review committee, a professional health service plan review committee or organization, a dental review committee, a physicians’ advisory committee, a podiatry advisory committee, a nursing advisory committee, any committee or organization established pursuant to a medical assistance program, the joint commission on accreditation of health care organizations or similar accrediting body or any entity established by such accrediting body or to fulfill the requirements of such accrediting body, any entity established pursuant to state or federal law for peer review purposes, and any committee established by one or more state or local professional societies or institutes, to gather and review information relating to the care and treatment of patients for the purposes of:
 - Evaluating and improving the quality of health care rendered;
 - reducing morbidity or mortality; or
 - establishing and enforcing guidelines designed to keep within reasonable bounds the cost of health care.
- It shall also mean any hospital board committee or organization reviewing the professional qualifications or activities of its medical staff or applicants for admission thereto, and any professional standards review organizations established or required under state or federal statutes or regulations.

The bill amends W.Va. Code §30-3C-3 to address confidentiality of a review organization. The bill deletes a provision for waiver by an individual authorizing the release of contents pertaining to their own acts or omissions – removing the peer review privilege further removes judicial review of any finding, materials or determination by a peer review organization; and eliminates protective orders to provide confidentiality for records reviewed by the court.

The bill establishes that documents prepared by or on behalf of a health care provider for improving the quality, delivery or efficiency of health care or for credentialing or reviewing health care providers are confidential and privileged and shall not be subject to discovery in a civil action or administrative proceeding. Such documents include, without limitation:

- Nursing home, as referred to in §55-7B-6(e), incident or event reports, except reports pertaining to the plaintiff of that civil action, or reports of same or similar incidents within a reasonable time frame of the events at issue in the civil action, containing only factual information, but excluding personal identification information;
- Documents related to review organization proceedings for hiring, disciplining, terminating, credentialing, issuing staff privileges, renewing staff privileges or alleged misconduct of a health care provider;
- Review organization documents;
- Quality control documents;
- Documents satisfying regulatory obligations related to quality assurance and performance improvement; and

- Reviews, audits and recommendations of consultants or other persons or entities engaged in the performance of peer review.

A person who testifies before a review organization, or who is a member of a review organization shall not be required to testify regarding, or be asked about, his or her testimony before such review organization, deliberations of the review organization, or opinions formed because of the review organization's proceedings.

All peer review proceedings, communications, and documents of a review organization are confidential, privileged, and not subject to discovery in civil or administrative proceedings. However, an individual may be given access to any document used as the basis for an adverse professional review action against him or her, subject to such protective order as may be appropriate to maintain the confidentiality of the information. Privilege is not waived unless the review organization executes a written waiver authorizing the release of such peer review proceedings, communications, or documents.

A new section, W.Va. Code §30-3C-5, provides that information available from original sources are not immune from discovery or use in any civil action because they were included in any report or analysis related to improving the quality, delivery or efficiency of health care or for credentialing or reviewing health care providers. However, no court may compel production of documents contained in peer review files because they were created as part of the peer review process – the document must come from the original source.

CODE REFERENCE: West Virginia Code §30-3C-1 and §30-3C-3 – amended; §30-3C-5 – new

DATE OF PASSAGE: March 10, 2018

EFFECTIVE DATE: June 6, 2018

ACTION BY GOVERNOR: Vetoed March 28, 2018

Senate Bill 441

Health care provider taxes

The bill extends for three years (through June 30, 2021) the health care provider tax imposed upon eligible acute care hospitals for the purposes of raising additional revenues to reimburse those hospitals for certain medical services at a higher rate than otherwise authorized by Medicaid, all under the federal matching Directed Payment program. The Legislature has adjusted the rate of this tax annually through its amendment and reenactment of this section of code each year since 2011. This year, the amendment will keep the rate at .75% of the gross receipts received or receivable by eligible acute care hospitals for 3 consecutive years.

CODE REFERENCE: West Virginia Code §11-27-38 – amended

DATE OF PASSAGE: March 7, 2018

EFFECTIVE DATE: July 1, 2018

ACTION BY GOVERNOR: Signed March 27, 2018

Senate Bill 442

Establishing universal forms and deadlines when submitting prior authorization electronically

The bill requires the Public Employees Insurance Agency, managed care organizations, and private commercial insurers to develop prior authorization forms by October 1, 2018. They are to accept “electronic prior authorizations requests and respond to the request through electronic means” by July 1, 2019.

The bill also requires that “if the health care practitioner submits the request for prior authorization electronically, the insurer or plan shall respond to the prior authorization request within 48 hours for urgent care services, or seven days for any prior approval request that is not for an urgent care service.” “[U]rgent care services” is defined in the bill.

CODE REFERENCE: West Virginia Code §33-4-22 – new

DATE OF PASSAGE: March 10, 2018

EFFECTIVE DATE: June 8, 2018

ACTION BY GOVERNOR: Vetoed March 28, 2018

The Governor’s veto message stated that the bill purports to void existing contractual agreements governing the prior authorization process, in violation of the Contracts Clause of both the Constitutions of the United States (U.S. Const. Art. I, § 10, cl. 1) and of West Virginia (W. Va. Const. Art. III, § 3, cl. 4).

Senate Bill 461

Extending time to file petition for motor fuel excise tax refund

The bill addresses tax refunds for those eligible for refundable exemptions for taxes paid on purchases of motor fuel. The bill extends the standard deadline for filing claims for refunds of all motor fuel taxes for which refunds may be claimed from “on or before the last day of January, April, July and October for purchases of motor fuel during the immediately preceding calendar quarter” to “within one year from the end of the calendar year for purchases of motor fuel during the calendar year.” This change would apply to most purchases of motor fuels for which refundable exemptions are available, including purchases of home heating oil and kerosene.

This change in the standard deadline does not apply to deadline for filing claims for refunds of taxes paid on the purchase of locomotive motor fuel, which would remain “on or before the last day of January, April, July and October for purchases of motor fuel during the immediately preceding calendar quarter.” It also does not apply to the special deadline for governmental entities that seek these refunds. Instead, the special deadline for governmental entities would be extended from “no later than August 31 for the purchases of motor fuel made during the preceding fiscal year ending June 30” to “no later than December 31 for the purchases of motor fuel made during the preceding fiscal year ending June 30.”

CODE REFERENCE: West Virginia Code §11-14C-31 – amended

DATE OF PASSAGE: March 8, 2018

EFFECTIVE DATE: June 6, 2018

ACTION BY GOVERNOR: Signed March 22, 2018

Senate Bill 479

Establishing local government monitoring by Auditor

The bill changes current law relating to the powers and duties of the state Auditor as to local governments.

The bill changes the standards by which audits are to be conducted. The Auditor is given the new authority to conduct “investigations” of local governments. “Investigation” is newly defined as “an examination, inspection, or review of a local government’s finances to determine or ascertain whether fraudulent, illegal, or improper conduct has occurred, including, but not limited to, misappropriation, waste, or misuse of moneys or assets.”

The Auditor (aka the Chief Inspector and Supervisor of Local Government Offices – See WV Code §6-9-11) is newly authorized to establish a “small government monitoring program” under which “local governments which are not otherwise required to undergo a single audit or a financial audit” may apply annually to the Auditor “for participation in the program.”

“Small government monitoring” is defined as “specialized procedures, performed on certain qualifying local governments as a lower cost alternative to an audit or review.” Under the bill, the Auditor is to “prescribe and oversee monitoring procedures that shall be performed by higher education students in the field of accounting. Participating institutions of higher education shall enter into a cooperative agreement with the chief inspector to provide the service.”

The bill increases from \$300,000 to \$500,000 the threshold of certain local governments’ annual expenditures below which the Auditor may “choose to perform either a review or an audit.”

The bill changes to whom notice is to be given upon the disclosure of finding “misfeasance, malfeasance, or nonfeasance in office on the part of any public officer or employee.” Under current law, if an “examination” discloses those findings, the Auditor is to give notice to “the proper legal authority of the agency, the prosecuting attorney of the county wherein the agency is located and with the Attorney General for such legal action as is proper.” The bill revises this language. Under the bill, if such findings are disclosed by “any audit, examination or investigation,” then the Auditor is to give notice to “the proper legal authority of the entity being audited, examined, or investigated the chief inspector deems appropriate.” The bill also provides a new definition of “proper legal authority”: “[T]he prosecuting attorney of the county wherein the audited, examined, or investigated entity is located, the Attorney General, law enforcement, or other legal authority the chief inspector deems appropriate.”

The bill reduces from 9 months to 90 days the period in which the “proper legal authority or prosecuting attorney” must bring a legal action following receipt of a certified audit report and the Auditor’s recommendations before the Auditor may act directly in their stead. The bill also removes the requirement that failing to take those legal actions “to a final conclusion” within the period triggers the Auditor’s authority to act.

The bill increases the limitations on fees charged by the Auditor for services to Class IV municipalities, removes limitations on fees charged by the Auditor for services to Class III municipalities, and provides \$3,000 limitation on additional fees the Auditor may charge for services provided for each policemen’s and firemen’s pension and relief fund maintained by “the” municipality.

The bill provides new language relating to confidentiality of records. First, if “an examination or report discloses misfeasance, nonfeasance, or malfeasance, the chief inspector may direct that a report remain confidential until such time that the proper legal authority . . . has completed its investigation or

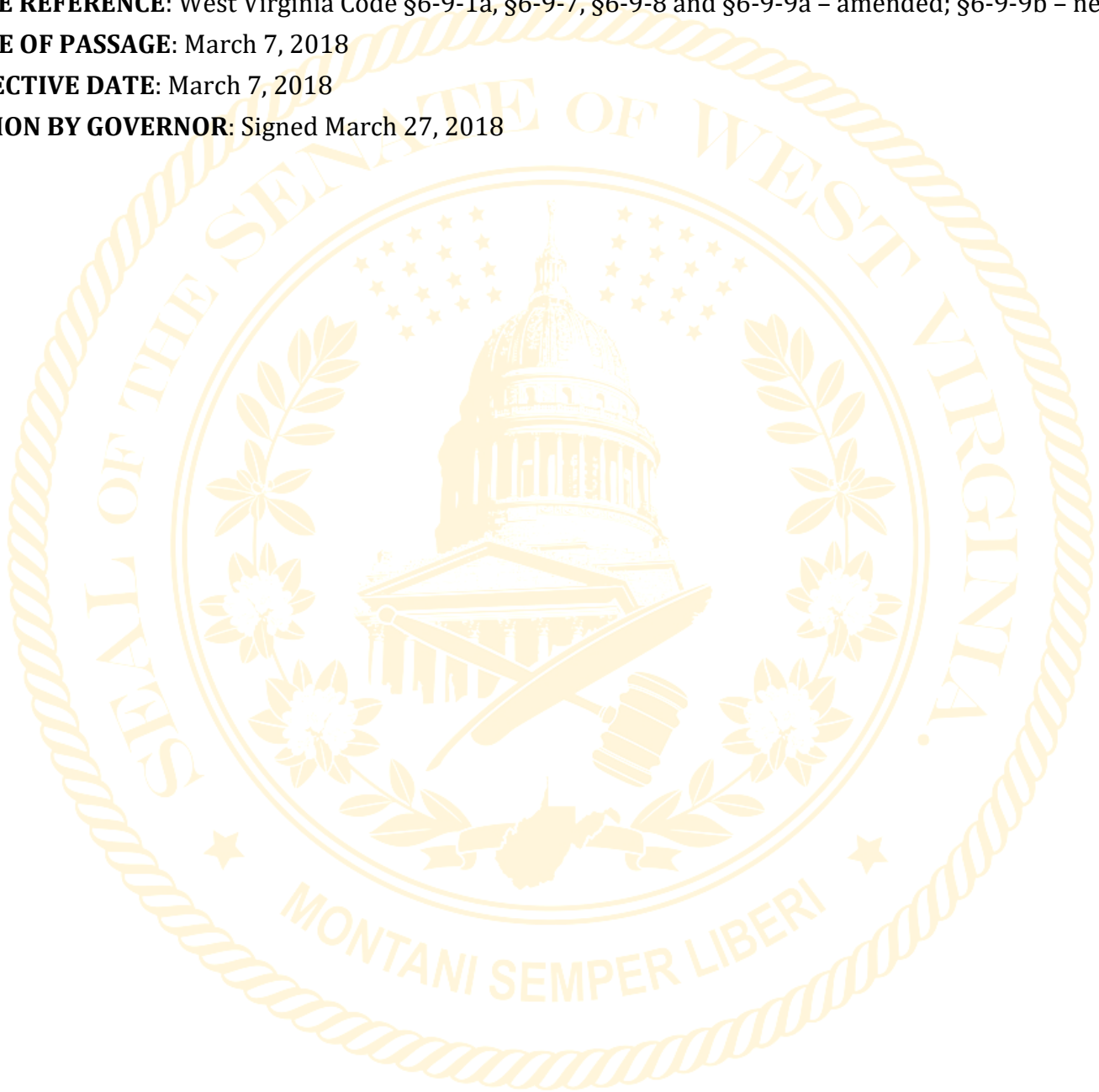
adjudication of the matter and authorizes public disclosure.” Second, all “audit working papers” created by the Auditor during examinations or investigations “shall be considered confidential, and shall not be deemed public records.” The bill then defines “audit working papers” to include, but not be limited to, “the books and records of the entity being audited, intra- and inter-agency communications, draft reports, summaries, schedules, notes, memoranda, and all other records relating to an examination or investigation by the chief inspector division.”

CODE REFERENCE: West Virginia Code §6-9-1a, §6-9-7, §6-9-8 and §6-9-9a – amended; §6-9-9b – new

DATE OF PASSAGE: March 7, 2018

EFFECTIVE DATE: March 7, 2018

ACTION BY GOVERNOR: Signed March 27, 2018



Senate Bill 522

Relating generally to Administrative Procedures Act

This bill provides that administrative rules become void when the statute authorizing the rule is repealed. The bill also allows an agency to repeal a legislative exempt, procedural, or interpretive rule by notifying the Secretary of State's Office. The bill provides a new method for determining the filing deadline for rules. Additionally, the bill establishes the procedures agencies must use to affirmatively seek renewal of a legislative rule due to expire and provides that such legislative rules are not subject to the statutory requirements for a public comment period.

CODE REFERENCE: West Virginia Code §29A-1-3b, §29A-3-8, §29A-3-12, and §29A-3-19 – amended

DATE OF PASSAGE: March 5, 2018

EFFECTIVE DATE: March 5, 2018

ACTION BY GOVERNOR: Signed March 20, 2018

Senate Bill 525

Relating to certification for emergency medical training – mining

The purpose of this bill is to move the code section governing the licensure of emergency medical technicians – mining from its current place in the chapter governing Public Health into the chapter governing Miner's Health, Safety and Training. The requirements remain identical, and the only substantive change is that references to the abolished Board of Miner Training, Education and Certification are changed to the Board of Coal Mine Health and Safety.

CODE REFERENCE: West Virginia Code §16-4C-6c – repealed; §22A-10-3 – new

DATE OF PASSAGE: March 10, 2018

EFFECTIVE DATE: June 8, 2018

ACTION BY GOVERNOR: Signed March 21, 2018

Senate Bill 555

Providing director of corporation not personally liable for corporation's torts

The purpose of the bill is to promote service on nonprofit boards by insulating directors from certain liability. The bill provides that a qualified director is not personally liable for the torts of a volunteer organization or entity, or the torts of the agents or employees of a volunteer organization or entity, unless he or she directed, sanctioned, or participated in the wrongful acts.

A “qualified director” is defined as “an individual who serves without compensation for personal services as an officer, member or director of a board, commission, committee, agency or other nonprofit organization which is a volunteer organization or entity.”

CODE REFERENCE: West Virginia Code §55-7C-3 – amended

DATE OF PASSAGE: March 7, 2018

EFFECTIVE DATE: June 5, 2018

ACTION BY GOVERNOR: Signed March 27, 2018

Senate Bill 576

Relating to Patient Injury Compensation Fund

This bill provides funding for remaining unfunded liabilities of the Patient Injury Compensation Fund (PICF). The Fund was created in 2004 to compensate claimants who are unable to collect damages due to statutory caps and other reforms. However, no funding stream was established in the legislation creating the PICF. In 2016, the Legislature closed the PICF to claims filed after June 30, 2016, and provided temporary funding sources for PICF claims filed before that time, including biennial fees paid by physicians, fees paid by trauma centers, an assessment on settlements and judgments in medical malpractice actions, and filing fees for plaintiffs in medical malpractice actions.

This bill extends the time during which those temporary fees will continue to be collected to satisfy projected unfunded liabilities of the PICF, as follows: physicians are required to pay a biennial license privilege fee of \$125 until December 31, 2021 (currently, the fee would be required only until December 31, 2019); and trauma centers are assessed a \$25 fee per patient treated until December 31, 2021 (currently, the fee is to be assessed only until June 30, 2020).

The bill also provides that after December 31, 2021, the filing fee required of plaintiffs in medical malpractice actions will decrease from \$400 to \$280, and that the clerk of a circuit court will no longer deposit filing fees by plaintiffs in medical malpractice actions into the PICF after that time. The bill amends the definition of a “qualifying claim,” in the context of medical malpractice claims subject to the PICF filing fee, to clarify that claims for which a “screening certificate of merit” is not required are included in the definition, and subject to PICF filing fees. Under the statutory exhaustion requirements for medical malpractice claims, a plaintiff must obtain a “screening certificate of merit,” which includes information from a health care provider setting out the basis for the claim. If a claim is based on a well-established legal theory of liability, the screening certificate of merit is not required, and the plaintiff may simply file a statement setting for the basis of the claim.

The bill designates the plaintiff or his or her counsel as the person responsible for paying the assessment in the case of settlement. The bill also conforms language in the bill establishing when an assessment must be paid with current law language describing when a medical malpractice claim may be filed.

Finally, the bill provides that any money remaining in the PICF on June 30, 2022 will be transferred to the General Revenue Fund.

CODE REFERENCE: West Virginia Code §29-12D-1a, §59-1-11, and §59-1-28a – amended

DATE OF PASSAGE: March 8, 2018

EFFECTIVE DATE: June 6, 2018

ACTION BY GOVERNOR: Signed March 22, 2018

Senate Bill 626

Relating to coal mining generally (Coal Jobs and Safety Act IV)

This bill is the 2018 effort by the Legislature to bring state environmental and coal safety laws into conformity with the federal counterpart. The bill does the following:

- Chapter 22 Article 3: Surface Coal Mining and Reclamation Act
 - This bill alters notice requirements regarding permit applications pursuant to the Surface Coal Mining and Reclamation Act. Notices are to be published in forms and by manners prescribed by the secretary, including electronic methods.
- Chapter 22 Article 11: Water Pollution Control Act
 - The bill establishes that any applicant for water quality certification that seeks certification for activities covered by a U.S. Army Corp. of Engineers permit under the Water Pollution Control Act will be granted certification without conditions. The bill removes special language in the code which targets the coal industry, but no other industry. The coal industry must comply with the language being removed anyway, under DEP rules. This change just removes duplicative requirements.
- Chapter 22A, Article 1: Office of Miner's Health, Safety, and Training
 - The bill eliminates the requirement that a comprehensive mine safety plan be subject to annual review by the director of West Virginia Office of Miner's Health, Safety, and Training unless it is proven that the operator has a pattern of mine safety violations which warrant annual review or there has been an accident resulting in a death or serious bodily injury.
 - The bill creates a new section, §22A-1-42, providing that the MSHA-approved ground control plan shall serve as the state-approved plan and be the only plan required by the director of West Virginia Office of Miner's Health, Safety, and Training.
 - The proposed bill also requires that surface operations have Automated External Defibrillators as required by the director, who will promulgate rules concerning them.
- Chapter 22A, Article 2: Underground Mines
 - The bill provides that the operator's MSHA-approved plan will be the only plan that shall be required by the director of West Virginia Office of Miner's Health, Safety, and Training for the following terms: a. Ventilation plans; b. Belt air plans; c. Seal plans; d. Roof control; e. Emergency shelter plans under the transportation provisions; f. Emergency response plans; g. Tracking and communications plans; and, h. Self-Contained Self-Rescuers storage plans.
 - The bill adds a requirement that 1 additional SCSR than is required by MSHA is to be located at the working section for each person present. The bill requires that operators provide at least 3 SCSRs, which include 1 on the working section, 1 in storage, and 1 on the mantrip. Also, the bill allows for fines and assessments by the director if 3 SCSRs are not present. However, this provision may be changed by the committee amendment.
 - If all state requirements are in the federal plan, there will only be the federal plan. The bill only affects the administrative planning process and does not affect safety laws or their enforcement. Only one MSHA-approved plan is to be accepted by the director, but both federal and state agencies remain responsible for enforcement.

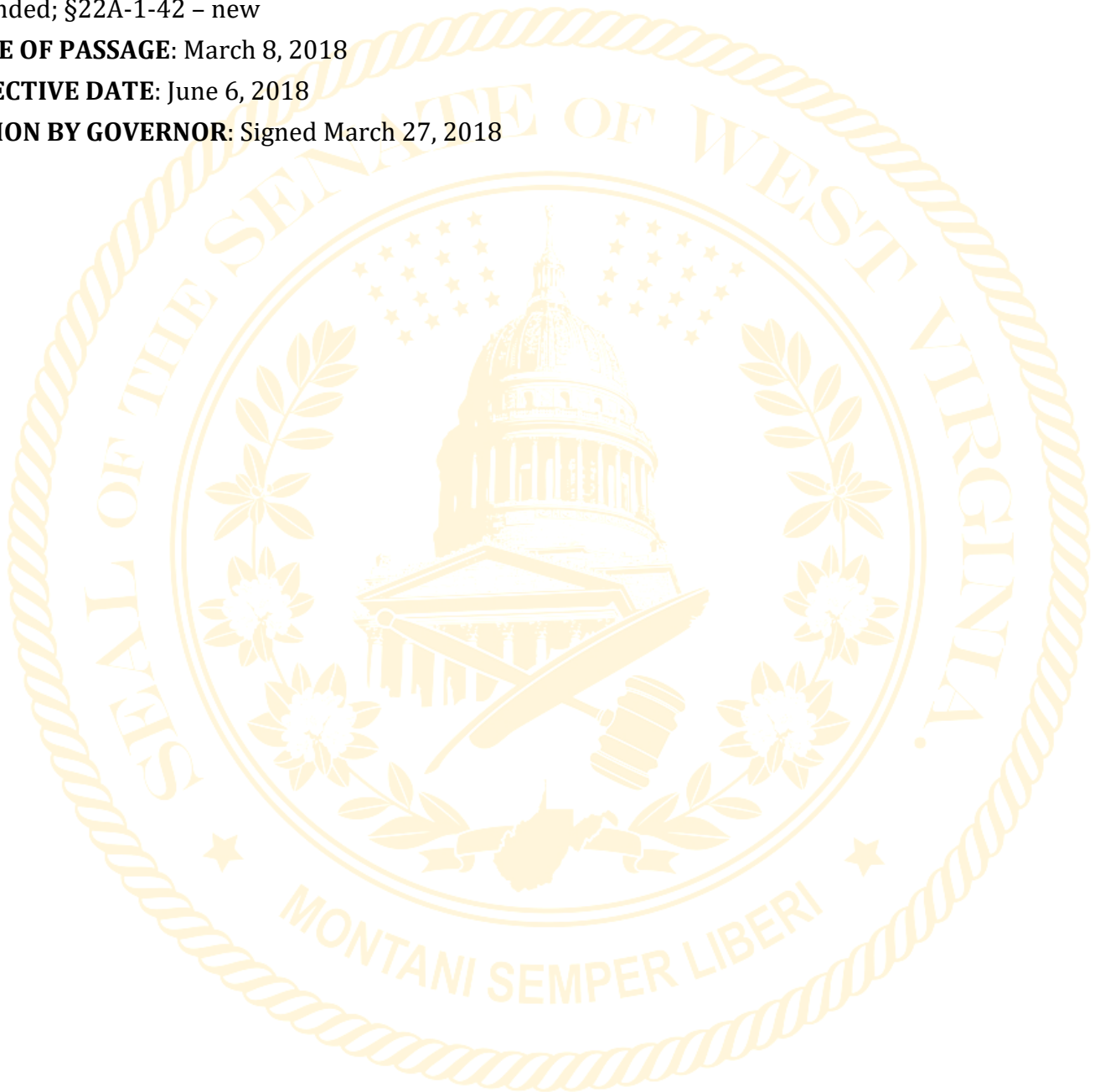
- Chapter 22A, Article 2A: Use of Diesel-powered equipment in Underground Coal Mines
 - The proposed bill allows for a diesel-powered generator to be used underground where (1) it is vented directly to a return, (2) there is a person within sight and sound of the generator, and (3) all other safety rules relating to diesel-powered generators are followed.

CODE REFERENCE: West Virginia Code §22-3-9, §22-3-20, §22-11-7a, §22A-1-36, §22A-2-2, §22A-2-3, §22A-2-4, §22A-2-4a, §22A-2-5, §22A-2-25, §22A-2-26, §22A-2-37, §22A-2-55, and §22A-2A-1001 – amended; §22A-1-42 – new

DATE OF PASSAGE: March 8, 2018

EFFECTIVE DATE: June 6, 2018

ACTION BY GOVERNOR: Signed March 27, 2018



House Bill 2008

Relating to the Dealer Recovery Program

The bill modifies the current statute governing the administration of the state special revenue fund known as the "Dealer Recovery Fund." The sources of the fund's moneys are, in part, special fees paid by certain motor vehicle dealers in the state. The moneys of the fund are spent to pay claims against the fund upon order of the Commissioner of Motor Vehicles based on the recommendation of a three person "Dealer Recovery Fund control board." Payments are for claims arising out of the actions of a motor vehicle dealer, including but not limited to, claims for taxes and fees collected by a dealer but not remitted to the Division of Motor Vehicles, the amounts of an undisclosed lien on a motor vehicle sold by a dealer, or the unpaid costs of goods or services provided to a dealer, all of which are otherwise uncollectible.

The bill adds language to the above, specifying that:

- "The board may hear claims consistent only with the purposes specified in this section."
- "The board may recommend rejection or acceptance of a claim, in full or in part."
- "The recommendation of the board requires a majority vote of the board."
- "The board may prorate the amount paid on claims when the 'aggregate' amount of valid claims submitted would exceed 33 percent of the fund. (here, the word 'aggregate' is new language added to existing code).
- "Payments under this section may not include payment for claims of punitive or exemplary damages, compensation for property damage other than to the vehicle, recompense for any personal injury or inconvenience, reimbursement for alternate transportation or payment for attorney fees, legal expenses, court costs or accrued interest."

CODE REFERENCE: West Virginia Code §17A-6-2a - amended

DATE OF PASSAGE: March 9, 2018

EFFECTIVE DATE: June 7, 2018

ACTION BY GOVERNOR: Signed March 20, 2018

House Bill 2464

Relating to disclaimers and exclusions of warranties in consumer transactions for goods

This bill provides that a consumer who purchases a used manufactured home may waive the warranties of merchantability and fitness for a particular purpose, or waive a warranty as to a particular defect or malfunction which the merchant has identified and disclosed in writing to the consumer, if the used manufactured home is not being sold for human habitation.

The waiver is not effective unless the waiver:

- Is in writing;
- Is conspicuous and is in plain language;
- Identifies with particularity the disclosed defect or malfunction, if any, in the used manufactured home for which the warranty is to be waived: Provided, that to the extent a merchant intends to waive a warranty as to a particular defect or malfunction, the disclosure must also be posted on the front door of the used manufactured home;
- Describes any additional defects or malfunctions, if any, disclosed to the merchant by a previous owner of the used manufactured home or discoverable by the merchant after an inspection of the used manufactured home;
- States that the warranty being waived applies only to the disclosed defect or malfunction, if any, to the extent the merchant intends to waive a warranty as to a specific defect;
- Acknowledges that the used manufactured home will not be used for habitation purposes; and
- Is signed by both the consumer and the merchant before the sales contract is executed.

This bill only applies to used manufactured homes that are more than four years old from their date of production and have previously been occupied, used, or sold for purposes other than resale.

CODE REFERENCE: West Virginia Code §46A-6-107 – amended

DATE OF PASSAGE: March 9, 2018

EFFECTIVE DATE: June 7, 2018

ACTION BY GOVERNOR: Signed March 27, 2018

House Bill 2546

Allowing replacement costs of employer provided property to be deducted from an employee's final paycheck if the property is not returned

The bill would allow employers to deduct the replacement cost of property they supply to employees for use in the employer's business if the property is not returned upon discharge or resignation. Examples of such property include equipment, phones, computers, supplies and uniforms. The bill sets forth requirements for when replacement costs may be deducted:

- The property must have a value in excess of \$100. The employee must have signed an agreement for the replacement cost to be deducted when the property was supplied. The agreement must contain:
 - Itemization of property supplied and the replacement cost thereof;
 - Clear statement that property is to be returned upon discharge or resignation and that replacement cost will be deducted from final paycheck if not timely returned.
- The employer must notify the employee in writing at time of discharge or as soon as practicable thereafter of the replacement cost, and make a demand for the return within a certain time, not to exceed 10 business days. The employer shall relinquish the withheld replacement cost if the property is returned within the time specified in the notice. The employee may object to the amount of the replacement cost within the time specified in the notice. If the employee does so, the employer shall place the withheld funds in an interest-bearing escrow account.
- If the employee does not bring a civil action within 3 months of filing the objection, then the money in the escrow account reverts to the employer.
- This bill does not apply to employer/employee relationships covered by a collective bargaining agreement.

CODE REFERENCE: West Virginia Code §21-5-4(f) – new

DATE OF PASSAGE: February 14, 2018

EFFECTIVE DATE: May 15, 2018

ACTION BY GOVERNOR: Signed February 23, 2018

House Bill 2843

Permitting Class III municipalities to be included in the West Virginia Tax Increment Act

The bill amends the provisions of the West Virginia Code relating to Tax Increment Financing (TIF). The bill would authorize Class III municipalities to create TIF districts. Current law limits municipal participation in TIF districts to Class I and II municipalities. Under current law, if a Class III or Class IV municipality wanted to create a TIF district, it would have to work with a county and the county would be the entity that would actually create the district. Class III municipalities are those with a population in excess of 2,000 but less than 10,000. Currently, there are 46 Class III municipalities in West Virginia.

CODE REFERENCE: West Virginia Code §7-11B-3, §7-11B -4, §7-11B -7 and §7-11B-8 – amended

DATE OF PASSAGE: March 2, 2018

EFFECTIVE DATE: May 31, 2018

ACTION BY GOVERNOR: Signed March 27, 2018

House Bill 3004

Relating to filling vacancies in certain offices

The purpose of this bill is to codify a recent Supreme Court of Appeals ruling, *State ex. rel. Biafore v. Tomblin*, 782 S.E.2d 223 (2016), and make other amendments to the Code regarding filling vacancies in certain offices.

In *Biafore*, the Supreme Court of Appeals interpreted the West Virginia Code to require that, for the vacancy of a State Senator who was elected as a Democrat but switched his party registration to Republican, the Governor was required to appoint a Republican to fill his office. The Supreme Court stated that its “decision is grounded in law, not in ideology or politics.” *Id.* at 232.

Vacancies in State Offices

This bill requires that a person appointed to fill a vacancy in elected state offices be selected from a list submitted by the party executive committee of the party with which the person vacating the office was affiliated at the time the vacancy is created. These offices include: The Board of Public Works offices (Secretary of State, Treasurer, Attorney General, Commissioner of Agriculture, Auditor, or any other elected state office). The bill specifies that the requirements related to party of a replacement official do not apply to the filling of vacancies in nonpartisan offices.

The bill requires the party executive committee to submit names of candidates to the Governor within 15 days of the occurrence of a vacancy. The bill also requires the Governor to make an appointment to fill the vacancy within five days of receiving the list. If the party executive committee does not submit a list to the Governor within the 15-day deadline, the Governor shall appoint a legally qualified person of the party with which the person vacating the office was affiliated at the time the vacancy.

Vacancies in U.S. Congressional Offices

The bill also requires that gubernatorial appointments to vacancies in the office of U.S. Senate be made from a list submitted by the party executive committee of the party with which the person vacating the office was affiliated at the time the vacancy is created.

The bill requires the party executive committees to submit names of candidates to the Governor within 15 days of the occurrence of a vacancy. The bill also requires the Governor to make an appointment to fill the vacancy within five days of receiving the list. If the party executive committee does not submit a list to the Governor within the 15-day deadline, the Governor shall appoint a legally qualified person of the party with which the person vacating the office was affiliated at the time the vacancy.

Vacancies in state Legislature

The bill codifies the requirement that for vacancies in the state Legislature, the Governor must appoint a person of the same party with which the person vacating the office was affiliated at the time the vacancy is created.

Vacancies in County Commissions

Under current law, vacancies in the offices of county commissioner and clerk of the county commission are filled by the county commission. If the vacancy causes a lack of quorum, the Governor makes an appointment to fill the vacancy.

The process for filling vacancies in the county commission itself is reworked in this bill. Initially, the county commission is given 30 days in which to make the appointment; the bill requires that the appointee must have been a member of the political party from which he or she is appointed for a period of at least

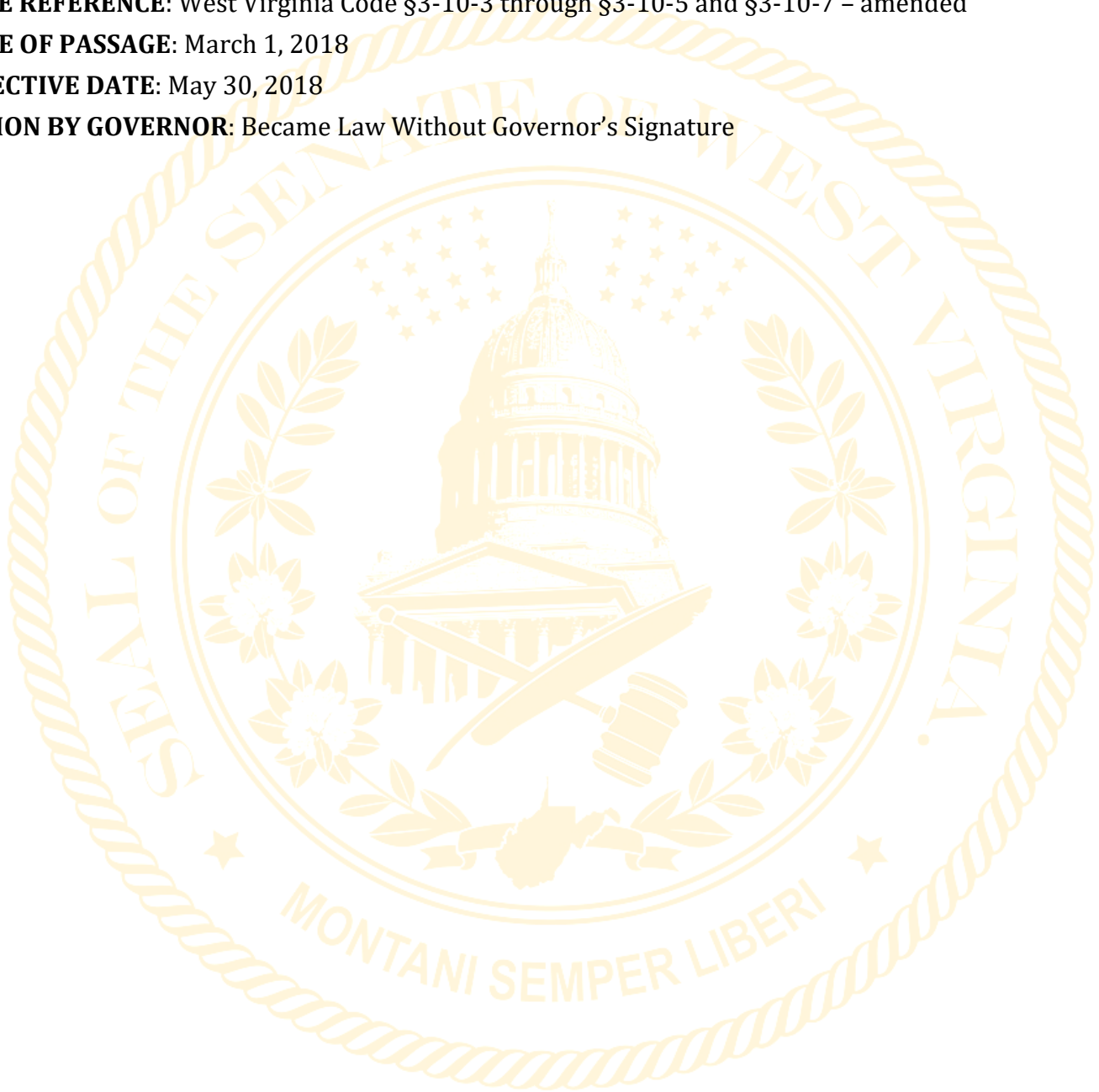
60 days preceding the vacancy. If the commission fails to make the appointment within that time frame, the county executive committee of the departing commissioner's party submits a list of three names. If the commission cannot select from among that list, then a process of elimination is provided, beginning with the most senior commissioner striking one name off the list, followed by the second-most senior. Additional language is added to §3-10-7 to clarify that the authority of the Governor to appoint members to the county commission is limited to creating a quorum in that body.

CODE REFERENCE: West Virginia Code §3-10-3 through §3-10-5 and §3-10-7 – amended

DATE OF PASSAGE: March 1, 2018

EFFECTIVE DATE: May 30, 2018

ACTION BY GOVERNOR: Became Law Without Governor's Signature



House Bill 4001

Relating to eligibility and fraud requirements for public assistance

This bill would require the Department of Health and Human Resources to implement a number of provisions relative to applicants for assistance and recipients for assistance at the Department. It defines key terms. Currently, applicants for SNAP are able to seek a work requirement waiver from the federal government. Additionally, only the applicants income/assets are tested, without further verification via computer tracking database. (2018)

This bill relates to investigations, inspections, evaluations, and review conducted by the Department of Health and Human Resources to prevent fraud and abuse. It disenrolls providers who commit fraud and requiring repayment. Further, the bill authorizes the Secretary to develop a data analytics pilot program to identify potential fraud and help guide policy objectives to eliminate future fraud, and requires a report on the pilot project to the Legislature.

The bill defines fraud as it relates to Medicaid, creates criminal penalties against providers for failure to keep medical records for a specific time period, authorizes a civil cause of action for fraud when a person or entity knew or reasonably should have known a claim to be false, and enlarges the statute of limitations to file health care fraud civil actions.

It defines terms relating to public assistance, and requires the Department of Health and Human Resources to implement work requirements for applicants of Supplemental Nutrition Assistance Program (SNAP). It limits recipients to 3 months of benefits in any 36-month period unless the recipient is working or participating in a work, educational, or volunteer program for at least 20 hours a week. The bill provides further exemptions to work requirements, requires discontinuance of a federal waiver in certain counties, requires a study of the impact of the SNAP work requirements in those counties where they were implemented, eliminates the federal waiver statewide within a certain time-period, and requires a report to the Legislature.

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

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

DATE OF PASSAGE: March 10, 2018

EFFECTIVE DATE: June 8, 2018

ACTION BY GOVERNOR: Signed March 27, 2018

House Bill 4002

Providing that all delegates shall be elected from one hundred single districts following the United States Census in 2020

This bill abolishes multi-member legislative districts for the West Virginia House of Delegates. Currently, the statutorily prescribed legislative districts for the House of Delegates contain 20 at-large multiple-member districts.

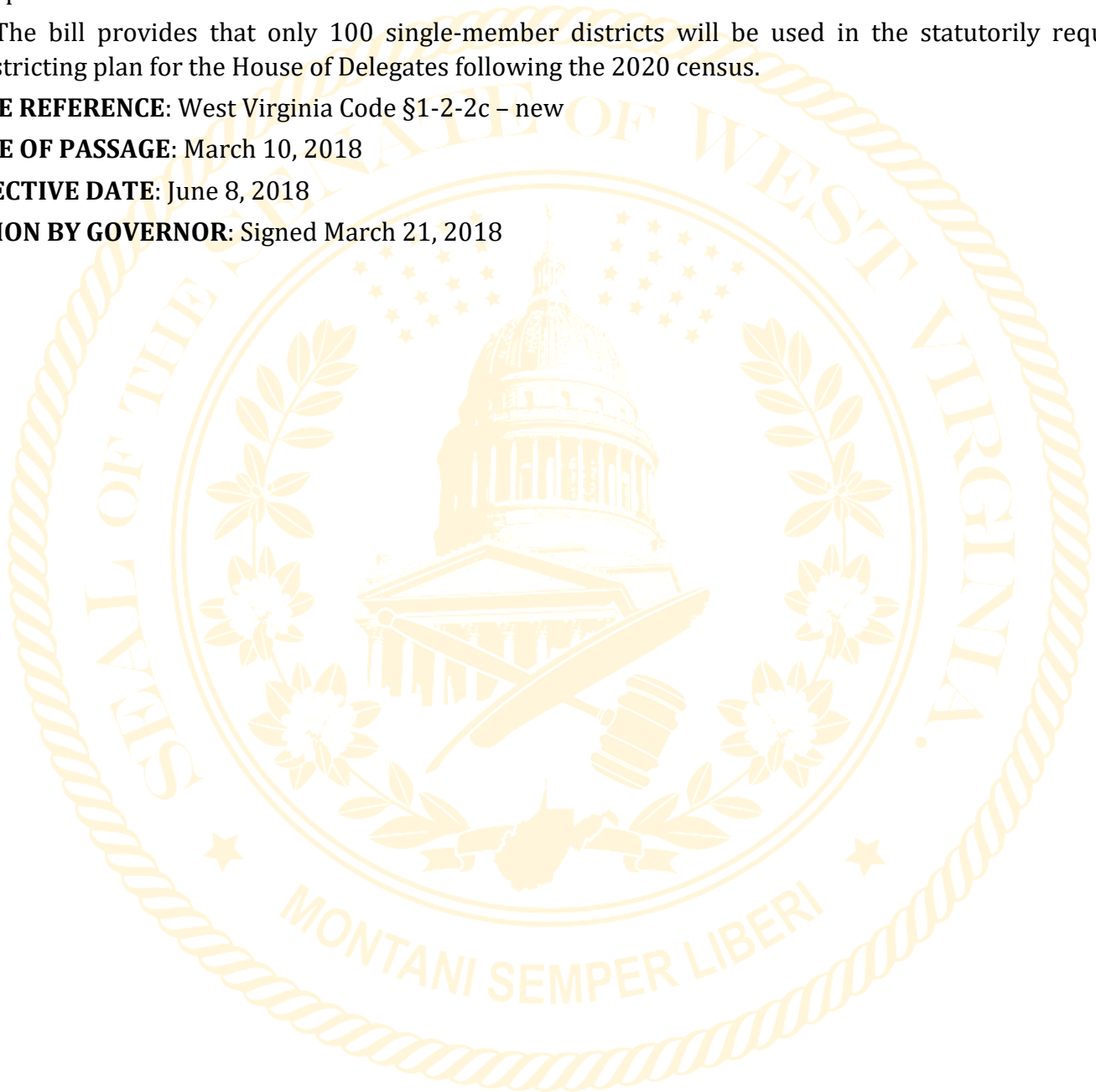
The bill provides that only 100 single-member districts will be used in the statutorily required redistricting plan for the House of Delegates following the 2020 census.

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

DATE OF PASSAGE: March 10, 2018

EFFECTIVE DATE: June 8, 2018

ACTION BY GOVERNOR: Signed March 21, 2018



House Bill 4006

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

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

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

Because of those changes, the revisions to accomplish this goal include the elimination of the state master plan for professional development and certain prescriptive and state level agency programs. It would also eliminate certain state agencies that are no longer needed to provide certain components of professional development, including the Department of Education and Arts, the office of its Cabinet Secretary ("the Secretary"), and several of the offices and programs for which they have been responsible, including the Center for Professional Development and the Principals Academy, among others.

Under current law, the Secretary of the Department of Education and Arts serves on many boards. Both the Secretary and the Department have many responsibilities for various state-directed programs, not all of which are related to the improvement of professional development. These provisions are set forth in numerous code sections throughout the Code. Much of the length of the bill is due to consequential amendments made to these sections to substitute others to assume those responsibilities. For example, the bill would move the Division of Culture and History from the Department of Education and Arts to the Department of Commerce. The bill would replace the Secretary on the West Virginia Sesquicentennial of the American Civil War Commission with the State Superintendent of Schools. Numerous amendments are made by the bill to conform other code sections to the primary changes made by the bill as well as those incident to those changes.

More specifically, the bill's provisions include:

- §4-13-2 is amended to replace the Secretary on the West Virginia Sesquicentennial of the American Civil War Commission with the State Superintendent of Schools. The section is further amended to add a representative from the Herbert Henderson Minority Affairs Office as an additional member to the West Virginia Sesquicentennial of the American Civil War Commission.

- §5-26A-3 is amended to replace the Secretary on the West Virginia Commission for National and Community Service with “a representative of an arts or crafts organization.”
- §5B-2C-6 is amended to remove the Department of Education and the Arts as one of the options that the West Virginia Academy of Science and Technology may use for technical support resources in preparing an annual report.
- §5F-1-2 is amended to remove the Department of Education and the Arts as one of the 9 departments within the executive branch headed by a Secretary appointed by the Governor.
- §5F-1-6 is a new section that provides that “[e]xcept for instances where specifically provided otherwise, all amendments to this Code made by the passage of House Bill 4006 during the 2018 regular session of the Legislature shall become effective July 1, 2018.”
- §5F-2-1 is amended to move the Division of Culture and History and the Division of Rehabilitation Services from within the administration of the Department of Education and the Arts to within the administration of Department of Commerce; and removing both the Educational Broadcasting Authority and the Library Commission from being agencies within the administration of the Department of Education and the Arts and reestablishing each of them as an independent agency within the executive branch.
- §6-7-2a is amended to eliminate the statutory salary of the Secretary of Education and the Arts.
- §10-5-2a. The bill repeals the statute creating the West Virginia Distance Learning Coordinating Council.
- §18-2I-1, -2 and -4 are amended to revise the framework for requiring the State Board of Education to deliver professional development. §18-2I-4 is further amended to add language relating to the new framework for requiring the State Board of Education to deliver professional development by adding principals to those who are to be included in legislative rules governing processes for collaboration among the Department of Education, county boards and classroom teachers. The section is also amended by transferring to the State Board of Education the “Center for Professional Development,” which had been operated under a board chaired by the Secretary of the Department of Education and the Arts, and providing its mission and duties under the direction of the State Board of Education, including “statewide coordination for the continued growth and development of advanced placement programs in West Virginia high schools, including, but not limited to, serving as a liaison for The College Board, Inc., and providing for the training of advanced placement teachers.”
- §18-2I-3 – The bill repeals the statute requiring the State Board of Education to establish a master plan for professional development.
- §18-10A-1, -2, -3, -6a and -12 are amended to conform the statutes by substituting the Department and Secretary of Commerce for the Department and Secretary of Education and the Arts regarding responsibilities for the Division of Rehabilitation Services and related topics.
- §18-30-4 is amended to conform the statute by changing the membership of the West Virginia Prepaid Tuition and Savings Plan Board by removing the Secretary of Education and the Arts. The section is also amended to reduce the membership of the Board by one of the two representatives of the Higher Education Policy Commission and add to the membership of the Board one representative of the Council for Community and Technical College Education. The section is also amended to add to the requirements for the five other members, appointed by the Governor, that they may have knowledge, skill and experience in an arts field, not just an academic, business or financial field.

- §18A-2-9 is amended to designate the principal as the instructional leader of the school and making further adjustments to their qualifications, responsibilities, professional development and assignments.
- §18A-2-12 is amended to remove language relating to certain responsibilities of the current Center for Professional Development.
- §18A-3-2d – The bill repeals the statute requiring internships for beginning principals.
- §18A-3-1, -1d, -2c and -8 are amended to solely vest the State Board of Education with the general direction and control of the education of professional educators. The amendments would also remove references to the Secretary, the current Center for Professional Development and the Chancellor for Higher Education, and in certain places include regional education services agencies, within the language governing teacher certification, teacher and principal training, and the delivery of staff development programs by county staff development councils. In addition, §18A-3-1(b) is amended to add a new requirement that the standards for education of professional educators in the state and for awarding certificates to them include “a provision for the study of the history and philosophical foundations of Western Civilization and the writings of the founders of the United States of America.”
- §18A-3A-1, -2, -3, -2b and -5 – The bill repeals the statutes to eliminate the current Center for Professional Development and the Principals Academy, as well as the West Virginia Advanced Placement Center, and certain requirements for training in evaluation skills and mentoring.
- §18A-3C-1, -2 and -3 are amended to revise language that would govern performance evaluations of teachers, principals and assistant principals as part of professional development.
- §18B-1B-2 is amended to remove the Secretary from the Higher Education Policy Commission. The section is also amended to establish new qualifications for the 7 at-large members of the Commission and revise the processes for their selection and appointment.
- §18B-3D-2 is amended to conform the statute by changing the membership of the Chancellor’s advisory committee for the Workforce Development Initiative by substituting a representative from the Herbert Henderson Minority Affairs Office for the Secretary of Education and the Arts.
- §18B-11-4 and -6 – The bill repeals the statutes to eliminate the requirement that the Higher Education Policy Commission and the Council for Community and Technical College Education establish two assistive device depositories for assistive devices for individuals with disabilities upon receipt of line item appropriations, and to eliminate the National Institute for Teaching Excellence.
- §18B-16-5 and -8 are amended to update references, including references to the Higher Education Policy Commission and the Council for Community and Technical College Education, in relation to, among others, the responsibilities of the Higher Education Vice Chancellor for Administration relating to health care education, and removing language referencing appropriations to the Secretary of Education and the Arts for the rural health initiative.
- §18B-18B-1 is amended to conform the statute by changing the membership of the Science and Research Council by substituting an additional member appointed by the Governor who has demonstrated interest, knowledge, skill and experience in academic research and scientific innovation, and who possesses recognized credentials and expertise in one or more of certain areas of science-related fields, for the Secretary of Education and the Arts.
- §29-24-3 and -5 are amended to conform the statutes by substituting the Secretary of Commerce for the Secretary of Education and the Arts in regard to responsibilities for the Technology-Related

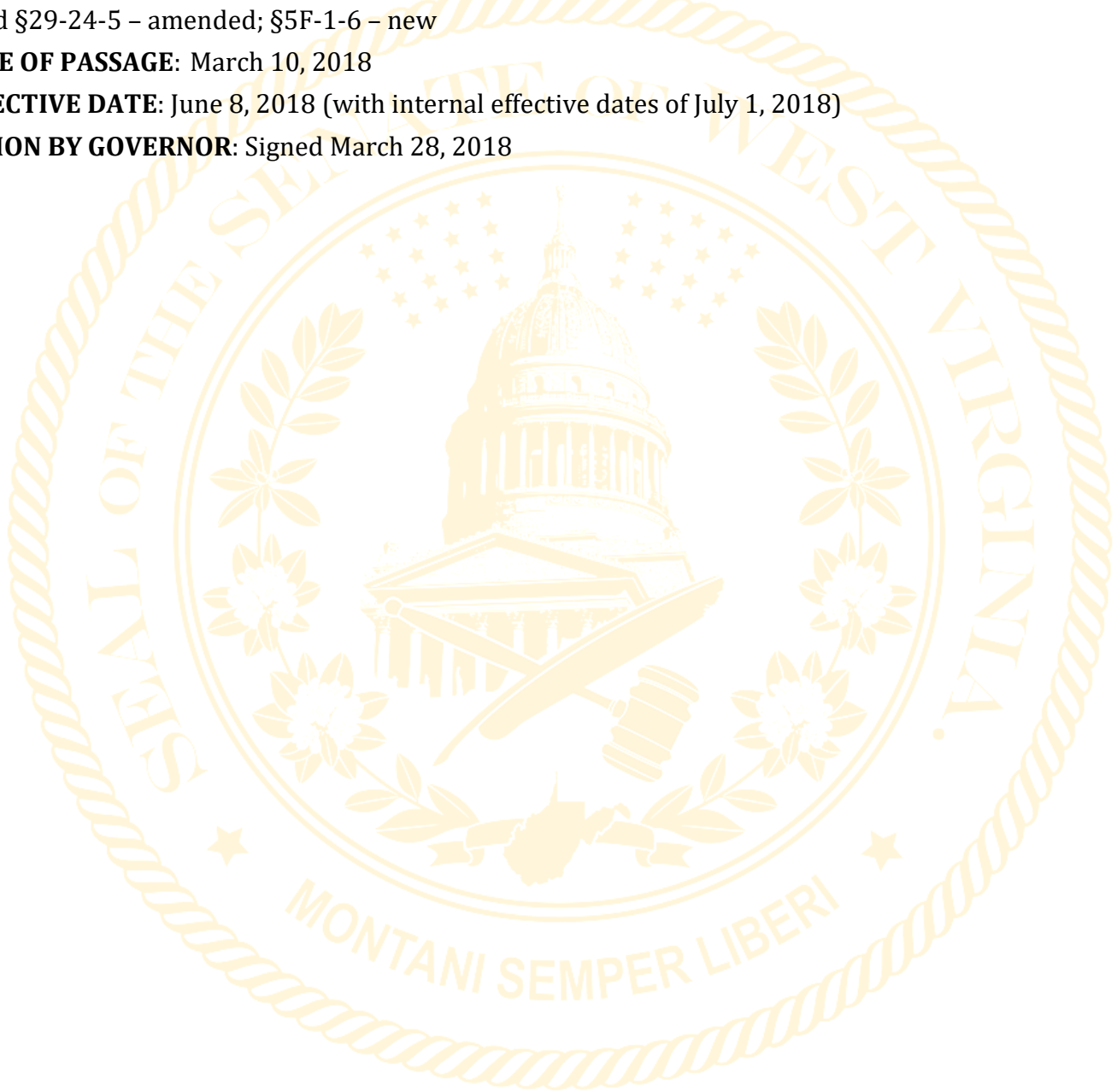
Assistance Revolving Loan Fund For Individuals With Disabilities Board, of which the Director of the Division of Rehabilitation Services is a member.

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

DATE OF PASSAGE: March 10, 2018

EFFECTIVE DATE: June 8, 2018 (with internal effective dates of July 1, 2018)

ACTION BY GOVERNOR: Signed March 28, 2018



House Bill 4009

State Settlement and Recovered Funds Accountability Act

This bill repeals the section of the Code requiring the Attorney General to deposit all fees received for representing the state into the General Revenue Fund.

This bill also creates the State Settlement and Recovered Funds Accountability Act. It contains legislative findings which include that the power to appropriate funds for public purpose is solely within the purview of the legislative branch of government.

With some exceptions, when the Attorney General or other state officer or state agency is a party to or has entered an appearance in a legal action on behalf of the State, the disposition of which results in a recovery of funds or assets to the state, all funds or assets awarded the state are public funds and are to be deposited into the General Revenue Fund. These provisions do not apply to equitable relief.

This bill provides that any of these assets or funds deposited in the State Treasury may not be disbursed without a specific legislative appropriation by the Legislature.

The exception to the deposit of funds in the General Revenue Fund are: monies recovered by the Attorney General's Division of Consumer Protection which are to be deposited in the Consumer Protection Recovery Fund; monies recovered on behalf of and specifically awarded to a political subdivision of the state, which are to be transmitted to the treasurer of the political subdivision; monies constituting recovery of attorney's fees, expenses and costs specifically awarded to the Attorney General, which are to be deposited to the Attorney General's General Administrative Fund; monies received in civil asset forfeiture proceedings; or fines and civil penalties.

This bill contains legislative findings that the Attorney General has litigation responsibilities for the state and that certain operational monies need to be retained by the Attorney General's Office. It creates the Consumer Protection Recovery Fund, a special revenue fund, for receipt of funds recovered in a civil action filed by the Attorney General's Division of Consumer Protection. At the end of each fiscal year, the Attorney General is to transfer any monies in excess of \$7,000,000 to the General Revenue Fund. Monies in the Fund are to be used for costs and services incurred for consumer protection purposes.

This bill also creates a special revenue fund to be known as the Consumer Protection Restitution Fund for deposit of consumer restitution or refunds, from which funds are to be paid to specific consumers for which recovery was made. If the AG cannot locate the consumer within one year of the date the restitution was received, the Attorney General is to transfer the funds to the Consumer Protection Recovery Fund.

On the effective date of this legislation, any monies in the current Consumer Protection Fund are to be transferred to the Consumer Protection Recovery Fund.

This bill prohibits the Attorney General or any state officer or agency from agreeing to any disposition that is contrary to the provisions of this bill and they are to make the court aware of the law. They may not agree to any terms in an extra-judicial settlement that are contrary to the requirements of this bill.

Finally, this bill requires the Attorney General to file an annual report on or before August 15, with the Governor, the Joint Committee on Government and Finance and the State Auditor containing receipt and expenditure information for each fund. The Attorney General is also required to file an annual report on or before January 15, with the Governor, the Joint Committee on Government and Finance and the State Auditor containing specified information regarding dispositions. The report is also to contain information on monies paid to special assistant attorney generals and persons under contract to perform legal services

and the amount of judgements, settlements, costs and fees awarded by a court to the Attorney General or to a state officer or agency.

CODE REFERENCE: West Virginia Code §5-3A-1 through §5-3A-6 – new; §5-3-5 – repealed

DATE OF PASSAGE: March 10, 2018

EFFECTIVE DATE: July 1, 2018

ACTION BY GOVERNOR: Vetoed March 28, 2018



House Bill 4013

Clarifying venue in West Virginia state courts as it applies to nonresidents of the state

First, in §6-9A-6 the bill amends the enforcement provision set forth in the Open Governmental Proceedings Act to provide venue to the circuit court in the county where the public agency regularly meets. Current code provides for jurisdiction, but not venue. The bill reconciles this section of code with other changes.

In §14-2-2a under current law, notwithstanding the general rule above, any suit brought against WVU or Marshall, their governing boards, or medical schools shall be brought in the county where the cause of action arose. The bill expands the venue exception to include all institutions of higher education and their governing boards, e.g., Fairmont State University. Under the bill, a suit against any state institution of higher education shall be brought in the county where the cause of action arose.

This bill also amends §56-1-1 to provide that for all civil actions filed on or after July 1, 2018, a nonresident of the state may not bring an action in a court of this state unless all or a substantial part of the acts or omissions giving rise to the claim asserted occurred in this state. The bill further provides that unless barred by the statute of limitations or otherwise time barred in the state where the action arose, a nonresident of this state may file an action in state court in this state if they cannot obtain jurisdiction in either federal or state court against the defendant in the state where the action arose.

The bill imposes these venue requirements on all plaintiffs and potential plaintiffs, including those in class actions. It provides that when venue is not proper for a nonresident plaintiff in any court of this state, the court shall dismiss the claims of that plaintiff without prejudice to refile in a court in any other state or jurisdiction. It also notes that if venue is proper as to one defendant, it is also proper as to any other defendant with respect to all actions arising out of the same transaction or occurrence. Finally, it defines the term nonresident.

CODE REFERENCE: West Virginia Code §6-9A-6, §14-2-2, §14-2-2a and §56-1-1 – amended

DATE OF PASSAGE: March 10, 2018

EFFECTIVE DATE: June 8, 2018

ACTION BY GOVERNOR: Signed March 27, 2017

House Bill 4015

Relating to the management and continuous inventory of vehicles owned, leased, operated, or acquired by the state and its agencies

This bill addresses the manner in which state-owned or -leased vehicles are managed and tagged. Broadly, the bill:

- Creates the Aviation Division. Currently there is an Aviation Fund, but there is no authority to establish an Aviation Division. Aviation was previously rolled in with the Fleet Management Office. This is a technical change that allows (but does not require) the establishment of an Aviation Division to oversee state-owned aircraft, administer rules, and perform necessary duties related to those aircraft. Control of the Aviation Fund would be vested with the Director of the Division, if one were appointed, or the Secretary of Administration.
- Establishes the Fleet Management Division as a permanent division within the Department of Administration (this is currently an Office that is permissively established within the Purchasing Division). The effect is to remove any exemptions from the oversight and services of the Fleet Management Office and make all state agencies, subject to specific exemptions, subject to the new Fleet Management Division. The Division is given broad authority, including the ability to provide management services (fueling and vehicle maintenance), assist with the purchase of vehicles for agencies, maintain a state vehicle fleet, provide training for fleet coordinators, and develop policies related to the safe operation of state vehicles.
- Directs the promulgation of legislative rules. Most of the substance of this bill, and the functions of the Fleet Management Division, is in its rulemaking authority, set out in §5A-12-5 of the bill. The director of Fleet Management is required to propose certain legislative rules, including:
 - Minimum requirements governing the use of state vehicles;
 - Reporting requirements and responsibilities for fleet coordinators regarding state vehicle use;
 - Minimum requirements and responsibilities for drivers/operators of state vehicles;
 - Minimum criteria to be collected and maintained on state vehicle log sheets;
 - Form and manner of reporting information to Fleet Management;
 - Information to be collected by each spending unit's fleet coordinator regarding state vehicle use by the spending unit;
 - Requirements for annual reporting by spending unit fleet coordinators to Fleet Management;
 - Requirements and policy governing commuting in and taking home state vehicles; and
 - Requirements and policy governing volunteer and non-public employee drivers.
- Current rules of the Fleet Management Office continue in effect until they are amended, replaced or repealed. Emergency rulemaking authority is granted to Fleet Management, which must be accomplished by June 15, 2018.
- Establishes requirements for vehicle operators. Vehicle operators are required to maintain certain logs and records (in the form established by legislative rule), comply with relevant laws, rules, and policies, and complete any training required by BRIM, the Travel Management Office, Fleet Management, and the spending unit. Failure to comply can lead to discipline from the spending unit, but not from Fleet Management.
- Requires spending units to report all owned vehicles. §5A-12-7 requires spending units to report vehicles and equipment into the centralized fixed asset accounting system (OASIS). Annual reporting of the accuracy of that information is required.

- Requires spending units to appoint a fleet coordinator. This person would be responsible for “the management and maintenance of state vehicle information, and for reporting state vehicle utilization reports to the division.” Once appointed, that person’s name and contact information is to be provided to Fleet Management, which will provide training.
- Requires spending units to utilize Fleet Management’s Vehicle Management Services. Currently, because the Fleet Management Office is “housed” under the Purchasing Division code, and because it was not an established division within Administration, broad exemptions from Fleet Management’s services were available. In particular, Fleet Management offers fueling and maintenance services, which each spending unit would now be required to utilize. Exemptions may be requested, and must be approved through the legislative rulemaking process. Part of this rule exemption would require a spending unit to determine how it will comply with the reporting requirements imposed elsewhere in the article.
- Creates annual reporting requirements. Spending units are required to submit information each year to Fleet Management, and to maintain other records for a period of three years. Fleet Management is required to prepare a State Vehicle Fleet Annual Report to submit to the Governor and the Joint Committee on Government and Finance.
- Establishes a complaint process for the public. Fleet Management is required to establish a complaint process for the public to report questionable use of fleet vehicles. Once a complaint is received, Fleet Management is to forward the complaint to the appropriate spending unit. The outcomes of those complaints are to be reported back to Fleet Management as well, and tracked.
- Incorporates requirements for audits by the State Auditor and Legislative Auditor. The State Auditor is to conduct spot compliance audits that will, over the course of five years, result in a review of the entire state fleet. The Legislative Auditor, meanwhile, will prepare a report no later than December 31, 2020, of the Fleet Management Division and the compliance of fleet coordinators with the requirements of this article. The Legislative Auditor shall likewise audit DMV no later than December 31, 2019, for compliance with the new requirements of code.
- Directs the issuance of new state vehicle license plates. By January 1, 2019, all of the current green and white license plates would be required to be replaced by gold and blue license plates following their inclusion in the OASIS system and re-registration with the Division of Motor Vehicles. Language is added to allow DMV to include seals and other designations on the state license plates for higher education institutions, public service districts or certain nongovernmental organizations. DMV can also create non-state governmental entity plates for those entities who can have plates at no charge (so that they are not issued state plates, as has been done in the past). A standard naming convention is to be utilized for registration of state cars. Old green and white license plates expire at midnight on December 1, 2018.
- Exempts information on undercover vehicles from FOIA. A new subdivision is added to the exemptions list in FOIA to clarify that the information about those vehicles is not subject to disclosure in response to a FOIA request.

CODE REFERENCE: §5A-3-49 – repealed; §5A-1-2, §5A-3-52, §17A-3-23, §29B-1-4 – amended; §5A-12-1 through §5A-12-12, §12-6D-7, §17A-3-25, §17A-3-26, and §17A-3-27 – new

DATE OF PASSAGE: March 7, 2018

EFFECTIVE DATE: June 7, 2018

ACTION BY GOVERNOR: Signed March 27, 2018

House Bill 4016

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

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

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

DATE OF PASSAGE: March 8, 2018

EFFECTIVE DATE: June 6, 2018

ACTION BY GOVERNOR: Signed March 27, 2018

House Bill 4022

Exempting the consumer sales and service tax and use tax for services for the repair, remodeling and maintenance of certain aircraft

The bill amends the provisions of the West Virginia Code relating to the West Virginia Consumer Sales and Service Tax. The bill provides an exemption from the Consumer Sales and Service Tax for sales, made on or after September 1, 2018, of tangible personal property and certain services sold for the repair, remodeling and maintenance of aircraft owned and operated under a fractional ownership program. Current law provides an exemption that exempts sales of tangible personal property and services for aircraft “operated by a certified or licensed carrier of persons or property, or by a governmental entity.” Like other tax exemptions, the person claiming the exemption may pay the tax and seek a refund or may apply for a certificate of exemption.

The bill also defines the term “fractional ownership program” and authorizes the Tax Commissioner to promulgate emergency legislative rules to establish eligibility requirements for the exemption.

CODE REFERENCE: West Virginia Code §11-15-9p – amended

DATE OF PASSAGE: March 2, 2018

EFFECTIVE DATE: May 31, 2018

ACTION BY GOVERNOR: Signed March 20, 2018

House Bill 4145

Increasing the annual salaries of members of the West Virginia State Police, public school teachers and school service personnel

The bill increases the annual salaries of members of the West Virginia State Police, public school teachers and public school service personnel beginning July 1, 2018, as follows:

- For members of the State Police – \$2,160 increase in annual pay
- For public school teachers – \$2,020 increase in annual pay (200 days per year contract)
- For public school service personnel – \$110/\$55 (increase in monthly pay)

The above reflects that uniformed members of the State Police, public school teachers and public school service personnel will effectively be given an across-the-board pay raise equal to approximately 5% of the average of their respective group's aggregate salaries. Each of these employees are paid through statutory compensation schedules establishing their base annual salaries, and these raises will be included in their base salaries going forward. The amounts set forth for members of the State Police are the minimum amounts for their 12-month year. The amounts set forth for teachers are the minimum annual salaries paid for their 200-day contracts. The amounts set forth for service personnel are the minimum monthly salaries paid each year for 10 months [Note: The \$110/\$55 difference is because some service personnel contract to work more than 3½ hours a day and others for 3 ½ hours a day or less.]

Note: On February 21, 2018, the Governor approved Com. Sub. For SB 267, which also provided pay raises for the State Police, teachers and service personnel. This bill (Com. Sub. For HB 4145) amended the same statutes to provide different pay raises, superseding the raises provided in Com. Sub. For SB 267. However, Com. Sub. For SB 267 also amended and reenacted §18-9A-8 to provide that the state's portion of funding for the pay raises for school nurses and counselors will be included in the computation of the state's school aid formula.

CODE REFERENCE: West Virginia Code §15-2-5, §18A-4-2, and §18A-4-8a – amended

DATE OF PASSAGE: March 6, 2018

EFFECTIVE DATE: July 1, 2018

ACTION BY GOVERNOR: Signed March 6, 2018

House Bill 4186

Relating generally to guaranteed asset protection waivers

House Bill 4186 resurrects Senate Bill 496 which was passed by the Senate too late in the session to be considered by the House.

Legislative intent

In subsection (c), the bill recites the finding of the legislature that guaranteed asset protection waivers are not insurance and not subject to the provisions of Chapter 33. It also states that the intent of the Legislature is that guaranteed asset protection waivers issued prior to and after the effective date of the new section are not insurance and may not be construed to be insurance.

Applicability

In subsection (d), the bill provides that it does not apply to:

- An insurance policy offered by an insurer under the laws of this state; or
- Certain debt cancellation or debt suspensions complying with certain federal provisions.

It also specifically states that guaranteed asset protection waivers are not insurance and are exempt from insurance laws of the state and that persons administering, selling or offering to sell GAP waivers to borrowers that comply with this section are exempt from insurance licensure requirements.

Waivers not insurance and are exempt from licensing

In subsection (e), the bill provides that a guaranteed asset protection waiver is exempt from insurance laws, and not considered insurance. Persons marketing, administering, selling or offering to sell guaranteed asset protection waivers to borrowers that comply with this section are exempt from this state's insurance licensing requirement.

Definitions

In subsection (f), the bill sets forth definitions for several terms used in the section:

- administrator;
- borrower;
- contractual liability;
- creditor;
- finance agreement;
- free look period;
- guaranteed asset protection waiver;
- insurer;
- motor vehicle; and,
- person.

Requirements for offering waivers

In subsection (g), the bill sets forth the requirements for offering guaranteed asset protection waivers. Guaranteed asset protection waivers must meet the following requirements:

- They must comply with this section
- They may be payable by a single payment or monthly installments;
- the cost thereof must be separately stated and not be considered a finance charge or interest;
- A retail motor vehicle dealer must insure its guaranteed asset protection waiver obligations on vehicles sold; creditors other than a dealer may insure its obligations;

- The GAP waiver remains part of the finance agreement upon its assignment, sale or transfer; and
- Extension of credit or terms of sale may not be conditioned upon its purchase.
- In addition, the bill provides that guaranteed asset protection waivers are not subject to state consumer sales tax.

Contractual liability or other insurance

An entity providing insurance for guaranteed asset protection waivers must comply with requirements in subsection (h).

Disclosures

Subsection (i), provides for certain disclosures, including:

- The name and address of the initial creditor, borrower at time of sale and, if different from the creditor, identity of the administrator;
- The purchase price and terms of the GAP waiver;
- The cancellation rights and procedures during the “free look period” (defined in (f)(5)) – full refund minus any benefits already provided;
- The procedure to obtain GAP waiver benefits;
- Cancellation after the free look period;
- A requirement that borrower must make written request to cancel or for early termination of the loan agreement (upon early payoff); and
- Methodology for calculating any refund of unearned purchase price; that the extension or terms of credit or terms of sale or lease may be conditioned on purchase of a GAP waiver.

Neither the extension of credit, the terms of the credit, nor the terms of the related motor vehicle sale or lease, may be conditioned upon the purchase of the guaranteed asset protection waiver.

Cancellation

Subsection (j) provides that guaranteed asset protection waivers may be cancellable or non-cancellable after a free look period (referred to above). If the borrower cancels within the free look period, and if no benefits have been provided, the borrower is entitled to a full refund; if benefits have been provided, the borrower may receive full or partial refund as agreement terms provide. If the borrower cancels after the free look period the borrower is entitled to a refund of any unearned portion of the purchase price, upon written request, unless the agreement provides otherwise. If the borrower cancels due to early termination into the financing agreement, the borrower must provide a written request within 90 days. If cancellation occurs because of default of the finance agreement, any refund due may be paid directly to the creditors and applied to the finance agreement balance, as set forth in (j)(4).

Exemption for commercial transactions

Subsection (k) provides that the requirements for offering, the disclosure requirements, as well as the requirement for the automobile retailer to obtain contractual liability or other insurance, are not applicable to guaranteed asset protection waivers offered in connection with a lease or sale associated with a commercial transaction.

CODE REFERENCE: West Virginia Code §33-4-22 – amended

DATE OF PASSAGE: March 10, 2018

EFFECTIVE DATE: June 8, 2018 (with internal effective dates)

ACTION BY GOVERNOR: Became Law Without Governor’s Signature

House Bill 4207

Authorizing an online application to receive a commission to act as a notary public, and eliminating the bond requirement

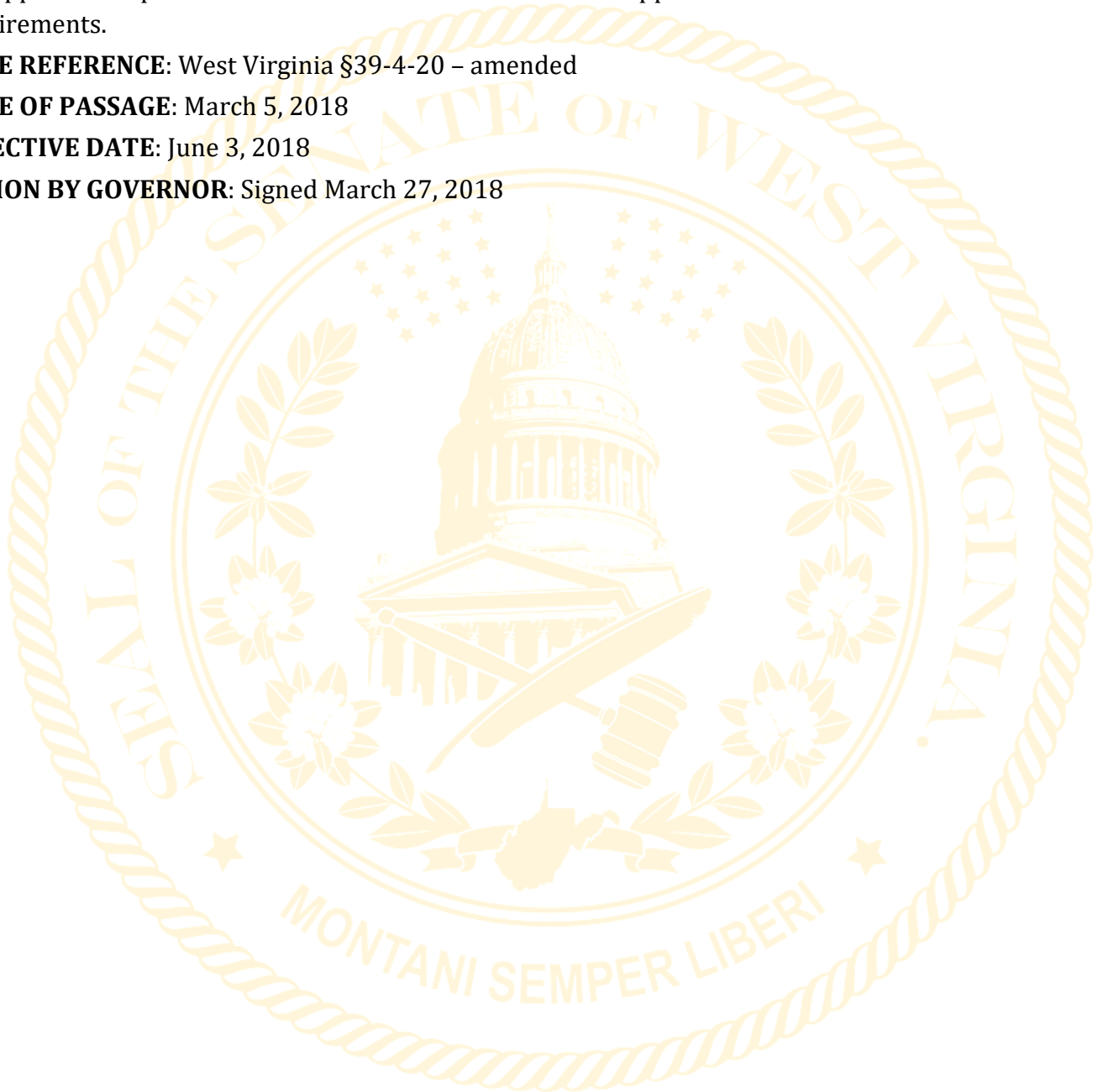
This bill allows a person to apply for a commission as a notary public through the Secretary of State's online notary system. It removes the requirement that the applicant execute an oath of office, but requires the applicant to provide an affirmation statement on the application. This bill also eliminates bonding requirements.

CODE REFERENCE: West Virginia §39-4-20 – amended

DATE OF PASSAGE: March 5, 2018

EFFECTIVE DATE: June 3, 2018

ACTION BY GOVERNOR: Signed March 27, 2018



House Bill 4230

Relating to credit for reinsurance

This bill amends current requirements in W.Va. Code §33-4-15a concerning credit for reinsurance, which is a credit reflected on a ceding insurer's annual statement showing reinsurance premiums ceded and losses recoverable from the reinsurer.

Reinsurance is a type of insurance that involves acceptance by an insurer, called the reinsurer, of all or part of the risk of loss covered by another insurer, called the ceding company. It is commonly used as a way for an insurer to avoid having to pay for large or catastrophic losses.

Currently, this section sets forth requirements to become an "accredited reinsurer," which includes having filed an application for and accreditation and received a letter of accreditation from the Insurance Commissioner and meeting several other requirements. This bill completely rewrites this section.

The bill adopts revised solvency standards for reinsurance placed with U.S. insurers. In order to get credit for reinsurance on an insurer's balance sheet, the reinsurer, if not licensed in a U.S. domiciliary jurisdiction, must be certified as an appropriate reinsurer based upon solvency strength and other financial benchmarks.

The bill establishes a scheme of reduced collateral requirements for certified and rated insurers. An unauthorized reinsurer may be "certified" and rated by the domestic state regulator of a ceding U.S. insurer.

Insurers ceding to a reinsurer that has been certified will be granted full credit for reinsurance while being permitted to obtain security according to a sliding scale, with the level of required collateral varying from 0% to 100% of ceded liabilities according to the certified reinsurer's rating.

To be eligible for certification, a reinsurer must meet the following criteria:

- be domiciled and licensed in a "qualified jurisdiction;"
- maintain capital and surplus of no less than \$250 million;
- maintain financial strength ratings from two or more acceptable rating agencies;
- submit to the jurisdiction of the certifying state and agree to provide security for 100% of its liabilities attributable to cessions by U.S. insurers if it resists enforcement of a final U.S. judgment;
- agree to provide certain informational filings, including notice within 10 days of any regulatory action taken against the reinsurer, an annual list of disputed and overdue reinsurance claims regarding U.S. cedants and annual audited financial statements and auditor's report; and
- comply with any other requirements established by the certifying state. If a reinsurer applying for certification has been certified by another state accredited by the NAIC, the regulator may defer to that state's certification.

In addition, the bill clarifies that to obtain credit for reinsurance, the reinsurance agreement must contain an insolvency clause stipulating that if the ceding insurer is placed in liquidation or similar insolvency proceedings, reinsurance claims are payable directly to the ceding insurer's liquidator or successor without diminution, regardless of the ceding insurer's status.

The bill requires that an insurer must notify its domestic regulator within 30 days if reinsurance recoverables from any single reinsurer or group of affiliated reinsurers exceed 50% of the insurer's last reported surplus or if the insurer has ceded to any single reinsurer or group of affiliated reinsurers more than 20% of the insurer's gross written premium in the prior calendar year.

An insurer also must notify its domestic regulator within 30 days if, at any time, it determines it is likely to exceed these limits.

CODE REFERENCE: West Virginia Code §33-4-15a – amended

DATE OF PASSAGE: March 3, 2018

EFFECTIVE DATE: January 1, 2019

ACTION BY GOVERNOR: Signed March 27, 2018



House Bill 4233

Relating generally to fraudulent transfers

This state is one of the large number of jurisdictions (43 states and the District of Columbia) which has enacted the Uniform Fraudulent Transfers Act. In 2014, the Uniform Law Commission approved a set of amendments to the Act.

The amendments changed the title of the Act to the Uniform Voidable Transactions Act.

The amendment project was instituted to address a small number of narrowly-defined issues, and was not a comprehensive revision; many of the updates made by the Uniform Law Commission have already been adopted by West Virginia, and this bill is merely a codification of the remaining provisions to bring us into full conformity with the new Act. In three years, 16 of the 43 states above have updated their statutes to be in conformity with the new provisions; and at least six more are likely to follow this year. The Commission took measures to correct the differing evidentiary standards and burdens of proof which had grown up among jurisdictions.

§40-1A-2(b) of the bill deals with the presumption of insolvency.

The change contemplated by the bill places on the debtor the burden of rebutting the presumption of insolvency by proving that the nonexistence of insolvency is more probable than its existence. §40-1A-4(c) provides that the evidentiary standard for a claim under §40-1A-4, Transfer or Obligation Voidable as to Present or Future Creditors, is preponderance of the evidence and defines the party that bears the burden of proof under the section.

§40-1A-5(c) provides that evidentiary standard under §40-1A-5, Transfers Fraudulent as to Present Creditors is preponderance of the evidence and places the burden of proof on the creditor, except to the extent the burden is limited by §40-1A-2(b) which shifts the burden to the debtor to show he is not insolvent if a creditor has proven the debtor is not paying his debts as they become due.

§40-1A-8(g) establishes the party with the burden of proving each subsection of

§40-1A-8, Defenses, Liability, and Protection of Transferee. It sets forth rules to determine the burden of proving the matters in the section. The evidentiary standard for all of §40-1A-8. applies the “preponderance of the evidence” standard.

§40-1A-13 is new and contains a choice of law rules similar to that of the Uniform Commercial Code, using the debtor’s location at the time of the transfer or incurrence of the obligation to determine the local law that governs the avoidance action; defined as: 1) the debtor’s principal residence if the debtor is an individual, 2) the debtor’s place of business if the debtor is an organization and has one place of business, or 3) the debtor’s chief executive office if the debtor is an organization and has more than one place of business.

§40-1A-14, which is new adds language relating to the application of fraudulent transfer law to series organizations/series LLCs and the series that comprise them.

These entities are a simple way to mimic the formation of separate special purpose vehicles to isolate assets of one series from the claims of creditors of another series (or of the series organization itself) for the benefits of different stakeholders.

A series can and usually does have both assets and liabilities, but it is not required to have both. This creation of various shell entities allows for the compartmentalization of assets and liabilities and could

allow for the protection of assets from creditors. This section also provides that a series organization includes a foreign series limited liability company.

§40-1A-15 is new and addresses electronic signatures.

CODE REFERENCE: §40-1A-1 through §40-1A-6 and §40-1A-8 – amended; §40-1A-13 through §40-1A-15 – new

DATE OF PASSAGE: March 10, 2018

EFFECTIVE DATE: June 8, 2018

ACTION BY GOVERNOR: Signed March 27, 2018



House Bill 4268

Co-tenancy Modernization and Majority Protection Act

This bill allows oil and gas development to occur in cases where there are seven or more royalty owners and at least 75% of the undivided interest owners of the oil and gas consent to development.

Prior to development, consenting cotenants and the operator are required to search the county records, last known addresses, and the internet to locate and identify all owners of the oil and gas estate. Reasonable efforts must be made to negotiate with all owners to acquire consent through leasing, purchasing, or assignments of interests.

The operator is required to pay non-consenting cotenants by one of the following methods, to be selected by the non-consenting cotenant:

- To receive a production royalty free of post-production expenses, equal to the highest royalty percentage paid to the consenting cotenants in the same property, and lease bonus and delay rental payments equal to the weighted average per net mineral acre paid to the consenting cotenants; or
- To participate in the development and receive his or her share of the revenue and costs attributable to the tract being developed, after the market value of the nonconsenting cotenant's share of production equals double the share of such costs payable or charged to the interest of the nonconsenting cotenant.

Non-consenting cotenants have 45 days to make an election. Non-consenting cotenants who do not make an election within the required time-period and all unknown or unlocatable owners are deemed to have elected the production royalty option.

In the case of a non-consenting cotenant who chooses the production royalty option, the bill provides that such cotenants shall benefit from the most favorable provisions in the consenting cotenant leases unless otherwise agreed to in writing. In the case of a non-consenting cotenant who chooses to participate, such cotenants shall benefit from other terms and provisions determined to be just and reasonable by the Oil and Gas Conservation Commission.

The commission is authorized to propose legislative rules to implement and make effective the provisions of the new code section.

The interests of the unknown or unlocatable owners are to be reserved, reported, and remitted to the Treasurer quarterly. The Treasurer will deposit and administer the funds in a newly created fund known as the Unknown and Unlocatable Interest Owners Fund. After July 1, 2023, the Treasurer must evaluate the size of the account and likelihood of claims being paid and begin transferring unneeded money as follows: 50% to the Oil and Gas Reclamation Fund, which is used by the DEP to plug orphan wells; and 50% to the Public Employees Insurance Agency Stability Fund.

Among other duties, the Treasurer is empowered to invest the funds with the West Virginia Board of Treasury Investments, conduct investigations to locate lawful owners, payout lawful claims to owners, and deduct reasonable administration costs.

Seven years after the first quarterly report is filed, a bonafide surface owner may file an action to quiet title to the interests of all unknown and unlocatable interest owners of the oil and natural gas estate underlying the surface tract and after satisfying certain requirements and procedures set forth in the bill shall be entitled to receive a special commissioner's deed transferring title to the interest of any or all unknown or unlocatable interest owners in an oil and natural gas estate which underlies the surface tract.

The surface owner shall thereafter be entitled to his or her proportionate share of all future proceeds.
CODE REFERENCE: West Virginia Code §22C-9-3, §22C-9-4, §37-7-2 – amended; §37B-1-1 through §37B-1-7, §37B-2-1 through §37B-2-9 – new

DATE OF PASSAGE: March 5, 2018

EFFECTIVE DATE: June 3, 2018

ACTION BY GOVERNOR: Signed March 9, 2018



House Bill 4270

Providing for the timely payment of moneys owed from oil and natural gas production

This bill provides for quarterly production reporting to the Department of Environmental Protection. The Department of Environmental Protection shall publish the production data to its website within a reasonable time.

The bill adds a new chapter addressing oil and natural gas production information reporting from horizontal wells.

The new chapter requires an operator or producer to provide certain information set forth in §37B-1-1 thereof with each payment. An interest owner who does not receive the required information in a timely manner may send a written request for the same by certified mail. The operator or producer has 60 days to provide the requested information. If the information is not provided within the 60-day period, the interest owner may bring a civil action against the operator or producer to enforce the provisions of the new section, and a prevailing interest owner shall be entitled to recover reasonable attorneys' fees and court costs incurred in the civil action.

Next, §37B-1-2 provides an exception to the timely payment rule which allows accumulation of payments until the total amount attributable to an interest owner exceeds \$100 but requires annual remittance not less than once annually regardless of the amount accumulated. Remittance of all accumulated amounts is required immediately, or as soon as practicable, upon cessation of production of oil, natural gas, or natural gas liquids or upon relinquishment or transfer of the payment responsibility to another party.

Lastly, §37B-1-3 requires all regular production payments from horizontal wells be made not less than 120 days from the first date of sale of oil, natural gas, or natural gas liquids and within 60 days thereafter for each additional sale, unless failure to remit is due to lack of record title in the interest owner, a legal dispute concerning the interest, a missing or unlocatable owner of the interest, or due to conditions otherwise specified in the new article. The bill assesses an interest penalty for non-timely payments of prime plus 2% compounded quarterly until such payment is made.

CODE REFERENCE: West Virginia Code §22-6-22 – amended; §37B-1-1 through §37B-1-3 – new

DATE OF PASSAGE: March 10, 2018

EFFECTIVE DATE: June 8, 2018

ACTION BY GOVERNOR: Signed March 27, 2018

House Bill 4285

The West Virginia Safe Mortgage Licensing Act

The bill amends the provisions of the West Virginia Code relating to the licensing of mortgage loan originators. The bill makes the following substantive changes:

- Increases the application fee from \$50 to \$200;
- Increases the total number of hours required for preclicensing education from 22 to 24 hours, with the additional 2 hours being in training related to West Virginia mortgage and consumer laws or issues;
- Increases the total number of hours required for continuing education from 8 to 9 hours, with the additional 1 hour being in training related to West Virginia law or regulation.

CODE REFERENCE: West Virginia Code §31-17A-4, §31-17A-6, and §31-17A-9 – amended

DATE OF PASSAGE: March 2, 2018

EFFECTIVE DATE: May 31, 2018

ACTION BY GOVERNOR: Signed March 22, 2018

House Bill 4343

Relating to the delivery of financial statements to bank shareholders

This bill permits the digital delivery of publication of a bank's most recent year-end audited financial statements to their shareholders at or prior to their annual meeting.

Currently, West Virginia Code §31A-4-20 requires state banking institutions to prepare and submit to stockholders a copy of the institutions fiscal year audited financial statement, by mail "or otherwise delivers", within 120 days of the close of the fiscal year. This bill amends the methods of delivery of the financial statement to shareholders to allow delivery of a digital copy of the statement through traditional mail or courier service, electronic mail or any other means of delivery or provides shareholders with access to a digital copy of the statements published to a website or any other digital media platform or portal.

CODE REFERENCE: West Virginia Code §31A-4-20 – amended

DATE OF PASSAGE: March 3, 2018

EFFECTIVE DATE: June 1, 2018

ACTION BY GOVERNOR: Signed March 22, 2018

House Bill 4400

Relating to the West Virginia Physicians Mutual Insurance Company

This bill amends several sections of code to allow the Physicians' Mutual Insurance Company (PMIC) to insure physicians licensed to practice in other states or to allow physicians licensed in this state to practice out of state. It further removes outdated code provisions that were either irrelevant to the current operation of the PMIC or set timeframes in 2003 and 2004 related to the creation of the PMIC that have long since passed. The bill also increases the number of directors on the PMIC's board who must be physicians licensed in this state from five to six, and it allows two additional directors to be chosen by election under the PMIC's bylaws. The bill reflects the PMIC's evolution from a state-funded insurance company for physicians in this state to a self-sustaining private insurer of physicians in this and other states.

CODE REFERENCES: West Virginia Code §33-20F-3, §33-20F-5, and §33-20F-9 – amended; §33-20F-6 – repealed

DATE OF PASSAGE: March 7, 2018

EFFECTIVE DATE: June 5, 2018

ACTION BY GOVERNOR: Signed March 20, 2018

House Bill 4424

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

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

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

DATE OF PASSAGE: March 10, 2018

EFFECTIVE DATE: June 8, 2018

ACTION BY GOVERNOR: Signed March 27, 2018

House Bill 4434

Clarifying provisions relating to candidates unaffiliated with a political party as it relates to certificates of announcement

The bill prohibits people from becoming candidates for political office by virtue of the nomination-certificate process:

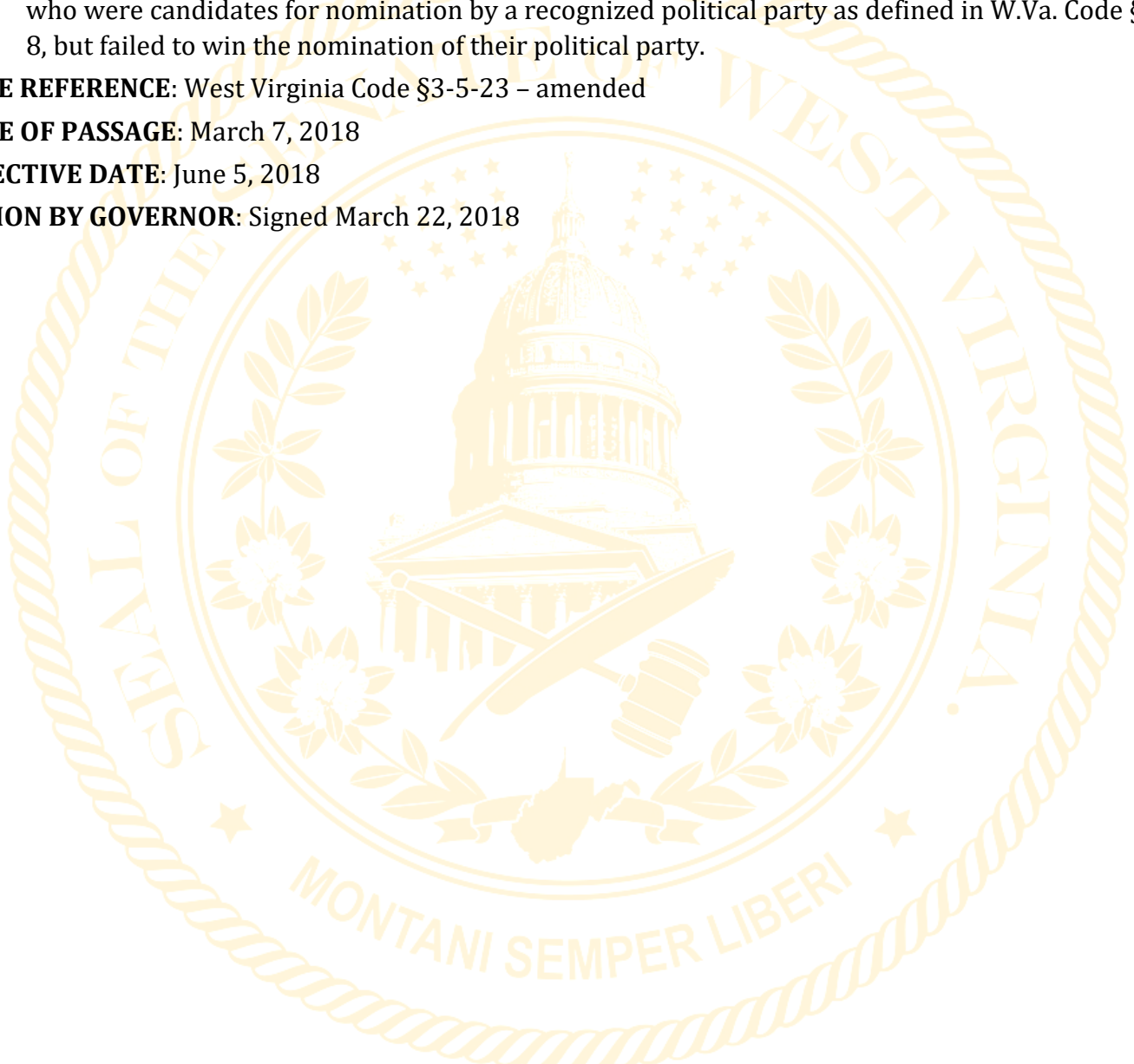
- who, at the time of the filing of the nomination certificate or certificates, are registered and affiliated with a recognized political party as defined in W.Va. Code §3-1-8; or
- who were candidates for nomination by a recognized political party as defined in W.Va. Code §3-1-8, but failed to win the nomination of their political party.

CODE REFERENCE: West Virginia Code §3-5-23 – amended

DATE OF PASSAGE: March 7, 2018

EFFECTIVE DATE: June 5, 2018

ACTION BY GOVERNOR: Signed March 22, 2018



House Bill 4447

Providing for a uniform and efficient system of broadband conduit installation

In 2017, the House took a major step forward in developing broadband coverage by unleashing the potential of the broadband bill. This bill places in Code a new article to further the purposes of that act, by adopting a policy adopted by several other jurisdictions such as Illinois, Nevada, and Utah. This bill attempts to develop a strategy by which providing a uniform and efficient system of broadband conduit installation is conducted which is designed to coincide with the construction, maintenance or improvement of highways, and rights-of-way under the oversight of the Division of Highways.

The bill as introduced by the House provided that the Division of Highways would install vacant broadband conduit on each covered highway construction project, and that providers desiring use of this conduit would be allowed to use it upon application to, and approval of the Broadband Enhancement Council at a cost-based rate. The Division of Highways may install broadband conduit without regard to the timing of a related existing construction project, based on a request and receipt of funding from the Broadband Enhancement Council. The Broadband Enhancement Council and Division of Highways would be requested to encourage and coordinate “dig once” efforts for the planning, relocation, installation, or improvement of broadband conduit within a right-of-way in conjunction with any current or planned construction; and to develop a strategy to facilitate the timely and efficient deployment of broadband conduit or other broadband facilities on state-owned lands and buildings

This bill relates to providing a uniform and efficient system of broadband conduit installation coinciding with the construction, maintenance, or improvement of highways and rights-of-way under the oversight of the Division of Highways. It provides procedures for broadband conduit installation in rights-of-way, provides for highway safety guidelines, establishes a procedure for joint use between telecommunications carriers, sets forth a procedure for monetary and in-kind compensation and provides a method for Division of Highways to offer excess conduit to a telecommunications carrier. The bill further sets forth standards to be utilized in agreements entered into by the Division of Highways and two or more telecommunications carriers in a single trench and provides that existing rules, policies, and procedures of the Division of Highways and United States Code shall control operations, but provide that the Commissioner of the Division of Highways may promulgate Legislative rules.

CODE REFERENCE: West Virginia Code §17-2E-1 through §17-2E-9 – new

DATE OF PASSAGE: March 10, 2018

EFFECTIVE DATE: June 8, 2018

ACTION BY GOVERNOR: Signed March 27, 2018

House Bill 4453

Relating to judicial review of contested cases under the West Virginia Department of Health and Human Resources Board of Review

This bill corrects a previous drafting error and makes other technical corrections to the section of code governing the process for seeking judicial review of decisions by the Department of Health and Human Resources. The Code currently states that “The petition [for review of a DHHR decision] shall state whether the appeal is taken on questions of law or questions of fact, not both.” The bill changes the “not” to “or,” as the intent of the original legislation was for an appellant to present questions of law and questions of fact when filing an appeal. The bill makes additional corrections of grammatical errors and misspelling of words.

CODE REFERENCE: West Virginia Code §9-2-13 – amended

DATE OF PASSAGE: March 8, 2018

EFFECTIVE DATE: June 6, 2018

ACTION BY GOVERNOR: Signed March 27, 2018

House Bill 4473

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

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

The bill permits the name and likeness of a public official to be used in publicly-funded educational materials, so long as the primary purpose of the education material is to provide “information about the processes, operations, structure, functions, or history of an agency, agencies, or branch of government”, or to provide lists of contact information. The bill also specifically permits the name and likeness of a public official to be included in the West Virginia Blue Book and Legislative Manual. In addition, the bill permits the name and likeness of a public official to be included in a publicly-funded press release that is intended for legitimate news or informational purpose, and taken as a whole, does not feature or present the public official for the purpose of self-promotion. Finally, the bill permits the name and likeness of a public official to be included on an agency’s website or social media account for the purpose of sharing biographical information, sharing educational materials, sharing press releases, or for any other purpose that is reasonable, incidental, appropriate, and has the primary purpose of promoting the agency’s mission and services rather than promoting the public official.

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

DATE OF PASSAGE: March 7, 2018

EFFECTIVE DATE: June 5, 2018

ACTION BY GOVERNOR: Signed March 27, 2018

House Bill 4486

Relating to persons required to obtain a license to engage in the business of currency exchange

This bill assists in the streamlining of filings with the West Virginia Securities Commission, and to potentially reduce the cost to filers by allowing use of a national database to make filings.

West Virginia adopted the Uniform Securities Act in 1974, which designates the State Auditor as the commissioner of securities of the state. The Act (W.Va. Code §32-3-301) requires that all securities offered for sale and sold in the state must be registered with the Auditor. The Act also requires all broker-dealers of securities and investment advisors to also be registered with the Auditor under the Act. Currently, and for the past several years, the Auditor utilizes the Electronic Filing Depository system, which is administered by the North American Administrator's Association to facilitate the electronic filing of these registrations and filings required by the Act, as an alternative to paper filings.

West Virginia Code §33A-2-1 et seq. regulates and requires licensure by the Division of Financial Institutions of persons, engaged in the business of currency exchange, transportation of transmission in this state, including persons providing these services either inside or out of this state by electronic means. This bill would specifically exempt The North American Securities Association, which administers the electronic Filing Depository System utilized by the Auditor to facilitate the filing of registrations under the Securities Act, from the licensure or other fee requirements contained in West Virginia Code §33A-2-1 et seq.

CODE REFERENCE: West Virginia Code §32A-2-3 – amended

DATE OF PASSAGE: March 9, 2018

EFFECTIVE DATE: March 9, 2018

ACTION BY GOVERNOR: Signed March 22, 2018

House Bill 4488

Relating to the Hatfield-McCoy Recreation Authority

This bill adds the counties of Braxton, Clay, Fayette, Nicholas and Webster as participating counties in the Hatfield-McCoy Recreation Authority. The bill also amends provisions regarding the board and prohibited acts. The following is an explanation of the changes that the bill makes, by section:

- W.Va. Code §20-14-1
 - The bill updates the Legislative Findings.
- W.Va. Code §20-14-2
 - The bill amends the definition of “[p]articipating county or counties” to add the following five counties: Braxton, Clay, Fayette, Nicholas, and Webster,
- W.Va. Code §20-14-3
 - The bill amends the counties in which the recreational trail system will be located to include Braxton, Clay, Fayette, Nicholas and Webster.
 - The bill amends the number of members of the board from no more than 18 to no more than “two times the number of participating counties
 - The amends the manner in which board members are appointed.
- W.Va. Code §20-14-4
 - The bill amends the quorum from a majority of the members of the board to 10 members of the board.
- W.Va. Code §20-14-8
 - The bill prohibits a person from consuming or possession any non-intoxicating beer and non-intoxicating craft beer or wine on any location within the Hatfield-McCoy Recreation Area.
 - The bill prohibits any child under the age of six from being allowed on any trail within the Hatfield-McCoy Recreation Area.
 - The bill prohibits children under the age of eight who are required to be placed in a child passenger safety device system from occupying a motor vehicle on any trail.
 - The bill requires all persons operating or riding upon an ATV, UTV or motorcycle to follow manufacturer’s recommendations for that vehicle relating to age and size limitations for operators and passengers.

CODE REFERENCE: West Virginia Code §20-14-1 through §20-14-4 and §20-14-8 – amended

DATE OF PASSAGE: March 10, 2018

EFFECTIVE DATE: June 8, 2018

ACTION BY GOVERNOR: Signed March 21, 2018

House Bill 4522

Allowing certain tax information to be shared with the Director of Purchasing Division, Department of Administration, and State Auditor

The bill allows the State Tax Commissioner to enter into written agreements to share certain tax information with the State Auditor, the chief executive officer of state agencies that contract with vendors, and with the Enterprise Resource Planning Board (OASIS), to ensure that a state vendor for whom payment of funds is pending in the Auditor's office is in good standing with the Tax Commissioner, and to disclose whether a vendor, or prospective vendor, is in good standing before a public contract is awarded or renewed.

CODE REFERENCE: West Virginia Code §11-10-5dd – new

DATE OF PASSAGE: March 9, 2018

EFFECTIVE DATE: June 7, 2018

ACTION BY GOVERNOR: Signed March 22, 2018

House Bill 4529

Relating to oath by municipal official certifying list of delinquent business and occupation taxes

West Virginia Code §8-13-24 vests plenary power and authority in municipalities to adopt an ordinance, which provides for the publication of delinquent business and occupation taxes, subject to certain requirements. West Virginia Code §8-13-25 requires that the official designated in the ordinance to oversee or conduct the publication shall take an oath, which is to be included in or attached to the published delinquency list.

This bill permits the certification to be a date certain (date of certification), instead of the date the oath is signed. The bill also clarifies that the official signing the oath is not subject to the misdemeanor penalties in §11-10-5d(c) prohibiting disclosure of personal taxpayer information.

CODE REFERENCE: West Virginia Code §8-13-25 – amended

DATE OF PASSAGE: March 8, 2018

EFFECTIVE DATE: June 6, 2018

ACTION BY GOVERNOR: Signed March 27, 2018

House Bill 4558

Establishing the Entrepreneurship and Innovation Investment Fund in the West Virginia Development Office

The bill creates a special revenue fund known as the Entrepreneurship and Innovation Investment Fund that is to be controlled by the West Virginia Development Office. The bill identifies sources of moneys for the fund including appropriations by the Legislature and external sources. The bill identifies what the Development Office must spend moneys in the fund on, including to support entrepreneurship, creation of business startups, improvements in workforce participation, and attracting individuals to relocate to West Virginia. The bill prevents any unspent balance in the fund from expiring in general revenue at the end of a given year and allows for the fund to be invested in the Consolidated Investment Fund.

CODE REFERENCE: West Virginia Code §5B-2-16 – new

DATE OF PASSAGE: March 9, 2018

EFFECTIVE DATE: June 7, 2018

ACTION BY GOVERNOR: Signed March 21, 2018

House Bill 4571

Relating to the final day of filing announcements of candidates for a political office

This bill requires that on the final day of the period during which certificates of announcement of candidacy for political office may be filed, the Secretary of State's office must be open from 9:00 a.m. until 11:59 p.m. and the offices of the county clerks must be open from 9:00 a.m. until 12:00 p.m.

CODE REFERENCE: West Virginia Code §3-5-7 – amended

DATE OF PASSAGE: March 10, 2018

EFFECTIVE DATE: June 8, 2018

ACTION BY GOVERNOR: Signed March 27, 2018

House Bill 4619

Supporting implementation of comprehensive systems for teacher and leader induction and professional growth

The bill creates a new statutory funding allowance within the school aid funding formula computations for “the purpose of supporting county-level implementation of the comprehensive systems for teacher and leader induction and professional growth,” which is a system of support required at the county level for improving the professional growth of education leaders and teachers. For each year, the allocation for this purpose is 20% of the increase in the local share amount for the next school year added to the amount of the appropriation for this purpose for the immediately preceding school year.

These funds will be allocated to the county boards of education in the manner established by the State Board of Education, which is required to take into consideration certain factors delineated in the bill. The amount allocated to each county may not be less than that county’s allocation FY2016-2017 allocation from the Teacher Mentor and Principals Mentorship appropriation to the Department of Education.

CODE REFERENCE: West Virginia Code §18-9A-10 – amended

DATE OF PASSAGE: March 2, 2018

EFFECTIVE DATE: July 1, 2018

ACTION BY GOVERNOR: Signed March 22, 2018

House Bill 4626

Relating to West Virginia Innovative Mine Safety Technology Tax Credit Act

The bill adds language to the definition of the “[l]ist of approved innovative mine safety technology” that is to be compiled and maintained by the Board of Coal Mine Health and Safety. Expenditures for eligible safety property on the list are qualified for a tax credit under the West Virginia Innovative Mine Safety Technology Tax Credit Act. The effect of the amendment is to include “proximity detection systems, cameras and underground safety shelters and the refurbishing thereof . . . on the list whether required or not”, thus making the costs of these properties eligible for the tax credit as well.

The bill also adds language providing that the list may include safety equipment other than that described in the expressions of legislative intent if “specified herein.” The bill extends the termination date of the tax credit from December 31, 2018, to December 31, 2025.

CODE REFERENCE: West Virginia Code §11-13BB-3, §11-13BB-4, and §11-13BB-14 – amended

DATE OF PASSAGE: March 10, 2018

EFFECTIVE DATE: June 8, 2018

ACTION BY GOVERNOR: Signed March 20, 2018

House Bill 4627

Relating to providing a limitation on the eminent domain authority of a municipal park board

Every city is authorized to create a board of park and recreation commissioners, for the purpose of establishing, constructing, improving, extending, developing, maintaining, and operating a city public park and recreation system. The boards are given the authority to acquire property by purchase, lease, or by exercise of the power of eminent domain.

The bill provides that any acquisition by exercise of eminent domain must be approved by a majority vote of the governing body of that municipality. The purpose of this bill is to place a limitation on the eminent domain authority of a municipal park board by requiring the approval of the governing body of that municipality in instances where it is sought to be exercised.

CODE REFERENCE: West Virginia Code §8-21-8 – amended

DATE OF PASSAGE: March 10, 2018

EFFECTIVE DATE: June 8, 2018

ACTION BY GOVERNOR: Signed March 22, 2018

House Bill 4629

Relating to broadband enhancement and expansion policies generally

The purpose of this bill is to make technical clean up to last year's Broadband bill, repeal the pilot project section of the article dealing with the Broadband Enhancement Council, and to clarify the PSC's jurisdiction over make-ready pole access in the state.

In 2018, current West Virginia law is confusing as to whether or not municipalities and counties may or may not become members of cooperative associations. Additionally, there is an issue regarding Federal supremacy of regulation of pole attachment issues that needs to be resolved. The bill seeks to clarify that municipalities, counties, and other political subdivisions may become members of broadband co-ops.

This bill repeals language relating to the pilot project for cooperative associations by political subdivisions and provides that a political subdivision of this state may be a qualified person for the purposes of forming a cooperative association.

CODE REFERENCE: West Virginia Code §31G-1-10 – repealed; §31G-2-1 – amended

DATE OF PASSAGE: March 10, 2018

EFFECTIVE DATE: March 10, 2018

ACTION BY GOVERNOR: Signed March 27, 2018

2017 Regular Session



Senate Bill 76

Creating WV Second Chance for Employment Act

Titled the Second Chance for Employment Act, the bill creates a procedure to reduce certain non-violent felony offenses to misdemeanors in order to improve the employment opportunities for reformed, law-abiding persons while still providing for public notice of prior convictions.

In particular, the bill allows an individual who was convicted of a non-violent felony to file a petition with the court to have his or her conviction reduced to a misdemeanor. The procedure models the expungement process, which directs notice of a petition to be sent to the prosecuting attorney, state police and other law enforcement entities. The prosecuting attorney is also responsible to notify any victims in the matter. The bill provides that the Court has the discretion to decide the petition and may conduct a hearing and take testimony if there is objection from any entity that has been given notice.

If granted, the Court would reduce the felony conviction to a misdemeanor and the conviction would be noticed on all future records as a “reduced misdemeanor”. The crime itself and the initial felony conviction would remain in the criminal records. Hence, if there was a background check by an employer, the conviction would still show up on the report. This is how it is distinguished from an expungement.

The effect of the reduction would be that the individual would be restored to the position he or she was in prior to the felony conviction. The bill additionally makes clear that in order to be qualified for this reduced misdemeanor, the person needs to have had a clean record and no further offenses for more than 10 years.

Finally, the bill provides certain employer protections. Specifically, the bill provides that an employer, general contractor, premises owner or other third party employing a person or independent contractor may not be liable for the hiring of a person who has had his or her conviction reduced pursuant to the provisions of this bill.

CODE REFERENCE: West Virginia Code §61-11B-1 through §61-11B-5 – new

DATE OF PASSAGE: April 8, 2017

EFFECTIVE DATE: July 7, 2017

ACTION BY GOVERNOR: Signed April 25, 2017

Senate Bill 214

Adopting Uniform Electronic Legal Material Act

The Uniform Electronic Legal Material Act establishes an outcomes-based, technology-neutral framework for providing online legal material with the same level of trustworthiness traditionally provided by publication in a law book. The goals of the authentication and preservation program outlined in this bill are to enable end-users to verify the trustworthiness of the legal material they are using and to provide a framework for the state to preserve legal materials in perpetuity in a manner that allows for permanent access.

The Act requires that official electronic legal material be:

- authenticated, by providing a method to determine that it is unaltered;
- preserved, either in electronic or print form; and,
- accessible, for use by the public on a permanent basis.

The law is technology-neutral, meaning the act does not require specific technologies, leaving the choice of technology for authentication and preservation up to the custodian.

CODE REFERENCE: West Virginia Code §39-6-1 through §39-6-11 – new

DATE OF PASSAGE: April 3, 2017

EFFECTIVE DATE: July 2, 2017

ACTION BY GOVERNOR: Signed April 11, 2017

Senate Bill 221

Relating to composition of PEIA Finance Board

This bill changes the experience requirements and reduce the number of members of the Public Employees Insurance Agency Finance Board.

The board consisted of the Secretary of the Department of Administration or their designee and ten members appointed by the Governor. The bill reduces the number of members appointed by the Governor from ten to eight.

One member shall represent the interests of education employees. The member must hold a bachelor's degree, have obtained teacher certification, must be employed as a teacher for a period of at least 3 years prior to appointment, and must remain a teacher for the duration to remain eligible to serve on the board.

One member shall represent the interests of public employees. The member must be employed to perform full or part time service for wages, salary, or remuneration for a public body for a period of at least 3 years prior to appointment, and must remain an employee for the duration.

One member shall represent the interests of retired employees, meeting the definition of a retired employee defined in article 16, section 2 of this chapter.

One member shall represent the interests of a participating political subdivision. The member must be employed by a political subdivision for at least 3 years prior to appointment, and must remain an employee for the duration.

Four members are selected from the public at large meeting the following: One member must have knowledge and expertise relating to the financing, development, or management of employee benefit programs; one member must have at least 3 years of experience in the insurance benefits business; one member must be a certified public accountant with at least 3 years' experience with financial management and employee benefits program experience; and one member must be a health care actuary or certified public accountant with at least 3 years of financial experience with the healthcare marketplace. No member of the board may be a registered lobbyist. The bill also provides that five, rather than six, members constitute a quorum.

The bill provides that effective July 1, 2017, members of the board shall satisfy the qualification requirements and the Governor shall make appointments necessary to satisfy the requirements. However, any member of the board in office on July 1, 2017, may continue to serve until his or her successor has been appointed and qualified.

CODE REFERENCE: West Virginia Code §5-16-4 – amended

DATE OF PASSAGE: April 7, 2017

EFFECTIVE DATE: July 6, 2017

ACTION BY GOVERNOR: Signed April 26, 2017

Senate Bill 222

Relating to disqualification for unemployment benefits

This bill addresses the standards for disqualification from unemployment compensation benefits in circumstances involving a strike or bona fide labor dispute. The bill provides that an individual is disqualified from benefits for any week or portion thereof in which he or she did not work as a result of a strike or bona fide labor dispute. A lockout is not considered a strike or bona fide labor dispute and no person may be disqualified due to a lockout. An employee can show he or she has been displaced from employment because of a lockout by presenting himself or herself physically for work at the workplace on the first day of the lockout or the first day he or she is able to be present at the workplace and the employer denied the individual the opportunity to perform work.

Employees are not entitled to benefits if non-striking employees or contractors operate the facility or perform the employees' duties unless they are permanent replacements. A permanent replacement is an employee currently employed and has been notified that he or she is permanently replacing the striking worker. Employees or contractors hired for shorter periods of time such as the length of the strike or bona fide labor dispute may not be determined to have permanently replaced the striking employee.

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

DATE OF PASSAGE: April 3, 2017

EFFECTIVE DATE: July 2, 2017

ACTION BY GOVERNOR: Signed April 8, 2017

Senate Bill 224

Repealing requirement for employer's bond for wages and benefits

The purpose of this bill is to remove the requirement that certain employers within the State of West Virginia must post a wage bond for the first five years of their operation. In §21-5-14, the bill shortens the length of time that a construction or mineral severance, production or transportation business must be in operation to be exempt from the wage bond requirement from five years to one year. Additionally, certain other businesses are exempted from the wage bond requirement if they satisfy one of three conditions:

- it has been in business in another state for at least five years
- it has at least \$100,000 in assets, or,
- it is a subsidiary of a parent company that has been in business for at least five years. In §21-5-15, the penalties for knowingly, willfully and fraudulently disposing of or relocating assets with the intent to deprive employees of their wages and benefits are increased, with the possible fine increasing from \$30,000 to \$60,000.

CODE REFERENCE: West Virginia Code §21-5-14 and §21-5-15 – amended

DATE OF PASSAGE: April 8, 2017

EFFECTIVE DATE: July 7, 2017

ACTION BY GOVERNOR: Signed April 24, 2017

Senate Bill 239

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

First, in §3-8-12, the bill broadens the class of employees protected from coercion or intimidation as it relates to political contributions and activity. Current code only covers nonelective salaried and nonsalaried employees in the public sector. The bill strikes those limitations so that all employees, whether public or private, are protected from being coerced or intimidated into making a political contribution or engaging in political activity.

Next, also in §3-8-12, a new subsection (o) is added that prohibits employers or any other person or entity responsible for the disbursement of wages or salaries from withholding any portion of an employee's wages or salary for use as contributions to any candidate or political committee, or for any other political activities, unless the employee has provided his or her express, written request to do so. The subsection contains internal effective dates. A violation of this subsection is not subject to criminal or civil penalties, but is instated governed by the provisions of §21-5-1 et seq.

In §21-1A-4, which addresses unfair labor practices, a new subsection (f) is added. This subsection makes it an unfair labor practice for a labor organization to use agency shop fees paid by a non-member to make contributions or expenditures to influence an election or operate a political committee, unless affirmatively authorized by the individual. The scope of the authorization is limited to twelve months from the date it is made. The term "agency shop fees" is defined as "any dues, fees, assessments or other similar charges, however denominated, of any kind or amount to the labor organization." This new subsection contains an internal effective date to prohibit retroactive application to provisions in effect on or before June 30, 2017.

Certain definitions are updated in §21-5-1. First, the definition for "deductions" is clarified to include "only those amounts required by law or Court order to be withheld, and those amounts required by the terms of an employer-sponsored or employer-provided plan or program providing fringe benefits in which the employee is a participant." Next, the term "fringe benefits" is updated and expanded by including a non-exclusive list of benefits that fall within the scope of the term.

Changes to §21-5-3 are made in subsection (e), which addresses assignments of future wages. Assignments of wages are required to be in writing, but a current requirement for them to be notarized is eliminated. Additionally, a proviso expanding the right of employers and employees to otherwise agree to deductions to be made from payroll is eliminated. Internal effective dates are added to make the provisions of this section inapplicable to contracts or agreements entered into on or before June 30, 2017.

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

DATE OF PASSAGE: April 8, 2017

EFFECTIVE DATE: July 7, 2017

ACTION BY GOVERNOR: Vetoed April 26, 2017

Senate Bill 255

Relating generally to filling vacancies in elected office

This bill amends three sections of code related to filling vacancies in elected office. First, with respect to vacancies in the offices of statewide elected officials on the Board of Public Works (Secretary of State, Auditor, Treasurer, Attorney General and Commissioner of Agriculture), the bill requires the Governor to fill a vacancy from a list of three legally qualified persons submitted by the party executive committee of the same political party with which the previous officeholder was affiliated at the time the vacancy occurred. That list must be submitted within fifteen days after the vacancy occurs, and the Governor must make the appointment within five days of receiving the list. Should a list not be submitted, the Governor must select a replacement from the prior officeholder's political party at the time the vacancy occurred.

For vacancies in the state Legislature, language was added to clarify that the vacancy was to be filled from a list of three persons submitted by the party executive committee of the same party with which the person holding the office immediately preceding the vacancy was affiliated "at the time the vacancy occurred," or, if no list is submitted, then the Governor must select an appointee who, in addition to meeting other statutory and constitutional requirements, must be of that same political party.

Finally, the bill changes the procedure for filling vacancies on county commissions. It imposes a requirement on the county commission to fill a commission vacancy by a person of the same political party with which the person holding the office immediately preceding the vacancy was affiliated at the time the vacancy occurred. The person selected to fill the vacancy must have been a member of the required political party for at least sixty days prior to the occurrence of the vacancy. Should the remaining quorum of the county commission fail to appoint a replacement within thirty days, then the county executive committee of the vacating commissioner's political party shall submit a list of three legally qualified persons. The commission shall then select from that list of names within fifteen days. If the commission is unable to select from the list, a process of elimination begins, whereby the most senior commissioner eliminates one name, followed by the second-most senior commissioner eliminating one name. The remaining name is deemed to be selected to fill the vacancy. The bill also addresses the situation where vacancies on a county commission leave it without a quorum. In that case, the Governor would have to fill enough vacancies to create a quorum. Those appointments would be made from a list of three legally qualified persons prepared by the county executive committee for the vacating commissioner's political party at the time the vacancy occurred. The Governor is directed to fill vacancies in the order they were created, beginning with the vacancy first created, until a quorum existed. After a quorum was reestablished, the remaining vacancies would be filled by the county commission as provided.

CODE REFERENCE: West Virginia Code §3-10-3, §3-10-5 and §3-10-7 – amended

DATE OF PASSAGE: April 7, 2017

EFFECTIVE DATE: July 6, 2017

ACTION BY GOVERNOR: Vetoed April 26, 2017

Senate Bill 330

Relating to WV Workplace Freedom Act

This bill strikes two provisions from the West Virginia Workplace Freedom Act for clarification. The definition of the term “state” is stricken from the Definitions section of the Act. Additionally, a Construction provision is stricken that dealt with collective bargaining agreements in the building and construction industry.

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

DATE OF PASSAGE: March 17, 2017

EFFECTIVE DATE: June 15, 2017

ACTION BY GOVERNOR: Vetoed March 28, 2017; Overridden April 7, 2017

Senate Bill 338

Relating to medical professional liability

This bill defines “occurrence” as used in the Medical Professional Liability Act, W. Va. Code §55-7B-1 et seq. The bill provides that actions for medical professional liability against nursing home and assisted living facilities must be commenced within one year of the date of injury. Venue for such claims lies in the county in which the facility is located. The bill provides that, if a screening certificate of merit is not available at the time a notice of claim is served upon a nursing home or assisted living facility, it must be served within one hundred eighty days of the date the health care provider receives the notice of claim. The bill addresses the tolling of the statute of limitations. Lastly, the bill provides that the amendments to the MPLA from this session apply to claims that arise or accrue on or after July 1, 2017 and contains specific severability language.

CODE REFERENCE: West Virginia Code §55-7B-2, §55-7B-4, §55-7B-6, §55-7B-10 and §55-7B-11 – amended

DATE OF PASSAGE: March 31, 2017

EFFECTIVE DATE: June 29, 2017

ACTION BY GOVERNOR: Signed April 8, 2017

Senate Bill 344

Relating to application of payments on consumer credit sale and loans

This banking bill specifies that all payments made to a creditor in accordance with the terms of a precomputed consumer credit sale or consumer loan must be applied to installments in the order in which they fall due. The bill eliminates an exception related to the application of payments when delinquency charges are involved, an exception that previously required that payments be applied first to current installments, then to delinquent installments, and then to delinquency and other charges.

The bill provides that all payments made to a creditor that do not comply with the terms of a precomputed consumer credit sale or consumer loan may be held in a suspense or unapplied funds account. The bill provides that the creditor must disclose to the consumer the total amount of funds so held and that, on accumulation of funds sufficient to cover a full payment in accordance with the terms of the precomputed consumer credit sale or consumer loan agreement, the creditor must then apply the payment to installments in the order in which they fall due. This eliminates a current requirement that financial institutions credit upon receipt all payments, even multiple non-conforming payments, in a single payment cycle.

As to delinquency charges on both precomputed and nonprecomputed consumer credit sales or consumer loans, refinancing, or consolidation, the bill retains the limitation that permits a delinquency charge to be collected only once on an installment however long it remains in default.

CODE REFERENCE: West Virginia Code §46A-2-115, §46A-3-111, §46A-3-112 and §46A-3-113 – amended

DATE OF PASSAGE: April 5, 2017

EFFECTIVE DATE: July 4, 2017

ACTION BY GOVERNOR: Signed April 24, 2017

Senate Bill 347

Relating to modernization of Physician Assistant Practice Act

This bill would modernize provisions of the practice act for physician assistants. It adds a second physician assistant to the make-up of the Board of Medicine.

There have been changes to the definition section to insert “collaborating” in place of “supervising”. The powers and duties of the two licensing boards has been modified to provide that a physician assistant in a collaborating arrangement with a physician may prescribe a monthly supply of Schedule II and Schedule III drugs under certain circumstances and with specified restrictions. The bill changes that once a physician assistant becomes board certified they do not have to keep recertifying.

A new provision has been added that would affect how physician assistants are reimbursed. Currently, they only receive up to 80% reimbursement when they see a patient without their collaborating physician in the room. If the collaborating physician is in the room they receive 100% of the allowable reimbursement. This bill would allow 100% reimbursement similar to what the current law provides for physicians and advanced practice registered nurses.

The final change would grant them global signatory authority in a manner identical to that which was given to advanced practice registered nurses last session.

CODE REFERENCE: West Virginia Code §30-3E-8 – repealed; §30-3-5, §30-3E-1 through §30-3E-4, §30-3E-6 and §30-3E-7, §30-3E-9 through §30-3E-12, §30-3E-15 through §30-3E-17 – amended

DATE OF PASSAGE: April 1, 2017

EFFECTIVE DATE: June 30, 2017

ACTION BY GOVERNOR: Vetoed April 12, 2017

Senate Bill 358

Relating generally to trustee sale of timeshare estates

This bill amends §36-9-15 to provide for, in addition to existing remedies, the non-judicial sale of timeshare estates to satisfy liens for delinquent assessments. Current law provides that an association or managing entity may (i) institute a judicial foreclosure similar to a mortgage foreclosure, or (ii) file civil suit for a monetary judgment. As such, this bill adds a third remedy. If an association or managing entity elects to proceed with a non-judicial sale of the timeshare estate, then it must follow the procedure outlined in the new section, designated §36-9-15a.

Pursuant to §36-9-15a, an association or management entity may foreclose on a timeshare estate when the owner is delinquent for more than a year for accrued assessments. The process mirrors that used for sale of property under a deed of trust. The section requires notice, publication, public auction and recording with the county commission.

CODE REFERENCE: West Virginia Code §36-9-15 – amended; §36-9-15a – new

DATE OF PASSAGE: April 5, 2017

EFFECTIVE DATE: April 5, 2017

ACTION BY GOVERNOR: Signed April 18, 2017

Senate Bill 364

Incorporating changes to Streamlined Sales and Use Tax Agreement

The bill would bring state laws into compliance with changes made to the Streamlined Sales and Use Tax Agreement adopted by the Streamlined Sales and Use Tax Governing Board, of which West Virginia is a member state.

CODE REFERENCE: West Virginia Code §11-15B-2a and §11-15B-32 – amended

DATE OF PASSAGE: April 5, 2017

EFFECTIVE DATE: July 3, 2017

ACTION BY GOVERNOR: Signed April 18, 2017

Senate Bill 386

Creating WV Medical Cannabis Act

The bill establishes the medical cannabis program in West Virginia. While delayed until July 1, 2019, the program is modeled after the Pennsylvania medical marijuana program, and the three most recent states to have adopted medical marijuana. In particular, the bill has the following core components:

Administration/Oversight

The bill places the program under the authority of the Bureau of Public Health in the West Virginia Department of Health and Human Resources.

- Creates an Advisory Board to make recommendations to the Bureau
- Bureau has rule-making authority (including emergency rule-making)
- Allows Bureau to enter into agreements with other states for reciprocity of identification card

Use and Possession

Authorizes the use and possession of medical cannabis. Cannabis may be dispensed to:

- A patient who receives a certification from a practitioner and is in possession of a valid identification card issued by the bureau; and
- A caregiver who is in possession of a valid identification card issued by the bureau on behalf of a certified patient.

Form of Medical Cannabis

Subject to rules promulgated under the act, medical cannabis may only be dispensed to a patient or caregiver in the following forms:

- Pill;
- Oil;
- Topical forms, including gels, creams or ointments;
- A form medically appropriate for administration by vaporization or nebulization, excluding dry leaf or plant form until dry leaf or plant forms become acceptable under rules adopted by the bureau;
- Tincture;
- Liquid; or
- Dermal patch.

Not allowed:

- Smoke medical cannabis (dry leaf/raw)
- Bureau may add/allow by legislative rule upon recommendation from Advisory Board
- Incorporation or selling of edibles
- Allows patient and caregiver to incorporate into edibles to aid ingestion by the patient
- Homegrown plants

Certification/ID Card

- Utilizes the Controlled Substance Monitoring System to track everything
- Sets up system in which physician may issue certificate to patient which states that the patient has a condition or conditions which allow the use of medical cannabis
- Required physician training for four hours
- Certificate may recommend particular form and duration
- Certificate goes to Bureau

- Bureau issues an identification card
- Patient/Caregiver takes identification card to dispensary
- Dispensary must check monitoring system prior to dispensing to confirm certificate recommendations
- Sold in sealed/labeled/child-resistant package
- Include a safety insert with information
- Must carry warning label as well
- Identification card good for one year

Amount

- 30-day supply
- Allows renewal for new 30-day supply within last week of 30-day supply

Permits

- Bureau may issue permits for the following Medical Cannabis Organizations
- Growers – up to 10 permits (allow up to 2 locations per permit)
- Processors – up to 10 permits
- Dispensaries – up to 30 permits (split evenly among 3 regions)
- Dispensary may not be grower or processor
- However, grower may be a processor

Fees

- Patient identification card – \$50 processing fee (waiver for financial hardship)
- Grower & Processor
- Initial Application Fee – \$5,000
- Permit Fee – \$50,000
- Renewal Fee – \$5,000
- Dispensary
- Initial Application Fee – \$2,500
- Permit Fee – \$10,000
- Renewal Fee – \$2,500

Controls/Monitoring

- Utilizes an electronic tracking system for seed-to-sale monitoring
- Requires Laboratory testing by grower/processor
- Local Option
- County may vote to prohibit operation/location in county
- Municipality may enact zoning or ordinance prohibiting or limiting number and type of organizations

Taxes

- No Sales Tax
- Tax on sale between grower/processor and dispensary
- 10%

Medical Cannabis Program Fund

- All fees and taxes collected deposited into new fund
- Allocation as follows:
- 55% of the revenue in the fund shall be allocated to the bureau.
- The remaining 45% of the revenue in the fund shall be allocated as follows:
- 50% shall be allocated to the Fight Substance Abuse Fund
- 40% shall be allocated to the Division of Justice and Community Services
- 10% shall be allocated to Law Enforcement Professional Standards/police academy

Criminal Offenses

- Diversion of medical cannabis by practitioner
- Diversion of medical cannabis
- Retention of medical cannabis
- Diversion of medical cannabis by patient/caregiver
- Falsification of identification cards
- Adulteration of medical cannabis
- Disclosure of confidential information

Civil Penalties

- Allows civil penalties for violations
- Expressly authorizes warnings to be given for minor infractions

Research Programs

- Directs Bureau to establish and develop a research program to study impact of medical cannabis on treatment and symptom management of medical conditions
- Bureau may register academic clinical research centers for research study

CODE REFERENCE: West Virginia Code §16A-1-1, §16A-2-1, §16A-3-1 through §16A-3-5, §16A-4-1 through §16A-4-5, §16A-5-1 through §16A-5-10, §16A-6-1 through §16A-6-13, §16A-7-1 through §16A-7-6, §16A-8-1 through §16A-8-3, §16A-9-1, §16A-9-2, §16A-10-1 through §16A-10-6, §16A-11-1, §16A-11-2, §16A-12-1 through §16A-12-9, §16A-13-1 through §16A-13-8, §16A-14-1 through §16A-14-3, §16A-15-1 through §16A-15-9 and §16A-16-1 – new

DATE OF PASSAGE: April 6, 2017

EFFECTIVE DATE: July 5, 2017; However, the full implementation (e.g. issuance of identification cards) is delayed until July 1, 2019.

ACTION BY GOVERNOR: Signed April 19, 2017

Senate Bill 398

Creating Emergency Volunteer Health Practitioners Act

This bill sets up the volunteer health practitioners act. It creates a registration system for health care practitioners who want to volunteer their time and service during states of emergency.

The bill defines terms. It grants the Governor the authority to regulate volunteer health practitioners during states of emergencies. It provides for a registration system to be operated by a disaster relief organization, a licensing board or a governmental entity. The designation of who would operate the registration system is given to the Governor.

Health care practitioners who are properly registered may practice in this state during states of emergency without the need for an additional license. The health care practitioner must be in good standing in his or home state.

There are specific exclusions for credentialing and privileging. There are also limitations of liability unless the act is intentional or willful misconduct.

Specific limitations in the bill require the volunteer adhere to his or her scope of practice. The State Health Officer is given the authority to modify or restrict the services provided. The host entity as defined in the bill as the entity which relies upon the volunteer services, may also restrict the volunteer services. The DHHR is also given the power to incorporate the volunteers into and Emergency Management Assistance Compact in conjunction with an emergency.

The Secretary of the Department of Health and Human Resources is given rulemaking authority.

CODE REFERENCE: West Virginia Code §29-30-1 through West Virginia Code §29-30-12 – new

DATE OF PASSAGE: April 5, 2017

EFFECTIVE DATE: July 4, 2017

ACTION BY GOVERNOR: Signed April 18, 2017

Senate Bill 402

Relating to covenants not to compete between physicians and hospitals

This bill addresses covenants not to compete between hospitals and physicians in employment contracts. The bill limits such covenants not to compete to thirty road miles and one year in duration. The bill provides that a covenant not to compete is void and unenforceable upon expiration of the contract or the termination of employment by the employer. If the termination of the employment is at the physician's option, a covenant remains valid.

There are provisions in the bill which provide that unless the contract states otherwise, other provisions may remain enforceable. These include:

- Taking of property, patient lists or records;
- Repayment for loans, relocation expenses, signing bonuses, inducement to locate in a specific area and recruiting education or training expenses;
- Nondisclosure about trade secrets;
- Non-solicitation provisions with respect to patients and employees;
- Liquidated damages; and,
- Any other provision not in violation of state law.

There is also a provision that states that the provisions of the bill do not apply to instances when a physician has sold his or her practice to his or her employer and to contracts between physicians who are shareholder's owners, partner, members or directors of a health care practice. The provisions of the bill are effective after July 1, 2017.

CODE REFERENCE: West Virginia Code §47-11E-1 through §47-11E-5 – new

DATE OF PASSAGE: April 7, 2017

EFFECTIVE DATE: July 6, 2017

ACTION BY GOVERNOR: Signed April 26, 2017

Senate Bill 444

Establishing Court Advanced Technology Subscription Fund

This bill proposes to create the Court Advanced Technology Subscription Fund as a special revenue fund within the State Treasury. The fund shall consist of moneys received from subscribers using the court's advanced technology system, including, but no limited to, the E-filing system and the Unified Judicial Application Information System. The fund shall be used to pay the costs associated with maintaining and administering the court's advanced technology systems. Expenditures from the fund are to be made only in accordance with appropriation by the Legislature.

CODE REFERENCE: West Virginia Code §51-1-22 – new

DATE OF PASSAGE: April 8, 2017

EFFECTIVE DATE: July 7, 2017

ACTION BY GOVERNOR: Signed April 20, 2017

Senate Bill 490

Clarifying standard of liability for officers of corporation

This bill adopts a provision of the Model Business Corporation Act, which was otherwise adopted in West Virginia in 2002, to address standards of liability for corporate officers. Broadly, the standard adopted mirrors the liability standard already in code for corporate directors and is commonly referred to as the “business judgment rule.”

The bill provides that officers are not liable to the corporation or shareholders for any decision unless certain elements can be satisfied.

First, the challenged conduct must not be otherwise protected in state code. Second, the challenged conduct must consist of or be the result of:

- action taken not in good faith,
- a decision which the officer did not reasonably believe to be in the best interests of the corporation or as to which the officer was not informed to an extent the officer reasonably believed appropriate under the circumstances,
- a lack of objectivity due to the officers’ familial, financial or business relationship with another person having a material interest in the challenged conduct which could reasonably be expected to have affected the officer’s judgment and the officer does not establish that the challenged conducted was reasonably believed by the officer to be in the best interest of the corporation,
- a sustained failure of the officer to devote attention to ongoing oversight of the business and affairs of the corporation, or
- receipt of a financial benefit to which the officer was not entitled or any other breach of the officers’ duties to deal fairly with the corporations and its shareholders that is actionable under applicable law.

The party seeking to hold the officer liable for money damages must show harm to the corporation or shareholders and that the harm suffered was proximately caused by the challenged conduct.

For other money payment under a legal remedy, including compensation for unauthorized use of corporate assets, the party seeking to hold the officer liable has whatever persuasion burden may be called for to establish that the payment sought is appropriate under the circumstances.

For other money payment under an equitable remedy including profit recovery by or disgorgement to the corporation, the party seeking to hold the officer liable has whatever persuasion burden may be called for to establish that the equitable remedy sought is appropriate under the circumstances.

The bill specifically disclaims any intent to alter the burden of proving the fact or lack of fairness otherwise applicable where fairness is at issue, alter the fact or lack of liability of an officer under another section of chapter 31D, including the provisions governing the consequences of an unlawful distribution under W.Va. Code §31D-8-833 or a transactional interest under W.Va. Code §31D-8-860, or alter any rights to which the corporation or a shareholder may be entitled under another provision of West Virginia Code or United States Code.

CODE REFERENCE: West Virginia Code §31D-8-842a – new

DATE OF PASSAGE: April 7, 2017

EFFECTIVE DATE: July 6, 2017

ACTION BY GOVERNOR: Signed April 21, 2017

Senate Bill 497

Relating to liability for health care providers who provide services at school athletic events

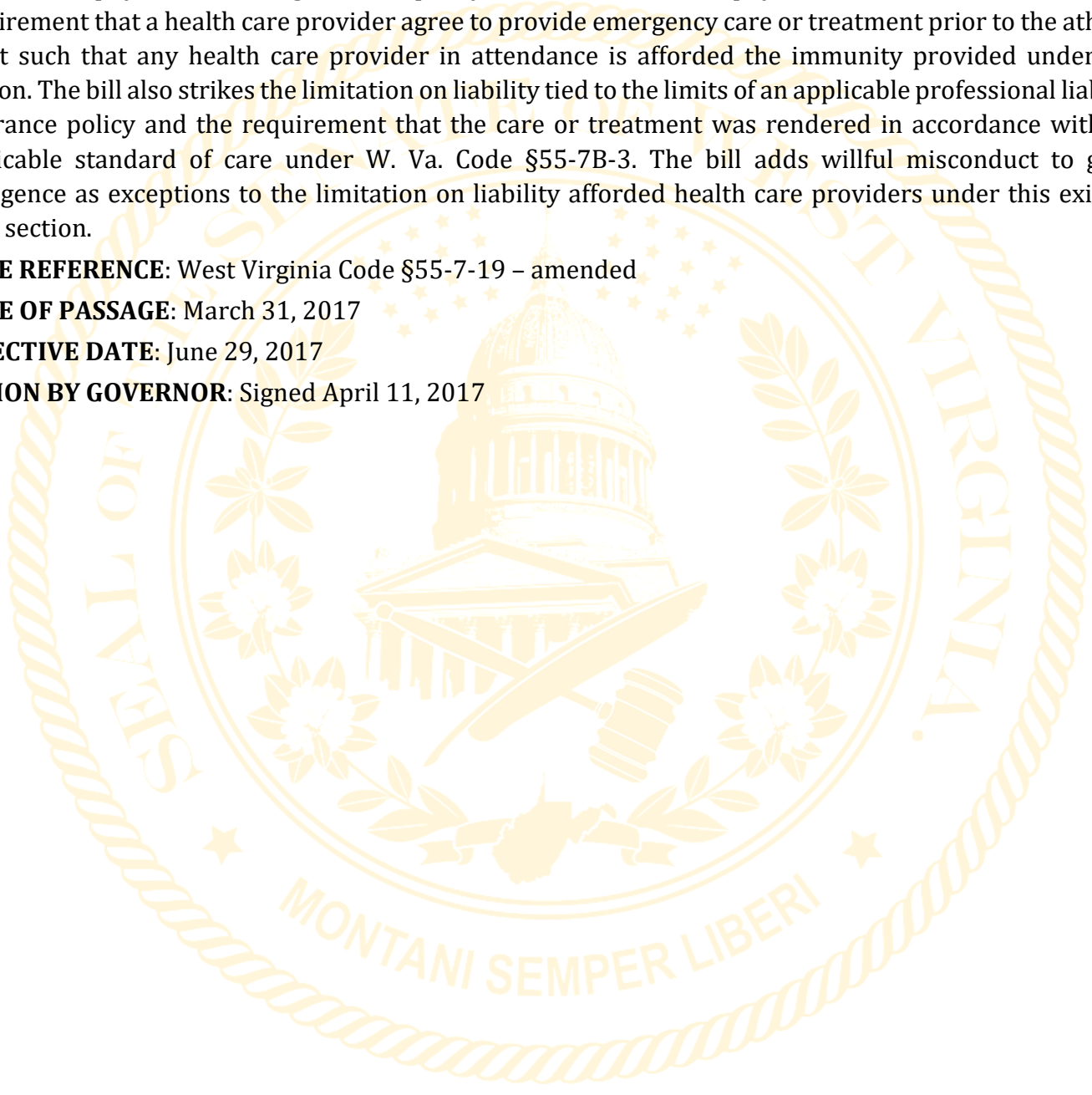
This bill revises current code, which addresses the liability for physicians who render services at school athletic events, and extends the liability protections to all licensed, certified or registered health care providers whether licensed or certified in West Virginia or another state. The bill removes the reference to physicians “acting in the capacity of a volunteer team physician” and further removes the requirement that a health care provider agree to provide emergency care or treatment prior to the athletic event such that any health care provider in attendance is afforded the immunity provided under this section. The bill also strikes the limitation on liability tied to the limits of an applicable professional liability insurance policy and the requirement that the care or treatment was rendered in accordance with the applicable standard of care under W. Va. Code §55-7B-3. The bill adds willful misconduct to gross negligence as exceptions to the limitation on liability afforded health care providers under this existing code section.

CODE REFERENCE: West Virginia Code §55-7-19 – amended

DATE OF PASSAGE: March 31, 2017

EFFECTIVE DATE: June 29, 2017

ACTION BY GOVERNOR: Signed April 11, 2017



Senate Bill 505

Providing five-year reclamation period following completion of well pads for horizontal wells

This bill provides a five-year reclamation period following completion of the construction of a well pad for well pads designed for multiple horizontal wells.

The bill states that the operator of a horizontal well shall reclaim the land surface within the area disturbed in siting, drilling, completing or producing the well in accordance with the following requirements:

- Except as provided elsewhere in this article, within six months after a horizontal well is drilled and completed on a well pad designed for a single horizontal well, the operator shall fill all the pits and impoundments that are not required or allowed by state or federal law or rule or agreement between the operator and the surface owner that allows the impoundment to remain open for the use and benefit of the surface owner (i.e. a farm pond as described in section nine of this article) and remove all concrete bases, drilling supplies and drilling equipment
- Impoundments or pits for which certificates have been approved pursuant to section nine of this article shall be reclaimed at a time and in a manner as provided in the applicable certificate and said section.
- Within that six-month period, the operator shall grade or terrace and plant, seed or sod the area disturbed that is not required in production of the horizontal well in accordance with the erosion and sediment control plan.
- No pit may be used for the ultimate disposal of salt water. Salt water and oil shall be periodically drained or removed and properly disposed of from any pit that is retained so the pit is kept reasonably free of salt water and oil. Pits may not be left open permanently.
- For well pads designed to contain multiple horizontal wells, partial reclamation shall begin upon completion of the construction of the well pad.
- “Partial reclamation” means grading or terracing and planting or seeding the area disturbed that is not required in drilling, completing or producing any of the horizontal wells on the well pad in accordance with the erosion and sediment control plan.
- This partial reclamation satisfies the reclamation requirements of this section provided that the maximum period in which partial reclamation satisfies the reclamation requirements of this section is five years from completion of the construction of the well pad.
- For purposes of this subdivision, construction of a well pad will be deemed to be complete twelve months after construction is commenced if construction of the well pad is not actually completed prior to that date. Within six months after expiration of the five-year maximum partial reclamation period, the operator shall complete final reclamation of the well pad as set forth in this subsection.
- Within six months after a horizontal well that has produced oil or gas is plugged or after the plugging of a dry hole, the operator shall remove all production and storage structures, supplies and equipment and any oil, salt water and debris and fill any remaining excavations. Within that six-month period, the operator shall grade or terrace and plant, seed or sod the area disturbed where necessary to bind the soil and prevent substantial erosion and sedimentation.
- The operator shall reclaim the area of land disturbed in siting, drilling, completing or producing the horizontal well in accordance with the erosion and sediment control plans approved by the secretary or the secretary’s designee pursuant to this article.

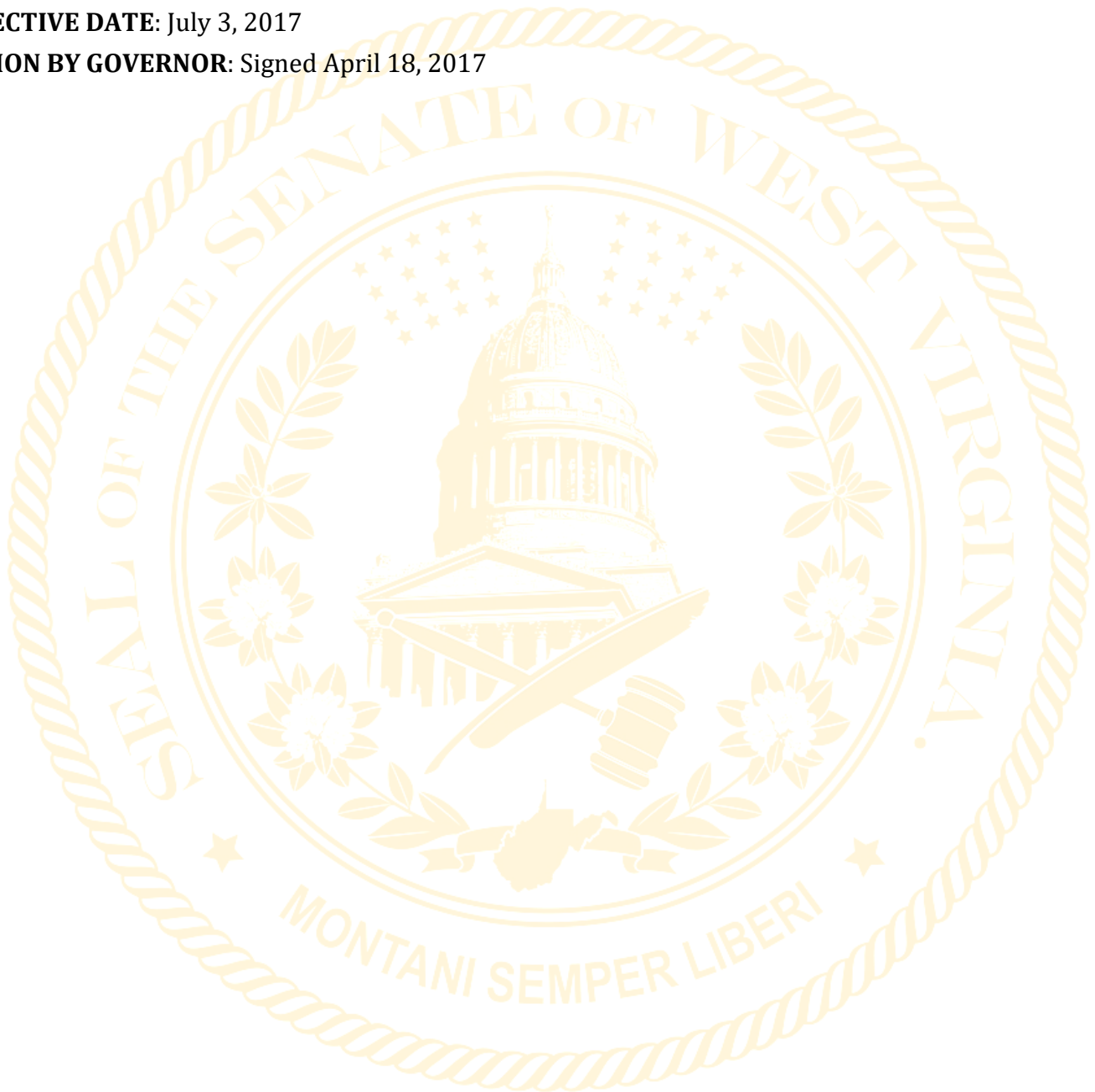
- The secretary, upon written application by an operator showing reasonable cause, may extend the period within which reclamation must be completed, but not to exceed a further six-month period.
- If the secretary refuses to approve a request for extension, the refusal shall be by order, which may be appealed pursuant to the provisions of subdivision (23), subsection (a), section five of this article.

CODE REFERENCE: West Virginia Code §22-6A-14 – amended

DATE OF PASSAGE: April 4, 2017

EFFECTIVE DATE: July 3, 2017

ACTION BY GOVERNOR: Signed April 18, 2017



Senate Bill 522

Relating to pharmacy audits

The bill creates a new article, called the Pharmacy Audit Integrity Act, in W Va. Code Chapter 33, Insurance. The new article applies to any audit of prescription or nonproprietary drug records of a pharmacy that is conducted by a managed care company, third-party payer, pharmacy benefits manager or an entity that represents a covered entity. “Covered entity” is defined as a contract holder or policy holder providing pharmacy benefits to a covered individual under a health insurance policy pursuant to a contract administered by a pharmacy benefit manager.

The bill defines terms and procedures that must be followed when conducting a pharmacy audit. For instance, the bill limits who may gain access to audit reports and prohibits the auditing entity to be compensated solely based on the amount recouped or claimed by the pharmacy. It limits the days on which an audit may take place and provides for a 14 day written notice prior to an audit being conducted. The bill limits the age and number of prescriptions that may be audited and also sets forth the type of documents the pharmacy may use to validate its records and claims.

The bill provides that the auditing entity must provide the pharmacy with a written preliminary report 60 calendar days after completion of the audit and specifies minimum content of such report. Upon receipt of the audit, the pharmacy is allowed at least 30 days to respond to the report. A final audit report must be issued no later than 90 days after completion of the audit and shall consider and address any responses of the pharmacy to the preliminary audit report. The bill prohibits a pharmacy to be subject to a charge-back or recoupment for merely clerical errors that did not result in overpayment to the pharmacy. Moreover, charge-back or recoupment or collection of penalties would not be permitted until the time to file an appeal of a final pharmacy audit report has passed or the appeals process has been exhausted, whichever is later. If an identified discrepancy in a pharmacy audit exceeds \$25,000, future payments to the pharmacy in excess of \$25,000 could be withheld pending adjudication of appeal.

The bill states that a pharmacy may appeal a final audit report in accordance with the procedures established by the entity conducting the pharmacy audit. The article would not be applicable an investigative audit when fraud, misrepresentation or criminal wrongdoing upon physical review or review of claims data or statements, or when other investigative methods indicate that the pharmacy is engaged in criminal acts. The bill also requires a pharmacy benefits manager or auditing entity to register with the Insurance Commissioner. However, licensed insurer or a managed care entity with a certificate of authority (already registered or licensed under Chapter 33) isn’t required to separately register. The commissioner would be authorized to propose rules for legislative approval that are necessary to effectuate this article.

CODE REFERENCE: West Virginia Code §33-51-1 through §33-51-8 – new

DATE OF PASSAGE: April 4, 2017

EFFECTIVE DATE: July 3, 2017

ACTION BY GOVERNOR: Signed April 20, 2017

Senate Bill 533

Relating to taxes on wine and intoxicating liquors

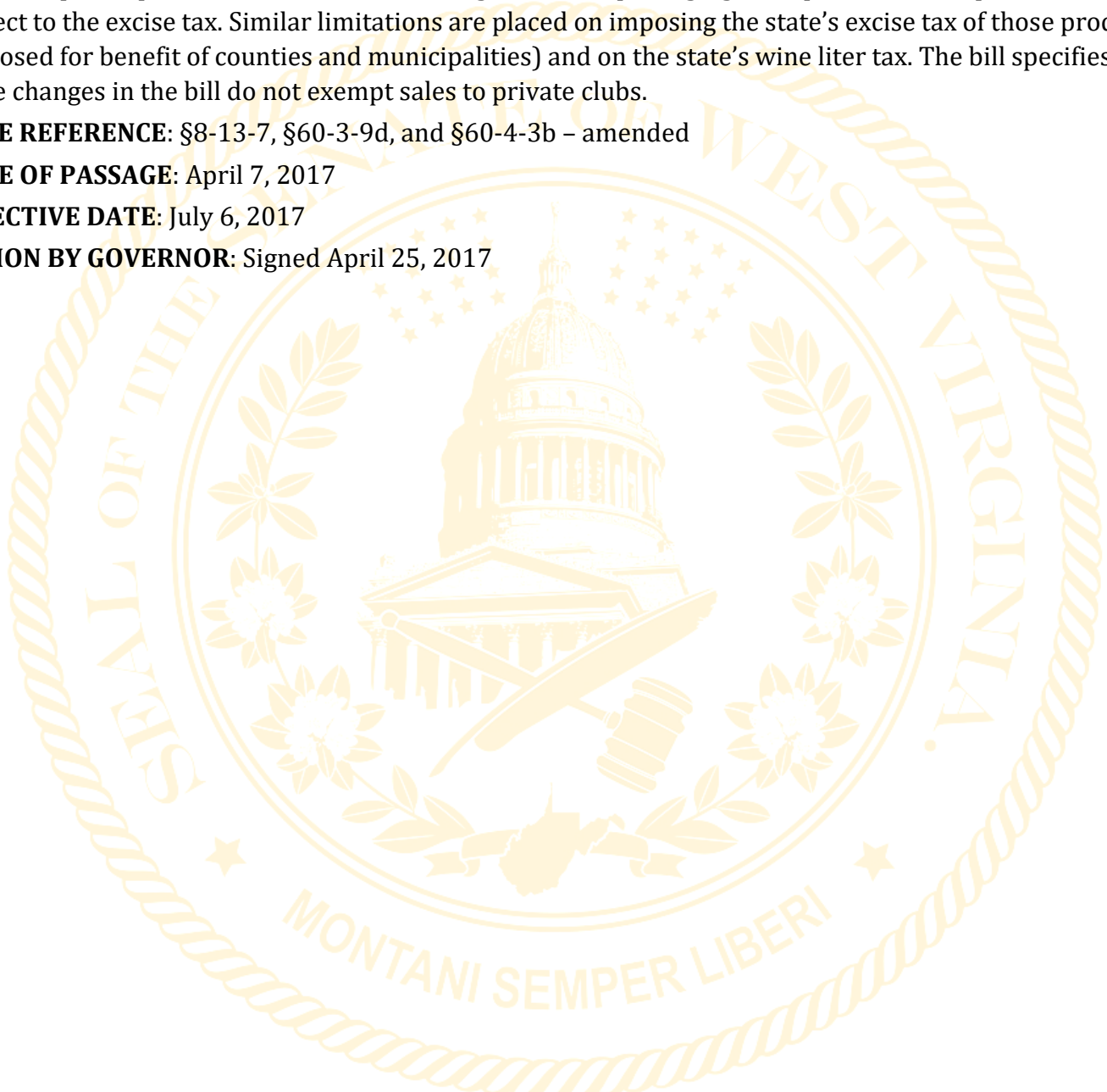
This bill limits the incidents of taxing sales of packaged wine and intoxicating liquor, allowing these products to be subject to certain taxes only when they are purchased by the ultimate consumer. The bill would provide that a municipality may not collect its excise tax on wine or intoxicating liquors when the wine or liquor is purchased for resale in its original sealed packaging if the product's final purchase will be subject to the excise tax. Similar limitations are placed on imposing the state's excise tax of those products (imposed for benefit of counties and municipalities) and on the state's wine liter tax. The bill specifies that these changes in the bill do not exempt sales to private clubs.

CODE REFERENCE: §8-13-7, §60-3-9d, and §60-4-3b – amended

DATE OF PASSAGE: April 7, 2017

EFFECTIVE DATE: July 6, 2017

ACTION BY GOVERNOR: Signed April 25, 2017



Senate Bill 535

Reorganizing Division of Tourism

The bill would amend the Code relating to the Division of Tourism and the Tourism Commission in the Commerce Department and would add a new article to be known as the “West Virginia Tourism Act of 2017.” The bill would rename the current Division of Tourism, the West Virginia Tourism Office to be led by the Executive Director of the West Virginia Tourism Office. The current provisions relating to the Commissioner of Tourism would be repealed and the provisions regarding appointment, salary and qualifications are now applicable to the Executive Director. The new office would take over most of the duties now assigned to the Tourism Commission. The Tourism Office is given the additional duty to assist with the retention and expansion of existing tourism-related enterprises and to assist in the recruitment of new tourism-related enterprises to the state. The Tourism Office is given the authority to charge and collect reasonable fees for goods and services it provides to state agencies, departments, units of state or local government or other person, entity or enterprise. Moneys collected are to be deposited in the Tourism Promotion Fund. The current requirement that 20% of the advertising space or time bought by the new Tourism Office is to be used to advertise state parks is eliminated.

The bill provides a new process for the Tourism Office to engage in and retain advertising and marketing agencies, consultants, firms or persons. There is a process for advertising and marketing services costing \$250,000 or more to be conducted by a committee of 3 to 5 persons from the Tourism Office and/or the Commission; and a process for services costing less than \$250,000 to be conducted by the Executive Director.

The Tourism Commission would be continued and would have the same members, except that the Secretary of Commerce or his designee replaces the Director of the Division of Natural Resources as an ex officio member. The chair of the Commission is to be appointed by the Governor. Commissioners serve at the will and pleasure of the Governor. The Tourism Commission’s new duties are to assist the Executive Director in the development and implementation of the state’s comprehensive tourism advertising, marketing, promotion and development strategy; and to finalize all outstanding advertising grants or other financial obligations respecting funds in the Tourism Promotion Fund previously approved, expended or obligated by the Tourism Commission.

The Tourism Promotion Fund is continued. Current law provides that the moneys in the fund be spent as follows: 75% used solely for marketing, advertising and public relations for building the brand identity of Wild, Wonderful West Virginia and promoting travel and tourism in the state with 1% of these funds used to promote and market state parks and recreation areas; the rest of the funds are to be used for direct advertising within the state’s travel regions. The bill would eliminate this allocation and allow the Executive Director to use the funds for marketing, direct advertising, business development and public relations promoting travel and tourism within the state and brand identity. Any balances in the fund are to remain in the fund at the end of any fiscal year. However, the spending authority for the fund will cease and all moneys in the fund will revert to the General Revenue fund if the bonds authorized to pay for improvements to Cacapon and Beech Fork State Parks are not issued and sold and contracts for those improvements have not been entered by the State by January 1, 2018.

The Tourism Advertising Partnership Program currently funded through the Tourism Promotion Fund would cease. It is to be replaced with a cooperative advertising program to be created and established by the Tourism Office. The program is to facilitate and allow participation in the Tourism Office’s advertising and marketing campaigns and activities, to state agencies, departments, units of state or local government,

private tourism enterprises and other persons, entities or private enterprises, including, without limitation, convention and visitors' bureaus. The Executive Director is to establish and publish a fee schedule to include a match of state funds to program participant's funds for participation in the cooperative advertising program. The current program is established by legislative rule.

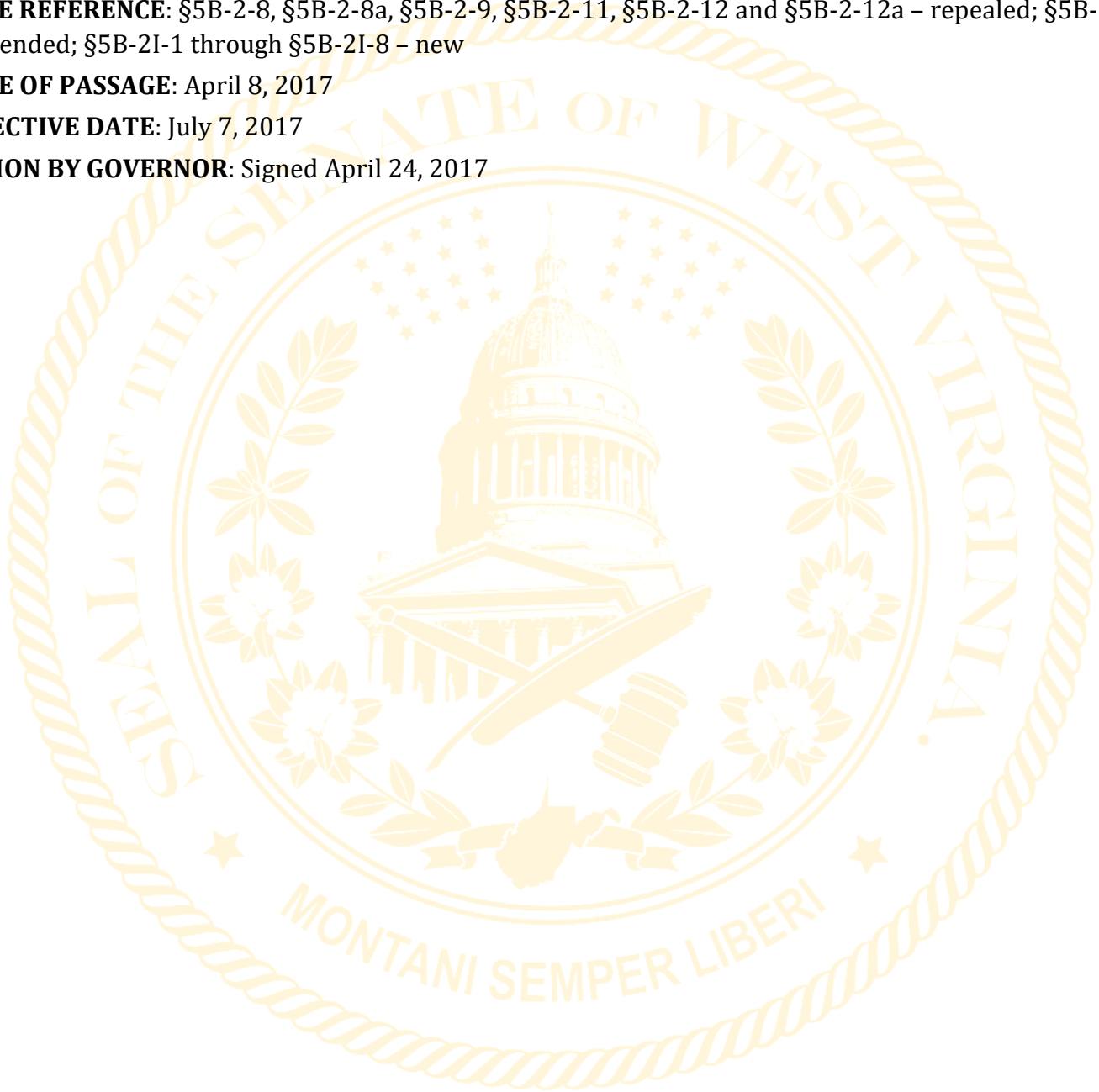
The bill would made also apply the same confidentiality provisions of the Development Office to the new Tourism Office.

CODE REFERENCE: §5B-2-8, §5B-2-8a, §5B-2-9, §5B-2-11, §5B-2-12 and §5B-2-12a – repealed; §5B-1-2 – amended; §5B-2I-1 through §5B-2I-8 – new

DATE OF PASSAGE: April 8, 2017

EFFECTIVE DATE: July 7, 2017

ACTION BY GOVERNOR: Signed April 24, 2017



Senate Bill 554

Relating to false swearing in legislative proceeding

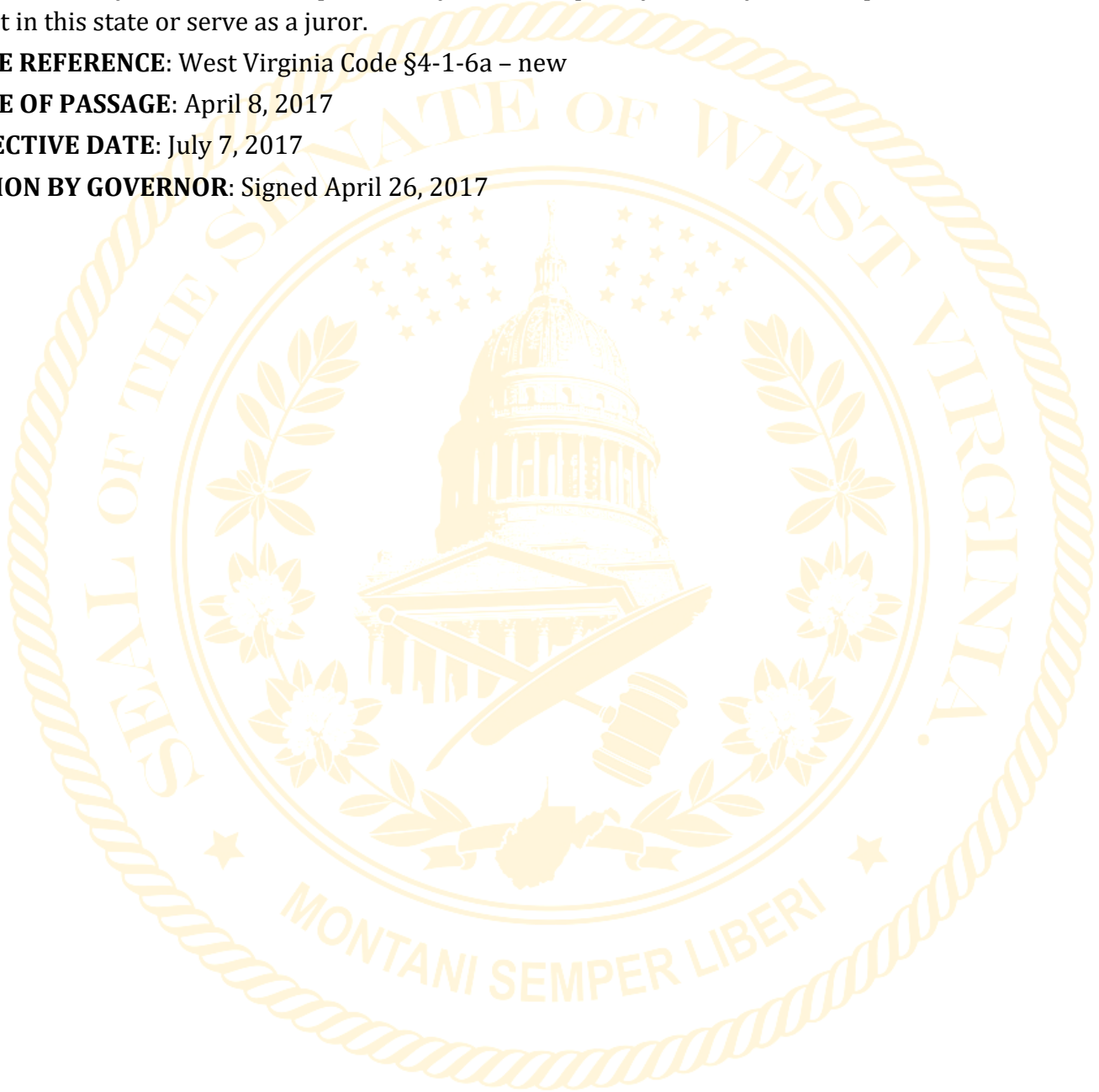
This bill makes it a misdemeanor to willfully swear falsely under a lawfully administered oath or affirmation in a legislative proceeding, or to procure or attempt to procure the false testimony of another person. The convicted person is subject to a fine of not more than \$1,000 and confinement in jail for not more than one year. A convicted person may not subsequently hold any office or position of honor, trust of profit in this state or serve as a juror.

CODE REFERENCE: West Virginia Code §4-1-6a – new

DATE OF PASSAGE: April 8, 2017

EFFECTIVE DATE: July 7, 2017

ACTION BY GOVERNOR: Signed April 26, 2017



Senate Bill 563

Relating to Consumer Credit and Protection Act

This bill revises the state Consumer Credit Protection Act.

First, the bill amends §46A-2-105(2), which addresses balloon payments. In current code, a promissory note which contains a balloon payment must contain very specific language. The amendments to this section provide that promissory notes containing a balloon payment shall be “in form and substance substantially similar to” the language contained in the code provision.

Next, the bill amends the definition of debt collector in §46A-2-122 to exclude attorneys licensed in West Virginia or otherwise authorized to practice law in West Virginia who are representing creditors from the definition of debt collector unless they are operating a debt collection agency under the management of a non-lawyer.

Third, the bill amends §46A-2-128 to require that notification of representation by counsel may not be sent electronically and must be sent by certified mail. It also amends the time period from receipt of the notice of representation to the time to cease direct contact with the consumer from seventy-two hours to three business days. The bill also amends subsection (f) by striking the language “its initial” and inserting the word “all” in relation to written communications to a consumer.

A new section is added, §46A-2-140, which excludes pleadings as the basis of a cause of action under Chapter 46A unless the pleading is a material violation of §46A-2-124(f) (coercion), §46A-2-127(d) (misrepresentation), §46A-2-128(c) (fees), or §46A-2-128(d) (fees not in the contract). It clarifies that seeking an award of costs authorized by the applicable rules of civil procedure shall not be the basis of a cause of action in this chapter. This new section also includes language to clarify that this section is not intended to abolish cause of actions for abuse of process, malicious prosecution, harassment or frivolity.

In §46A-5-101, the bill makes amendments to the statute of limitations provisions. Under this bill, the statute of limitations for these actions will remain at four years unless the claim relates to setting aside a foreclosure sale, in which case the statute of limitation is one year after the foreclosure is final.

§46A-5-102 is amended to state that any counterclaim brought pursuant to Chapter 46A is subject to the appropriate statute of limitations under this article.

The bill creates a new section, designated §46A-5-108. This section is modeled after the right-to-cure provisions contained in §46A-6-106, and requires consumers to give the creditors or debt collectors a notice of right to cure any violations under Articles 2, 3, 4 and 5 of this chapter prior to filing suit for said violations.

If an alleged violation occurs, the consumer is required to send the creditor or debt collector written notice by certified mail to either its registered agent or its principal place of business if it does not have a registered agent with the West Virginia Secretary of State. The notice must identify the alleged violation and the factual basis for the violation.

Following the issuance of the notice, the creditor or debt collector has forty-five days from receipt of the notice to make a written offer to cure if they choose.

Once the consumer receives the offer to cure, the consumer has twenty days to accept or reject the offer. If the consumer fails to respond to the cure offer, the offer will be deemed rejected.

If the cure offer is accepted, the creditor or debt collector has twenty days to begin effectuating the agreed upon cure and the cure must be completed within a reasonable time.

Any applicable statute of limitations is tolled for the forty-five-day period that the creditor or debt collector is considering the notice of the alleged violation or the period that the accepted cure offer is being implemented - whichever is longer.

This section states that nothing in this section prevents a consumer that has accepted a cure offer from bringing an action for failing to timely effect the cure offer.

If an action is brought pursuant to this right to cure section, it is a complete defense to show that a cure offer was made, accepted and the cure was performed. If the trier of fact concludes that the defense is justified, the creditor or debt collector is entitled to their attorneys' fees and costs associated with defending that action.

A cure offer is generally not admissible at trial.

A creditor or debt collector is not liable for the consumer's attorney's fees and court costs following the delivery of the cure offer unless (i) the actual damages; (ii) civil penalties; and (iii) any other monetary and equitable relief provided for in Articles 2, 3, 4 and 5 of this chapter are found to have been sustained (without consideration of the attorneys' fees and court costs) to exceed the value of the cure offer.

Amendments to §46A-2-105 shall only apply to loan agreements entered into after the effective date of this bill.

Amendments to §46A-2-128 and §46A-2-140 shall apply to all causes of action accruing after the effective date of this bill.

Amendments to §46A-2-122, §46A-5-101 and §46A-5-108 shall apply to all causes of action filed on or after the effective date of this bill.

CODE REFERENCE: West Virginia Code §46A-2-105, §46A-2-122, §46A-2-128, §46A-5-101, §46A-5-102 and §46A-8-101 - amended; §46A-2-140 and §46A-5-108 - new

DATE OF PASSAGE: April 5, 2017

EFFECTIVE DATE: July 4, 2017

ACTION BY GOVERNOR: Signed April 21, 2017

Senate Bill 581

Relating generally to administration of trusts

The purpose of this bill is to make a number of technical corrections and updates to the Code regarding the administration of trusts and estates.

§38-1-13. Substitution of trustees under a trust deed securing a debt.

This section addresses the right of a party secured by a trust deed to substitute a trustee in his or her place by following a certain process, including making a writing, recording it with the county clerk, and providing notice to certain persons by mail. Subsection (c), which clarified that there was no obligation to notify a trustee under certain circumstances, is eliminated.

§44D-1-103. Definitions.

Two definitions are updated. First, the definition of “Internal Revenue Code” or “Internal Revenue Code of 1986” is made more general to encompass changes to the Internal Revenue Code and “all amendments made to the laws of the United States and amendments which have been adopted and incorporated into West Virginia law by the West Virginia Legislature” in the state tax code. Second, the definition of “qualified beneficiary” is updated.

§44D-1-113. Insurable Interest of Trustee.

This is a new section of code. It first defines “grantor” more narrowly, limiting it to a person who “executes a trust instrument”. This section allows a trustee to have an insurable interest in someone’s life so long as the insured person is a grantor of the trust or a person in whom the grantor has, or could have, an insurable interest, and the life insurance proceeds are primarily for the benefit of one or more of the trust beneficiaries.

§44D-4-405. Charitable purposes; enforcement.

This section, which authorizes the creation of a charitable purposes trust, is modified by adding a reference to §35-2-2 in subsection (d). The effect of this addition is to clarify that the charitable purposes section does not override other provisions of the Code, specifically §35-1-4 (“Insufficient designations of beneficiaries or objects not to cause failure of trust; acquisition, conveyance, etc., of property”) and now §35-2-2 (“Validation of conveyances, devises, gifts and bequests to trustees – Appointment of trustee; designation of beneficiaries and objects; administration by chancery court cy pres”).

§44D-4-414. Modification or termination of uneconomic trust.

This section allows a trustee of a small trust to terminate it without court approval under certain conditions. One of those conditions is that the value of the trust assets is less than \$100,000. The changes to this section increase that dollar figure to \$200,000.

§44D-5-503b. Definitions.

The definitions in this section relate to the creation of self-settled spendthrift trusts, which were approved by the Legislature last year. Changes to this section clarify that a qualified interest in a self-settled spendthrift trust is required to have at least one independent qualified trustee.

§44D-5-505. Creditor’s claim against grantor.

References are added to this section, which relates to spendthrift provisions in trust instruments, to the three sections of code that authorize the creation of self-settled spendthrift trusts.

§44D-6-604. Limitation on action contesting validity of revocable trust; distribution of trust property.

Throughout this section, the term “beneficiary” is stricken in favor of the phrase “interested person”.

§44D-8-813. Duty to inform and report.

First, strict time frame requirements of reporting to beneficiaries, now set at 60 days, are stricken in favor of a “reasonable time” requirement. Second, the term “qualified beneficiary” is replaced throughout with “current beneficiary.” Third, the bill permits a trustee to provide reports or other information to beneficiaries who are not otherwise required to be informed. Last, this section permits, but does not require, a personal representative or guardian to send reports on behalf of a deceased individual who was a trustee, but requires the representative to deliver all relevant materials to the successor trustee.

§44D-8-817. Distribution upon termination.

Modifications to this section grant the trustee “all powers appropriate to wind up the administration of the trust” and require the trustee to exercise those powers to wind up the trust administration.

CODE REFERENCE: §38-1-13 and §44D-1-103, §44D-4-405, §44D-4-414, §44D-5-503b, §44D-5-505, §44D-6-604, §44D-8-813, §44D-8-817 – amended; §44D-1-113 – new

DATE OF PASSAGE: April 5, 2017

EFFECTIVE DATE: July 4, 2017

ACTION BY GOVERNOR: Signed April 18, 2017

Senate Bill 631

Prosecuting violations of municipal building code

The bill seeks to clarify the process by which municipal governments may abate unsafe, unsanitary, or dangerous dilapidated structures that are detrimental to the public safety or welfare.

The bill creates a method of issuing misdemeanor citations for violations of the building code with proper due process. The current statute does not provide a process on how building code citations are to be issued; therefore, each municipality has developed their own method for issuing citations with these violations.

The bill also defines “unsafe, unsanitary, dangerous, or detrimental to the public safety or welfare.” This gives uniformity throughout the state of what is an unsafe building allowing a definition to fast tract the demolition process by a municipality. The building demolition fast tract now must meet certain criteria before the process will begin. The fast tract also provides a process for municipal courts with proper notice and due process to each owner.

The bill also provides protection to the owner when municipality officials perform a walk through to determine if the building is unsafe, that no information obtained through that walk through would be allowed for evidence in any criminal prosecution.

CODE REFERENCE: West Virginia Code §8-12-13 and §8-12-16 – amended

DATE OF PASSAGE: April 7, 2017

EFFECTIVE DATE: July 6, 2017

ACTION BY GOVERNOR: Signed April 24, 2017

Senate Bill 637

Relating to private club operations requirements

This bill creates private club licenses tailored to resort facilities.

- Private Resort Hotel
 - Requirements – A private resort hotel must have the following: 5,000 or more members, 50 or more rooms, a restaurant open at least 24 hours per week, and 10 or more acres;
 - Licenses – Hotels are tiered by number of areas designated to sell and consume alcoholic liquors and non-intoxicating beer:
 - 1-5, \$7,500
 - 6-10, \$12,500
 - 11-15, \$17,500
 - 15-20, \$22,500
- Private Golf Course
 - Requirements – A private golf course must have the following: 1,000 or more members; one or more 18-hole golf courses; a clubhouse; golf carts; and a restaurant and full kitchen open 15 or more hours a week;
 - License Fees – \$4,000 per year.

Short term licenses are available up to one week for \$150 per day.

CODE REFERENCE: West Virginia Code §60-7-2, §60-7-6 and §61-8-27 – amended

DATE OF PASSAGE: April 7, 2017

EFFECTIVE DATE: July 6, 2017

ACTION BY GOVERNOR: Signed April 25, 2017

Senate Bill 656

Relating to Student Data Accessibility, Transparency and Accountability Act

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

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

DATE OF PASSAGE: April 8, 2017

EFFECTIVE DATE: July 7, 2017

ACTION BY GOVERNOR: Vetoed April 26, 2017

Senate Bill 667

Limiting authority of Attorney General to disclose certain information provided by Tax Commissioner

Under the 1998 tobacco Master Settlement Agreement (MSA), participating cigarette manufacturers agreed to make annual payments to the states to compensate them for health care costs as a result of smoking-related illnesses. These annual payments could be reduced if the participating manufacturers can demonstrate that they lost market share as a result of the MSA. The MSA, however, provides a safe harbor from the adjustment if a settling state "diligently enforces" the provisions of model statute, which requires non-participating manufacturers to pay an annual escrow payment based on the amount of cigarettes sold in the state for that given year. The model statute is intended to level the playing field between participating and non-participating manufacturers.

The participating manufacturers have sued several of the states to reduce the annual payments because the states failed to diligently enforce the levy against non-participating manufacturers. The dispute was settled, but a third-party data clearing house was established to receive sales data from the states and check it against the data submitted by the participating manufacturers.

CODE REFERENCE: West Virginia Code §11-10-5s – amended

DATE OF PASSAGE: April 6, 2017

EFFECTIVE DATE: April 6, 2017

ACTION BY GOVERNOR: Signed April 25, 2017

Senate Bill 687

Relating generally to coal mining, safety and environmental protection (Coal Jobs and Safety Act III)

This bill updates and revises a number of mine health and safety and environmental sections of West Virginia Code.

Environmental Provisions

- Reclamation Funds
 - The originating bill makes a few changes to the surface coal mining and reclamation act bonding requirements. Moneys paid from special reclamation water trust fund shall be paid to help assure a reliable source of capital and operating expenses for the treatment of water discharges from forfeited sites where the secretary has applied for or obtained an NPDES permit. The changes also strike the requirement that the secretary of DEP develop a long-range planning process for selection and prioritization of sites to be reclaimed.
- Preblast Survey Requirements
 - The standard for notifying owners and occupants of manmade dwellings and structures of blasting at surface mining operations is expanded in distance from within five tenths of a mile within of the permitted area or areas to within one-half mile of those areas. The distinction between surface mining operations that are less than 200 or 300 acres is also removed, and the statute now only references surface mining operations.
 - For blasting related to permitted surface disturbances of underground mines, blasting activities associated with specified construction activities is also added to the statutory language and the notification requirement is now limited to all owners and occupants of man-made dwellings and structures within one-half mile (not five-tenths of a mile) of the proposed blasting area.
 - A provision of the statute that required additional preblast surveys and referenced the receipt by the operator of a written waiver or affidavit from residents is removed, as well as language distinguishing the waiver from an occupant of a structure as opposed to an owner of a structure (no waiver is necessary for an occupant).
 - The statutory requirement that the operator file notice of the preblast survey or waiver in the office of the county clerk where the structure is located is also removed.
- Bonding Release
 - The bill also changes the code section applicable to release of bond or deposits related to reclamation work performed and a permittee's approved reclamation plan. Language is removed that requires a minimum bond of \$10,000 be retained after grade release, after 60% of the bond or collateral is released for the applicable bonded area once an operator completes backfilling, regrading and drainage control.
 - Language is also removed regarding an additional bond release of 25% two years after the last augmented seeding, fertilizing, irrigation or other work. Language is added regarding bond releases after successful revegetation has been established, and that notes no bond shall be fully released until all reclamation requirements of this article are fully met.
 - Language is removed from the code that applies to operations with an approved variance from approximate original contour. The bill requires the Secretary to propose new rules to

implement revisions to the statute related to the releases of bond or deposits and directs the Secretary to specifically consider adopting corresponding federal standards.

- Well Plugging
 - The bill proposes a change to the Office of Oil and Gas duties as to the methods of plugging wells. Additional language is added to the code that applies to instances in which the well to be plugged is an abandoned well and the well operator is also a coal operator that intends to mine through the well.
 - The language that is added notes that with respect to wells that are less than 4,000 feet, a mine cooperater need only fill the well to at least 200 feet below the base of the lowest workable coal bed. As to wells that are 4,000 feet or greater, the operator must fill the well to at least 400 feet below the base of the lowest workable coal bed. The change is proposed to make well plugging of abandoned mines in WV consistent with Mine Safety Health Administration (MSHA) regulations, rather than require plugging of wells to a greater depth that the state Office of Oil and Gas currently mandates.
 - The bill notes that the secretary may require filling to a greater depth based on excessive pressure within the well.
- Water Quality Standards
 - The bill proposes a change to W.Va. Code §22-11-7b regarding water quality standards and the procedure to determine compliance with the biologic component of the narrative water quality standard.
 - As to rule proposals by the secretary of the DEP that measure compliance with the narrative water quality standard, the new language replaces the term “biologic” with “aquatic life” in qualifying the component to be measured for compliance. The revised bill also removes the following criteria from being considered by the DEP in evaluating the holistic health of the aquatic ecosystem: “Supports a balanced aquatic community that is diverse in species composition.”
 - The code still states that rules promulgated may not establish measurements for biologic components of WV’s narrative water quality standards that would establish standards less protective than legislatively-approved rules.

Mine Safety Provisions

- The bill retains all inspection and enforcement authority of the Office of Miners’ Health, Safety and Training (OMHS&T). It does not transform the OMHS&T into a compliance assistance office. The bill does not make changes to the state’s mine rescue teams.
- Currently, the Office of Miners’ Health, Safety and Training includes the following separate boards and commissions: Board of Coal Mine Health and Safety; Coal Mine Safety and Technical Review Committee; Board of Miner Training, Education and Certification; Mine Inspectors’ Examining Board; Board of Appeals; and, the Mine Safety Technology Task Force
- The above boards and commissions will be collapsed to eliminate the duplication of responsibilities, as follows: The Board of Coal Mine Health and Safety will assume all duties and responsibilities of the Board of Miner Training, Education and Certification, the Mine Inspectors’ Examining Board, and the Mine Safety Technology Task Force. Those three boards/task force will be abolished under the proposed language of the originating bill.
- In addition to the Board of Coal Mine Health and Safety, the Coal Mine Safety and Technical Review Committee and the Board of Appeals remain intact.

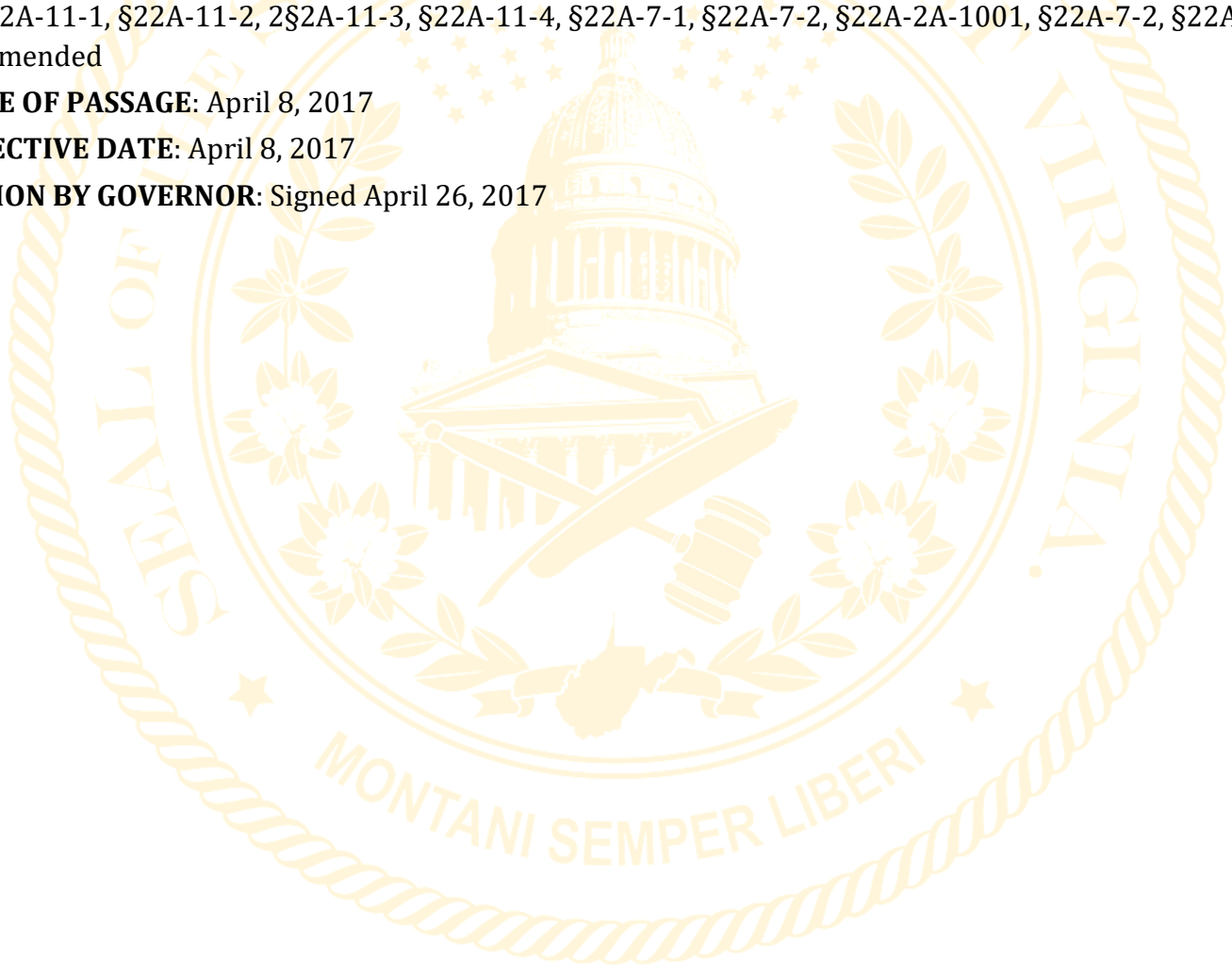
- The bill adds an automated external defibrillator (AED) to the list of mandatory first-aid equipment that an underground coal mine must have at certain locations within the mine.
- The bill proposes a change to the code language that applies to the use of diesel-powered equipment in underground coal mines. The changes reflect the 2015 abolishment of the WV Diesel Equipment Commission, and the transfer of that commission's duties to the director of the OMHS&T.
- The changes also direct OMHS&T to revise the diesel equipment commission's legislative rules, found at 196 C.S.R. §1.1, et seq. to reflect the technological advances that have been made in diesel equipment currently operating in underground mines, and to recognize the scope of existing annual retraining and task training standards that are already mandated by MSHA.
- The bill also directs the Office of Miners' Health, Safety and Training to promulgate rules consistent with the changes proposed in the bill.

CODE REFERENCE: West Virginia Code §22-3-11, §22-3-13a, §22-3-23, §22-6-24, §22-11-7b, §22A-1-2, §22A-1-5, §22A-2-59, §22A-6-3, §22A-6-4, §22A-6-6, §22A-7-3, § 22A-7-5, §22A-7-5a, §22A-7-7, §22A-9-1, §22A-11-1, §22A-11-2, §22A-11-3, §22A-11-4, §22A-7-1, §22A-7-2, §22A-2A-1001, §22A-7-2, §22A-11-6 – amended

DATE OF PASSAGE: April 8, 2017

EFFECTIVE DATE: April 8, 2017

ACTION BY GOVERNOR: Signed April 26, 2017



House Bill 2001

Relating to ethics and transparency in government

This bill amends and adds several new provisions of code related to ethics and transparency in government.

§6B-2-1. WV Ethics Commission creation, composition, meetings and quorum

- Authorizes members of Commission and Probable Cause Review Board to attend and participate via videoconferencing when conducting a hearing and taking testimony

§6B-2-2. General powers and duties

- Corrects cross-reference to “chapter” instead of “article”

§6B-2-2a. Probable Cause Review Board

- Makes clear that the Review Board conducts “investigations” and that the Commission conducts hearings

§6B-2-3a. Complaints

- Corrects cross-reference to “chapter” instead of “article”

§6B-2-4. Processing Complaints, dismissal, hearings, disposition, judicial review

- Makes clear that the Commission and Review Board are two distinct bodies and clarifies respective powers
- Corrects subsection (n) to reflect changes in number of members and new threshold for majority vote
- BACKGROUND: The number of members on Commission was lowered from 12 members to 9 members during the 2013 Regular Session
- Corrects cross-references in subsections (o)
- Corrects cross-reference on subsection (s) to clarify applicability of sanctions throughout “chapter”

§6B-2-5. Ethical Standards for elected and appointed officials and public employees

- Adds new subdivision (4) under subsection (b) to expressly prohibit nepotism under the Ethics Act:
- “A public official or public employee may not show favoritism or grant patronage in the employment or working conditions of his or her relative or a person with whom he or she resides: Provided, That as used in this subdivision, “employment or working conditions” shall only apply to government employment: Provided, however, That government employment includes only those governmental entities specified in subsection (a) of this section.”
- Re-writes subsection (j)(1)(C) relating to voting on personnel matters involving public officials’ spouse or relative
- “(C) The employment or working conditions of the public official’s relative or person with whom the public official resides.”
- Makes consistent with the new nepotism prohibition in (b)(4)
- Adds two provisos to subsection (j)(1)(D) to require recusal of a public official or immediate family member if voting on the appropriations of public money to non- profit in which the official serves as an officer or board member.
- NOTE: The voting prohibitions under (j)(1) do not apply to members of the Legislature

§6B-2-6. Financial disclosure statement; filing requirements

- Clarifies the timeframe in which candidates must file a financial disclosure statement

- Eliminates requirement for an additional financial statement if previously filed for prior year
- §6B-2-10. Violations and penalties
- Corrects multiple cross-references in the penalties section to reflect correct subsections
- §6D-1 through §6D-4. Disclosure of Interested Parties to a contract
- Creates new requirement that prior to executing a public contract that has an actual or estimated value of \$100,000 or more, the entity must submit a disclosure of interested parties to the contract
 - Requires disclosure form to be filed with Ethics Commission and be publicly available
 - Provides disclosure requirements for institutions of higher education

CODE REFERENCE: West Virginia Code §6B-2-1, §6B-2-2, §6B-2-2a, §6B-2-3a, §6B-2-4, §6B-2-5, §6B-2-6 and §6B-2-10 – amended; §6D-1-1 through §6D-1-4 – new

DATE OF PASSAGE: April 8, 2017

EFFECTIVE DATE: July 7, 2017

ACTION BY GOVERNOR: Signed April 26, 2017



House Bill 2006

Increasing the penalties for violating the Whistle-blower Law

This bill makes any individual who violates the Whistle-blower Law personally liable for the civil fine that may be imposed under that law. The bill also raises the maximum civil fine to \$5,000 from the current maximum of \$500.

The bill strikes provisions related to suspension of public office holders who violate the law. The bill provides that if a court specifically finds a person, while in the employment of a public body, who violates section three of the Whistle-blower Law with the intent to discourage the disclosure of information, then such finding shall be deemed a finding of official misconduct and malfeasance in office and may be relied upon as admissible evidence in any subsequent proceeding or petition to remove the person from public office and may be relied upon by the public body as a basis to discipline the person including but not limited to termination from employment.

Nothing in this new section shall be construed as requiring a civil action, civil penalty or a court finding under this section as a condition or prerequisite for a public body to take disciplinary action against the person.

CODE REFERENCE: West Virginia Code §6C-1-6 – amended

DATE OF PASSAGE: April 5, 2017

EFFECTIVE DATE: July 4, 2017

ACTION BY GOVERNOR: Signed April 18, 2017

House Bill 2109

Relating to the West Virginia Land Reuse Agency Authorization Act

The bill would include a municipal bank as an agency within the West Virginia Land Reuse Agency Authorization Act; stating also that a municipal land bank may acquire tax delinquent property.

Notwithstanding any other provision of this code to the contrary, if authorized by the land reuse jurisdiction which created a land reuse agency or municipal land bank or otherwise by intergovernmental cooperation agreement, the land reuse agency or municipal land bank shall have the right of first refusal to purchase any tax-delinquent property which is within municipal limits, and has an assessed value of \$25,000 or less or has been condemned.

A list of properties which meet the criteria of this subdivision shall regularly be compiled by the sheriff of the county, and a land reuse agency or municipal land bank may purchase any qualifying tax-delinquent property for an amount equal to the taxes owed and any related fees before such property is placed for public auction.

When a land reuse agency or municipal land bank exercises a right of first refusal, the land reuse agency or municipal land bank shall, within fifteen days, provide written notice to all owners of real property that is adjacent to the tax-delinquent property. Any such property owner shall have a period of 120 days from the receipt of notice, actual or constructive, to exercise a right to purchase the tax-delinquent property from the land reuse agency or municipal land bank for an amount equal to the amount paid for the property by the land reuse agency or municipal land bank: Provided, That in the event more than one adjacent land owner desires to purchase the tax-delinquent property, it shall be sold to the adjacent property owner offering the highest bid.

It is the duty of the adjacent property owner to establish that he or she is the actual owner of property that is adjacent to the tax-delinquent property and all state and local taxes and all fees on his or her adjacent property are current and non-delinquent.

Provisions of this act shall sunset July 1, 2020, and have no further force and effect.

CODE REFERENCE: West Virginia Code §31-18E-3 and §31-18E-9 – amended

DATE OF PASSAGE: April 8, 2017

EFFECTIVE DATE: April 8, 2017

ACTION BY GOVERNOR: Signed April 25, 2017

House Bill 2119

Repealing West Virginia Health Benefit Exchange Act

The purpose of this bill is to repeal the West Virginia Health Benefit Exchange Act. That act created the state's Health Benefit Exchange within the Offices of the Insurance Commissioner in 2011. The Exchange has never been operational.

When it was codified, the purpose was to "facilitate the purchase and sale of qualified health plans in the individual market in this state and a Small Business Health Options Program within the exchange to assist qualified small employers in this state in facilitating the enrollment of their employees in qualified health plans," all under the Federal Patient Protection and Affordable Care Act.

Although the Exchange was created in the Offices of the Insurance Commissioner, it was to operate under the supervision and control of a governing board. The board was never appointed and the Exchange never became operational. The State's health exchange is all done via the federal exchange.

CODE REFERENCE: West Virginia Code §33-16G-1 through §33-16G-9 – repealed

DATE OF PASSAGE: April 5, 2017

EFFECTIVE DATE: July 4, 2017

ACTION BY GOVERNOR: Signed April 21, 2017

House Bill 2195

Relating to requiring comprehensive drug awareness and prevention program in all public schools

This bill requires the State Board of Education to implement educational programs in drug prevention and violence reduction in grades K-12. The programs shall teach resistance techniques, life skills, and street knowledge to counteract the dangers of drug use and violence. The bill requires county school boards to implement the programs no later than the 2017-2018 school year, and that the county school boards coordinate the delivery of instruction to meet the purposes of the program, by including community figures in the education program.

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

DATE OF PASSAGE: April 6, 2017

EFFECTIVE DATE: July 5, 2017

ACTION BY GOVERNOR: Signed April 26, 2017

House Bill 2301

Relating to direct primary care

This bill would allow the practice for certain medical professionals of direct primary care. This has been a pilot project for some years. The pilot project expired. This bill would authorize the practice and discontinue the pilot project.

The bill repeals the language authorizing a pilot project in Chapter 16 and moves this practice into Chapter 30. It defines terms. It allows for payment for direct primary care outside of an insurance plan or Medicare or Medicaid. If there is a direct payment agreement, it preclude the health care provider from billing for third party reimbursement.

The bill specifically provides that these types of arrangements are not considered insurance. The agreements are to be in writing and signed by the parties. There is also the requirement for 30 notice prior to termination. It requires that the scope of the agreement be specified and state the duration of the agreement.

The disciplines which may participate in direct primary care are:

- Physicians;
- Optometrist;
- Chiropractors;
- Dentists and
- Nurses.

The licensing boards of each of these disciplines is granted rulemaking authority to effectuate the provisions of the bill.

Violations of the act are considered unprofessional conduct.

CODE REFERENCE: West Virginia Code §16-2J-1 through §16-2J-9 – repealed; §30-3F-1 through §30-3F-5 – new

DATE OF PASSAGE: March 15, 2017

EFFECTIVE DATE: June 13, 2017

ACTION BY GOVERNOR: Signed March 23, 2017

House Bill 2318

Relating generally to human trafficking

This bill creates, redefines, and strengthens felony offenses and other penalties relating to human trafficking for purposes of forced labor, debt bondage, sexual servitude, and patronizing a victim of sexual servitude.

First, House Bill 2318 repeals §61-2-17. Current law makes human trafficking a felony that is punishable by incarceration in a state correctional facility for an indeterminate sentence of not less than three nor more than fifteen years or fined not more than \$200,000, or both.

The bill amends and reenacts §15-9A-2 by designating the Division of Justice and Community Services as an authorized state entity to seek grant funding relating to human trafficking.

The bill amends and reenacts §15-12-2 by requiring those convicted of sexual offenses relating to human trafficking to register as a sexual offender.

Additionally, House Bill 2318 amends and reenacts §49-1-201 by including “human trafficking of a child, or attempting to traffic a child” in the definition of “abused child” and by adding “a parent, guardian or custodian [who] knowingly maintains or makes available a child for the purpose of engaging the child in commercial sexual activity” under the definitions of “sexual exploitation”.

The bill creates an article designated §61-14 which sets forth five distinct crimes relating to trafficking:

- trafficking an individual – for labor, debt bondage, and sexual servitude;
- using forced labor;
- using victims of debt bondage;
- using victims of sexual servitude; and,
- patronizing victims of sexual servitude.

Each of these crimes contains differing penalties depending on whether the victim is an adult or a minor, with higher penalties where the victim is a minor.

§61-14-1 provides definitions related to human trafficking.

§61-14-2 makes a felony for “any person who knowingly and willfully” traffics an adult or a minor. The new section also provides for increased penalties when the victim is a minor. Penalties Adult Victim: 3 – 15 years and/or \$200,000; Minor Victim: 5 – 20 years and/or \$300,000.

§61-14-3 makes a felony for “any person who knowingly” uses an adult or a minor in forced labor to provide labor or services and imposes fees upon conviction. The new section also provides for increased penalties when the victim is a minor. Penalties Adult Victim: 1 – 5 years and/or \$100,000; Minor Victim: 3 – 15 years and/or \$300,000.

§61-14-4 makes a felony for “any person who knowingly” uses an adult or a minor in debt bondage. The new section also provides for increased penalties when the victim is a minor. Penalties Adult Victim: 1 – 5 years and/or \$100,000; Minor Victim: 3 – 15 years and/or \$300,000.

§61-14-5 makes a felony for “any person who knowingly” uses an adult or a minor in sexual servitude. The new section also provides for increased penalties when the victim is a minor. Subsection (c) clarifies that it is not a defense in a prosecution that the minor consented to engage in the commercial sexual activity or that the defendant believed the minor was an adult. Penalties Adult Victim: 3 – 15 years and/or \$200,000; Minor Victim: 5 – 20 years and/or \$300,000.

§61-14-6 makes a felony for “any person who knowingly” patronizes an adult or a minor to engage in commercial sexual activity knowing, or having reason to know, the minor is a victim of human trafficking. The new section also provides for increased penalties when the victim is a minor. Penalties Adult Victim: 1 – 5 years and/or \$100,000; Minor Victim: 3 – 15 years and/or \$300,000.

§61-14-7 describes general provisions and other penalties, including aggravating circumstance, restitution, forfeiture, victims’ eligibility for compensation fund, and notification of DHHR when a child is involved. This section also clarifies that each victim constitutes a separate offense.

§61-14-8 grants immunity for a minor victim of sex trafficking in a juvenile proceeding for an offense of prostitution in violation of §61-8-5(b) because it is presumed that the minor committed the offense as a direct result of being a victim. The new section also clarifies that a minor may not be immune for any other offenses under §61-8-5(b), including specifically soliciting, inducing, enticing or procuring another to commit an act or offense of prostitution, unless it is established by the court that the minor was coerced into the criminal behavior.

§61-14-9 describes the circumstances under which trafficking victims may petition to vacate their conviction and expunge their criminal record.

Lastly, House Bill 2318 amends and reenacts §62-1D-8 by authorizing law enforcement to intercept wire, oral, or electronic communications if there is reasonable cause to believe that the interception would provide evidence of the commission of offenses included and prohibited by the newly created human trafficking article.

CODE REFERENCE: West Virginia Code §61-2-17 – repealed; §15-9A-2, §15-12-2 and §49-1-201, §62-1D-8 – amended ; §61-14-1 through §61-14-9 – new

DATE OF PASSAGE: March 17, 2017

EFFECTIVE DATE: June 15, 2017

ACTION BY GOVERNOR: Signed March 31, 2017

House Bill 2319

Relating to candidates or candidate committees for legislative office disclosing contributions

This bill adds a new section to the Election Code relating to campaign finance, which places an additional requirement on current members of the Legislature who are candidates for legislative office. If a member of the Legislature who is a candidate for legislative office holds a fund-raising event while the Legislature is in session, s/he is required to disclose:

- the existence of the event
- the receipt of all contributions (including source and amounts) within five business days after the event.

This reporting requirement also applies to members of the Legislature who hold fund-raising events to retire debt from a prior campaign. This reporting is to be in addition to any other reporting and disclosure requirements set forth in the Election Code. House Bill 2319 directs the Secretary of State to prepare a form for these disclosures and to publish the collected information on the Secretary of State's website within 48 hours of receipt. The Secretary of State may also establish a means for electronic filing of this information. Rule-making authority is given to the Secretary of State for this purpose.

CODE REFERENCE: West Virginia Code §3-8-15 – new

DATE OF PASSAGE: April 6, 2017

EFFECTIVE DATE: July 5, 2017

ACTION BY GOVERNOR: Signed April 26, 2017

House Bill 2367

Establishing a criminal offense of organized retail crime

This bill creates two new offenses: organized retail theft and knowing purchase of materials from organized retail theft rings.

The bill places the new offenses in the shoplifting article. Three or more people involved in multi-county theft rings may be prosecuted in any county where any part of the common scheme or plan occurred. Cumulation of values of stolen items is authorized. There is a seizure forfeiture provision tied to chapter sixty-a, article seven and, upon conviction, the sentencing court may order for disgorgement to victims.

Penalties:

- \$2,000 of merchandise or more stolen/purchased – Determinate 1-10 years and/or fined not less than \$1,000 nor more than \$10,000. Penalties apply to both subsections (a) and (c);
- \$10,000 of merchandise or more stolen/purchased – Determinate 2-20 years and/or fined not less than \$2,000 nor more than \$25,000. Penalties apply to both subsections (b) and (c).

CODE REFERENCE: West Virginia Code §61-3A-7 – new

DATE OF PASSAGE: April 8, 2017

EFFECTIVE DATE: July 7, 2017

ACTION BY GOVERNOR: Signed April 26, 2017

House Bill 2428

Establishing additional substance abuse treatment facilities

This bill creates a special revenue account known as the Ryan Brown Addiction and Recovery Fund. This fund will be funded by the proceeds of litigation in Boone County, West Virginia.

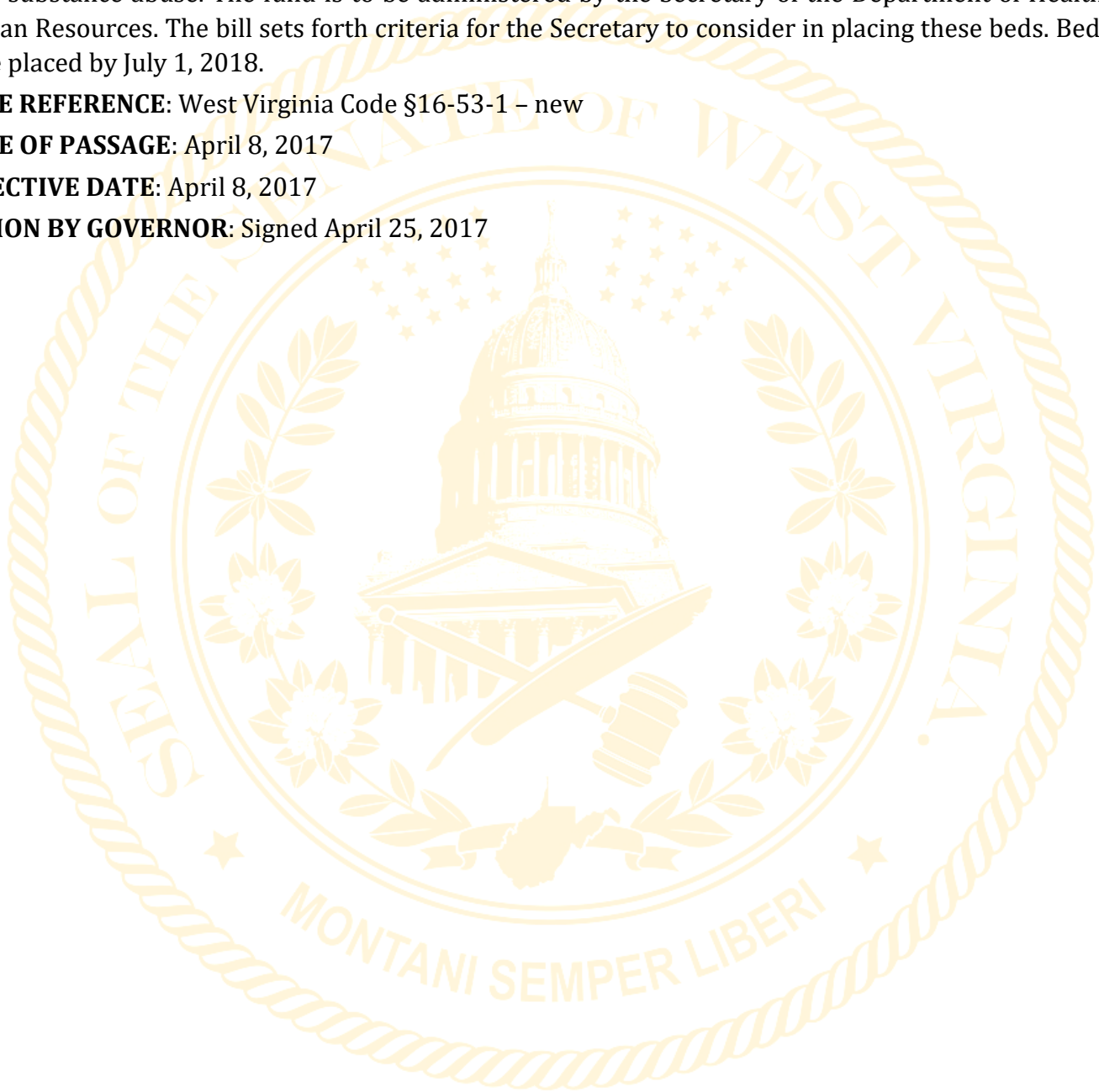
The purpose of the fund is to create substance abuse beds through the state to treat persons suffering from substance abuse. The fund is to be administered by the Secretary of the Department of Health and Human Resources. The bill sets forth criteria for the Secretary to consider in placing these beds. Beds are to be placed by July 1, 2018.

CODE REFERENCE: West Virginia Code §16-53-1 – new

DATE OF PASSAGE: April 8, 2017

EFFECTIVE DATE: April 8, 2017

ACTION BY GOVERNOR: Signed April 25, 2017



House Bill 2447

Renaming the Court of Claims the state Claims Commission

The bill repeals §14-2-6, §14-2-18 and §14-2A-7. This bill seeks to clarify that the current Court of Claims is a function of the Legislature. The bill therefore renames the West Virginia Court of Claims, the West Virginia Legislative Claims Commission.

This bill does the following:

- Replaces “court and “court’s” with “commission” and “commission’s”, as necessary;
- Replaces “judge” and “judges” with “commissioner” and “commissioners”, as necessary;
- Authorizes the President of the Senate and the Speaker of the House of Delegates to jointly remove any commissioner at any time;
- Transfers certain authority from the Joint Committee on Government and Finance to the President of the Senate and the Speaker of the House of Delegates;
- Increases the monetary limit for certain agency shortened claims from \$1,000 to \$3,000 per claim;
- Authorizes the President of the Senate and the Speaker of the House of Delegates to hire a clerk, chief deputy clerk, deputy clerks, claim investigators, and supporting staff and to set salaries for said positions;
- Updates, modifies, and clarifies procedures and practices of the commission; and
- Adds a new shortened claims process for Division of Highways, road condition claims. The shortened procedure requires that the claim satisfy each of the following:
 - The claim cannot arise under an appropriation for the current fiscal year;
 - The claim must allege a condition on the state’s highways or roads caused property damage;
 - The Division of Highways concurs in the claim and amount claimed does not exceed \$1,000.

Procedurally, if the Division of Highways concurs with the claim—then this section provides that it shall prepare a stipulation concerning the claim and file it with the clerk. Once the stipulation has been properly filed, the State Claims Commission will order that the claim be approved and file its statement with the clerk.

CODE REFERENCE: West Virginia Code §14-2-6, §14-2-18 and §14-2A-7 – repealed; §14-2-3, §14-2-4, §14- 2-4a, §14-2-5, §14-2-7, §14-2-8, §14-2-9, §14-2-10, §14-2-11, §14-2-12, §14-2-13, §14-2-14, §14-2-15, §14-2-16, §14-2-17, §14-2-19, §14-2-20, §14-2-21, §14-2-22, §14-2-23, §14-2-24, §14-2-25, §14-2-26, §14-2-27 and §14-2-28; §14-2A-5, §14-2A-6, §14-2A-9, §14-2A-10, §14-2A-11, §14-2A-12, §14-2A-13, §14-2A-14, §14-2A-15, §14-2A-16, §14-2A-17, §14-2A-18, §14-2A-19, §14-2A-19a, §14-2A-19b, §14-2A-20, §14-2A-21, §14-2A-25, §14-2A-26 and §14-2A-28 – amended; §14-2-17a – new

DATE OF PASSAGE: April 8, 2017

EFFECTIVE DATE: July 7, 2017

ACTION BY GOVERNOR: Signed April 25, 2017

House Bill 2453

Expanding the list of persons the Commissioner of Agriculture may license to grow or cultivate industrial hemp

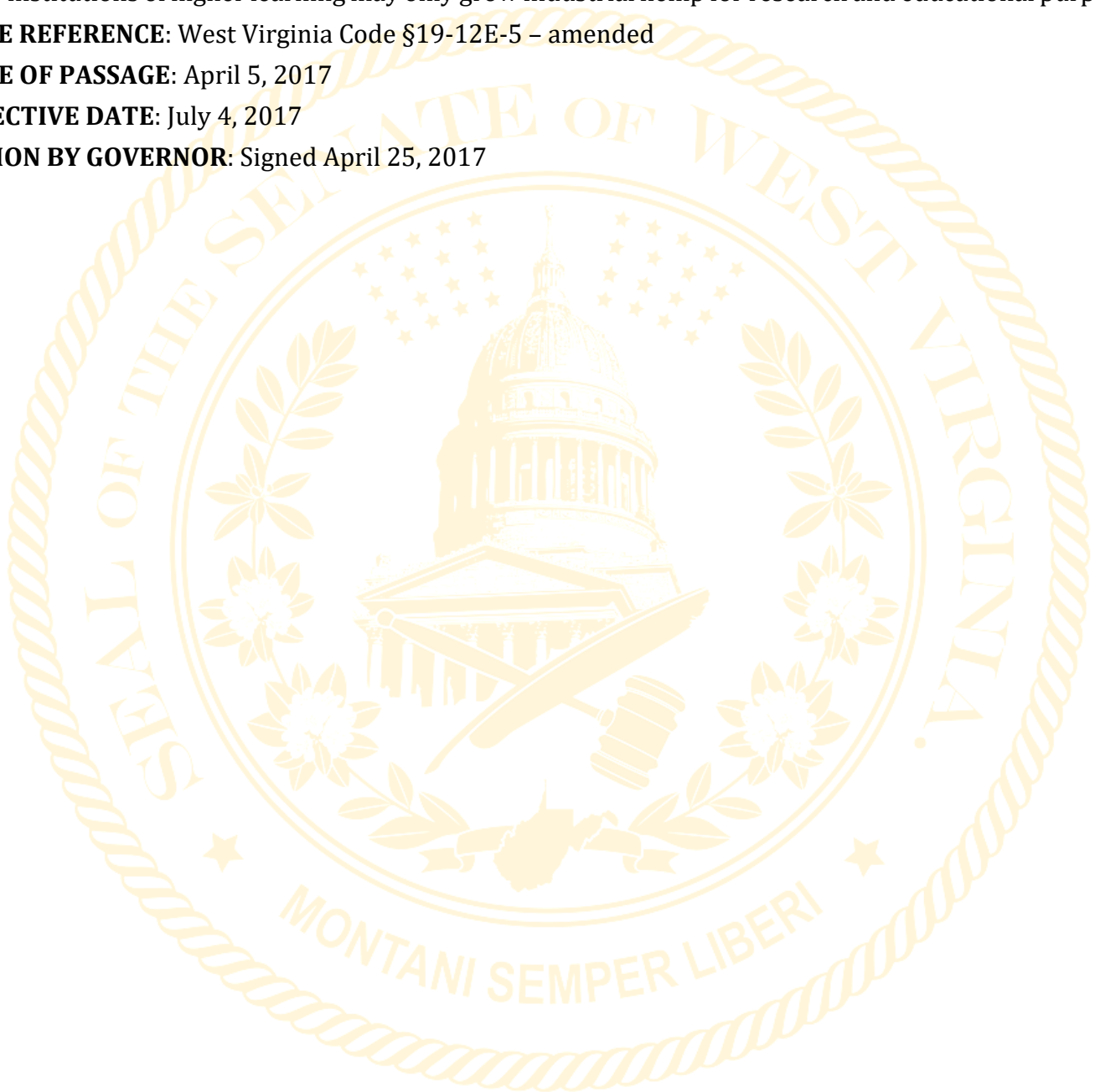
The purpose of this bill is to expand the list of persons the Commissioner of Agriculture may license to grow or cultivate industrial hemp, including qualified persons and state institutions of higher learning. State institutions of higher learning may only grow industrial hemp for research and educational purposes.

CODE REFERENCE: West Virginia Code §19-12E-5 – amended

DATE OF PASSAGE: April 5, 2017

EFFECTIVE DATE: July 4, 2017

ACTION BY GOVERNOR: Signed April 25, 2017



House Bill 2459

Relating to regulation of health care and the certificate of need process

This bill relates to the regulation of health care and modifies several provisions of code related to the Certificate of Need process.

The bill does the following things:

- Repeals redundant code section relative to neonatal abstinence facilities;
- Repeals health care facility financial disclosure;
- Repeals uniform system of financial reporting;
- Repealing information gathering and coordination advisory group;
- Updates the certificate of need process;
- Places certificate of need under Secretary of Department of Health and Human Resources;
- Adds exemptions to certificate of need and clarifies exemptions;
- Modifies computed technology exemption from certificate of need;
- Clarifies skilled nursing facility exemption for counties with no skilled nursing facility;
- Allows skilled nursing facility bed transfers;
- Requires skilled nursing facility beds retain identical certification status;
- Clarifies appeals process;
- Removes autonomy of Health Care Authority;
- Placing Health Care Authority under direct supervision of Secretary of the Department of Health and Human Resources;
- Repeals unnecessary code sections made unnecessary with transfer to Department of Health and Human Resources;
- Eliminates powers related to insurance policies and health organizations;
- Modifies health care provider tax relative to rate review;
- Eliminates public disclosure;
- Eliminates granting authority;
- Eliminates unnecessary penalties;
- Eliminates unnecessary severability section;
- Eliminates three full time board members;
- Replaces existing board with a five member board;
- Provides for appointment of board members – setting out qualifications of board members, terms of offices, filling of vacancies and oath for board members, providing for payment of board member expenses, providing for appointment of a chairman, setting out meeting requirements
- Creating the position of Executive Director – setting out power and duties of the Executive Director and setting compensation for the Executive Director
- Eliminates certain powers of the Health Care Authority;
- Eliminates hospital and health care facility assessments;
- Updates authority power relative to cooperative agreements; Provides for transfer of necessary duties of Health Care Authority to Department of Health and Human Resources;
- Requires a transition plan and sets forth necessary elements of transition plan;
- Allows transfer of West Virginia Health Information Network to private entity;
- Grants access to West Virginia Health Information Network to Secretary of Department of Health and Human Resources;

- Provides for transfer of encumbered amounts of West Virginia Health Information Network to private entity upon transfer date;
- Provides for administrative penalties for nurses overtime be paid into the general revenue fund;
- Eliminates discretionary spending of Health Care Authority for amounts from penalties for violation of the nurse overtime act;
- Substitutes executive director of Health Care Authority or Secretary of Department of Health and Human Resources for chair of Health Care Authority in various code sections;
- Transfers authority of Health Care Authority regarding uninsured small group health benefit plans to the Insurance Commission;
- Eliminates archaic revolving loan and grant fund; making conforming amendments;
- Sets effective dates for the bill and its provisions.

CODE REFERENCE: West Virginia Code §16-2D-5f, §16-5F-1 through §16-5F-7, §16-29B-6, §16-29B-7, §16-29B-9, §16-29B-10, §16-29B-11, §16-29B-17, §16-29B-18, §16-29B-22, §16-29B-23, §16-29B-24, §16-29B-25, §16-25B-27, and §16-29B-29, §16-29I-1, and §16-29I-10 – repealed; §5F-1-3a §6-7-2a, §9-4C-7, §9-4C-8, §11-27-9, §11-27-11, §16-2D-2, §16-2D-3, §16-2D-4, §16-2D-5, §16-2D-8, §16-2D-9, §16-2D-10, §16-2D-11, §16-2D-13, §16-2D-15 and §16-2D-16, §16-5B-17, §16-29B-2, §16-29B-3, §16-29B-5, §16-29B-8, §16-29B-12, §16-29B-26 and §16-29B-28, §16-29G-4, §21-5F-4, §33-4A-1 through §33-4A-7, and §33-16D-16 – amended; §16-29B-5a – new

DATE OF PASSAGE: April 5, 2017

EFFECTIVE DATE: July 4, 2017

ACTION BY GOVERNOR: Signed April 25, 2017

House Bill 2475

Authorizing the Tax Commissioner to collect tax, interest and penalties due and owing from payments to vendors and contractors from the Auditor and other state, county, district or municipal officers and agents

This bill does the following:

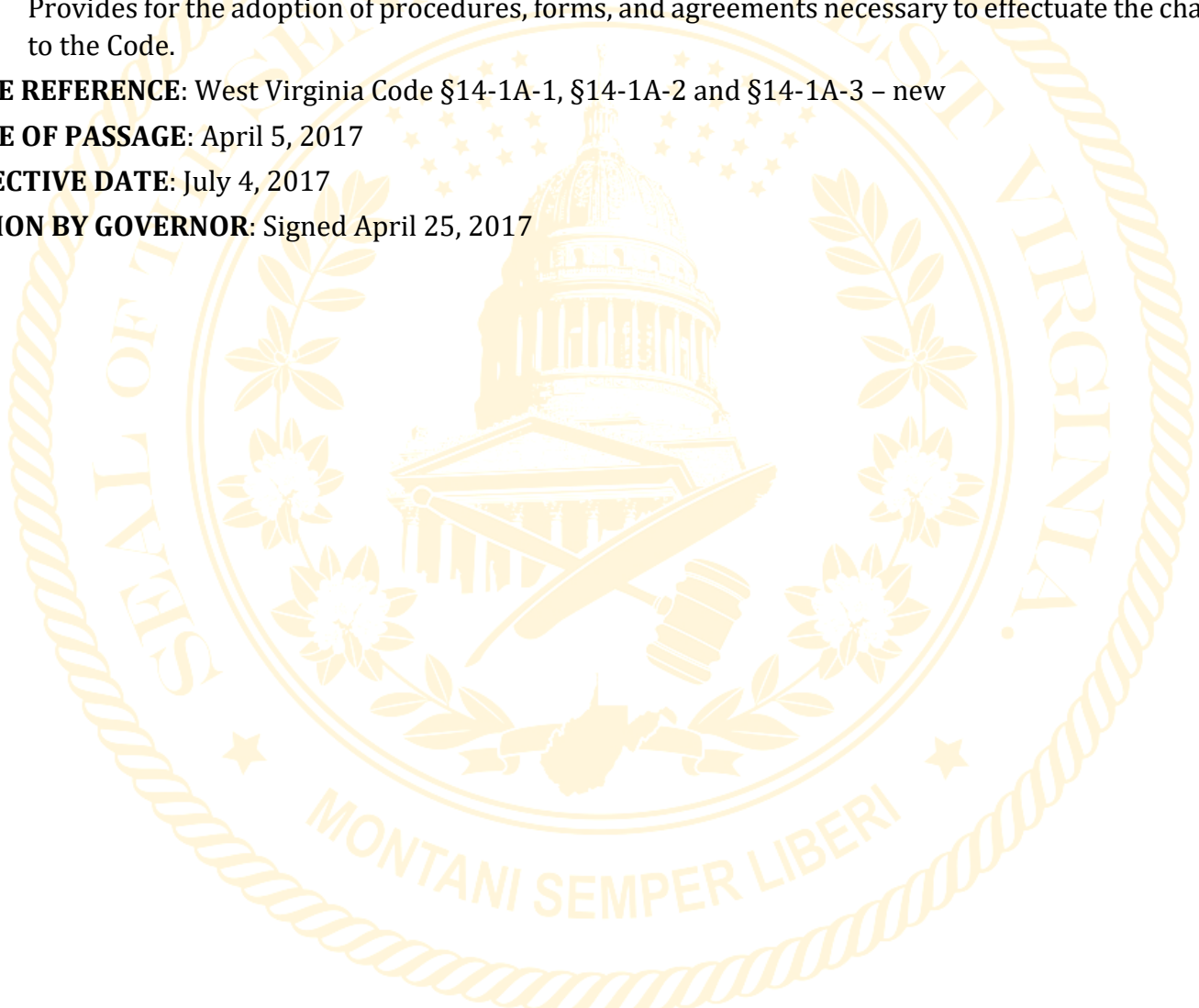
- Authorizes the establishment of a Debt Resolution Services Division within the Auditor's office;
- Provides for administration of division and the offset of a payment due to a vendor, contractor or taxpayer from the state to satisfy an outstanding obligation owed by them to the state.
- Authorizes the Division to administer the United States Treasury Offset Program.
- Establishes responsibilities of the State Tax Commissioner and spending units of the state.
- Provides for the adoption of procedures, forms, and agreements necessary to effectuate the changes to the Code.

CODE REFERENCE: West Virginia Code §14-1A-1, §14-1A-2 and §14-1A-3 – new

DATE OF PASSAGE: April 5, 2017

EFFECTIVE DATE: July 4, 2017

ACTION BY GOVERNOR: Signed April 25, 2017



House Bill 2486

Providing that when a party's health condition is at issue in a civil action, medical records and releases for medical information may be requested and required without court order

This bill amends W. Va. Code §33-6F-1 by adding thereto a new subsection, designated subsection (c). Under this new subsection, medical records and medical billing records obtained by insurers in connection with insurance claims or civil litigation must be confidentially maintained by insurers in accordance with state and federal law, including the provisions of Title 114, Series 57 of the Code of State Rules. Under the new subsection, no additional restrictions or conditions may be imposed that contradict or are inconsistent with any applicable policy of insurance or the performance of insurance functions permitted or authorized by state and federal law.

The bill requires the Insurance Commissioner to review the current provisions of Title 114, Series 57 of the Code of State Rules and, if determined necessary, shall propose new rules or modify existing rules by December 31, 2017, to address four specific areas:

- The circumstances under which an insurance company may disclose medical records and medical billing records to other persons or entities;
- The circumstances under which personal identifying information of a person must be redacted before that person's medical records or medical billing records may be disclosed to other persons or entities;
- The steps an insurance company is required to undertake before medical records or medical billing records are disclosed to other persons or entities to assure that any person or entity to which an insurance company is disclosing a person's medical records or medical billing records will be using such records only for purposes permitted by law; and,
- The implementation of the requirement that the insurance company has processes or procedures in place to prevent the unauthorized access by its own employees to a person's confidential medical records or medical billing records.

CODE REFERENCE: West Virginia Code §33-6F-1 – amended

DATE OF PASSAGE: March 31, 2017

EFFECTIVE DATE: June 29, 2017

ACTION BY GOVERNOR: Signed April 10, 2017

House Bill 2506

Relating to the permit limit calculations and allowing overlapping mixing zones for calculating permit limits for drinking water criteria

This bill allows water quality NPDES permit limits to be calculated using an average design flow as recommended by the United States Environmental Protection Agency (EPA) for the protection of human health, rather than the more restrictive low flow standard that is currently used by the WV Department of Environmental Protection (DEP). Specifically, the bill requires the DEP to calculate a permittee's limit on pollutant discharge by using the harmonic mean flow, a critical design flow that is used to determine the amount of pollution a stream can hold without posing a threat to human health.

The bill also allows for overlapping mixing zones, a practice that has been prohibited in West Virginia. In order to comply with water quality standards set forth by the Federal Clean Water Act (CWA), the WV DEP allows permitted dischargers to use a mixing zone, where concentrations of an emitted pollutant in wastewater are higher than would normally be allowed under the standards because they are allowed to mix with the receiving river or stream. By mixing with the receiving body of water, the pollutant is diluted to an acceptable level. The bill also allows for mixing zones to overlap, which means that permitted dischargers may be located closer in proximity to one another. Even with passage of the bill, the law still mandates that no mixing zone – whether or not it overlaps – reach a point that is less than one-half mile upstream of any water intake.

CODE REFERENCE: West Virginia Code §22-11-7b – amended

DATE OF PASSAGE: March 28, 2017

EFFECTIVE DATE: June 26, 2017

ACTION BY GOVERNOR: Signed April 8, 2017

House Bill 2509

Relating to the practice of telemedicine

This bill provides an exception to the prohibition for prescribing Schedule II drugs via telemedicine when a physician is providing treatment to patients who are minors, or if eighteen years of age or older, who are enrolled in a primary or secondary education program who are diagnosed with intellectual or developmental disabilities, neurological disease, Attention Deficit Disorder, Autism, or a traumatic brain injury in accordance with guidelines as set forth by organizations such as the American Psychiatric Association, the American Academy of Child and Adolescent Psychiatry or the American Academy of Pediatrics. The physician must maintain records supporting the diagnosis and the continued need of treatment.

CODE REFERENCE: West Virginia Code §30-3-13a and §30-14-12d – amended

DATE OF PASSAGE: April 7, 2017

EFFECTIVE DATE: April 7, 2017

ACTION BY GOVERNOR: Signed April 26, 2017

House Bill 2519

Medicaid program compact

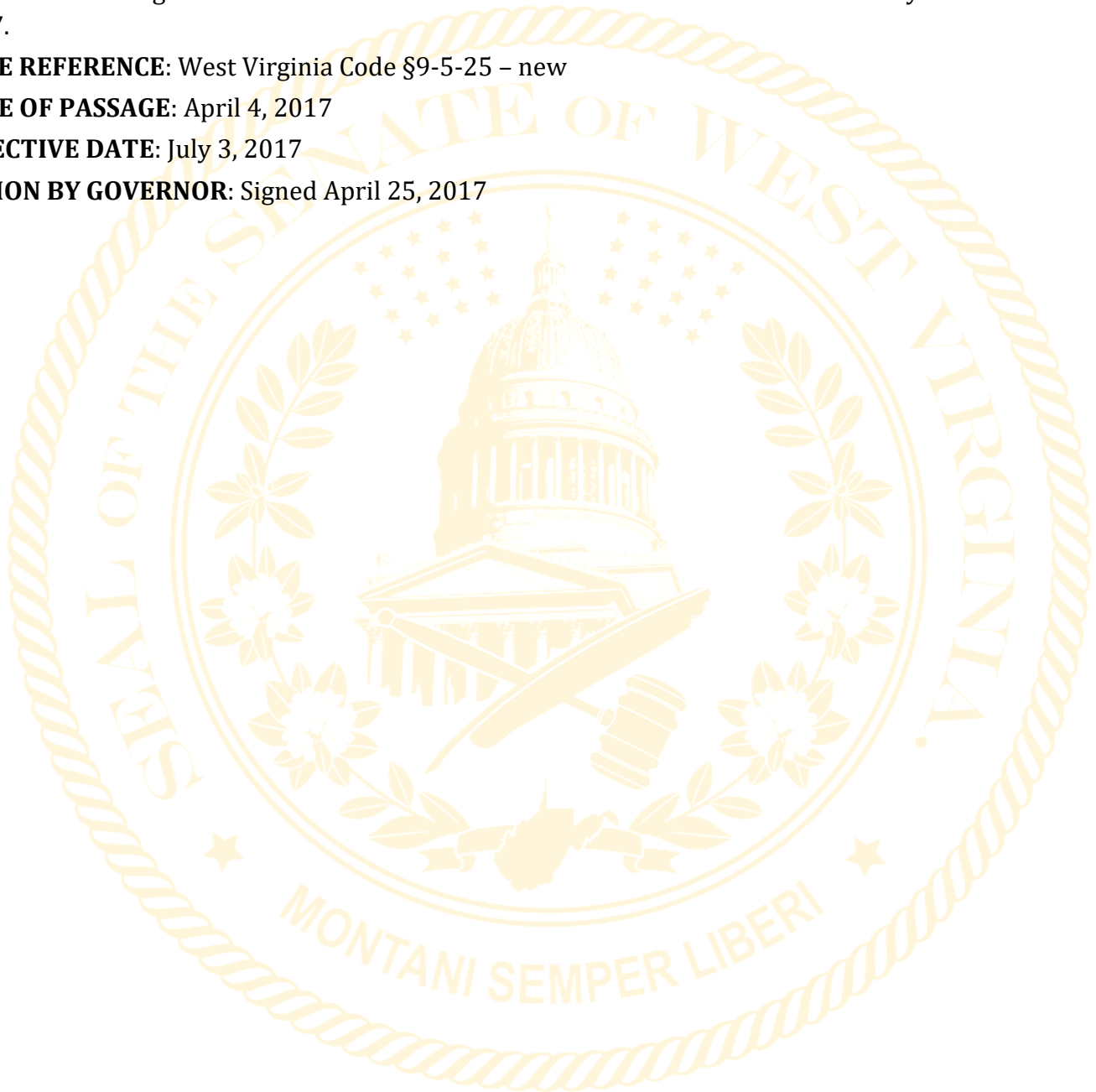
This bill would require the Secretary of the Department of Health and Human Resources to contact our surrounding states to establish a compact to allow health care providers to be paid for services in other states that are provided to other states' Medicaid participants. There is also a required report to the Legislative Oversight Commission on Health and Human Resources Accountability before October 31, 2017.

CODE REFERENCE: West Virginia Code §9-5-25 – new

DATE OF PASSAGE: April 4, 2017

EFFECTIVE DATE: July 3, 2017

ACTION BY GOVERNOR: Signed April 25, 2017



House Bill 2522

Nurse licensure compact

The bill permits the West Virginia Board of Nursing to enter into a licensure compact which would enable a participant to be licensed in 25 other states when West Virginia adopts the compact. Here is a section by section description of the compact:

- §30-7F-1. Findings and Declaration of Purpose
- §30-7F-2. Defines necessary terms
 - Adverse action
 - Alternative program
 - Coordinated licensure information system
 - Current significant investigative information
 - Encumbrance
 - Home state
 - Licensing board
 - Multistate license
 - Multistate licensure privilege
 - Nurse
 - Party state
 - Remote state
 - Single-state license
 - State
 - State practice laws
- §30-7F-3. General Provisions and Jurisdiction
 - A multistate license issued by a home state to a resident of that state will be recognized by each party state.
 - States must implement procedures for considering the criminal history of applicants.
 - Requirements for obtaining or retaining a multistate license in the home state.
 - Allows disciplinary action to be taken on a multistate license similar to a state license.
 - Nurses practicing in a party state must comply with the state practice laws of the state in which the client is located at the time service is provided.
 - Provides that a nurse remains eligible for licensure in individual states.
 - Allows renewal of a multistate license by a nurse holding such license.
- §30-7F-4. Applications for Licensure in a Party State
 - Limitation to one home state license
 - Outlines process for change of primary residence/home state
- §30-7F-5. Additional Authorities Invested in Party State Licensing Boards
 - A licensing board can take adverse action against a nurse's multistate licensure privilege to practice within that party state. These include cease and desist orders, investigations, issue subpoenas, completion of a criminal background check and provides that an adverse action on a license carries over to all party states.
- §30-7F-6. Coordinated Licensure Information System and Exchange of Information
 - Requires participation in a coordinated licensure information system.

- Requires the boards of nursing to promptly report to the database any adverse action taken on a nurse, any information gathered during an investigation on a complaint against a nurse
- Sets out confidentiality requirements.
- Sets out data elements that should be exchanged with the Compact administrator
- §30-7F-7. Establishment of the Interstate Commission of Nurse Licensure Compact Administrators
 - Establishes the Interstate Commission of Nurse Licensure Compact Administrators. This provides for membership and voting procedures for member states. It also sets up meeting requirements.
 - Requires bylaws.
 - Sets out various powers and duties of the Commission.
 - Allows for an assessment to be levied on each member state.
 - Sets out limitation of liability for duties which are within the official capacity of the Commission.
- §30-7F-8. Rulemaking
 - Allows for the Interstate Commission to adopts rules.
- §30-7F-9. Oversight, Dispute Resolution and Enforcement
 - Allows each state to enforce the Compact.
 - Provides the procedures that will be followed in the event that a party state fails to comply with the NLC
 - Sets out a dispute resolution procedure
- §30-7F-10. Effective Date, Withdrawal and Amendment
 - Compact will become effective on the earlier of the date of legislative enactment by no less than 26 states or December 31, 2018.
- §30-7F-11. Construction and Severability
 - Compact shall be liberally construed, and the provisions are severable.

CODE REFERENCE: West Virginia Code §30-7F-1 through §30-7F-11 – new

DATE OF PASSAGE: April 4, 2017

EFFECTIVE DATE: July 3, 2017

ACTION BY GOVERNOR: Signed April 25, 2017

House Bill 2542

Relating to public higher education personnel

This bill repeals the following sections of Code:

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

This bill also:

- Removes the requirement that the commission employ a Vice Chancellor for Human Resources, a Generalist/Manager, a Director of Classification and Compensation and a Training and Development Specialist; removes a portion of the duties of the Vice Chancellor and reassigns the remaining duties to the chancellor or a qualified designee.
- Adds consulting with institutions on human relations policies and rules to the duties of the Chancellor for Higher Education.
- Modifies the legislative intent and purpose section for the article relating to personnel to be consistent with other changes in the bill.
- Defines “more senior employee” as an employee who has greater longevity with the institution than another employee who is also subject to layoff as part of a reduction in force.
- Removes language providing that the section on reducing the workforce is applicable to an employee who is transferred involuntarily to a position in nonclassified status for which he or she did not apply; and providing that any classified employee involuntarily transferred to a position in nonclassified status may exercise the rights in the section only for positions equivalent to or lower than the last job class the employee held.
- Requires governing boards to adopt a rule on reductions in workforce of full-time classified employees after consultation with and providing 30 days written notice to the applicable staff council of an organization.

- For certain layoffs, allows an institution to layoff the incumbent in the position being eliminated. In the case of elimination of some but not all of the position of the same job title, requires consideration of an employee's documented quality of work performance as demonstrated in performance evaluations of record (including, but not limited to, disciplinary records), skills, seniority as measured by years of service, or other factors, as determined by the board.
- Provides that if the organization desires to lay off a more senior employee, it may offer him or her a severance package, the value of which cannot exceed the employee's salary for a year.
- Removes language requiring that if the organization desires to lay off a more senior employee, it must demonstrate that the senior employee cannot perform any other job duties held by less senior employees of that organization in the same job class or any other equivalent or lower job class for which the senior employee is qualified.
- Removes language requiring a random selection system be used in cases of identical seniority.
- Removes language relating to requiring that during a furlough or reduction in workforce employees be placed on a preferred recall list.
- Removes language relating to requiring that a nonexempt classified employee, who applies and meets the minimum qualifications for a nonexempt job opening at the organization where currently employed, whether the job is a lateral transfer or a promotion, be promoted or transferred before a new person is hired.
- Removes requirement that applications for employment include each applicant's social security number.
- Removes language applicable in cases of a reduction in force relating to an employee of an organization under the council not being able to displace an employee of an organization under the commission; relating to an employee of an organization under the commission not being able to displace an employee of an organization under the council; and addressing instances where an employee is performing a dual service for a formerly administratively linked community and technical college and a former sponsoring institution.
- Makes modifications to provisions relating to continuing education and professional development such as requiring the continuing education and professional development be operated under rules adopted by the governing boards instead of the commission and council; and expanding application of provisions to include all employees instead of only faculty and classified employees.
- Modifies required personnel report to LOCEA by requiring it to be every five years instead of annually; and requiring the report to include progress toward achieving fair compensation of all employees rather than full funding of the temporary classified employees' salary schedule.
- Modifies requirements for human resources report card by requiring it to be submitted to LOCEA every five years instead of annually; and removing requirements for several specific items of data.
- Allows a governing board to adopt a rule relating to faculty after consulting with and providing 30 days written notice to the faculty senate; and providing that the rule preempts any conflicting rule adopted by the commission or council.
- Modifies the definition of classified employee to mean a regular employee who: (1) Does not meet the duties test for exempt status under the provisions of the Fair Labor Standards Act; and (2) does not otherwise meet the definition of nonclassified employee except that any employee who was a classified employee as of January 1, 2017, retains that status unless otherwise meeting the definition of nonclassified employee.

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

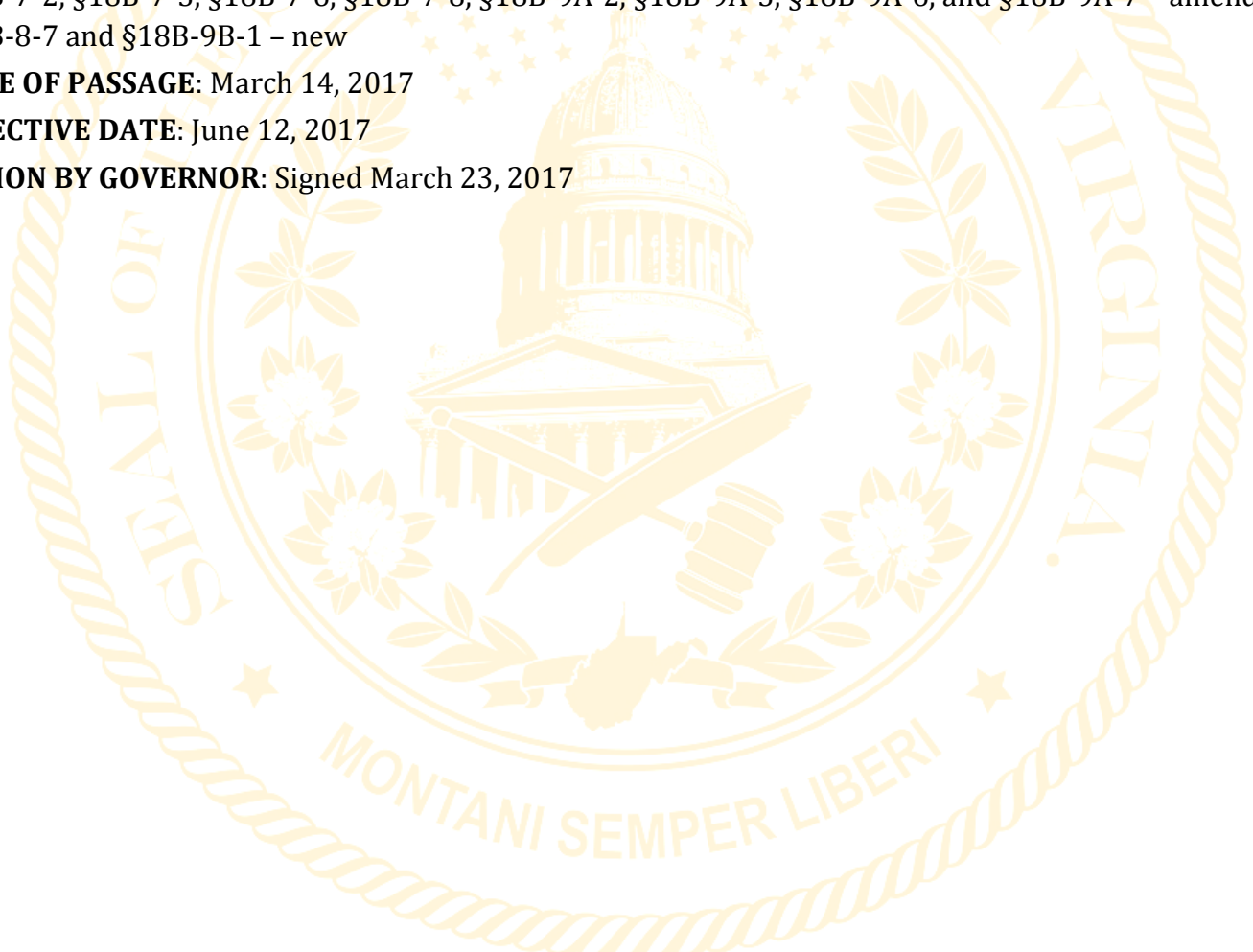
- Requires that any classification and compensation rule provide for the following:
 - The establishment of a classification and compensation system to address certain specified objectives;
 - provisions for an objective performance evaluation model;
 - a quarterly meeting between management and representatives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

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

DATE OF PASSAGE: March 14, 2017

EFFECTIVE DATE: June 12, 2017

ACTION BY GOVERNOR: Signed March 23, 2017



House Bill 2555

Relating to tax credits for apprenticeship training in construction trades

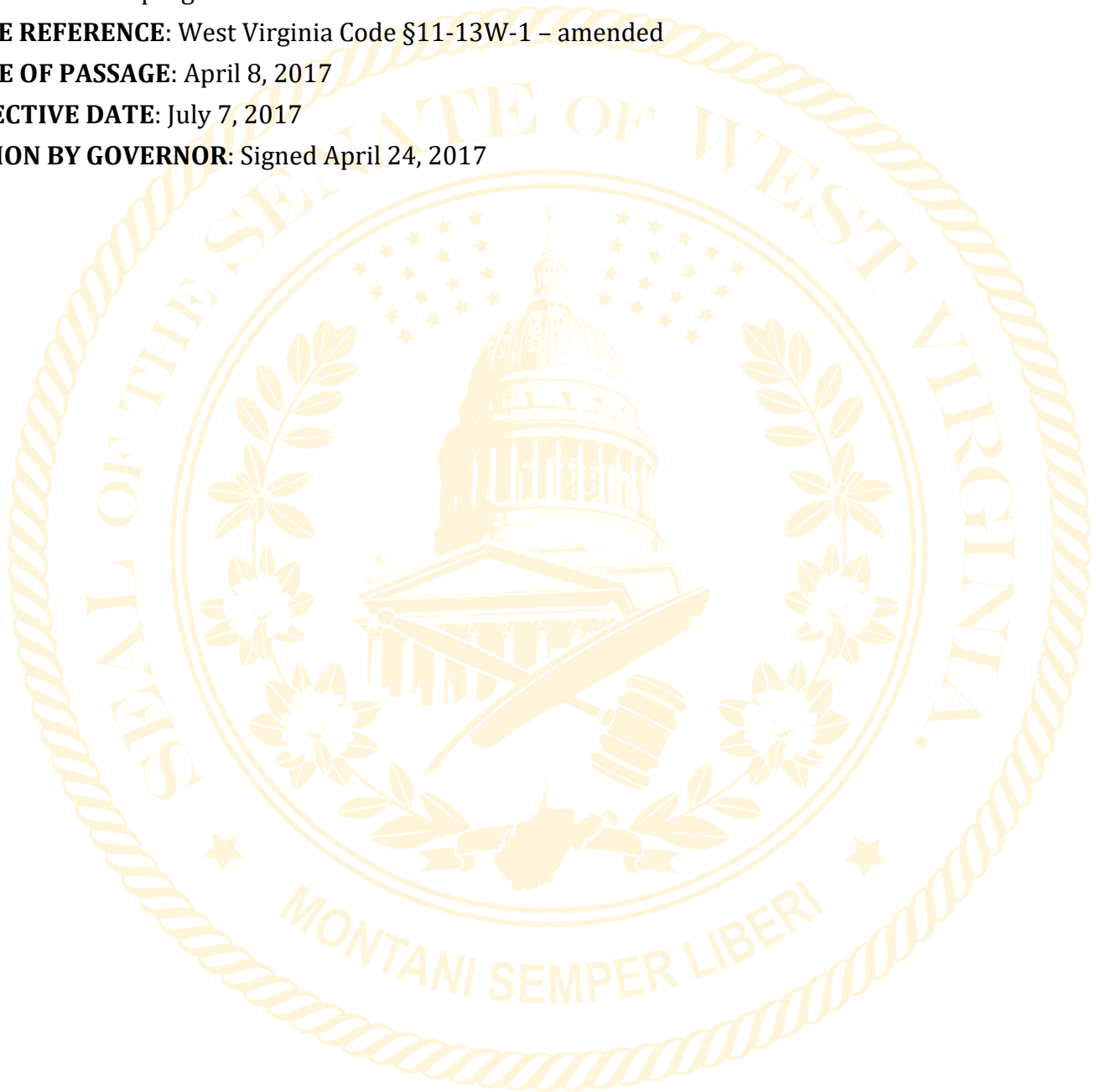
The bill would remove the requirement that an apprentice training program administered under federal law be jointly administered by labor and management trustees to qualify for tax credits for wages paid to apprentices in the construction trades participating in apprenticeship training in construction trades under the program.

CODE REFERENCE: West Virginia Code §11-13W-1 – amended

DATE OF PASSAGE: April 8, 2017

EFFECTIVE DATE: July 7, 2017

ACTION BY GOVERNOR: Signed April 24, 2017



House Bill 2561

Relating to public school support

The bill would amend several steps of the funding formula by which public school support is calculated.

- §18-9A-4 – This section would be amended to change the allowance for professional educators and professional instructional personnel. No penalty will be imposed for those county boards that fail to maintain the minimum number of professional instructional personnel during the 2016-2017. The section would also provide for the proration of professional instructional personnel among counties that join in support of a vocational or comprehensive high school or other program or service. (See HED amendment that makes further amendments to determining the allowance for professional instructional personnel).
- §18-9A-5 – This section would be amended to change the allowance for service personnel. For a position not filled, the average state funded salary for the county is used. Where number and allowance for service personnel is paid in part by county and state, the funding would be prorated.
- §18-9A-6a – This section would be amended to change the allowance for the Teachers Retirement contributions to include professional student support personnel in the calculation; and to change a factor in the calculation for county contributions to pensions for teachers.
- §18-9A-7 – This section would be amended to change the allowance for transportation costs by allowing each county board to use up to \$200,000 of the allowance for bus replacement each year for school facility and equipment repair, maintenance and improvement or replacement or other current expense priorities if approved by the state superintendent.
- §18-9A-9 – This section would be amended to change the allowance for current expense from a percent of allowances for professional and service personnel to the county's state average costs per square footage per student for operations and maintenance
- §18-9A-10 – This section would be amended to change the allowance for instructional improvement.
- §18-9D-4d – This section authorizes the School Building Authority to maintain a reserve fund in the amount of not less than \$600,000 for the purpose of making emergency grants to financially distressed county boards of education.

CODE REFERENCE: West Virginia Code §18-9A-4, §18-9A-5, §18-9A-6a, §18-9A-7, §18-9A-9, and §18-9A-10 – amended; §18-9D-4d – new

DATE OF PASSAGE: April 8, 2017

EFFECTIVE DATE: July 1, 2017

ACTION BY GOVERNOR: Signed April 26, 2017

House Bill 2619

Risk Management and Own Risk and Solvency Assessment Act

This is an agency bill and accreditation requirement for the Insurance Commissioner. This bill adopts the National Association of Insurance Commissioners' Risk Management and Own Risk Solvency Assessment Model Act (Model #505; Model Regulation Service Oct. 2012), for implementation by West Virginia insurers, so that they are better equipped to assess their financial conditions and remain solvent.

The bill provides requirements for an insurer (including an insurance group of which the insurer is a member) to maintain a risk management framework and for completing an own risk and solvency assessment (ORSA). The article applies to all insurers domiciled in this state, subject to certain exemptions.

Section one expresses the purpose and scope of the article. Section two states definitions. "Owns risk and solvency assessment" or "ORSA" means a confidential internal assessment, appropriate to the nature, scale and complexity of an insurer or insurance group, conducted by that insurer or insurance group of the material and relevant risks associated with the insurer or insurance group's current business plan and the sufficiency of capital resources to support those risks. Section three requires insurers to maintain a risk management framework.

Section 4 requires an ORSA annually and at any time when there are significant changes to the risk profile. Section 5 provides that, upon the Insurance Commissioner's (IC) request, and no more than once each year, an insurer shall submit to the IC an ORSA summary report. An insurer may comply with this section by providing the most recent and substantially similar report(s) provided by the insurer to another jurisdiction.

Section six provides exemptions from the ORSA requirements. Notwithstanding these exemptions the IC may require an insurer to comply with the article requirements based on unique circumstances if the insurer meets one or more standards of an insurer considered to be in hazardous financial condition or otherwise exhibits qualities of a troubled insurer.

Section seven provides that the ORSA summary report shall be prepared consistent with the ORSA Guidance Manual, subject to certain requirements.

Section 8 provides that documents or other information in the possession of the IC or obtained via any other person under this article, including the ORSA summary report, are recognized as being proprietary and to contain trade secrets and shall be confidential and privileged. This section also sets forth several requirements and limitations related to confidentiality of information provided pursuant to this article. Section nine provides sanctions. Any insurer failing to timely file the ORSA summary report, without just cause, shall, after notice and hearing, pay a penalty of \$2,500 for each day's delay, up to a maximum penalty of \$75,000. The IC may reduce the penalty if the insurer demonstrates to the commissioner that the penalty would constitute a financial hardship to the insurer.

Section ten sets forth a severability clause and Section 11 states that the requirements of this article shall become effective on January 1, 2018.

CODE REFERENCE: West Virginia Code §33-40B-1 through §33-40B-11 – new

DATE OF PASSAGE: April 7, 2017

EFFECTIVE DATE: January 1, 2018

ACTION BY GOVERNOR: Signed April 26, 2017

House Bill 2620

West Virginia Drug Overdose Monitoring Act

This bill creates the Office of Drug Control Policy within the Department of Health and Human Resources. It requires the Office to create a state drug control policy in coordination with the Bureaus of the Department and other state agencies. The bill sets forth the duties of the Office, including developing a strategic plan to reduce the prevalence of drug and alcohol abuse and smoking by at least 10 % by July 1, 2018, applying for grants and filing semi-annual reports with the Joint Committee on Health. It allows the exchange of information between various agencies. It also requires the Office to develop a plan, prior to July 1, 2018, to expand the number of treatment beds in locations throughout the states.

This bill requires the Office to establish a central repository to store information required by the Act. It sets forth the information required to be reported and specifies those entities that are required to report.

Finally, this bill authorizes the Office to propose rules for promulgation and authorizes emergency rules.

CODE REFERENCE: West Virginia Code §15-9C-1 through §15-9C-5 – new

DATE OF PASSAGE: April 8, 2017

EFFECTIVE DATE: July 7, 2018

ACTION BY GOVERNOR: Signed April 26, 2017

House Bill 2653

Extending the Multi State Real-Time Tracking System

This bill extends the expiration date of the Multi-State Real-Time Tracking System of pseudoephedrine from June 30, 2017 to June 30, 2023.

The NPLEX pseudoephedrine sales tracking database is a nationwide database that is provided for free to the states through funding by the pseudoephedrine manufacturers funneled through the National Association of Drug Diversion Investigators. There is no cost to West Virginia government for this database or access to it. The NPLEX database is incorporated into law in West Virginia Code Chapter 60A, Article 10, with requirements on pharmacies as sellers of pseudoephedrine to use it and report into it. There is no revenue generated by the State from this database.

CODE REFERENCE: West Virginia Code §60A-10-19 – amended

DATE OF PASSAGE: April 4, 2017

EFFECTIVE DATE: July 3, 2018

ACTION BY GOVERNOR: Signed April 11, 2017

House Bill 2678

Changing the amounts of prejudgment and post-judgment interest to reflect today's economic conditions

This bill modifies the manner in which prejudgment and post-judgment interest on a court judgment or decree is calculated. To accomplish this, §56-6-31 is substantially rewritten. Subsection (a) clarifies that, unless otherwise provided by law, all judgements and decrees for the payment of money shall bear simple interest that does not compound.

With respect to prejudgment interest, subsection (b) provides that prejudgment interest may be permitted by a court for any special damages or liquidated damages. Interest on these special and liquidated damages is simple, not compounding, interest. The term “special damages” is defined to include “lost wages and income, medical expenses, damages to tangible personal property and similar out-of-pocket expenditures, as determined by the court.” Additionally, the terms of any written agreement giving rise to the obligation govern the rate and terms of prejudgment interest.

The prejudgment interest rate is set at 2% above the Fifth Federal Reserve District secondary discount rate in effect on January 2 of the year in which the right to bring the action has accrued. Once established, the rate does not change during the prejudgment time period. The prejudgment rate has a floor of 4% and is capped at 9%. The bill directs the administrative office of the Supreme Court of Appeals to determine the rate and notify appropriate parties, including courts and members of the West Virginia State Bar. A provision is included to govern the rate for cases where the right to bring the action accrued prior to 2009, in which case the court may award damages at the rate in effect at the time the cause of action accrued.

For post-judgment interest, addressed in subsection (c), the rate is set at two percentage points above the Fifth Federal Reserve District secondary discount rate in effect on January 2 of the year in which the judgment or decree is entered. This marks a one percent decrease from the prior rate. Additionally, the rate of post-judgment interest must remain between 4% and 9%. As with prejudgment interest, the administrative office of the Supreme Court of Appeals is directed to determine the rate and notify appropriate parties, and the rate remains constant for each case once established.

CODE REFERENCE: West Virginia Code §56-6-31 – amended

DATE OF PASSAGE: March 17, 2017

EFFECTIVE DATE: January 1, 2018

ACTION BY GOVERNOR: Signed March 30, 2017

House Bill 2683

Relating to West Virginia Insurance Guaranty Association Act

The West Virginia Insurance Guaranty Association Act has not been amended since its enactment in 1970. The Act provides a mechanism for payment of covered claims under certain insurance policies to avoid excessive delay and financial loss to claimants or policyholders resulting from the insolvency of an insurer. The Act does not apply to life, title, surety, disability, credit, mortgage guaranty and ocean marine insurance. The bill updates the provisions of the Act based on two model insurance acts. Excluded insurance now additionally includes the following: annuity and health; fidelity or surety bonds; insurance of warranties or service contracts; and insurance provide by or guaranteed by a government entity or agency.

Current law and the bill do not cap workers' compensation claims. This bill caps a claim for deliberate intention at \$300,000. The bill maintains the current \$300,000 cap for all non-workers' compensation claims. The bill states that the Association is not obligated to pay a claimant an amount in excess of the obligation of the insolvent insurer. The bill also specifies a cap of \$10,000 per policy for a covered claim for the return of unearned premiums.

CODE REFERENCE: West Virginia Code §33-26-2, §33-26-3, §33-26-4, §33-26-5, §33-26-8, §33-26-9, §33-26-10, §33-26-11, §33-26-12, §33-26-13, §33-26-14 and §33-26-18 – amended

DATE OF PASSAGE: April 8, 2017

EFFECTIVE DATE: July 7, 2017

ACTION BY GOVERNOR: Signed April 24, 2017

House Bill 2711

Abolishing regional educational service agencies and providing for the transfer of property and records

This bill abolishes regional educational service agencies, and contains several provisions of code related to the transfer of the agencies' property and records.

§18-2-26

- Strikes out all of the existing language relating to RESAs, but adds language keeping RESAs in place until July 1, 2018 unless and until modified by a cooperative agreement entered into by county boards within the agency boundaries or dissolved by the county boards.

§18-2E-1a

- Requires the state board to constructively engage with LOCEA prior to adoption or revision of academic standards in certain subjects and prior to adoption of a new statewide summative assessment.
- Requires, prior to the implementation of a new accountability system, the state board to develop and recommend to LOCEA an accountability program.
- Prohibits the state board from implementing Common Core standards.
- Requires the state board to allow West Virginia educators the opportunity to participate in the development of academic standards.
- Prohibits the state board from adopting the Smarter Balanced Assessment system or the PARCC assessment system.
- Prohibits the state board from adopting any national or regional testing program tied to federal funding, or national or regional academic standards tied to federal funding without oversight by LOCEA.

§18-2E-5

- Modifies findings.
- Modifies the areas for which the state board must adopt high-quality education standards in by adding digital literacy and replacing curriculum with academic standards.
- Requires, prior to the testing window of the 2017-1018 school year an assessment in grades 3 through 8 and once during the grade span of 9-12 to assess ELA and math.
- Requires one science assessment in each grade of the grade spans of 3-5, 6-8 and 9-12.
- Removes authorization for state board to require the ACT EXPLORE and PLAN.
- Requires the adoption of a college and career readiness assessment to be administered in grade eleven; requires the assessment to count toward the statewide student assessment; and requires that the assessment be one that is used by a significant number of regionally accredited higher education institutions for determining college admissions.
- Removes authority of state board to require writing assessment.
- Requires that for any online assessment, the state board provide online assessment preparation.
- Allows the state board to adopt a career readiness assessment that measures foundational workplace skills and leads to a nationally recognized work readiness certificate.
- Requires assessment to be used for at least a total of four consecutive years.
- Prohibits the summative assessment from taking more than two percent of the student's instructional time.

- Provides that no student may be required to complete a greater number of summative assessment than is required by ESSA except as otherwise required by this subsection.
- Prohibits collection of personal data as part of the assessment process except for what is necessary for the student's instruction, academic and college and career search needs.
- Requires school accreditation system be based on multiple measures and meet the requirements of federal law; and requires state accreditation to be reviewed and approved in a balanced manner that gives fair credit to all measures.
- Strikes out all language relating to the Office of Education Performance Audits; and allows the state board to employ experienced education professionals to coordinate on site and school system improvement efforts with staff at the State Department of Education.
- Modifies school accreditation provisions including striking out all provisions relating to allowing the state board to intervene in the operation of a school.
- Modifies school system approval provisions including requiring the state board to issue an approval status in compliance with federal law and established by state board rule; and strikes out all of the current statutory approval statuses: full approval, temporary approval, conditional approval and nonapproval status.
- Strikes out all language relating to requiring a county board with more than a casual deficit to submit a plan to the state board specifying the county board's strategy for eliminating a casual deficit.
- Modifies authority of the state board to intervene in the operation of a school system:
- Allows the state board to only limit the authority of the county board in areas that compromise the delivery of a thorough and efficient education.
- Allows the state superintendent to fill vacancies in a county superintendent's position or other positions the state superintendent has declared vacant.
- Removes authority of state superintendent to conduct hearings on personnel matters and school closure or consolidation matters.
- Removes authority of state superintendent to function in lieu of the county board in a transaction relating to real property.
- Removes authority of state superintendent to replace administrators in low performing schools.
- Removing authority of state superintendent to fill positions of administrators and principals
- Allows the state board to intervene immediately if a county board fails to act on a statutory obligation which would interrupt the day-to-day operations of the school system.

§18-5-13

- Allows county boards to enter into cooperative agreements with other county boards to facilitate coordination in areas of service to reduce administrative and/or operational costs.

§18-5-13b

- Establishes the County Superintendents' Advisory Council for the purpose of promoting collaboration among county districts and to provide input to the state board and state superintendent on issues facing school systems.
- Requires after this bill's effective date but not later than June 1, 2017, all 55 county superintendents to convene to divide the state into four geographic quadrants.
- Requires county superintendents belonging to the same quadrant to select a county superintendent to represent the quadrant.

- Requires county superintendents of each quadrant to meet as necessary to identify coordination and cooperation in areas of service to reduce administrative and/or operational costs.
- Requires the representative from each of the quadrants to identify issues facing their quadrant and present them at the state level: Meet semiannually with the state superintendent; meet annually with the state board; and provide an annual report to LOCEA and the governor.
- Requires at least one meeting in each quadrant annually to include a discussion of any recommendations of the county boards in the quadrant for changes in laws or policies needed to better empower them to meet the state's education goals.

§18-5-13c

- Allows county board to enter into a cooperative agreement with one or more other county boards to establish educational services cooperatives.
- Provides that all references in code to RESA's mean an educational services cooperative.
- Provides that if a RESA is reconfigured pursuant to a cooperative agreement or is dissolved, all property, equipment and records held by the RESA are to be transferred in accordance with the following priority order:
 - To any successor educational services cooperative substantially covering the same geographical area.
 - To the county boards who were members of the RESA as agreed on by those counties.
 - To the state board or to other appropriate entities as provided by law.
- Provides that an educational services cooperative is under the direction and control of a governing council consisting of the following members:
 - The county superintendent of each county participating in the cooperative agreement.
 - A member of the board of education from each county participating in the cooperative agreement selected by the county board.
 - The following representatives, if any, to be selected by the educational services cooperative administrator with the consent of the governing council:
 - Representatives of institutions of higher education and community and technical colleges serving the geographical area covered by the educational services cooperative.
 - One non-superintendent chief instructional leader employed by a member county.
 - One school principal employed by a member county.
 - One teacher employed by a member county.
 - Additional members representing business and industry, or other appropriate entities, as the governing council determines fit to meet its responsibilities.
- Provides that the governing council:
 - Must adopt bylaws concerning the appointment and terms of its members, including the authorization of designees by its members, the selection of officers and their terms, the filling of vacancies, the appointment of task forces and study groups, the evaluation of the executive director and staff and any other provisions necessary for the operation of the educational services cooperative.
 - Must appoint an educational services cooperative administrator who serves at the council's will and pleasure and implements the policies of the governing council.
- Can employ regular full-time and part-time staff, as necessary, after a majority of the members of a governing council, by vote, verify that the employment is necessary for effective provision of

services and to perform services or other projects that may require staff and support services for effective implementation.

- Provides that the governing council is the sole employer of the personnel it employs.
- Provides that educational services cooperative employees are state employees for the purposes of participation in the state's public employees' insurance and retirement programs.
- Can purchase, hold, encumber and dispose of real property, in the name of the educational services cooperative, for use as its office or for any educational service provided by the cooperative if a resolution to do so is adopted by a two-thirds vote of the members of the governing council and then approved by three-fourths of the county boards in the educational services cooperative.
- Operates as local education agencies for financial purposes, including grants and cooperative purchasing, and collectively as essential agencies, responsible for performing service functions to the total community.
- Can receive, expend and disburse funds from the state and federal governments, from member counties, or from gifts and grants and may contract with county boards, the Department of Education, institutions of higher education, persons, companies, or other agencies to implement programs and services at the direction of the council.
- Can assume responsibility for one or more functions otherwise performed by one or more county boards if requested by the county boards or the state board.
- Can offer technical assistance to any member school or school system.
- Can serve as repositories of research-based teaching and learning practices and use technology to ensure maximum access to the practices in the region and state.
- Must develop and/or implement any other programs or services as directed by law or the governing council, or requested by individual member counties or groups of member counties, subject to available funds.
- Requires the administrator of each educational services cooperative to submit annually a plan to the governing council that identifies the programs and services which are suggested for implementation by the educational services cooperative during the following year.
- Allows the educational services cooperative administrator, with the advice and assistance of the governing council, to select one of the county boards comprising the educational services cooperative as its fiscal agent.
- Includes provisions relating to employee reimbursement for travel; county board member compensation and travel reimbursement for serving on a governing council; and prohibiting a county board member from being an employee of an educational services cooperative.

§18-5-45

- Removes the requirement that the 180 days be separate.
- Requires one day to be designated by the county board for preparation for opening school and one day to be designated by the county board for preparation for closing school, but allows those days to be used for certain other purposes at the teacher's discretion.
- Allows accrued minutes of instruction remaining after recovering time lost due to late arrivals and early dismissals to be used for instructional minutes or days lost due to inclement weather or emergencies.
- Increases the minimum number of faculty senate meetings from four to six with at least one occurring in the first month of the employment term, at least one occurring in the last month of the

employment term, and at least one occurring in each of the months of October, December, February and April.

- Encourages the use of reimagining student instructional days to achieve the 180 instructional day requirement in order to minimize scheduling instructional days too early or late in the school year.

§18-5A-5

- Modified to be consistent with faculty senate changes to §18-5-45.

§18-9A-8a

- Reduces foundation allowance for RESAs to zero for the fiscal year beginning on July 1, 2017, and for each fiscal year thereafter.

§18A-4-14

- Provides that educators shall receive uninterrupted time for planning periods each week; and that administrators cannot require a teacher to use the planning period time to complete duties beyond instructional planning.

CODE REFERENCE: West Virginia Code §18-2-26a – repealed; §18-2-26, §18-2E-5, §18-5-13, § 18-5-45, §18-9A-8a and §18A-4-14 – amended; §18-5-13b and §18-5-13c – new

DATE OF PASSAGE: April 8, 2017

EFFECTIVE DATE: April 7, 2017

ACTION BY GOVERNOR: Signed April 26, 2017

House Bill 2731

Clarifying civil actions heard in circuit court

This bill raises the threshold dollar amount in controversy for the circuit courts of the state to have jurisdiction. Current law requires a minimum amount in controversy of \$2,500. This bill increases that minimum amount to \$7,500.

CODE REFERENCE: West Virginia Code §51-2-2 – amended

DATE OF PASSAGE: April 8, 2017

EFFECTIVE DATE: July 7, 2017

ACTION BY GOVERNOR: Signed April 26, 2017

House Bill 2734

Authorizing a method for the collection and remittance of property taxes related to dealers' heavy equipment inventory

This bill allows a dealer of heavy equipment rental inventory to assign a fee to each item of heavy equipment rental inventory in an amount not greater than 2.5% of the rental charge. This fee must be held separately from the dealer's remaining revenue and remitted to the proper sheriff before September 30th of each year for the payment of the dealer's personal property taxes. If the amount of remittances exceeds the tax obligation, the excess is retained by the sheriff. This bill exempts the fee from municipal sales or use taxes.

CODE REFERENCE: West Virginia Code §11-5-15 – new

DATE OF PASSAGE: April 6, 2017

EFFECTIVE DATE: July 5, 2017

ACTION BY GOVERNOR: Signed April 26, 2017

House Bill 2739

Relating to supplemental Medicaid provider reimbursement

This bill authorizes a “ground emergency medical transportation,” owned or operated by the state, or a city, a county, or city and county, that provides ground emergency medical transportation services to Medicaid beneficiaries, to receive a “supplemental Medicaid reimbursement” on a per-transport basis or other federally permissible basis if approved by the Centers for Medicare and Medicaid Services.

The bill provides that if an entity wishes to participate – participation is voluntary – the entity must:

- Certify that the expenditures meet federal requirements;
- Provide supporting evidence;
- Submit data to support the claimed amount; and
- Keep accurate records.

The bill allows DHHR to seek necessary federal approval.

CODE REFERENCE: West Virginia Code §9-5-25 – new

DATE OF PASSAGE: April 8, 2017

EFFECTIVE DATE: July 7, 2017

ACTION BY GOVERNOR: Signed April 26, 2017



House Bill 2759

Creating Statewide Interoperable Radio Network

This bill adds language that provides that the provisions of the code relating to state purchasing requirements do not apply to construction or repair contracts entered into by the state for the emergency construction or repair of the SIRN.

The bill will add language that provides that the provisions of the code relating to office of technology do not apply to technology used with the SIRN.

The bill will provide that revenues derived from the lease of property, towers, or tower space owned, operated, or controlled by the West Virginia Division of Homeland Security and Emergency Management or any other state agency managed as part of the West Virginia State Interoperable Radio Network shall be deposited into the Statewide Interoperable Radio Network Account.

This bill creates a new Article of the code with ten new Sections.

Section one provides a short title as the “Statewide Interoperable Radio Network Act”.

Section two provides definitions relating to the creation of the Statewide Interoperable Radio Network.

Section three outlines the purpose of and objective of this Section of the code, specifically outlining a desire to protect the citizens of the State of West Virginia by stating the importance of communication of emergency services.

Section four outlines the appointment of a Statewide Interoperability Coordinator by the director of the West Virginia Division of Homeland Security and Emergency Management.

Section five outlines what members are to be part of the Statewide Interoperability Executive Committee, which will be the governing body of the SIRN.

Section six outlines the duties of the Statewide Interoperability Executive Committee, including monitoring the implementation and operation of the SIRN, establishing goals and guidance for the betterment of the SIRN, reviewing and approving all requests for use of the SIRN by a public or private entity, and serving as the mechanism for developing, updating, and implementing policies, procedures, and guidelines related to the SIRN among other duties.

Section seven includes the movement of SIRN equipment, structures, property, and personnel along with their equipment and vehicles, owned, managed, directed, controlled, and governed by the Department of Health and Human Resources associated with the statewide interoperable radio and/or microwave network and medical command radio system from DHHR to the West Virginia Department of Homeland Security and Emergency Management.

There is an exception of equipment and personal located in the medical coordination center at Flatwoods, West Virginia, which will remain in DHHR.

Section eight creates Regional Interoperability Committees and describes their composition and duties. The duties of these committees include assisting with the governing and monitoring the implementation and operation of the SIRN and establishing goals for the betterment of the SIRN and serving as the mechanism for providing local level input

Section nine creates a Statewide Interoperable Radio Network account. The account captures several sources of revenue and outlines several purposes of expenditures from the account.

Section ten gives the authority to promulgate emergency rules and also the ability to propose rules for legislative approval.

CODE REFERENCE: West Virginia Code §5A-3-3, §5A-6-8, §5A-10-6 – amended; §15-14-1 through §15-14-10 – new

DATE OF PASSAGE: April 8, 2017

EFFECTIVE DATE: April 8, 2017

ACTION BY GOVERNOR: Signed April 25, 2017



House Bill 2767

Authorizing the Secretary of State to transmit electronic versions of undeliverable mail to the circuit clerks

This bill amends service of process requirements for the Secretary of State (SOS). The bill authorizes the SOS to create a preservation duplicate that truly and accurately depicts the image of the original record. The bill would also permit the Secretary of State to destroy or otherwise dispose of the original returned or undeliverable mail and provide written notice to the circuit clerks via certified mail, return receipt requested, facsimile, or by email.

The SOS acts as an agent upon whom service of notice and process may be made in the state for numerous entities in certain circumstances. After being served with or accepting any process or notice, the SOS is required to transmit one copy of the process or notice by registered or certified mail to the entity or individual which the process is intended. Under current law, if the process or notice is refused or undeliverable, the SOS must return the refused or undeliverable mail to the clerk's office of the court from which the process, notice or demand was issued. The bill eliminates the requirement that the SOS return the refused or undeliverable mail to the clerk's office.

The bill modifies the aforementioned service of process requirements when the SOS is acting as an agent of the following entities:

- Limited liability companies;
- Corporations;
- Non-profit corporations;
- Limited partnerships;
- Nonresident operators of motor vehicles involved in highway accidents;
- Nonresidents conducting certain business or causing tortious injury in the state;
- Nonresident respondents to domestic violence or personal safety relief requests; and
- Nonresident bail bond enforcers or bondsmen.

CODE REFERENCE: West Virginia Code §31B-1-111, §31D-5-504, §31E-5-504, §47-9-4, §56-3-31, §56-3-33, §56-3-33a, and §56-3-34 – amended

DATE OF PASSAGE: April 7, 2017

EFFECTIVE DATE: July 6, 2017

ACTION BY GOVERNOR: Signed April 25, 2017

House Bill 2774

Defining special aircraft property

The bill would amend the provisions of the Code relating to the valuation of special aircraft property. The bill amends the definition of the term “special aircraft property” to include “parts, materials or items used in the construction, maintenance or repair of aircraft which are, or are intended to become, affixed to or a part of an aircraft or of an aircraft’s engine or of any other component of an aircraft, used as such, by a repair station as defined under Part 145 of Title 14 of the US Code of Federal Regulations.”

Current law provides that the value to be used for ad valorem property taxation is its salvage value which is the lower of the fair market salvage value or 5% of the current cost of the property.

CODE REFERENCE: West Virginia Code §11-6H-2 – amended

DATE OF PASSAGE: March 28, 2017

EFFECTIVE DATE: June 26, 2017

ACTION BY GOVERNOR: Signed April 8, 2017

House Bill 2781

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

This bill amends and reenacts one section of code for the purpose of delaying implementation of automatic voter registration with the Division of Motor Vehicles. As passed by the Legislature in 2016, automatic voter registration was set to become effective July 1, 2017. This bill delays that implementation until July 1, 2019. The bill requires the Division of Motor Vehicles to make a presentation to the Joint Committee on Government and Finance if it is unable to meet this new deadline, and include in that presentation any changes that should be made to the code. Additionally, the Division of Motor Vehicles shall report to the Joint Committee on Government and Finance by January 1, 2018, providing a “full and complete list of all infrastructure they require” to implement automatic voter registration.

Lastly, House Bill 2781 struck language from the code that would have required the Division of Motor Vehicles to submit certain information to the Secretary of State for any person who affirmatively declined to register to vote. That information would have included name, address, date of birth and electronic signature.

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

DATE OF PASSAGE: April 8, 2017

EFFECTIVE DATE: April 8, 2017

ACTION BY GOVERNOR: Signed April 26, 2017

House Bill 2797

Codifying statutory immunity for government agencies and officials from actions of third-parties using documents or records

This bill merely seeks to clarify that the sovereign immunity for government agencies and officials continues to exist to shield them from liability for actions of third- parties using documents or records which governmental agencies are required to maintain and preserve or make available, for intervening unlawful acts, such as identity theft or other malicious or criminal behavior.

There shall be no:

“. . . liability upon any person acting in his or her capacity as a state officer, employee, or retiree or former employee of the State of West Virginia; or upon the legal dependents, heirs and assignees of any such person; nor, upon any agency of the executive, legislative, or judicial branch of government of the State of West Virginia, for any transaction which is compromised by any third party’s illegal act or inappropriate use associated with information regulated by this article.”

CODE REFERENCE: West Virginia Code §5A-8-23 – new

DATE OF PASSAGE: April 6, 2017

EFFECTIVE DATE: July 5, 2017

ACTION BY GOVERNOR: Signed April 14, 2017

House Bill 2811

Relating to the definition of above ground storage tanks

This bill creates two new exemptions for the Aboveground Storage Tanks Act.

Subsection (M) carves out an exemption for “Tanks having the capacity of two hundred ten barrels or less, containing brine water or other fluids produced in connection with hydrocarbon production activities, that are not located in a zone of critical concern.”

Subsection (N) creates an exemption for “Tanks having a capacity of 10,000 gallons or less, containing sodium chloride or calcium chloride water for roadway snow and ice pretreatment, that are not located in a zone of critical concern.”

The zone of critical concern defined in the act as one thousand feet measured horizontally from each bank of the principal stream and five hundred feet measured horizontally from each bank of the tributaries draining into the principal stream.

This legislation retrains the registration provision, signage provision, and notice requirements for these classes of storage tanks.

CODE REFERENCE: West Virginia Code §22-30-3 – amended

DATE OF PASSAGE: March 25, 2017

EFFECTIVE DATE: June 23, 2017

ACTION BY GOVERNOR: Signed April 4, 2017

House Bill 2850

Relating to product liability actions

This bill establishes and codifies the “innocent seller” defense to a product liability cause of action based in whole or in part on the doctrine of strict liability. The bill provides that no product liability action may be brought or maintained against a seller other than a manufacturer of the product.

The bill includes thirteen (13) exceptions from the application of the doctrine. Those exceptions include:

- The seller had actual knowledge of the defect in the product that was a proximate cause of the harm for which recovery is sought;
- The seller exercised substantial control over the aspect of the manufacture, construction, design, formula, installation, preparation, assembly, testing, labeling, warnings or instructions of the product that was a proximate cause of the harm for which recovery is sought;
- The seller made an express warranty regarding the product that was independent of any express warranty made by the manufacturer regarding the product, the product failed to conform to that express warranty by the seller and that failure was a proximate cause of the harm for which recovery is sought;
- The manufacturer cannot be identified or the manufacturer is not subject to service of process under the laws of the state; or
- The manufacturer is insolvent.

Finally, the bill defines certain key terms, specifically the following:

“Seller” means a wholesaler, distributor, retailer, or other individual or entity other than a manufacturer, that is regularly engaged in the selling of a product, whether the sale is for resale by the purchaser or is for use or consumption by the ultimate consumer.

The provisions of this bill apply to any civil action involving a product sold on or after the effective date of this bill.

CODE REFERENCE: West Virginia Code §55-7-31 – new

DATE OF PASSAGE: April 7, 2017

EFFECTIVE DATE: July 6, 2017

ACTION BY GOVERNOR: Signed April 26, 2017

House Bill 2851

Updating fee structure provisions for broker-dealers

The bill will amend the provisions of the Code relating to the Securities Division in the Auditor's Office. The bill increases various fees (see chart below). The strike and insert amendment, requested by the Auditor's Office, also changes the threshold at which money in the Securities Division's special revenue fund becomes excess and transfers to the General Revenue Fund.

	Current	Proposed
Initial/renewal application: Broker-Dealer and Agent of Issuer	\$250	\$300
Initial/renewal application: Agent	\$55	\$66
Initial/renewal application: Investment Advisor	\$55	\$200
Initial/renewal application: Investment Advisor Representative	\$55	\$75
Registration of Successor	\$20	\$24
Name/Address Change	\$50	\$60
Branch Registration	\$50	\$60
Compliance Assessment: Initial License	\$25	\$30
Compliance Assessment: Renewal	\$10	\$12
Registration or Notice Filing*	1/20 of 1% of maximum aggregate offering price. Minimum: \$50 Maximum: \$1,500	1/16 of 1% of maximum aggregate offering price. Minimum: \$60 Maximum: \$1,800
Oversale Assessment	3x Registration or Notice Filing (above)* Minimum: \$350 Maximum: \$1,500	3x Registration or Notice Filing (above)* Minimum: \$420 Maximum: \$1,800
Securities Registration or Notice Filing Name/Address Change	\$50	\$60
Amendment to Registration Statement or Notice Filing	\$50	\$60
Sales Report Filing Fee	1/10 of 1% of maximum offering price Minimum: \$240 Maximum: \$1,500	1/8 of 1% of maximum offering price Minimum: \$240 Maximum: \$1,800
Interpretive Opinion	\$100	\$120

CODE REFERENCE: West Virginia Code §32-2-202; §32-3-305; §32-4-406; §32-4-413 – amended

DATE OF PASSAGE: April 8, 2017

EFFECTIVE DATE: July 7, 2017

ACTION BY GOVERNOR: Signed April 24, 2017

House Bill 2857

West Virginia Safer Workplaces Act

This bill creates a new article entitled the “West Virginia Safer Workplace Act”, a short title that is given to the article in §21-3E-1.

§21-3E-2 defines a number of terms. “Alcohol” means ethanol, isopropanol or methanol. “Drugs” is defined as any substance considered unlawful for nonprescribed consumption or use under the United States Controlled Substances Act, 21 U.S.C. 812. For purposes of this article, an “employer” includes any person, firm, company, corporation, labor organization, employment agency or joint labor-management committee, which has one or more full-time employees. The term “employer” expressly excludes the United States, the state or other public-sector incorporated municipalities, counties or districts or any Native American tribes. Other terms defined include “employee,” “good faith,” “prospective employee,” “sample,” and “split sample.”

In §21-3E-3, the article sets forth the public policy of the act. It includes a legislative declaration that the State’s public policy is to advance the confidence of workers that they are in a safe workplace and to enhance the viability of their workplaces by permitting employers to require mandatory drug testing of both applicants and current employees. This section includes language to preserve the right to privacy, but to state that the public policy of drug testing outweighs the right to privacy in this area under certain circumstances. The article is made applicable to employers who are not otherwise subject to drug and alcohol testing provisions in other areas of the Code.

§21-3E-4 declares it lawful for employers to test employees or prospective employees for the presence of drugs or alcohol as a condition of continued employment or hiring, but requires employers to adhere to certain safeguards in order to qualify for a bar from being subjected to legal claims for acting in good faith on the results of those tests.

§21-3E-5 permits employers to require samples from employees and prospective employees, and sets forth requirements for the collection of samples to test reliably. An employer may require individual identification, and the collection of samples must be done in conformity with the provisions of this article. The employer may designate the type of sample to be used for testing.

In §21-3E-6, the article imposes obligations on the employer with respect to timing and costs of any testing conducted under the new article. Testing shall occur during, immediately before or after a regular work period. Testing time is work time for purposes of compensation and benefits for current employees. Employers must pay all actual costs for drug and/or alcohol testing for current and prospective employees. Finally, if required tests are conducted at a location other than the normal work site, the employer must provide transportation or pay reasonable transportation costs to current employees.

Testing procedures are set forth in §21-3E-7. Collection of samples must be performed under reasonable and sanitary conditions. Any observer of urine sample collection must be of the same sex as the employee from whom the sample is being collected. Sample collections must be documented. The documentation requirements include labeling to reasonably preclude the possibility of misidentification and the handling of samples in accordance with reasonable chain of custody and confidentiality procedures. Employees must also be afforded an opportunity to provide notification of any information which may be considered relevant to the test, such as identification of currently or recently used prescription drugs, nonprescription drugs or other relevant medical information. Sample collection, storage and transportation shall be performed in a manner to preclude the possibility of sample

contamination, adulteration or misidentification. Confirmatory drug testing must be conducted at a laboratory either certified by the United States Department of Health and Human Services' Substance Abuse and Mental Health Services Administration, approved by the Department of Health and Human Services under the Clinical Laboratory Improvement Acts, or approved by the College of American Pathologists. Drug and alcohol testing must include confirmation of any positive test results. For drug testing, confirmation will be conducted by use of a chemical process different than the one used in the initial drug screen. The second confirming test must be a chromatographic technique. An employer may take adverse employment action based only on a confirmed positive drug or alcohol test. Should a person wish to challenge the results of the initial test, the employee has a right to a split sample, but he or she will be responsible for the associated costs.

§21-3E-8 addresses the requirements of testing policies. Testing or retesting must be carried out within the terms of a written policy which has been distributed to every employee subject to testing and available for review by prospective employees. Upon request or as otherwise appropriate, employers must provide information about the existence and availability of counseling, employee assistance, rehabilitation and/or other drug abuse treatment programs which the employer offers, if any. However, the bill does not require any such programs to be offered.

Within the terms of the written policy, employers may require the collection and testing of samples for 1) deterrence or detection of possible illicit drug use, possession, sale, conveyance, or distribution or manufacture of illegal drugs, intoxicants or controlled substances in any amount or in any manner or on or off the job or the abuse of alcohol or prescription drugs; 2) investigation of possible individual employee impairment; 3) investigation of accidents in the workplace or incidents of theft or other employee misconduct; 4) maintenance of safety for employees, customers, clients or the public at large; or, 5) maintenance of productivity, quality of products or services or security of property or information. The collection of samples and testing of samples shall be conducted in accordance with the Act and need not be limited to circumstances where there are indications of individual, job-related impairment of an employee or prospective employee. The employer's use and disposition of all drug or alcohol test results are subject to the limitations of this article and applicable federal and state law. Language is included in subsection (f) to clarify that nothing in the article may be construed to encourage, discourage, restrict, limit, prohibit or require on-site drug or alcohol testing.

After a confirmed positive drug or alcohol test result that indicates a violation of the employer's written policy, or an employee's refusal to provide a testing sample, the provisions of §21-3E-9 permits the employer to then use the test result or refusal to submit as a valid basis for disciplinary and/or rehabilitative action. Such actions may include a requirement that the employee enroll in an approved counseling or treatment program, suspension of the employee, termination of employment, refusal to hire a prospective employee or other adverse employment action in conformity with the employer's written policy including any applicable collective bargaining agreement.

§21-3E-10 addresses employees in sensitive positions where an accident could cause loss of human life, serious bodily injury or significant property or environmental damage. After a confirmed positive test of an employee in a sensitive position, the employer may permanently remove the employee from the sensitive position and transfer or reassign the employee to an available nonsensitive position with comparable pay and benefits or may take other action consistent with the employer's policy provided there are not applicable contractual provisions that expressly prohibit such action. Employers obligated to

perform drug testing under a federal or state mandated drug testing statute will be required to follow any additional requirements mandated under those laws.

§21-3E-11 provides legal protections from civil claims to employers who comply with the provisions of the West Virginia Safer Workplace Act. No cause of action can be brought against any employer who has established a policy and initiated a testing program in accordance with the new article for: 1) actions based on the results of a positive drug or alcohol test or the refusal of an employee or job applicant to submit to a drug test; 2) failure to test for drugs or alcohol or failure to test for a specific drug or other controlled substance; 3) failure to test for, or if tested for, failure to detect, any specific drug or other substance, any medical condition or any mental, emotional or psychological disorder or condition; or, 4) termination or suspension of any substance abuse prevention or testing program or policy.

In §21-3E-12, the bill provides that no cause of action exists against an employer who has an established drug or alcohol testing program in accordance with this new article unless the employer's action was based on a "false positive" test result and the employer had actual knowledge the result was in error and ignored the true test result because of disregard for the truth and/or the willful intent to deceive or be deceived. Should a claim be made under this article where the allegation is based on a claim of a false positive test, there is a rebuttable presumption that the test was valid if the employer complied with the provisions of the article, and the employer is not liable for monetary damages if it relied on a false positive test reasonably and in good faith. No liability exists for any action taken based on a "false negative" drug or alcohol test. Likewise, §21-3E-13 provides that no cause of action for defamation or similar claims exists against employers with an established testing program under this article, unless the results of a test were disclosed to a person other than the employer, an authorized agent or representative, the tested employee or the tested prospective employee and all elements of the cause of action are satisfied.

§21-3E-14 clarifies that this article does not create a cause of action against an employer who does not establish a program or policy on substance abuse prevention or implement drug or alcohol testing.

§21-3E-15 addresses confidentiality, providing that all communications related to the drug or alcohol testing program are confidential and may not be used in any proceeding except in a proceeding related to an action taken by an employer under this new article.

Finally, §21-3E-16 provides that employees who test positive at levels above those set forth in the employer's policy may be terminated and forfeit his or her eligibility for unemployment compensation benefits and indemnity benefits under the Workers' Compensation Laws. The drug-free workplace program must notify all employees that it is a condition of employment for an employee to refrain from reporting to work or working with the presence of drugs or alcohol in his or her body and that policy must also state that employees risk forfeiture of unemployment and/or workers' compensation benefits. Employers who fail to provide this notice waive their right to assert that eligibility for benefits is entirely forfeited.

CODE REFERENCE: West Virginia Code §21-3E-1 through §21-3E-16 – new

DATE OF PASSAGE: April 8, 2017

EFFECTIVE DATE: July 7, 2017

ACTION BY GOVERNOR: Signed April 26, 2017

House Bill 2948

Establishing timelines for taking final action on certain permits

This bill establishes timeline requirements for the granting of numerous permit applications. Currently, the permit applications addressed in the bill do not have time requirements.

The bill mandates that final action must be taken on all completed permit applications within thirty days if the application is uncontested, or within ninety days if the application is contested.

The following entities and permits are covered by the bill and would be subject to the new timeliness requirements:

- Public Service Commission
 - Permits regarding the regulation of the commercial transport of coal;
 - Permits to operate as a commercial contract carrier by motor vehicle.
- Division of Forestry
 - Permits for dealers and growers of ginseng.
- Commission of Agriculture
 - Permits to operate public markets where livestock, poultry, and other agricultural or horticultural products are received and sold;
 - Permits to feed garbage to swine;
 - Permit to move, transport, deliver, ship or offer for shipment noxious weed, which means any living plant declared to be detrimental to crops, other desirable plants, waterways, livestock, land or other property, or to be injurious to public health or the economy; and
 - Permits/application for registration to manufacture or distribute fertilizer.
- Dangerous Wild Animals Board
 - Permit to possess a dangerous wild animal.
- Local Health Department
 - Permits to be a vendor at a farmers market selling farm and food products that requires a food establishment permit.
- Division of Natural Resources
 - Burn permits which authorize a person to burn or set fire to any forest land during the designated forest fire season; and
 - Permits to excavate or remove archaeological, paleontological, prehistoric and historic features.
- Division of Labor
 - Permits to operate amusement rides or attractions;
 - Permits to operate a commercial bungee jumping site;
 - Permits to operate a zipline or canopy tour; and
 - Permits for the sterilization of bedding and upholstery.
- State Fire Marshal
 - All permits issued by the State Fire Marshal, including blasting permits.
 - Nonprofit youth organizations

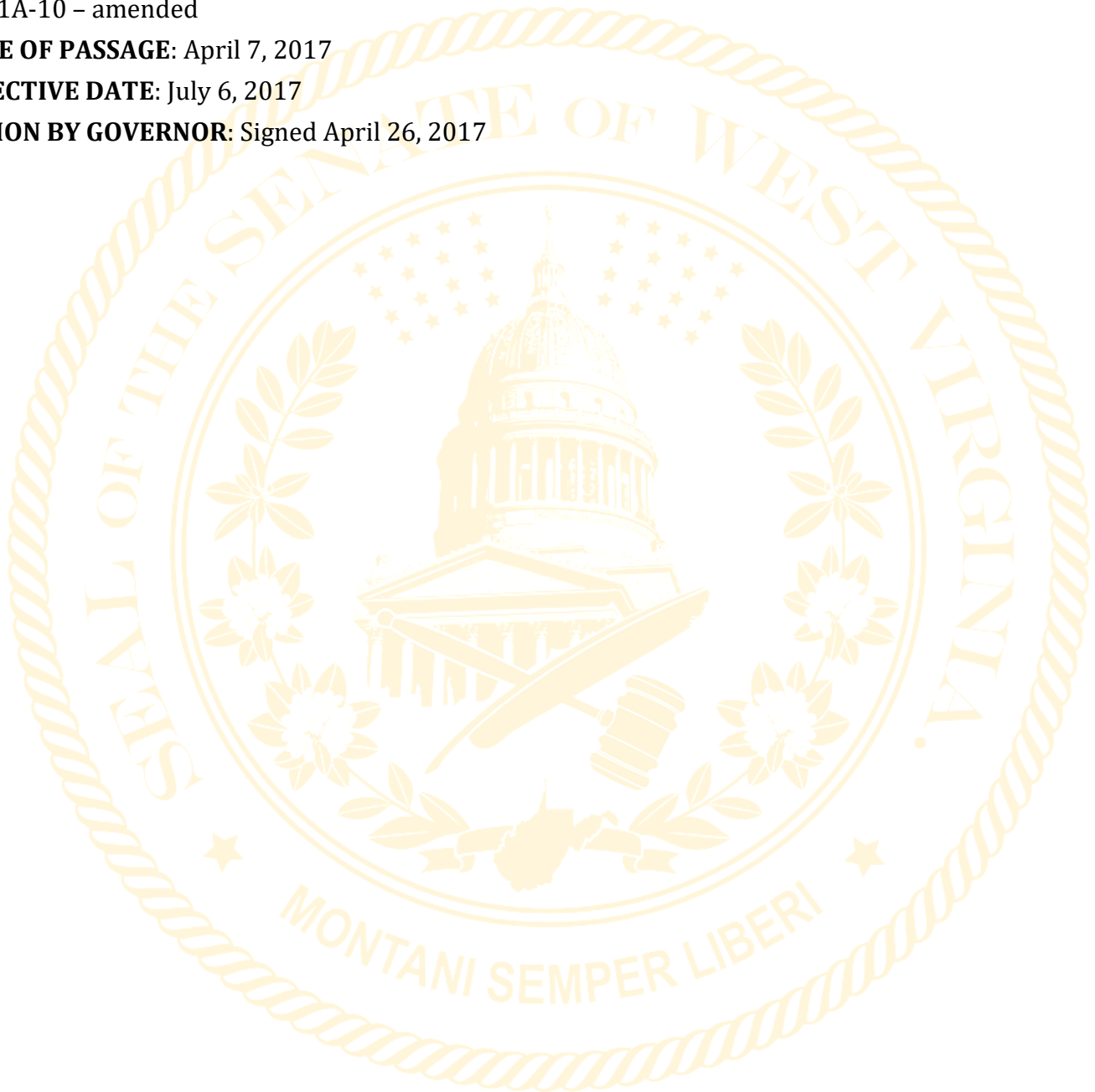
- Permits issued by nonprofit volunteer programs to a registered and non-compensated volunteer which exempts the person from obtaining an authorization to practice from a professional licensing agency while providing services within the limits of his or her authorization to practice.

CODE REFERENCE: West Virginia Code §17C-17A-7, §19-1A-3a, §19-2A-4, §19-9A-3, §19-12D-7, §19-15-2, §19-34-6, §19-35-3, §20-3-5, §20-7A-5, §21-10-7, §21-12-7, §21-15-10, §24A-3-3, §29-3-12, §29-29-4, §47-1A-10 – amended

DATE OF PASSAGE: April 7, 2017

EFFECTIVE DATE: July 6, 2017

ACTION BY GOVERNOR: Signed April 26, 2017



House Bill 2963

Eliminating tax lien waiver requirement for estates of nonresidents

The bill terminates the provision in Code provide allowing a personal representative of a nonresident decedent application to the Tax Commissioner for a certificate releasing all real property situates in this state from any estate tax lien.

CODE REFERENCE: West Virginia Code §11-11-17a – amended

DATE OF PASSAGE: April 4, 2017

EFFECTIVE DATE: July 4, 2017

ACTION BY GOVERNOR: Signed April 26, 2017

House Bill 2967

Relating generally to administration of estates and trusts

This bill affects several provisions of state code related to the administration of estates and trusts. This bill was introduced by request of the West Virginia Department of Tax and Revenue. Specifically, the bill does the following things:

- Waives surety requirements for administrators of estates where grantee is sole beneficiary or sole distributee of the decedent;
- Requires county commission to hold hearing if application filed by interested party to compel nonresident executor otherwise exempt from bond requirements to post bond; or to hold hearing if application filed by interested party to compel sole beneficiary to post surety
- Removes authority of clerk of county commission to require bond or surety from certain executors and administrators upon knowledge;
- Makes executor or administrator not required to post surety liable upon his or her own personal recognizance in the event of default, failure or misadministration;
- Requires interested parties objecting to the qualifications of a personal representative or venue to file notice with the county commission sixty days after the date of first publication;
- Transfers to state Auditor duty to administer fiduciary supervisor qualifying test and requires state Auditor provide annual training for fiduciary supervisors not licensed to practice law in this state; and authorizes action against bond surety when execution on judgment or decree against personal representative is returned without being satisfied.

CODE REFERENCE: West Virginia Code §44-1-1, §44-1-6, §44-1-7, §44-1-8, §44-1-14a, §44-1-26 §44-3A-3, §44-5-3 – amended

DATE OF PASSAGE: April 8, 2017

EFFECTIVE DATE: July 7, 2017

ACTION BY GOVERNOR: Signed April 24, 2017

House Bill 2980

Relating to civil lawsuit filing fees for multiple defendant civil action

This bill creates a new fund within the treasury called the “State Police Forensic Laboratory Fund.” The bill provides that the fund is to be administered by the superintendent and shall consist of all moneys made available for the operations of the State Police forensic laboratory. Expenditures made from the fund must be for the operations of the State Police forensic laboratory.

The bill also requires circuit clerks to charge and collect a new fee in civil actions, except civil in actions within the jurisdiction of the family courts, involving two or more named defendants. For each defendant, and for each additional defendant, respondent or third-party defendant subsequently named in a pleading filed in a civil action, the clerk shall collect a fee of \$15 payable upon the filing of the initial pleading that names the additional defendant, respondent or third-party defendant.

Of each \$15 fee, \$10 shall be deposited in the general fund of the county in which the office of the circuit clerk is located and \$5 shall be deposited in the State Police Forensic Laboratory Fund. John or Jane Doe defendants are excluded from payment of the per-defendant fee.

CODE REFERENCE: West Virginia Code §15-2-24d – new; §59-1-11 – amended

DATE OF PASSAGE: April 8, 2017

EFFECTIVE DATE: July 7, 2017

ACTION BY GOVERNOR: Signed April 24, 2017

House Bill 3048

Relating to collection of Tier II fees for chemical inventories

Current law caps the inventory form fee amount at \$100 annually for a facility when it submits the emergency and hazardous chemical inventory forms or material safety data sheet. This bill would increase that cap to \$2500.

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

DATE OF PASSAGE: April 7, 2017

EFFECTIVE DATE: July 6, 2017

ACTION BY GOVERNOR: Signed April 26, 2017

House Bill 3093

Establishing Broadband Enhancement and Expansion Policies

This bill moves the creation of the existing Broadband Enhancement Council into a new Chapter 31G of the code, and sets forth additional duties and responsibilities for the council. The bill additionally authorizes the establishment of cooperative associations for the purpose of obtaining internet services. It also establishes new policies and protocols for microtrenching and make-ready pole access. Finally, it makes it an unfair and deceptive practice for an internet service provider to advertise or contract for “up to” speeds.

Under §31G-1-1 et seq., the bill retains the current composition and duties of the Council. However, members of the Council would now be limited to three year terms, and the Council’s duties and authority are expanded. Currently, the Broadband Enhancement Council is tasked with exploring “any and all ways” to expand access to broadband services, including, but not limited to, middle mile, last mile and wireless applications”. The Council is given the responsibility for the mapping of broadband services in state. It’s required to publish an annual assessment and a map of broadband in state, include designations of unserved and underserved areas, and to indicate the presence of broadband around state; it also authorizes creation of an interactive map reflecting data in state allowing the public/businesses to go online and see status of broadband data rate speeds and capacity at a particular location, street, region, community. Certain information collected would be excluded from public accessibility and availability.

The bill establishes a voluntary data collection system to be administered by the Council, which may include: data submitted by an ISP, including any home or region data rate meters, and consumer submitted data, including data collected from a web-based test or analysis (e.g. ookla); all data collected and submitted are explicitly not to be considered as public records available under FOIA. The bill also authorizes the Council to propose guidelines and make recommendations to the Legislature in order to create voluntary donation programs for easements and pipelines, railroads, other structures and rights of way which may be donated to serve as corridors for broadband infrastructure.

§31G-2-1 et seq. authorizes the creation of cooperative associations and provides numerous sections related the governance of such associations. The bill authorizes 20 or more “qualified persons” to form cooperative associations. A “qualified person” is defined to mean a person who is engaged in the use of internet services, either in an individual capacity or business. The co-ops would be formed as non-profit entities. Co-ops formed pursuant to the article may not be a political subdivision cooperative association, unless these are part of a Pilot Project authorized through the Broadband Enhancement Council. The co-ops are permitted to contract with other cooperative associations in this state or another for more economical carrying out of internet services.

Under §31G-3-1 et seq., the bill authorizes the use of microtrenching – a technique of deploying cables, including specifically for broadband networks, using a cutting wheel to cut a trench no greater than 3 inches in width, and at a depth of only 12 to 24 inches--in the deployment of cable. This shallower trenching allows for easier development in urban areas and speedier cable laying. This article requires obtaining of a permit through the appropriate state or local government entity, and requires installation of a vacant conduit of the same size when performing microtrenching operations, as well as specifying certain documents and maps to be provided as part of process.

Under §31-G-4-1 et seq., the bill provides for procedures and requirements related to pole attachments. The bill provides for an expedited process for the application and installation of facilities

placed on an existing pole. Entities seeking to attach new facilities must apply to the owner of the pole for access and approval. If the attachment application is approved, the attacher may relocate or alter the attachments or facilities owned by any third party currently operating on the pole or ground space. The attacher must use contractors approved by the pole owner to move preexisting facilities. The attacher may not effectuate a relocation of pre-existing facilities that causes or would reasonably be expected to cause a customer outage without providing written notice 45 days prior to the pre-existing third party user, to allow the pre-existing user to relocate its own facilities. An attacher may commence relocating or altering a third-party user's facilities if the third-party user fails to transfer or rearrange their facilities within 45 days of receiving notice of relocation or alteration. The bill further provides for procedural requirements related to the practice of installing new facilities on a pole with pre-existing facilities.

Lastly, under §31G-5-1 et seq., the bill establishes regulations for the advertisement of internet data speeds. It is deemed to be unlawful for Internet Service Providers to advertise for data solely in terms of the maximum data rate, or an "up to speed". Providers may only advertise the minimum data rate to be provided in any advertisement. The use of the prohibited practice is deemed an unfair or deceptive act or practice under the Consumer Credit and Protection Act with enforcement and remedies to be obtained under the provisions of that Act.

CODE REFERENCE: West Virginia Code §31-15C-1 through §31-15C-13 – repealed; §31G-1-1 through §31G-1-14, §31G-2-1 through §31G-2-28, §31G-3-1, §31G-3-2, §31G-4-1, §31G-4-2, §31G-4-3, §31G-5-1 and §31G-5-2 – new

DATE OF PASSAGE: April 8, 2017

EFFECTIVE DATE: July 7, 2017

ACTION BY GOVERNOR: Signed April 26, 2017

2017 First Extraordinary Session – Roads to Prosperity

Senate Joint Resolution 6

Roads to Prosperity Amendment of 2017

This Resolution creates an amendment to the Constitution of the State of West Virginia which will be submitted to the voters of the state at a special election to be held at a date set by the Governor in 2017.

The amendment gives the Legislature the power to authorize the issuance and selling of state bonds not exceeding 1.6 billion dollars in the aggregate. The bond scheduled is as follows:

- July 1, 2018 – an amount not to exceed \$800 million;
- July 1, 2019 – an amount not to exceed \$400 million;
- July 1, 2020 – an amount not to exceed \$200 million; and
- July 1, 2021 – an amount not to exceed \$200 million.

Bonds not issued in the first three years may be carried forward and issued in a subsequent year until July 1, 2021.

The proceeds of the bonds shall be used and appropriated for the following purposes:

- Matching available federal funds for highway and bridge construction in this state; and
- General highway and secondary road and bridge construction or improvements in each of the fifty-five counties.

NOTE: This Joint Resolution was adopted by the Legislature during the 2017 Regular Session.

CODE REFERENCE: Constitutional Amendment; adds “Road to Prosperity Amendment of 2017”

DATE OF ADOPTION: April 8, 2017

House Bill 1003

Relating generally to WV Parkways Authority

This bill grants authority to the Parkways Authority to issue revenue bonds and refunding bonds for the purpose of financing parkway projects. It expands the definition of “parkway project” to include roads and bridges that the West Virginia Department of Transportation (WVDOT) may acquire, construct, reconstruct, maintain, operate, improve, repair or finance.

The bill specifies that parkway revenue bonds dedicated to paying all or any part of the cost of any one or more parkway projects or for issuing revenue refunding bonds must be payable solely from toll revenues. The bill permits the Parkways Authority to charge, fix and revise fees as well as tolls for transit over each parkway project. The bill permits the Parkways Authority, if feasible, to implement a "single fee" program and charge a flat fee to owners of motor vehicles registered in West Virginia or any other state which opts into any such program. Such program would apply only to passenger motor vehicles, divided into classes based on size and usage, and would not apply to commercial motor vehicles. The flat fee would be set by the authority at a rate that provides sufficient toll revenues. The bill permits the Parkways Authority rule-making authority regarding the implementation of any single fee program. The bill permits the Parkways Authority to enter reciprocal toll enforcement agreements with other toll agencies in this state or in any other state or foreign country. The bill also creates within the State Treasury a special revenue fund to be known as the “West Virginia Parkways Authority Single Fee Program Fund” for deposits of the single fee program proceeds.

The bill provides that the Parkways Authority is authorized to operate the currently existing toll collection facility located at the interchange of U.S. Route 19 (Corridor "L") and to fix, revise, charge and collect tolls for the use of such toll collection facility. The bill makes it a misdemeanor offense to knowingly or intentionally utilize any commuter pass issued for a Class “A” vehicle with another vehicle type. It also authorizes the Parkways Authority to cancel any commuter pass or passes that are improperly used.

The bill provides that all proceeds of any parkway revenue bonds issued will be credited to the newly-created special revenue account within the State Road Fund called the State Road Construction Account. Amounts in such account are to be used by the Department of Transportation for any acquisition, construction, reconstruction, maintenance, improvement or repair of public highways and bridges in the state. The Division of Highways is required to give priority consideration to projects in Raleigh County, Fayette County, Wyoming County and Mercer County when determining how to expend funds in the account. The bill also removes the cap on parkways projects that currently limits the issuance of parkway revenue bonds in an aggregate outstanding principal amount not to exceed \$200 million. The bill lifts the monetary cap on bonds that currently limits the issuance of parkway revenue refunding bonds in an aggregate principal amount not to exceed \$60 million.

The bill creates within the State Road Fund a special revenue account, not part of the state General Revenue Fund, called the “State Road Construction Account.” Amounts in the account are to be expended by the Division of Highways for construction, maintenance and repair of public highways and bridges in the state. The State Road Construction Account would consist of:

- All or any portion of the proceeds of any parkway revenue bonds that the Parkways Authority, in its discretion, may credit to the State Road Construction Account;
- Any appropriations, grants, gifts, contributions or other revenues received by the State Road Construction Account from any source;

- All interest earned on moneys held in the account.

Concerning the imposition and increase of tolls and fees, the bill changes the hearing requirement to a meeting requirement after public notice. A public meeting would be required prior to the issuance of bonds, approval of any project or contract, or other action that would necessitate an increase in tolls or fees. The bill deletes a requirement that the Parkways Authority hold at least one public informational session annually. The bill permits the collection and enforcement of tolls for the use of roads, highways and bridges by electronic toll collection.

The bill authorizes the DMV to enter all necessary agreements with the West Virginia Parkways Authority that will permit the division to collect, as agent for the Parkways Authority, all road user fees. The additional fee for any single fee program would be payable upon the issuance of a certificate of registration and renewal thereof. The fee would be deposited by the DMV into the West Virginia Parkways Authority Single Fee Program Fund. The bill provides that the DMV must refuse registration or issuance of a certificate of title or any transfer of registration if any road user fee due under a “single fee” program imposed by the Parkways Authority has not been paid.

CODE REFERENCE: West Virginia Code §17-16A-18a, §17-16A-23 and §17-16A-30 – repealed; §17-16A-1, §17-16A-5, §17-16A-6, §17-16A-10, § 17-16A-11, §17-16A-13, §17-16A-13a, §17-16A-18, §17-16A-21, §17-16A-22 and §17-16A-29, §17-16D-3, and §17A-3-7 – amended; §17-16A-11a, §17A-2-25, §17A-10-17 – new

DATE OF PASSAGE: June 16, 2017

EFFECTIVE DATE: June 16, 2017

ACTION BY GOVERNOR: Signed June 22, 2017

Senate Bill 1006

Increasing funding for State Road Fund

This bill increases the funding for the State Road Fund by increasing Division of Motor Vehicles administrative fees and motor fuel excise taxes. It increases the flat rate component of the motor fuel excise tax from 20.5 cents to 22 cents per gallon per invoiced gallon of motor fuel and on each gallon equivalent for alternative fuel.

The bill increases the minimum average wholesale price of motor fuels for purposes of calculating the five percent variable fuel tax from \$2.34 per invoiced gallon of motor fuel to, as of July 1, 2017, \$3.04 per invoiced gallon of motor fuel, and provides that the rate of tax per gallon may not be less than 15.2 cents per gallon. The bill also deletes some outdated language relating to floorstocks.

Additionally, the bill raises consumer sales tax on vehicles from 5% of sales price to 6% of sales price. Consumer sales tax on vehicles, formerly known as “privilege tax,” is dedicated to the Road Fund, unlike general consumer sales and service tax on other tangible goods.

The bill also increases DMV fees effective July 1, 2017 and provides for future increases every five years on September 1 based on the U. S. Department of Labor, Bureau of Labor Statistics most current Consumer Price Index.

Immediate increases include the following:

- Fees for records (from \$1 to \$1.50);
- Identifications cards, as well as license fee for each year the license is valid (from \$2.50 to \$5);
- Graduated driver’s license (from \$5 to \$7.50);
- Duplicate license or permit (from \$5 to \$7.50);
- Certificates of title, some reconstructed, salvage or cosmetic total loss titles, lien recordings, transfers of registration, duplicate or substitute registration plates/cards or certificates of title, certificate of retitle, instruction permit for one attempt, duplicate permits and driver’s licenses, and abstract of an operating record (from \$5 to \$10);
- Special stickers (from \$5 to \$10);
- Written knowledge test attempts and instruction permit fee (from \$5 to \$7.50);
- Certain witness fees (from \$10 to \$15);
- Salvage titles, cosmetic total loss titles, and cosmetic total loss salvage certificates (from \$15 to \$22.50);
- Copies of driver’s operating record (from \$5 to \$7.50);
- Annual registration fee for Class A vehicles (from \$28.50 to \$50).

Finally, the bill requires an additional annual registration fee of \$200 for vehicles fueled by hydrogen or natural gas and an additional \$100 fee for registration of hybrid vehicles. The bill also sets the annual registration fee for a vehicle operating exclusively on electricity at \$200.

CODE REFERENCE: West Virginia Code §11-14C-5, §11-15-3c, §11-15-18b, §17A-2-13, §17A-3-4, §17A-4-1, §17A-4-10, §17A-4A-10, §17A-7-2, §17A-10-3, §17A-10-10, §17A-10-11, §17B-2-1, §17B-2-3a, §17B-2-5, §17B-2-6, §17B-2-8, §17B-2-11, §17C-5A-2a, and §17D-2-2 – amended; §17A-10-3c – new

DATE OF PASSAGE: April 8, 2017

EFFECTIVE DATE: July 7, 2017

ACTION BY GOVERNOR: Signed April 26, 2017

Senate Bill 3001

Authorizing sale of bonds pursuant to Roads to Prosperity Amendment of 2017

This bill was required upon passage of the Roads to Prosperity Amendment of 2017 to facilitate the sale of state road bonds. Specifically, the bill does the following:

- Requiring proceeds from the sale of state road bonds issued pursuant to Roads to Prosperity Amendment of 2017 to be kept in separate and distinct account in the State Road Fund;
- Authorizes cost of issuance to be paid from State Road Fund;
- Provides definitions;
- Authorizes sale of bonds;
- Provides schedule for sale of bonds;
- Provides amount of bonds to be sold;
- Provides conditions on the sale and issuance of bonds;
- Creates the Roads to Prosperity Bond Debt Service Fund;
- Authorizes investment of the fund;
- Provides bond covenants;
- Requires certification of annual debt service amount;
- Prohibits conflicts of interest;
- Creates a criminal misdemeanor offense and providing penalties for the proceeds from the sale of bonds to inure to the benefit of or be distributed to officers or employees of the state except to pay reasonable compensation for services rendered;
- Declares state road bonds lawful investments;
- Allows for the refund of bonds;
- Allows for continuity of debt service in termination or dissolution;
- Authorizes the Treasurer to select financial advisor;
- Authorizes the Governor to select bond counsel and underwriter;
- Allows for payment of necessary expenses for issuance from funds;
- Dedicates tax and fee collections for debt service;
- Sets a schedule for certain deposits into the Roads to Prosperity Bond Debt Service Fund.

Note: This bill was passed during the 2017 Third Extraordinary Session. The Roads to Prosperity Constitutional Amendment was adopted by West Virginia voters in a special election on October 7, 2017.

CODE REFERENCE: West Virginia Code §17-3-1 – amended; §17-26A-1 through §17-26A-14 – new

DATE OF PASSAGE: December 4, 2017

EFFECTIVE DATE: December 4, 2017

ACTION BY GOVERNOR: Signed A December 4, 2017

2016 Regular Session



Senate Bill 1

Establishing WV Workplace Freedom Act

This bill establishes the West Virginia Workplace Freedom Act and makes changes to two sections of the West Virginia Labor-Management Relations Act to make those sections consistent with the new Act. The bill prohibits requiring a person, as a condition or continuation of employment, to become or remain a member of a labor organization, pay any dues or other fees or charges, however denominated, of any kind to any labor organization, or pay any charity or third party in lieu of those payments any amounts equivalent to or a pro rata portion of dues or other fees required of members of a labor organization.

The bill makes any contract or other understanding or practice, whether written or oral, which excludes from employment any person because of membership with or refusal to join any labor or employee organization unlawful, null and void, and of no legal effect. Violations of the West Virginia Workplace Freedom Act carry criminal penalties. Any labor organization, employer, public body or other person directly or indirectly violating the Act is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$500 nor more than \$5,000. Each day of violation is considered a separate and distinct offense. The bill creates avenues of civil relief and damages.

In addition to the criminal penalties set forth in the Act, any person injured as a result of any violation or threatened violation of the Act has a cause of action, and, if proven in a court of competent jurisdiction, may be entitled the following relief against a person or persons violating or threatening to violate the Act: (1) compensatory damages; (2) costs and reasonable attorney fees, which shall be awarded if the injured person substantially prevails; (3) punitive damages; (4) preliminary or injunctive relief; and (5) any other appropriate equitable relief.

The bill specifically excludes from its scope any employee or employer covered by the federal Railway Labor Act, 45 U.S.C. 151 et seq., any employee of the United States or a wholly owned corporation of the United States, any employee employed on property over which the United States government has exclusive jurisdiction for purposes of labor relations and where the provisions of this article would otherwise conflict or be preempted by federal law. This bill addresses its construction and applicability. The bill states it is neither intended nor should it be construed to change or affect any collective bargaining or collective bargaining agreements in the building and construction industry. It applies to any written or oral contract or agreement entered into, modified, renewed or extended after July 1, 2016. The provisions of this bill do not otherwise apply to or abrogate a written or oral contract or agreement in effect on or before June 30, 2016.

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

DATE OF PASSAGE: February 5, 2016

EFFECTIVE DATE: May 5, 2016

ACTION BY GOVERNOR: Vetoed February 11, 2016; Overridden February 12, 2016

Senate Bill 6

Requiring drug screening and testing of applicants for TANF program

Substance abuse issues have long been part of public assistance policy discussions. States have proposed drug testing of applicants and recipients of public welfare benefits since federal welfare reform in 1996. The federal rules permit drug testing as part of the Temporary Assistance for Needy Families block grant. In recent years, nearly all states have proposed some form of drug testing or screening for applicants. In 2009, over 20 states proposed legislation that would require drug testing as a condition of eligibility for public assistance programs. In 2010 at least 12 states had similar proposals. None of these proposals became law because most of the legislation was focused on “suspicionless” or “random” drug testing, which is at odds with a 2003 Michigan Court of Appeals case. *Marchwinski v. Howard* ruled that subjecting every welfare applicant in Michigan to a drug test without reason to believe that drugs were being used, was unconstitutional.

The proposals gained momentum beginning in the 2011 session. Three states passed legislation in 2011, four states enacted laws in 2012, two states passed legislation in 2013, and three states passed legislation in 2014, bringing the total number of states to twelve. In 2013, Kansas enacted legislation to require drug testing for applicants and recipients suspected of using controlled substances. In 2012, Utah passed legislation requiring applicants to complete a written questionnaire screening for drug use and Georgia passed legislation requiring drug tests for all applicants for Temporary Assistance for Needy Families. Tennessee approved a bill to require the department to develop a plan for substance abuse testing for all applicants and Oklahoma passed a measure requiring all applicants for TANF to be screened for illegal drug use.

As of today, at least thirteen states have passed legislation regarding drug testing or screening for public assistance applicants or recipients (Alabama, Arkansas, Arizona, Florida, Georgia, Kansas, Michigan, Mississippi, Missouri, North Carolina, Oklahoma, Tennessee and Utah.) Some apply to all applicants; others include specific language that there is a reason to believe the person is engaging in illegal drug activity or has a substance use disorder; others require a specific screening process.

Florida's law was halted by a district judge. The District Court issued a final judgment in December 2013 that permanently stopped enforcement of the law saying it violated constitutional protections against unreasonable searches. On December 2, 2014, the 11th U.S. Circuit Court of Appeals upheld the ruling. Tennessee's bill required the department to develop a plan of suspicion-based testing and report its recommendations to the legislature by January 2014. The state began a testing program in July 2014

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

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

A first positive test requires completion of a substance abuse treatment and counseling program and a job skills program approved by DHHR; program participants continue to receive benefits while

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

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

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

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

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

DATE OF PASSAGE: March 10, 2016

EFFECTIVE DATE: June 8, 2016

ACTION BY GOVERNOR: Signed March 23, 2016

Senate Bill 7

Establishing wrongful conduct rule prohibiting recovery of damages in certain circumstances

This bill amends W. Va. Code §55-7-13d, specifically subsection (c), which addresses a plaintiff's involvement in a felony criminal act. The bill provides a defendant is not liable for damages as a result of negligence or gross negligence, if a plaintiff's damages arise out of that plaintiff's commission, attempted commission or immediate flight from the commission or attempted commission of a felony. The plaintiff's injuries must have been suffered as a proximate result of those actions for the bar to apply. However, in some cases, such as wrongful death or adjudicated incompetency, the plaintiff may not be the actual injured person. The bill provides that it is the conduct of the injured person that generates the defense and not necessarily the named plaintiff.

The bill clarifies that the burden of proof for this defense rests on the party seeking to assert the defense. The bill provides that if the plaintiff has been convicted of, pleaded guilty or pleaded no contest to a felony, the court shall dismiss the claim, if the court determines as a matter of law, that the person's damages were suffered as a proximate result of the felonious conduct to which the plaintiff pleaded guilty or no contest, or upon which the plaintiff was convicted. The bill also offers a definition of damages. It includes all damages which may be recoverable for personal injury, wrongful death, property damage and also damages recoverable in a wrongful death action, including damages suffered by family members, such as loss of companionship and loss of income or services of the decedent. Further, the bill provides that if a criminal action is pending, the court shall stay the action at the request of the defendant until resolution of the criminal matter, including appeals, unless the court finds that the conviction would not constitute a valid defense under the bill.

The bill also establishes that the amendments to W.Va. Code §55-7-13d apply to causes of action accruing on or after its effective date. The bill also amends W. Va. Code §55-7B-5(d) of the Medical Professional Liability Act. It establishes that an action related to the prescription or dispensation of controlled substances may not be maintained against a health care provider pursuant to this article by or on behalf of a person whose damages arise as a proximate result of a violation of the Uniform Controlled Substances Act as set forth in §60A, the commission of a felony, a violent crime which is a misdemeanor, or any other state or federal law related to controlled substances. Additionally, the bill provides that an action may be permitted if the health care provider dispensed or prescribed a controlled substance in violation of state or federal law that proximately caused injury or death.

CODE REFERENCE: West Virginia Code §55-7-13d & 55-7B-5 – amended

DATE OF PASSAGE: February 24, 2016

EFFECTIVE DATE: May 24, 2016

ACTION BY GOVERNOR: Signed March 2, 2016

Senate Bill 14

Limiting successor corporation asbestos-related liabilities

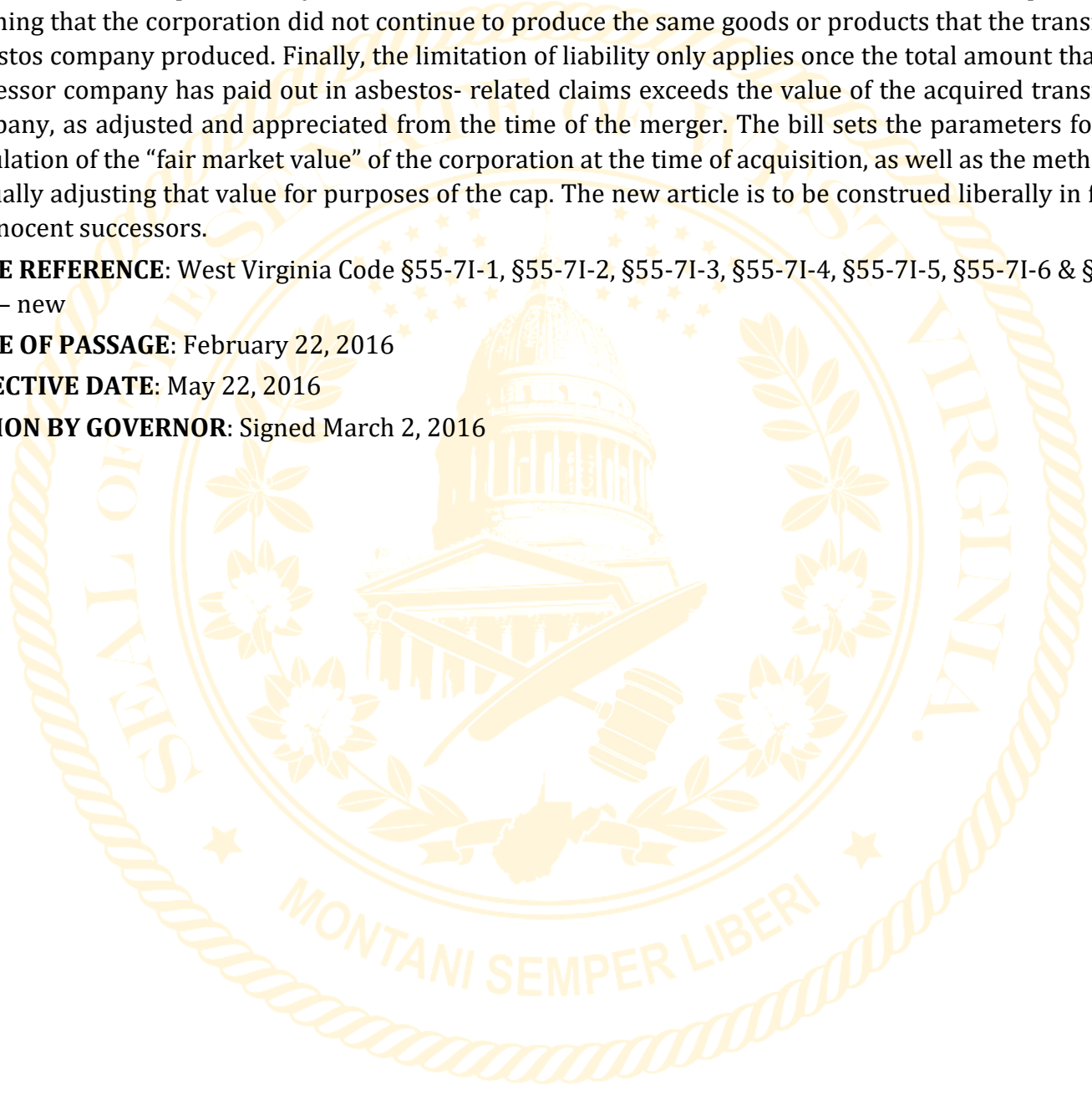
This bill limits the asbestos liability exposure of companies that acquired a business entity that previously produced asbestos or asbestos-containing products. This limitation on liability is available only in certain instances. First, the acquisition, whether through merger or consolidation or other legal process, must have occurred prior to May 13, 1968. Second, the successor must have been an “innocent” purchaser, meaning that the corporation did not continue to produce the same goods or products that the transferor asbestos company produced. Finally, the limitation of liability only applies once the total amount that the successor company has paid out in asbestos- related claims exceeds the value of the acquired transferor company, as adjusted and appreciated from the time of the merger. The bill sets the parameters for the calculation of the “fair market value” of the corporation at the time of acquisition, as well as the method of annually adjusting that value for purposes of the cap. The new article is to be construed liberally in favor of innocent successors.

CODE REFERENCE: West Virginia Code §55-7I-1, §55-7I-2, §55-7I-3, §55-7I-4, §55-7I-5, §55-7I-6 & §55-7I-7 – new

DATE OF PASSAGE: February 22, 2016

EFFECTIVE DATE: May 22, 2016

ACTION BY GOVERNOR: Signed March 2, 2016



Senate Bill 15

Adopting learned intermediary doctrine as defense to civil action due to inadequate warnings or instructions

This bill reestablishes and codifies the “learned intermediary” doctrine which was abrogated by a Supreme Court of Appeals’ decision in 2007. The learned intermediary doctrine provides an exception to the general rule imposing a duty on manufacturers to warn consumers about the potential risks of their products because a prescribing physician or healthcare provider acts as a “learned intermediary” between the manufacturer and the ultimate consumer. This bill provides that a manufacturer or seller of a prescription drug or medical device may not be held liable in a products liability action for a claim based on inadequate warning or instruction, unless the manufacturer or seller of a prescription drug or medical device acted unreasonably in failing to provide reasonable instructions or warnings regarding foreseeable risks of harm to prescribing or other health-care providers who are in a position to reduce the risks of harm in accordance with the instructions or warnings. Failure to provide reasonable instructions or warnings must have been a proximate cause of harm. The bill sets forth the Legislature’s intent to adopt and allow the development of a “learned intermediary” doctrine as a defense in cases based upon claims of inadequate warning or instruction for prescription drugs or medical devices.

CODE REFERENCE: West Virginia Code §55-7-30 – new

DATE OF PASSAGE: February 17, 2016

EFFECTIVE DATE: May 17, 2016

ACTION BY GOVERNOR: Signed February 25, 2016

Senate Bill 27

Permitting county commissions hire outside attorneys for collection of taxes through courts

This bill permits county commissions to retain outside counsel for prosecuting civil tax collection suits and to represent the county before any United States Bankruptcy Court. A county commission engaging an attorney for tax collection suits must have a written representation agreement which sets caps on any hourly fees to be paid, or sets a percentage cap in the case of a contingent fee agreement. It leaves the amount of those caps in the hands of the county commission and the attorney to negotiate. Any attorney fees or other costs associated with the collection of taxes shall be paid from the taxes collected prior to distribution to the various taxing units.

CODE REFERENCE: West Virginia Code §7-5-24 & §11A-2-2 – amended

DATE OF PASSAGE: March 5, 2016

EFFECTIVE DATE: June 3, 2016

ACTION BY GOVERNOR: Signed March 9, 2016

Senate Bill 29

Tolling statute of limitations in certain cases

This bill creates an exception to §55-2-21 for third party complaints. Currently, after a civil action is commenced, the statute of limitations on any claim that can be asserted in that civil action is tolled for the pendency of that civil action, including the statutory period on third-party complaints. The bill provides that this section tolls the running of any statute of limitation with respect to any claim for which the statute of limitation has not expired on the effective date of this section, but only for so long as the action tolling the statute of limitations is pending. This bill shortens the period during which the statute of limitations is tolled for bringing third party claims during the pendency of a law suit to the longer of 180 days following service of process of the original suit or the time remaining on the applicable statute of limitations. The bill provides a third- party defendant the same time period to bring a third-party complaint against any non-party person or entity (180 days from the date of service of process of the original complaint, or the time remaining on the applicable statute of limitations, whichever is longer).

Third party complaints are claims filed by a defendant against some person or entity that was not made a party to the original suit. This bill gives such entities the benefits of repose bestowed by any applicable statutes of limitation that they would enjoy but for the fact that a law suit, of which they may or may not have any knowledge at all, is pending. This bill preserves the ability of a defendant to bring a third party complaint even after the limited tolling period expired if that defendant did not discover any cause of action it might have against a third party until after the expiration of the limited tolling period. This bill specifically preserves that so-called “discovery rule” as well as the doctrine of equitable tolling sometimes used by courts in such situations.

CODE REFERENCE: West Virginia Code §55-2-21 – amended

DATE OF PASSAGE: March 7, 2016

EFFECTIVE DATE: June 5, 2016

ACTION BY GOVERNOR: Signed March 23, 2016

Senate Bill 32

Relating to withdrawal of candidates for office and filling vacancies

This bill modifies the State Election Code as it relates to the creation and filling of ballot vacancies. The impact of these changes is to codify the process by which candidates can file withdrawals of candidacy, set new deadlines by which candidate withdrawals must be filed, and eliminate the discretion of the State Election Commission to determine whether a candidate can withdraw from the ballot.

First, §3-5-11 is amended to require the Secretary of State to create a form to allow a candidate to withdraw by filing a “signed and notarized statement.” If filed by the appropriate deadlines, the withdrawal is presumptively final. These deadlines are: for primary or special primary elections, by the third Tuesday following the close of candidate filing, and for the general or special general elections, no later than 84 days before the general election. Nonpartisan judicial election deadlines are the same as those for primary elections. In §3-5-18, the deadline for the Secretary of State to certify the identity of parties to be printed on the ballot is established as “the seventy-first day next preceding the date of the general election,” and directs that the certification shall include all candidates “entitled to have their name placed on the official ballot . . . following the filling of vacancies made pursuant to” §3-5-19. Lastly, §3-5-19 eliminates all language related to a voluntary withdrawal by a candidate “due to extenuating personal circumstances which will prevent the candidate from serving in the office if elected.” As modified, the statute removes any authority for the State Election Commission to evaluate and decide whether a candidate could withdraw. Instead, withdrawal by the established deadlines is presumptively valid and automatically triggers the ability of a party executive committee to nominate a replacement to fill that ballot vacancy.

CODE REFERENCE: West Virginia Code §3-5-11, §3-5-18, §3-5-19 – amended

DATE OF PASSAGE: February 6, 2016

EFFECTIVE DATE: February 6, 2016

ACTION BY GOVERNOR: Signed February 11, 2016

Senate Bill 54

Altering how tax is collected on homeowners' associations

The bill exempts from the consumers sales and service tax payments of membership dues, fees and assessments made by a member to a homeowners' association that are used for the homeowners' association's payment of its members' common expenses.

CODE REFERENCE: West Virginia Code §11-15-9o – new

DATE OF PASSAGE: March 11, 2016

EFFECTIVE DATE: June 9, 2016

ACTION BY GOVERNOR: Signed March 23, 2016

Senate Bill 104

Classifying Marshall University Forensic Science Center as a criminal justice agency

This bill clarifies the relationship with regard to grant seeking between the West Virginia State Police and the Marshall University Forensic Science Center.

The bill, with regard to grants and state funding sources:

- Designates the DNA Analysis Laboratory at the Forensic Center to be engaged in the administration of Criminal Justice. This opens some possible funding sources;
- Requires the entities to confer on grants and funding sources and gives the West Virginia State Police primacy over decisions to seek grants; and
- Requires the parties to enter an agreement to comply with the requirements of the bill.

CODE REFERENCE: West Virginia Code §15-2-24C – new

DATE OF PASSAGE: March 9, 2016

EFFECTIVE DATE: March 9, 2016

ACTION BY GOVERNOR: Signed March 23, 2016

Senate Bill 107

Uniform Interstate Depositions and Discovery Act

This bill enacts the Uniform Interstate Depositions and Discovery Act in West Virginia. This Uniform Act is designed to address the need for an efficient and inexpensive procedure that would allow litigants to depose individuals and conduct discovery in a state other than the trial state. The bill defines terms of import including subpoena. The bill provides a procedure for issuance of a subpoena – for deposition, document production or site inspection - in West Virginia for litigation in another jurisdiction or state. Specifically, a party must submit a foreign subpoena to the clerk of the court in the county in which the discovery is sought. The clerk then shall promptly issue a subpoena for service upon the person to which the foreign subpoena is directed. Subpoenas issued under this Act must incorporate the terms used in the foreign subpoena and contain or be accompanied by the contact information of all counsel of record in the proceeding to which the subpoena relates. The Uniform Act requires that any subpoenas issued or depositions conducted comply with the West Virginia Rules of Civil Procedure. Similarly, any application or motion to enforce, quash or modify a subpoena must comply with West Virginia law and procedure and must be submitted in the county in which discovery is sought. The bill applies to requests for discovery in cases pending as of its effective date.

CODE REFERENCE: West Virginia Code §56-12-1 et seq. – new

DATE OF PASSAGE: March 12, 2016

EFFECTIVE DATE: June 10, 2016

ACTION BY GOVERNOR: Signed March 24, 2016

Senate Bill 259

Amending Unfair Trade Practices Act

This bill amended the Unfair Trade Practices Act. The Act prohibits retailers and wholesalers from selling goods at prices less than cost. It also prohibits the use of rebates, refunds, commissions or unearned discounts not extended to all purchasers from being extended to certain purchasers for the purpose of injuring competition. In addition to possible civil injunctions and damage suits, a violation of the Act constitutes a misdemeanor, and upon conviction is subject to a \$100 to a \$1,000 fine, or up to 90 days of jail, or both.

First of all, the bill repealed §47-11A-10, §47-11A-12 and §47-11A-13. Section ten provided that the Attorney General, upon a party's third conviction for violation of the Act, may seek to forfeit the party's right to do business in the state. Section twelve provided that contracts violating the provisions of the Act are unenforceable.

Section thirteen provided that proof of an advertisement, offer to sell, or the sale of any product for a below-cost price is prima facie evidence of a violation of the Act.

The bill amended the elements for what constitutes an unlawful below-cost sale. It provides that it's unlawful for any retailer or wholesaler to sell, offer for sale, or advertise to sell any product at a price less than the cost thereof with the intent to destroy or the effect of destroying competition.

The bill amended the methodology for determining cost by exempting federal and state fuel taxes from the determination of mandatory markups. Under current law, "cost" means the invoice or replacement cost plus freight charges and a markup to cover the cost of doing business, which in the absence of proof of a lesser cost, shall be 4% of the invoice or replacement cost for wholesalers and 7% of the invoice or replacement cost for retailers. The bill retained the aforementioned language but provided that the markup to cover the cost of doing business shall be exclusive of any federal and state motor fuel taxes.

The bill also amended the sales exempt from the provisions of the Act. Previous law only exempted sales, but the exemptions now apply to sales, offers to sell and advertisements to sell. An exemption is added for sales made to meet the prices of a competitor. It exempts sales involving a discount or rebate earned by purchases or the redemption of credits, discounts or rebates through a bonus, and loyalty or rewards program. It also adds an exemption for sales made within fifteen days of a businesses' grand opening.

The bill significantly amended the section of the Act addressing injunctions and damage suits. It provides that any person or entity injured by a violation of the Act may maintain an action for an injunction and/or damages.

If damages are alleged and proven, the plaintiff is only entitled to actual damages sustained and proven to be a result of the violation.

It also provides that it shall be an absolute defense to an action that the sale price of any product alleged to be in violation of the Act is equal to, or greater than, the sale price of the same product being sold by a competitor. Under previous law, any entity could maintain a proceeding to enjoin continuance of any practice violating the provisions of the Act, regardless of whether or not there was an injury. If there was an injury proven, the plaintiff was entitled to treble (3x) damages.

Lastly, the bill provided that the purposes of the Act are as follows:

- to safeguard consumers from the creation of monopolies by prohibiting predatory pricing;

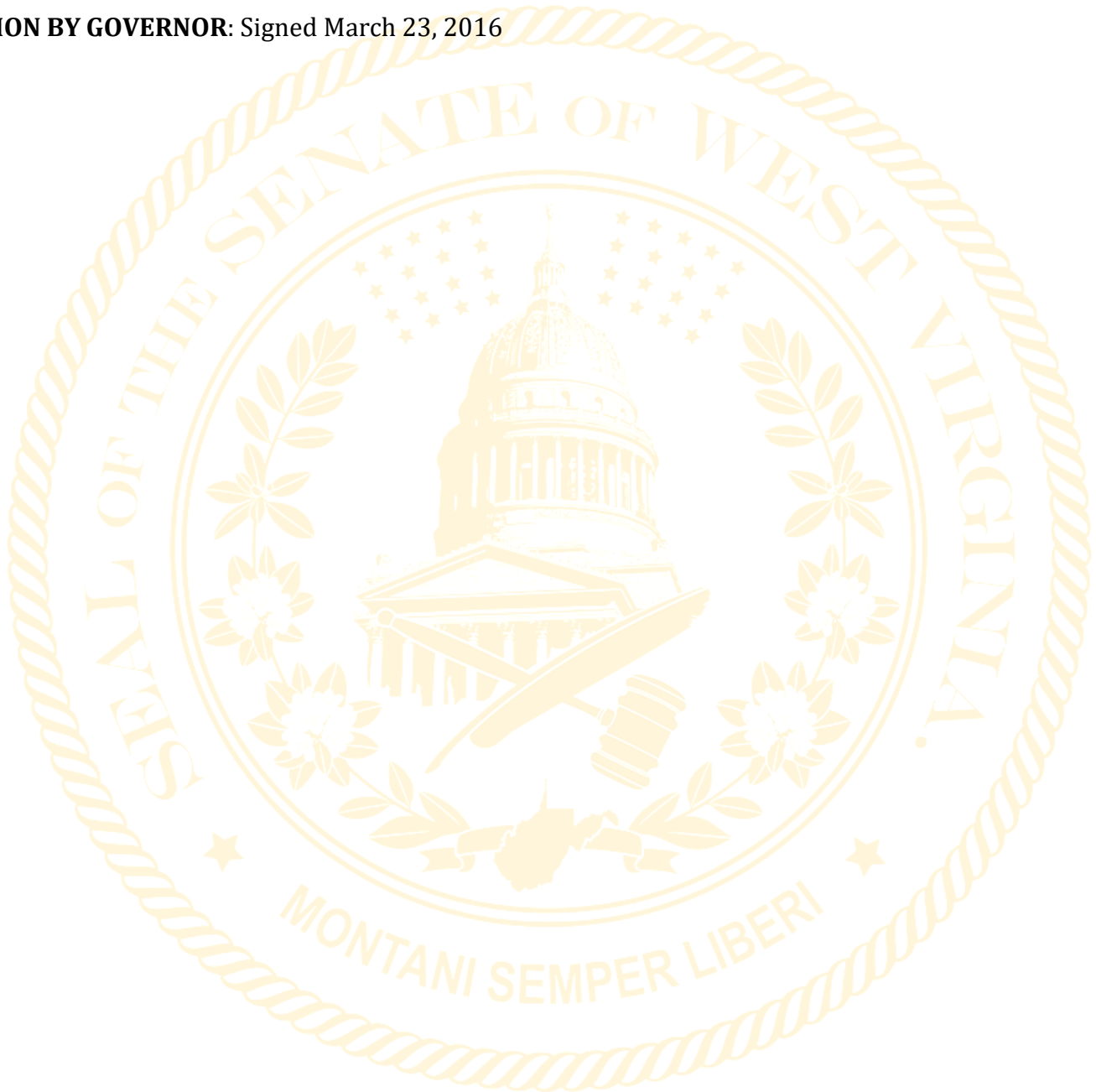
- to foster market efficiency; and
- to protect market competition.

CODE REFERENCE: West Virginia Code §47-11A-1, §47-11A-2, §47-11A-5, §47-11A-6, §47-11A-8, §47-11A-9, §47-11A-14 – amended; §47-11A-10, §47-11A-12 and §47-11A-13 – repealed

DATE OF PASSAGE: March 11, 2016

EFFECTIVE DATE: June 9, 2016

ACTION BY GOVERNOR: Signed March 23, 2016



Senate Bill 261

Bringing state code relating to daylight saving time in conformity with federal code

This bill brings the state code relating to daylight saving time into conformity with federal code and practice. The bill authorizes that daylight saving time will commence on the second Sunday of March, and will terminate on the first Sunday of November.

CODE REFERENCE: West Virginia Code §5-1-25 – amended

DATE OF PASSAGE: February 15, 2016

EFFECTIVE DATE: May 15, 2016

ACTION BY GOVERNOR: Signed February 25, 2016

Senate Bill 267

Modifying removal procedure for certain county, school district and municipal officers

This bill changes the regulations for the removal of public officials. The bill authorizes the procedure of removal in the case of any county officer, member of a board of education, magistrate, or municipal officer by a duly enacted resolution of the county commission, or by petition. A petition requires a number of qualified petitioners, which shall be the lesser of two thousand or ten percent of the number of registered votes in the election in which the challenged officer was chosen. Similarly, in the case of a municipal officer, the removal action can be taken by either the appropriate governing body or by a petition with the lesser of two thousand or ten percent of the number of registered votes in the election in which the challenged officer was chosen.

The bill authorizes the procedures for filing the charges against the officeholder and serving officeholder. The court then evaluates the resolution or petition and, if the allegations are sufficient, forwards the matter to the Supreme Court of Appeals. The Chief Judge then empanels a three-judge court to try the matter.

If a judicial proceeding under this section is dismissed or otherwise resolved in favor of the challenging officer, then the political subdivision for which the officer serves shall be responsible for the court costs and reasonable attorney fees for the officer.

CODE REFERENCE: West Virginia Code §6-6-1 and §6-6-7 – amended

DATE OF PASSAGE: March 12, 2016

EFFECTIVE DATE: June 10, 2016

ACTION BY GOVERNOR: Signed March 24, 2016

Senate Bill 270

Repealing code relating to insurance policies

This bill repeals the last section of Article 25, Chapter 19 relating to limiting liability of landowners. Under current code, the liability of landowners who open property for recreational wildlife propagation or certain governmental purposes is limited to situations where a deliberate, willful or malicious intent to injure exists or where the land owner charges in excess of the amounts permitted under the article. Otherwise, the land owner is immune from liability. However, if the land owner has liability insurance, then that insurance policy is, by operation of statute, read to expressly waive the immunity otherwise provided to land owners unless rejected in writing by the named insured. The bill repeals that section (W. Va. Code §19-25-7) relating to insurance policies. It does not alter, in any other way, the Chapter relating to limiting liability of landowners.

CODE REFERENCE: West Virginia Code §19-25-7 – repealed

DATE OF PASSAGE: March 11, 2016

EFFECTIVE DATE: June 9, 2016

ACTION BY GOVERNOR: Signed March 23, 2016

Senate Bill 271

Regulating practice of accountancy

This bill makes the following changes to the regulation of the profession of Accountancy:

- it changes the definition of “Attest Services” to conform to the Uniform Accountancy Act;
- it provides an exemption from civil liability for members of the Board of Accountancy arising from the good faith discharge of their duties;
- it revises the requirements for the issuance of certificates as certified public accountants to include a listing of all states in which the applicant has applied for, or holds, an out-of-state certificate and any past denial, revocation or suspension of an out-of-state certificate, submitted to a criminal history check, provides for the privacy of information revealed in a criminal history check of an applicant;
- provides rulemaking authority to the Board of Accountancy for implementation of the provisions of the application provisions.

This bill also adds two new sections to the same article designated §30-9-33 and 34. The bill requires Mandatory Training in federal antitrust law and state action immunity for members of the Board of Accountancy and their representatives from the Attorney General’s office. Lastly, the bill provides for indemnification for board members and current and former employees for expenses reasonably incurred in connection with judicial or administrative proceedings to which they are, or may become, parties by reason of the performance of their official duties.

CODE REFERENCE: West Virginia Code §30-9-2, §30-9-3, & §30-9-7 – amended; §30-9-33 & §30-9-34 – new

DATE OF PASSAGE: March 7, 2016

EFFECTIVE DATE: June 5, 2016

ACTION BY GOVERNOR: Signed March 15, 2016

Senate Bill 274

Relating to increasing civil jurisdictional amount in magistrate courts

The purpose of this bill is to increase the monetary jurisdictional amount for Magistrate Courts from \$5,000 or less to \$10,000 or less.

CODE REFERENCE: West Virginia Code §50-2-1 – amended

DATE OF PASSAGE: March 7, 2016

EFFECTIVE DATE: June 5, 2016

ACTION BY GOVERNOR: Signed March 15, 2016

Senate Bill 278

Clarifying physicians' mutual insurance company is not state or quasi-state actor

This bill clarifies that the Physicians' Mutual Insurance Company is not a state actor, or a quasi-state actor, or a quasi-public entity for any purpose.

CODE REFERENCE: West Virginia Code §33-20F-2 & §33-20F-4 – amended

DATE OF PASSAGE: March 12, 2016

EFFECTIVE DATE: June 10, 2016

ACTION BY GOVERNOR: Signed March 24, 2016

Senate Bill 293

Neighborhood Investment Program Act

The bill amends the provisions of the West Virginia Code relating to the Neighborhood Investment Program (NIP). The Neighborhood Investment Program is a program administered by the Development Office and the Neighborhood Investment Program Advisory Board.

The program authorizes certain qualifying charitable organizations that serve economically disadvantaged citizens or areas of the state to be able to offer tax credits to persons who donate to the organizations. Without the amendments provided in this bill, the program would expire July 1, 2016. The bill extends the termination date for the program through July 1, 2021.

The bill also makes several other substantive changes to the program, as follows:

- Adds a definition for the term and “direct need programs” – programs, organizations or community endowments that serve persons whose annual incomes are no more than 125% of the federal poverty level with self-reliance and independence from government assistance as its primary objective;
- Adds a definition for the term “community-based” – a project is to be managed locally, without national, state, multistate or international affiliations; it will benefit local citizens in the immediate geographic area where the project is to operate; and the sponsor of the project is a local entity, rather than a statewide, national or international organization or an affiliate of a statewide, national or international organization;
- Redefines the term “economically disadvantaged area” as any region in the state with a poverty rate greater than the average statewide poverty rate as determined by the US Census Bureau’s most recently published data;
- Adds a definition for the term “emergency assistance” – the provision of basic needs including shelter, clothing, food, water, medical attention or supplies, personal safety, or funds to obtain these to an individual facing circumstances that prevent him or her from securing or maintaining these basic needs;
- Adds to the list of favorable criteria to be used in evaluation of qualifying projects that the proposed projects are direct need programs or will provide emergency assistance.
- Reduces the frequency of progress reports by certified projects to the Development Office from quarterly to biannually and reduces the frequency of required meetings by the NIP Advisory Board from at least 4 times per year to at least 2 times per year;
- Reduces the frequency of reporting by the Development Office to the NIP board regarding the progress of certified projects and the program generally;
- Eliminates the requirement that the Tax Commissioner publish the address of a taxpayer who has used the NIP credit in its required annual publication in the State Register; and
- Reduces the frequency of independent review of NIP and report of such review to the Joint Committee on Government and Finance from every 2 years to every 3 years.

CODE REFERENCE: West Virginia Code §11-13J-3, §11-13J-4, §11-13J-4a, §11-13J-10 and §11-13J-12 – amended

DATE OF PASSAGE: March 12, 2016

EFFECTIVE DATE: June 10, 2016

ACTION BY GOVERNOR: Signed March 29, 2016

Senate Bill 306

Permitting sale of county or district property online

This bill permits counties and districts to sell property through on-site and online public auctions. The requirements for public notice of the sale remain the same.

CODE REFERENCE: West Virginia Code §7-3-3 – amended

DATE OF PASSAGE: March 12, 2016

EFFECTIVE DATE: June 10, 2016

ACTION BY GOVERNOR: Signed March 24, 2016

Senate Bill 311

Allowing permanent exception for mortgage modification or refinancing loan under federal Making Home Affordable program

The bill amends the provisions of the West Virginia Code relating to the West Virginia Residential Mortgage Lender, Broker and Servicer Act. Current provisions of the law prohibit mortgage loans in a principal amount that, when added to the aggregate total of the outstanding principal balances of all other primary or subordinate mortgage loans secured by the same property, exceeds the fair market value of the property on the date that the latest mortgage loan is made. This prohibition has an exception for mortgage modifications or refinances made in participation with and in compliance with the federal Homes Affordable Modification Program or any other mortgage modification or refinancing loan funded through any other federal or state program or litigation settlement done between January 1, 2012, and January 1, 2015.

The bill extends the current exception by removing the January 1, 2015, limitation, and applies the same exception to the provision of current law that requires mortgage modifications or refinances to have uniform installment payments over the installment period. In addition, the bill also excepts these types of mortgage modifications or refinances from the provisions of the law authorizing causes of action and the nullification of loans for violations of the article.

CODE REFERENCE: West Virginia Code §31-17-8 and §31-17-17 – amended

DATE OF PASSAGE: March 12, 2016

EFFECTIVE DATE: Signed June 10, 2016

ACTION BY GOVERNOR: Signed March 29, 2016

Senate Bill 339

Establishing Judicial Compensation Commission

This bill creates a new article of Code, wherein a new legislative commission is established. The Judicial Compensation Commission is established as an advisory commission to the West Virginia Legislature and is tasked with “studying the compensation structure for justices of the Supreme Court of Appeals, circuit court judges, family court judges, magistrates and any other judicial officer subject to election and which office requires the judge to hold a professional license to serve in that position.” The commission is composed of two representatives appointed by the Speaker of the House, two representatives appointed by the President of the State Senate, and the Dean of the West Virginia University College of Law.

Appointed representatives may not be public employees, elected public officials, recipients of state pensions, members of political party executive committees, or members of the West Virginia State Bar. The commission is to meet in Charleston and to conduct a thorough review of judicial compensation for the purpose of making a recommendation to the West Virginia Legislature concerning changes to be made. The commission is to consider a number of specific criteria in evaluating judicial compensation, but may also consider other information that the commission may find relevant. The first report by the commission is to be completed by September 1, 2017.

If the Legislature enacts the commission’s salary recommendations in the following year, then the commission adjourns for three years. If the Legislature fails to enact the recommendations or enacts some reduced salary increase, then the commission continues to meet and prepare an annual report to the Legislature.

CODE REFERENCE: West Virginia Code §4-2A-1, §4-2A-2, & §4-2A-3 – new

DATE OF PASSAGE: March 12, 2016

EFFECTIVE DATE: June 10, 2016

ACTION BY GOVERNOR: Signed March 30, 2016

Senate Bill 351

Dedicating severance tax proceeds

The bill amends the provisions of the West Virginia Code relating to the dedication of severance taxes to the West Virginia Infrastructure General Obligation Debt Service Fund. Current law requires that the first \$22.5 million of severance tax collected be deposited in the West Virginia Infrastructure General Obligation Debt Service Fund. The bill requires that the amount deposited into the fund be only the amount necessary to pay principal and interest, and to ultimately retire bonds over their scheduled amortization life, but in no fiscal year may the deposit exceed \$22.25 million. The annual debt service amount is to be determined in accordance with a debt amortization table to be published by the Treasurer by April 1, 2016. The Treasurer may amend the table from time to time as the Treasurer considers necessary.

CODE REFERENCE: West Virginia Code §31-15A-16 – amended

DATE OF PASSAGE: February 24, 2016

EFFECTIVE DATE: May 24, 2016

ACTION BY GOVERNOR: Signed March 2, 2016

Senate Bill 379

Relating to candidate filing fees

This bill changes where candidates for circuit and family court judge are to file their campaign finance statements, and to whom their filing fees are to be paid, to correspond with the location where they file their candidacy paperwork. Following passage of House Bill 2010 in 2015, candidates for judicial offices (excluding magistrates) are required to fill their candidacy papers with the Secretary of State's Office. This bill requires all candidates running for those offices to file their financial statements and pay for filing fees with the Secretary of State.

CODE REFERENCE: West Virginia Code §3-5-8, §3-8-5b – amended

DATE OF PASSAGE: March 4, 2016

EFFECTIVE DATE: March 4, 2016

ACTION BY GOVERNOR: Signed March 10, 2016

Senate Bill 387

Shared animal ownership agreements to consume raw milk

This bill creates a new section of code that permits a herd seller and a responsible party to enter into a “written shared animal ownership agreement to consume raw milk.” Certain terms of these agreements are required, including that:

- the responsible party must acquire a percentage ownership interest in the animal
- the responsible party pay for a portion of the animal’s care and boarding
- the responsible party is then entitled to receive a “fair share” of the raw milk produced by the animal
- the responsible party must agree not to distribute or resell raw milk received from the agreement.

The bill requires a written agreement acknowledging the inherent dangers of consuming raw milk. Once executed, the agreement must be filed with the Commissioner of Agriculture by the herd seller, and must include names, addresses and phone numbers for the herd seller and any party who has executed an agreement with the herd seller. This is provided so that all parties may be contacted in the event of an illness. Certain requirements are imposed on the herd seller with respect to the health of the herd. In order to provide milk for consumption, the herd must test negative in the prior twelve months for “brucellosis, tuberculosis and other diseases as required by the state veterinarian.” Any new animal added to the herd must test negative for those diseases for the thirty days immediately preceding. Additionally, any animals producing “bloody, stringy or abnormal milk” are to be excluded from the milking herd until the milk returns to normal.

Any party to a shared animal ownership agreement or any physician who becomes aware of an illness “directly related to consuming raw milk” is required to report the illness to his/her local health department and the Commissioner of Agriculture. The Commissioner is then required to contact and warn others who have herd sharing agreements for animals in the same herd.

Violations of this section are punishable by an administrative penalty, imposed by the Commissioner of Agriculture, of not more than \$100. Lastly, the Commissioner of Agriculture, in consultation with the Department of Health and Human Resources, is given rulemaking authority to propose rules “in compliance with raw milk dairy industry standards.”

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

DATE OF PASSAGE: February 23, 2016

EFFECTIVE DATE: May 23, 2016

ACTION BY GOVERNOR: Signed March 3, 2016

Senate Bill 415

Lengthening maximum term of negotiable certificates of deposit municipal funds can hold

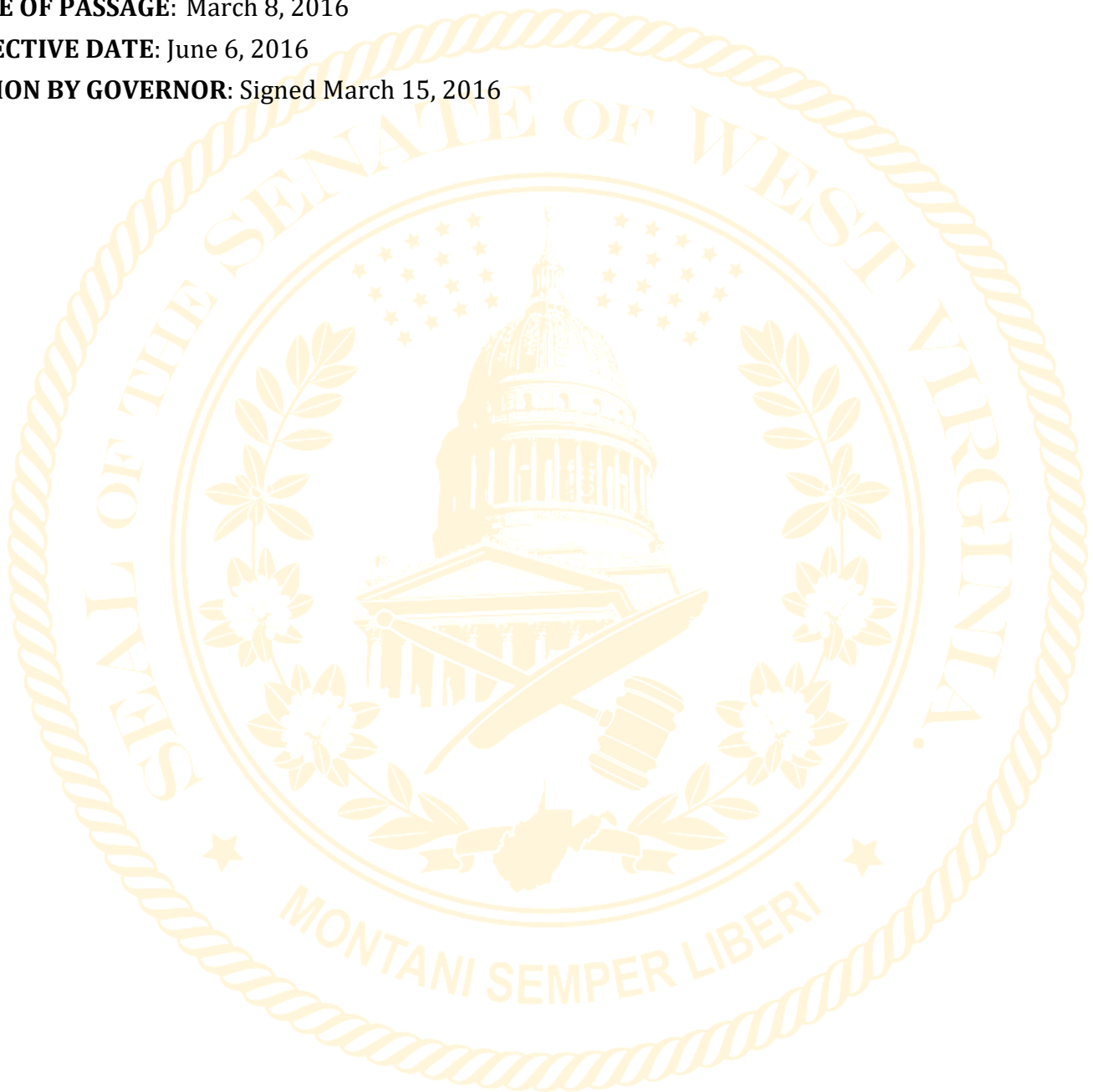
The bill increases from one year to 5 years the period in which qualified negotiable certificates of deposit authorized by law for the investment of municipal funds must mature.

CODE REFERENCE: West Virginia Code §8-13-22a – amended

DATE OF PASSAGE: March 8, 2016

EFFECTIVE DATE: June 6, 2016

ACTION BY GOVERNOR: Signed March 15, 2016



Senate Bill 419

Relating to Workers' Compensation Debt Reduction Act

The bill revises statutory measures that provide funding to pay the legacy costs of the state's Workers' Compensation system incurred before the system was privatized in 2005. Changes to those statutes affect the flow of revenues into the state General Revenue Fund, authorize the future termination of additional severance taxes imposed on coal, natural gas and timber, and the future severance tax on timber, among others. Specifics of the changes include:

§4-11A-18 – This section is amended to end the annual transfer of \$50.4 million dollars of Personal Income Tax revenues to the Workers' Compensation Debt Reduction Fund effective February 1, 2016. This revision would effectively restore the flow of that amount of Personal Income Tax revenues to the State General Revenue Fund permanently.

§11-13A-3b – This section is amended to provide that on and after July 1, 2016, the regular severance tax imposed on timber (that is currently suspended until the additional Workers' Compensation 2.78% severance tax on timber is terminated) will be reestablished and imposed at the rate of 1.50%.

§11-13V-4 – This section is amended to:

- Authorize the Governor to redirect the deposit of revenues from additional severance taxes imposed on coal, natural gas and timber from the Workers' Compensation Debt Reduction Fund to the State General Revenue Fund during any period directed by Executive Order from February 29, 2016 through June 30, 2016.
- Terminate those taxes beginning July 1, 2016.
- Authorize the Governor to terminate those taxes before July 1, 2016 by Executive Order if he chooses to do so.
- Remove language that would terminate these taxes only when the Governor certifies to the Legislature that an independent certified actuary has determined that the unfunded liability of the Workers' Compensation system's "Old Fund" has been paid or provided for in its entirety.

§11-21-96 – This section is amended to end the annual transfer of a separate \$45 million dollars of Personal Income Tax revenues to the Workers' Compensation Debt Reduction Fund effective February 1, 2016. This revision would effectively restore the flow of that full amount of Personal Income Tax revenues to the State General Revenue Fund until July 1, 2016. Thereafter, \$30 of that amount will be distributed annually as required by current law into the West Virginia Retiree Health Benefit Trust Fund, also known as the OPEB fund. However the current law requirement that \$5 million of those Personal Income Tax revenues be deposited into a separate fund known as the Post-July 1, 2010, Employee Trust Fund would change. That transfer will not be made and the \$5 will remain in the State General Revenue Fund permanently.

§23-2C-3 – This section is amended to:

- Authorize the Governor to redirect the deposit of revenues from surcharges and assessments derived from Workers' Compensation insurance premiums from the Workers' Compensation Debt Reduction Fund to the State General Revenue Fund during any period directed by Executive Order from February 29, 2016 through June 30, 2016.
- Authorize the Governor to redirect one-half of the deposit of revenues from surcharges and assessments derived from Workers' Compensation insurance premiums from the Workers'

Compensation Debt Reduction Fund to the State General Revenue Fund during any period directed by Executive Order during FY 2017.

§29-22A-10d – This section is amended to:

- Authorize the Governor to redirect the deposit of revenues derived from racetrack video lottery net terminal income from the Workers' Compensation Debt Reduction Fund to the State General Revenue Fund during any period directed by Executive Order from February 29, 2016 through June 30, 2016.
- Authorize the Governor to redirect one-half of the deposit of revenues from racetrack video lottery net terminal income from the Workers' Compensation Debt Reduction Fund to the State General Revenue Fund during any period directed by Executive Order during FY 2017, until the Governor certifies to the Legislature that an independent certified actuary has determined that the unfunded liability of the Workers' Compensation system's "Old Fund" has been paid or provided for in its entirety. Current law directing that, after the certification, these net terminal income revenues are to be redirected into the State Excess Lottery Fund is retained.

§29-22A-10e – This section is amended to:

- Authorize the Governor to redirect the deposit of revenues derived from racetrack video lottery net terminal income from the Workers' Compensation Debt Reduction Fund to the State General Revenue Fund during any period directed by Executive Order from February 29, 2016 through June 30, 2016.
- Authorize the Governor to redirect one-half of the deposit of revenues from racetrack video lottery net terminal income from the Workers' Compensation Debt Reduction Fund to the State General Revenue Fund during any period directed by Executive Order during FY 2017, until the Governor certifies to the Legislature that an independent certified actuary has determined that the unfunded liability of the Workers' Compensation system's "Old Fund" has been paid or provided for in its entirety. Current law directing that, after the certification, these net terminal income revenues are to be redirected into the State Excess Lottery Fund is retained.

Notes: The Workers' Compensation Debt Reduction Fund was created in 2005 in WVC §23-2D-5 to serve as a transfer fund into which are collected revenues from various sources to pay the legacy costs of the state's Workers' Compensation system incurred before the system was privatized in 2005. The West Virginia Retiree Health Benefit Trust Fund, also known as the OPEB (Other Post Employment Benefits) fund, was created in 2006 to provide for and administer public employee post-employment health care benefits. [WVC §5-16D-2.] The Post-July 1, 2010, Employee Trust Fund was created in 2012 to provide an incentive to public retirees who were hired on and after July 1, 2010. [WVC §5-16-5b.]

CODE REFERENCE: West Virginia Code §4-11A-18, §11-13A-3b, §11-13V-4, §11-21-96, §23-2C-3, §29-22A-10d and §29-22A-10e – amended

DATE OF PASSAGE: February 26, 2016

EFFECTIVE DATE: February 26, 2016

ACTION BY GOVERNOR: Signed February 29, 2016

Senate Bill 426

Continuing Office of Coalfield Community Development

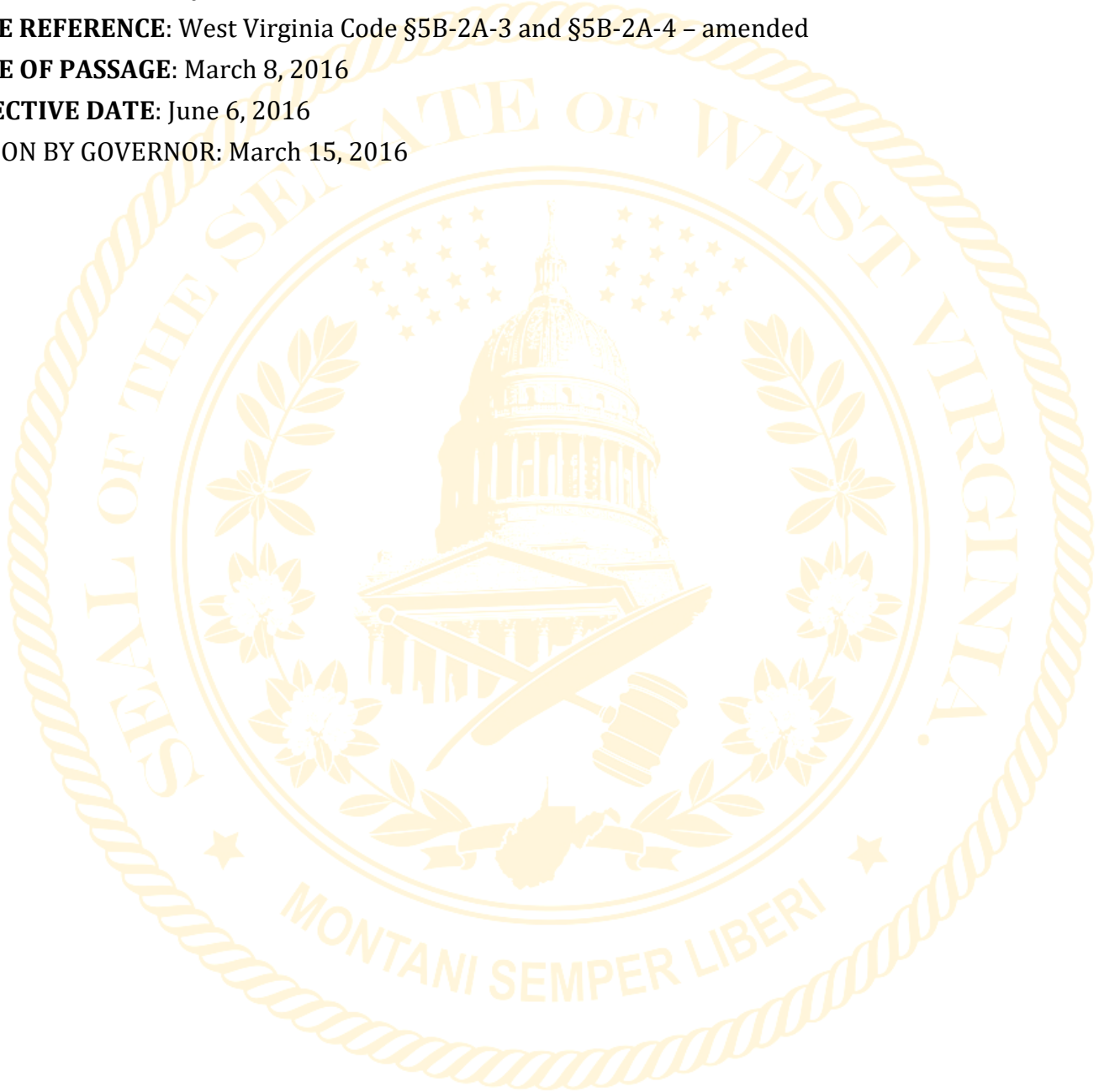
This bill authorizes the continuation of the Office of Coalfield Community Development, transferring the office from the Division of Energy to the Department of Commerce. The bill provides that the Secretary of the Department of Commerce may appoint a chief administrator to the office who serves at the will and power of the Secretary.

CODE REFERENCE: West Virginia Code §5B-2A-3 and §5B-2A-4 – amended

DATE OF PASSAGE: March 8, 2016

EFFECTIVE DATE: June 6, 2016

ACTION BY GOVERNOR: March 15, 2016



Senate Bill 429

Adopting two National Association of Insurance Commissioners' models to protect enrollees and general public and permit greater oversight

This bill makes health organizations subject to new statutory provisions concerning risk-based capital (RBC) that are currently not law in West Virginia.

The purpose of the bill is to adopt two National Association of Insurance Commissioners' models (MDL-315) to establish standards for minimum capital and surplus to be maintained by a health organization and provide for the early detection of a potentially dangerous financial condition of a health organization in order to protect its enrollees and the general public. The bill is necessary for WV to meet NAIC accreditation standards.

The bill removes HMOs from the general risk-based capital currently in article, Article 40 of Chapter 33 of the W. Va. Code, and makes other technical updates to Article 40.

The bill also creates a new article, Article 40A, entitled Risk-Based Capital (RBC) for Health Organizations. Risk-based capital (RBC) is a method of measuring the minimum amount of capital appropriate for a domestic insurer to support its overall business operations in consideration of its size and risk profile. This bill makes health organizations, (including Hospital, Medical and Dental Corporations; Health Care Corporations; Health Maintenance Organizations; and Prepaid Limited Health Services Organizations) subject to new statutory provisions concerning risk-based capital (RBC) for health organizations. "Health Organization" does not include any life, health, or property and casualty insurer that is subject to separate RBC requirements.

The bill requires health organizations to submit RBC reports annually. The bill defines company action level event, regulatory action level event, authorized control level event, and mandatory control level event. Such levels represent decreasing amounts of capital reported by such health organizations with increasing consequences. Consequences range from increased reporting and formulation of an RBC plan in case of a company action level event, to placing the health organization under regulatory control, including rehabilitation and liquidation, in case of a mandatory control level event. This bill also includes the changes made in HB4043 which changed the definition of one of the company action events known as the trend test for a life and/or health insurer, which currently is a threshold of when the ratio of the product of insurer's authorized control level risk based capital and two and one-half percent, to a ratio of the product of the insurer's authorized control level risk based capital and three percent.

The bill entitles health organizations to a confidential departmental hearing on record in case of an adjusted RBC report, notification that a RBC plan is unsatisfactory, a regulatory action level event, failure to adhere to an RBC plan, or notification of a corrective order. The bill specifies that RBC reports and plans that are in possession of the OIC are confidential by law and privileged (not subject to FOIA, subpoena, or discovery, including testimony), except in cases of regulatory action by the commissioner. The OIC would be permitted to share and receive documentation with regulatory and law-enforcement officials and the NAIC without it being a waiver of confidentiality or privilege.

The bill declares the RBC levels to be a purely regulatory tool and states that the publishing or dissemination of a statement with regard to the RBC levels of any health organization would be misleading and is therefore prohibited. [This confidentiality language mirrors W. Va. Code §33-40-8.] In addition, the bill reflects that the RBC instructions, reports, and plans are intended solely for use by the commissioner

in monitoring the solvency of health organizations and the need for possible corrective action and may not be used by the commissioner for rate making.

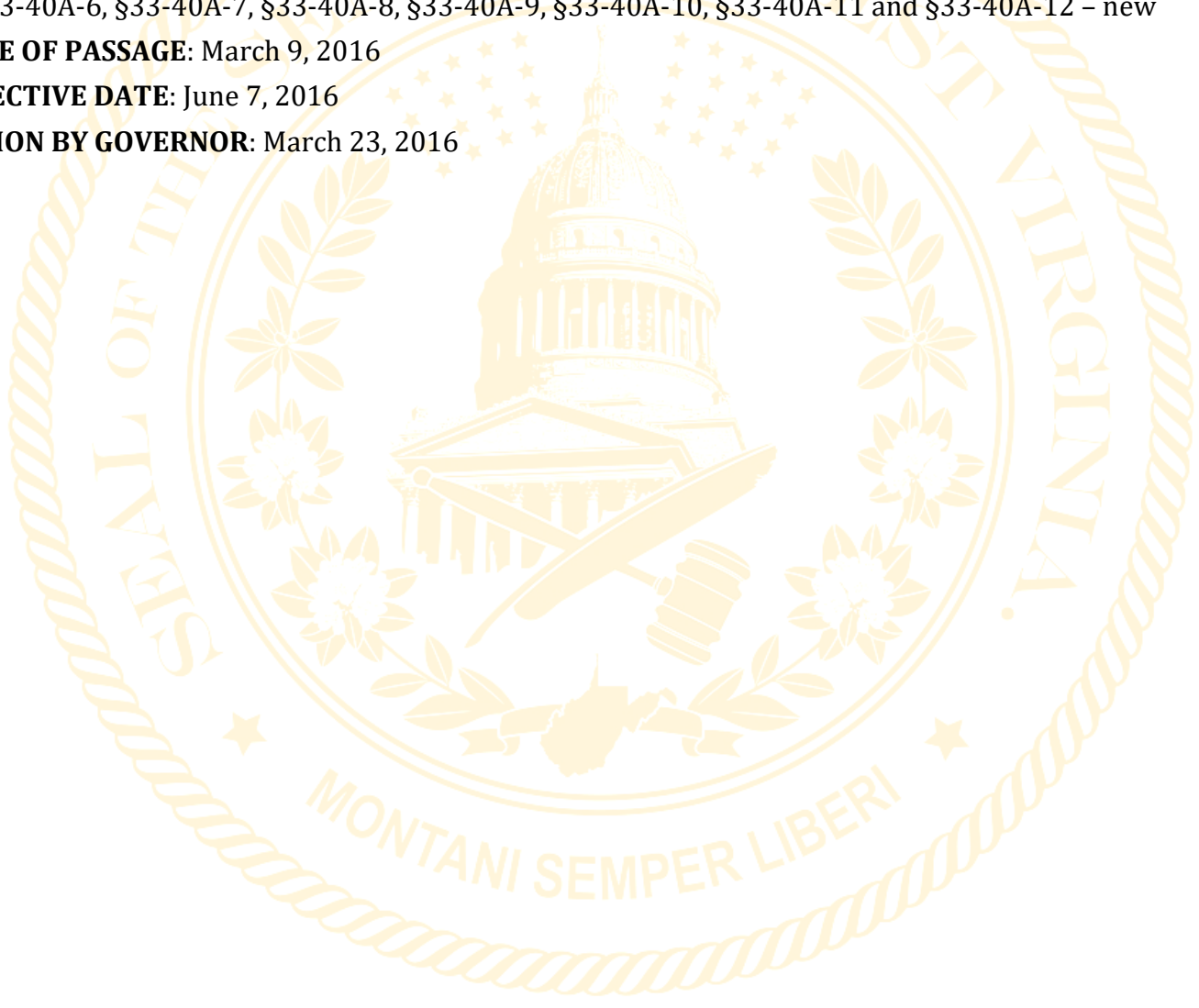
The bill provides the commissioner with authority to propose reasonable rules for legislative approval to effectuate the purposes of the new article. The commissioner would also be permitted to exempt from RBC requirements any domestic health organization that writes direct business only in this state; assumes no reinsurance in excess of five percent of direct premiums written; and writes direct annual premiums for comprehensive medical business of \$2 million or less; or is a limited health service organization that covers less than two thousand lives. Lastly, the bill provides immunity for the commissioner, employees and agents, as well as specifies the effective date of notices and the new article.

CODE REFERENCE: West Virginia Code §33-24-4, §33-25-6, §33-25A-24, §33-25D-26, §33-40-1, §33-40-2, §33-40-3, §33-40-6 and §33-40-7 – amended; §33-40A-1, §33-40A-2, §33-40A-3, §33-40A-4, §33-40A-5, §33-40A-6, §33-40A-7, §33-40A-8, §33-40A-9, §33-40A-10, §33-40A-11 and §33-40A-12 – new

DATE OF PASSAGE: March 9, 2016

EFFECTIVE DATE: June 7, 2016

ACTION BY GOVERNOR: March 23, 2016



Senate Bill 431

Authorizing pharmacists and pharmacy interns dispense opioid antagonists

This bill allows for opioid antagonist to be dispensed by a pharmacists or a pharmacy intern without having a prescription. The bill requires patient counseling and documenting of the dispensing. It also provides for informational materials. It also allows for current prescriptions for the antagonist to be refilled. The Board of Pharmacy and the Bureau for Public Health are required to develop protocols, develop the informational/educational materials and develop necessary forms. All of these may be updated periodically.

Portions of the bill reorganize existing law for readability. These are the limitations of liability portions of current law. There is also a report that is required to be submitted to the Legislative Oversight Commission on Health and Human Resources. This section has been modified to account for allowing the antagonist to be dispensed without a prescription. A new requirement to this section would require the Board of Pharmacy to query the Controlled Substances Monitoring database for additional data about dispensing of the antagonists and include that in the required report.

CODE REFERENCE: West Virginia Code §16-46-3, §16-46-5, §16-46-6 – amended; §16-46-3a – new

DATE OF PASSAGE: March 9, 2016

EFFECTIVE DATE: June 7, 2016

ACTION BY GOVERNOR: March 23, 2016

Senate Bill 454

Licensing and regulating medication-assisted treatment programs for substance use disorders

This bill regulates medication assisted treatment programs for substance abuse.

The bill creates a new article which sets out licensing requirements. This article defines terms. It requires a license to be issued by the Secretary of the Department of Health and Human Resources and sets out licensing requirements. There are two types of licenses – A registration for office based medication assisted treatment and a license for opioid treatment programs. There are three types of licensing categories – initial, provisional and renewal. There are requirements for applying and renewal licenses including non-transferability of a license and mandated application data.

The bill sets out specific operational requirements.

There is a requirement for patient protocols, treatment plans and profiles and guidelines regarding what is to be included are set forth. There are reporting requirements and a requirements for a physical exam upon initially prescribing a medication assisted treatment as well as a required mental status examination. There is also a preclusion for prescribing and dispensing liquid methadone. Individuals who are permitted to counsel patients include masters level social workers and psychiatrist, psychologist, marriage and family therapist and persons with prescribed bachelor's degrees who are directly supervised by someone with a masters degree.

Restriction on the operation of these facilities is set out in the bill. These include no co- location where patients with chronic pain are being treated – including a pain clinic, a preclusion against recruitment of new patients and a distance requirement of ½ mile in relation to a school. There is also a means to allow the Secretary to grant a variance and a procedure for granting a variance. The bill also provides for annual and unannounced inspections.

The Secretary is given the authority to order a limitation on patients should an inspection reveal inadequate care. Additionally the Secretary may deny, suspend or revoke a license for a violation of the article or any rules adopted under the article. Notice is required in both cases. Any applicant or licensee may request an administrative hearing and if they are unhappy with the results seek redress in the Circuit Court of Kanawha County. A revocation, suspension or denial requires that they clinic cease to operate and an administrative appeal shall not stay the denial, revocation or suspension.

Violation of the newly created article can result in civil penalty levied by the Secretary. Each day of a violation is considered a separate offense. There are penalties for intentional misrepresentation with a civil penalty of \$10,000. There is also a penalty of \$5000 for failure to operate a facility with a valid license and for failure to apply for a new license upon a change of ownership. Unlicensed dispensing of medication assisted treatment can result in a fine of \$20,000. The Secretary is also given authority to file for an injunction. Factors for the Secretary to consider in fixing the amount of the penalty are set out in the bill. Finally, the Secretary may notify the appropriate licensing board if the he or she finds that a physician violated the provisions of the new article.

The moratorium on additional opioid treatment centers remains.

Rulemaking authority is set out in the bill. Mandated rule provisions are set forth with respect to patient care, staff qualifications, the application process, record keeping, procedures for inspection, general operating standards; which drugs may be used, supervision and control of employees, data collection and other standards deemed necessary by the Secretary. The Secretary also is given emergency rulemaking authority.

This bill would add to the list of what must be reported to the Controlled Substance Monitoring Database an opioid antagonist.

The bill would also require all practitioners to register and have online access to the database. Current law only requires that they have online access. Additionally, the bill make licensing of practitioners contingent upon registering with the Controlled Substances Monitoring Program. In addition, it creates a fine to be levied by the appropriate board for failure to register in the amount of \$1,000. There is also a \$500 fine created for failure to properly access the database as required.

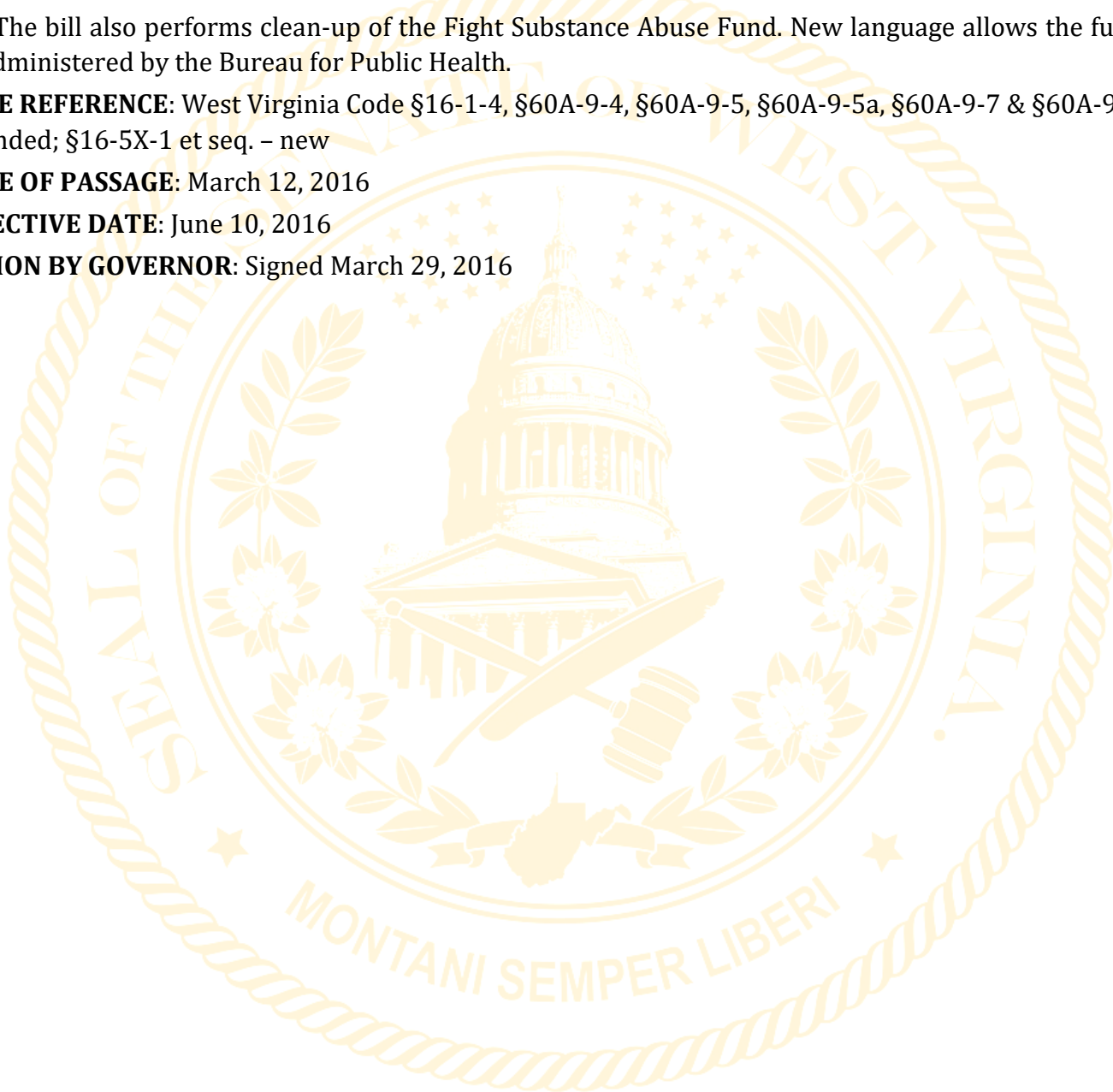
The bill also performs clean-up of the Fight Substance Abuse Fund. New language allows the fund to be administered by the Bureau for Public Health.

CODE REFERENCE: West Virginia Code §16-1-4, §60A-9-4, §60A-9-5, §60A-9-5a, §60A-9-7 & §60A-9-8 – amended; §16-5X-1 et seq. – new

DATE OF PASSAGE: March 12, 2016

EFFECTIVE DATE: June 10, 2016

ACTION BY GOVERNOR: Signed March 29, 2016



Senate Bill 461

Updating WV Workforce Investment Act to the WV Workforce Innovation and Opportunity Act

This bill authorizes the West Virginia Workforce Investment Act. Changes in the bill conform to the West Virginia Innovation and Opportunity Act consistent with federal law. This bill defines new terms. It also changes the composition of the West Virginia Workforce Investment Council and changes the name of the council to the West Virginia Workforce Development Board. The bill also establishes qualifications for certain board members. The bill updates the duties of the board from those previously applicable to the West Virginia Workforce Investment Act.

The bill updates reporting requirements to the Legislature and cleans up language to indicate the change of the name of from the West Virginia Workforce Investment Council to the West Virginia Workforce Development Board. The bill requires that the board's proceedings and information be open and available to the public.

CODE REFERENCE: West Virginia Code §5B-2B-1, §5B-2B-2, §5B-2B-3, §5B-2B-4, §5B-2B-4a, §5B-2B-5, §5B-2B-6 and §5B-2B-9 – amended; §5B-2B-4b – new

DATE OF PASSAGE: March 8, 2016

EFFECTIVE DATE: June 6, 2016

ACTION BY GOVERNOR: Signed April 24, 2016

Senate Bill 462

Reducing deposit of excess lottery proceeds into WV Infrastructure Fund

The bill amends the provisions of the West Virginia Code relating to the West Virginia Infrastructure Fund. The bill reduces the amount of excess lottery proceeds deposited in the WV Infrastructure Fund for FY2017 from \$40 million to \$30 million. It also continues the increase of the amount of funds that may be disbursed from the Infrastructure Fund for grants from 20% to 50% of the total funds available for the funding of projects. This increase was first authorized for FY2015.

CODE REFERENCE: West Virginia Code §29-22-18d – amended

DATE OF PASSAGE: February 25, 2016

EFFECTIVE DATE: February 25, 2016

ACTION BY GOVERNOR: Signed March 2, 2016

Senate Bill 465

Allowing professional employer insure certain risks through pure insurance captive

This bill revises existing code relating to Captive Insurance in West Virginia by including Professional Employer Organizations, licensed pursuant to W. Va. Code 33-46A-1 et seq., and permits PEOs to insure its risk for insurance coverage for accident and sickness for all employees and covered employees through a captive insurance company as defined under current code. The bill also revises current code to permit PEOs to offer a health benefit plan which is not fully insured by an authorized insurer only if the benefit plan complies with W. Va. Code 33-31-1 et seq. The bill also establishes that PEOs that sponsor health benefit plans shall be considered the employer of all covered employees. For purposes of state law, such health benefit plans shall be treated as a singular employer welfare benefit plan. Lastly, the bill authorizes the Insurance Commissioner to promulgate and adopt rules with respect to PEO-sponsored benefit plans.

CODE REFERENCE: West Virginia Code §33-31-2 & §33-46A-9 – amended

DATE OF PASSAGE: March 12, 2016

EFFECTIVE DATE: June 10, 2016

ACTION BY GOVERNOR: Signed March 29, 2016

Senate Bill 468

Allowing lender charge and receive interest on rescindable loan during rescission period

Under current state law, a lender may not receive or charge interest on a loan subject to a rescission period (i.e., the three-day cooling off period provided under the federal Truth in Lending Act and Regulation Z, its implementing regulation) until the loan is closed and loan funds are disbursed. This bill amends state law to bring it into conformity with Regulation Z by allowing a lender to charge and receive interest during the rescission period. The bill disallows a lender from collecting interest when the loan subject to the rescission period will be used to pay off a prior loan from the lender in full. Language was also added clarifying that if the loan is rescinded by the customer, the lender receives no interest.

CODE REFERENCE: West Virginia Code §46A-6K-3 – amended

DATE OF PASSAGE: March 11, 2016

EFFECTIVE DATE: June 9, 2016

ACTION BY GOVERNOR: Signed March 23, 2016

Senate Bill 469

Clarifying what personal funds are exempt from levy following judgment

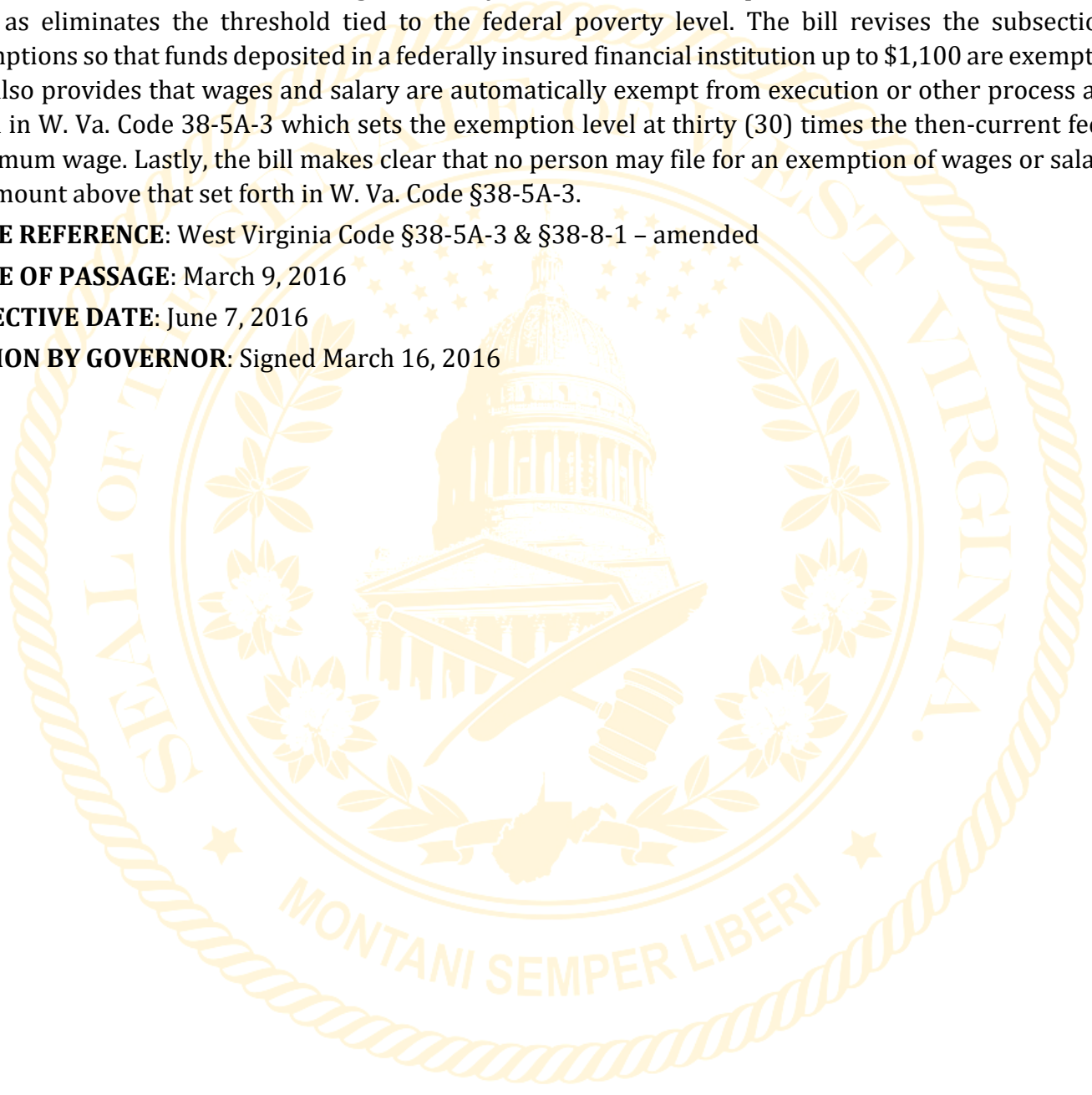
This bill revises current code addressing exemptions from execution or other process. The bill amends and reenacts W.Va. Code §38-5A-3 by amending the amounts set forth to mirror the changes made by House Judiciary to W.Va. Code §46A-2-130 as contained in House Bill 4417 regarding wages protected from garnishment. The bill eliminates wages or salary from the list of exemptions under W. Va. Code 38-8-1 as well as eliminates the threshold tied to the federal poverty level. The bill revises the subsection of exemptions so that funds deposited in a federally insured financial institution up to \$1,100 are exempt. The bill also provides that wages and salary are automatically exempt from execution or other process as set forth in W. Va. Code 38-5A-3 which sets the exemption level at thirty (30) times the then-current federal minimum wage. Lastly, the bill makes clear that no person may file for an exemption of wages or salary in an amount above that set forth in W. Va. Code §38-5A-3.

CODE REFERENCE: West Virginia Code §38-5A-3 & §38-8-1 – amended

DATE OF PASSAGE: March 9, 2016

EFFECTIVE DATE: June 7, 2016

ACTION BY GOVERNOR: Signed March 16, 2016



Senate Bill 493

Allowing creation of self-settled spendthrift trusts

This bill allows the creation of self-settled spendthrift trusts in West Virginia. First, §44D- 5-503a establishes self-settled spendthrift trusts as a permissible trust form under West Virginia law. Subsection (a) provides that a grantor may transfer assets to such a trust, and certain trust provisions are not applicable, including provisions that would otherwise allow the grantor's creditors to reach the assets of the trust. Subsection (b) permits the creation of a partially spendthrift trust, and provides that the provisions related to self-settled spendthrift trusts apply to the portion of the trust that is spendthrift. Subsection (c) provides that an intent to "delay, hinder or defraud creditors" will not be implied simply because the beneficiary of the trust provided the funds for the trust. However, a transfer from a grantor to the trust may be set aside on certain grounds, including if it violates West Virginia's Uniform Fraudulent Transfers Act, found at §§40- 1A-1 et seq., or if the qualified affidavit contains a material misstatement of fact. If a transfer is set aside based on the Uniform Fraudulent Transfers Act, that the amount in the trust shall first pay the costs, expenses and attorney's fees incurred by the trustee in the defense of action or proceeding.

The bill permits a creditor to challenge, by means of the Uniform Fraudulent Transfers Act, a transfer of funds into a self-settled spendthrift trust. They may challenge the transfer to enforce a claim that existed on the date of the transfer (not one that has arisen after that date), and that transfer must be challenged "within four years after the date of the grantor's transfer." Subsection (e) limits the recovery rights of the creditor to the trust assets, and specifically prohibits causes of action against "any trustee, trust adviser, trust director, or any person involved in the counseling, drafting, preparation or execution of, or transfers to, a qualified self-settled spendthrift trust."

Subsection (f) addresses how to treat multiple transfers by the grantor into the self-settled spendthrift trust. The later transfer is to be disregarded when considering any claim made by a creditor as to a prior transfer. Additionally, the four-year statute of limitations for creditors to challenge transfers will apply with respect to each transfer. Pursuant to subsection (g), any self- settled spendthrift trust that is moved to this state shall be treated as having been created on the date of the move to West Virginia, and the four-year date to challenge the transfer under the Uniform Fraudulent Transfers Act will begin to run on that date.

In §44D-5-503b, a number of terms are defined, including qualified trustee, independent qualified trustee, qualified interest, qualified self-settled spendthrift trust, and qualified affidavit. To be considered a qualified self-settled spendthrift trust, the trust must have certain characteristics. It must be (1) irrevocable and (2) created during the grantor's lifetime. There must be (3) another beneficiary whose interest in the trust is equal to that of the original grantor. The trust must have (4) at least one qualified trustee, and the trust documents must (5) expressly incorporate the laws of West Virginia "to govern the validity, construction and administration of the trust." There must be (6) a spendthrift provision in the trust documents, the (7) grantor does not have a right to disapprove of distributions from the trust, and (8) the grantor must execute a qualified affidavit. A qualified affidavit must be duly executed by the grantor under oath and must contain a number of sworn statements. The grantor must affirm that: (1) the transferred property was not derived from unlawful activities, (2) he or she has full right to the property and the right to transfer the property, (3) he or she will not be rendered insolvent immediately after the transfer, (4) he or she does not intent to defraud creditors by making the transfer, (5) there are no pending or threatened court actions against the grantor, (6) the grantor is involved in no administrative

proceedings at the time of the transfer, and (7) he or she does not contemplate filing for bankruptcy. With respect to court actions and administrative proceedings, the affidavit may include a list of any disputes that are pending or threatened at the time of making the transfer to the trust. If these elements are not materially addressed in the affidavit, it is not qualified. However, the affidavit is not invalid if it contains only “nonsubstantive variances” or if it contains “technical errors” that are not the fault of the affiant.

In §44D-5-503c, a number of technical and procedural matters are addressed. First, the manner of addressing vacancies in the office of qualified trustee is addressed in subsections (a) and (b), which requires that a trustee be replaced with an individual satisfying the same qualifications of the prior trustee be appointed by, in descending order of priority, designation pursuant to the terms of the trust, by unanimous agreement of the qualified beneficiaries, or by the court. Subsection (c) sets forth a number of provisions that can be included in the terms of the trust without making the trust revocable. These include: (1) a power of appointment upon the grantor’s death, (2) the grantor maintaining a qualified interest in the trust, (3) the grantor’s right to receive income or principal “pursuant to an ascertainable standard,” (4) the grantor’s receipt of income from a charitable remainder trust or the grantor’s right to release his own interest in the trust; (5) the grantor’s right to receive a fixed percentage of up to 5% of the trust assets, (6) the grantor’s right to remove a trustee and appoint a qualified replacement, (7) the grantor’s use of real property held by the trust; (8) the grantor’s receipt of a qualified annuity interest; (9) the trustee’s ability to pay any of the grantor’s debts upon his or her death, the expenses of administering the grantor’s estate, or the inheritance or death taxes imposed on the estate, and (10) the grantor’s receipt of income to pay taxes due on the trust property. Lastly, subsection (d) provides that if any beneficiary has the right to withdraw his or her beneficial interest from the trust, that beneficiary shall be treated as a grantor, once such withdrawal right has “lapsed, been released, or otherwise expired.”

CODE REFERENCE: West Virginia Code §44D-5-505 – amended; §44D-5-503a, §44D-5-503b, §44D-5-503c – new

DATE OF PASSAGE: March 10, 2016

EFFECTIVE DATE: June 8, 2016

ACTION BY GOVERNOR: Signed March 23, 2016

Senate Bill 517

Clarifying PEIA plans that are exempt from regulation by Insurance Commissioner

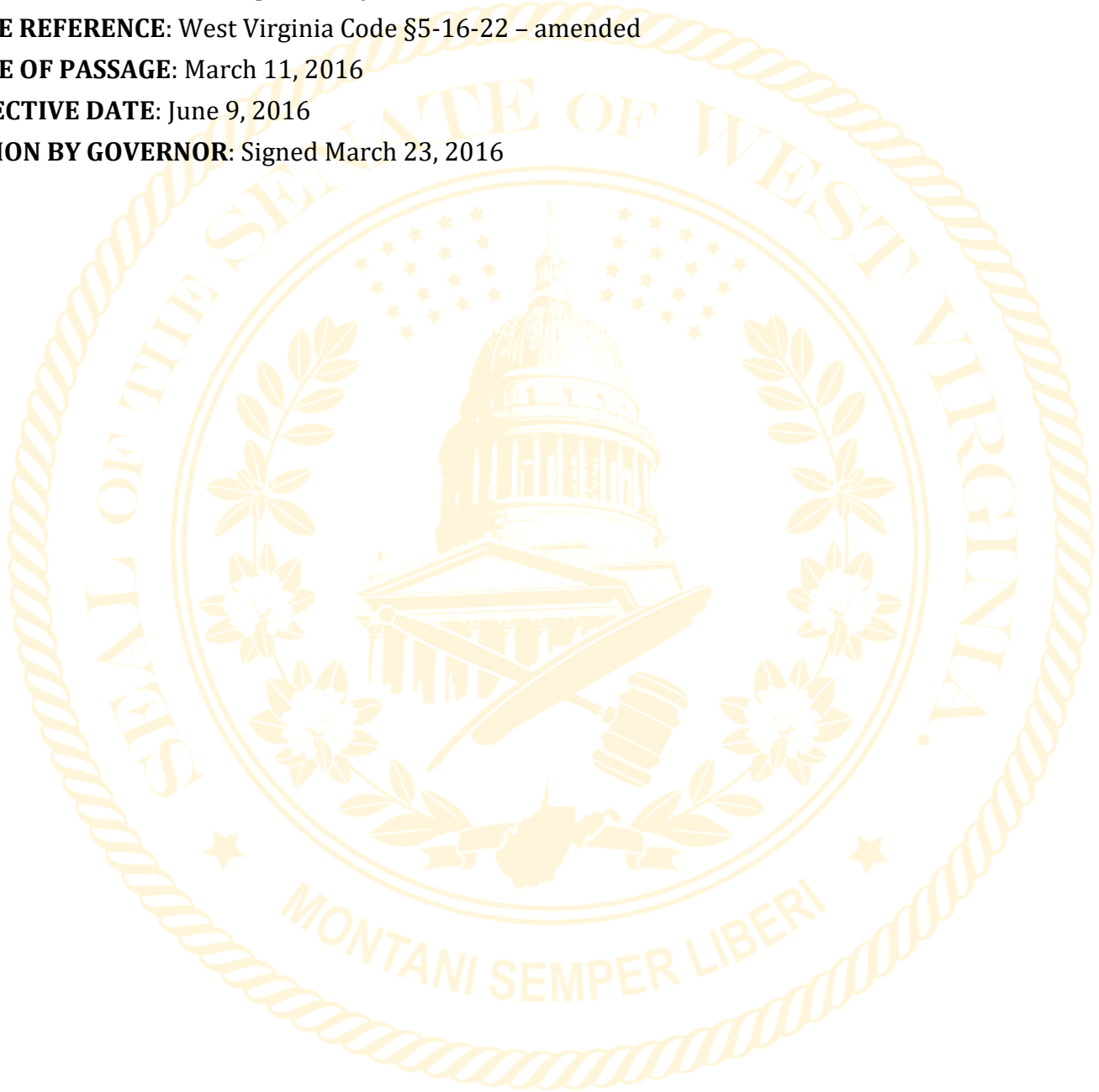
The bill supersedes current statutory to expressly state that all Public Employees Insurance Agency (PEIA) plans are exempt from certain other statutes governing insurance unless explicitly stated. The bill also adds new language expressly stating that PEIA “is not an insurer or engaged in the business of insurance as defined in chapter thirty-three of this code.”

CODE REFERENCE: West Virginia Code §5-16-22 – amended

DATE OF PASSAGE: March 11, 2016

EFFECTIVE DATE: June 9, 2016

ACTION BY GOVERNOR: Signed March 23, 2016



Senate Bill 520

Allowing PEIA ability to recover benefits or claims obtained through fraud

This bill clarifies and enhances the Public Employees Insurance Agency's ability to recover monies paid as a result of fraud. The bill establishes that it shall be a violation of the article for any person to (1) knowingly secure or attempt to secure benefits payable under this article to which they are not entitled; (2) knowingly secure or attempt to secure greater benefits than those to which the person is entitled; (3) willfully misrepresent the presence or extent of benefits to which the person is entitled under a collateral insurance source; (4) willfully misrepresent any material fact relating to any other information requested by the director; (5) willfully overcharge for services provided; or (6) willfully misrepresent a diagnosis or nature of the service provided. If it is determined the person has committed any of these violations, after notice and an administrative proceeding, then that person is liable for any overpayment received. The PEIA Director shall withhold and set-off any payment of any benefits or other payment due until the overpayment is recovered. The bill makes it a felony for any person who knowingly secures or attempts to secure benefits or greater benefits to which the person is entitled under this article by willfully misrepresenting or aiding in the misrepresentation of any material fact related to employment, diagnosis or services. Upon conviction of that felony, the person shall be fined not more than \$1,000, imprisoned for no less than one nor more than five years. The bill makes clear that billing code errors shall not be considered a violation of this felony subsection absent other evidence of willful wrongdoing.

This bill makes it a misdemeanor for any person who violates any provision of this article which results in a loss to or overpayment from the plan or to the State of West Virginia of less than \$1,000 for which no other penalty is provided. Upon conviction, that person is subject to a fine of not less than \$100 but not more than \$500, imprisonment for not less than 24-hours or more than 15 days, or both. This bill makes the same conduct a felony if the loss is greater than \$1,000 to either the plan or the State of West Virginia. The penalties for such a felony would be a fine of not less than \$1,000 or more than \$5,000, imprisonment for a period of not less than one nor more than five years, or both.

The bill also requires employees to provide information to PEIA upon request related to employment or eligibility. The bill also provides certain authority to PEIA to conduct investigations via administrative proceedings and to recover funds due from an employer that knowingly allowed or provided benefits to be paid to an employee or dependents fraudulently. The PEIA Director or designee may administer oaths or affirmations, issue administrative subpoenas, take evidence and require production of documents. The bill also outlines service of such subpoenas including fees to be paid and procedure for failure to comply. The bill provides that only authorized employees or agents may have access to confidential data or systems and applications containing confidential data within PEIA.

CODE REFERENCE: West Virginia Code §5-16-12 and §5-16-12a – amended

DATE OF PASSAGE: March 10, 2016

EFFECTIVE DATE: June 8, 2016

ACTION BY GOVERNOR: Signed March 23, 2016

Senate Bill 545

Relating to asbestos abatement on oil and gas pipelines

This bill addresses asbestos abatement on oil and gas pipelines. The bill defines certain terms and revises certain definitions already in code. Specifically, it states that an asbestos abatement project does not include removal, repair and maintenance of intact oil and gas pipeline asphaltic wrap which contains asbestos fibers encapsulated or coated by bituminous or resinous compounds as described in subsection (d), section eleven of this article. Removal, repair and maintenance of oil and gas pipeline asphaltic wrap which contains asbestos fibers is not subject to the requirements of this article if (1) the wrap is not friable prior to disturbance along the length of the pipeline being removed, repaired or maintained, (2) the area disturbed in preparing the pipeline for cutting does not extend 260 linear feet of removed friable asbestos, (3) before and as needed during the job, a competent person conducts an inspection of the worksite and determines the material is intact and will likely remain intact, (4) all employees performing work covered are trained in accordance with OSHA standards and all other workers must remain at a safe distance, (5) the material is not sanded abraded or ground – manual methods which do not render the material non-intact must be used, (6) all removal or disturbance of the pipeline wrap is performed using wet methods, and (7) all pipeline and asbestos removed is disposed of in a lawful manner.

CODE REFERENCE: West Virginia Code §16-32-2, §16-32-11 – amended

DATE OF PASSAGE: March 10, 2016

EFFECTIVE DATE: June 8, 2016

ACTION BY GOVERNOR: Signed March 29, 2016

Senate Bill 558

Maintaining solvency of Unemployment Compensation Fund

The bill amends the provision of the West Virginia Code relating to the Unemployment Compensation Fund. The current provisions of these statutes provided a mechanism for borrowing up to \$20 million from the Revenue Center Construction Fund to maintain at least a \$20 million balance in the Unemployment Compensation Fund. These provisions also required that all loans are to be paid back within 180 days. This mechanism was available until September 1, 2011. This bill reinstates those provisions with amendments, including the replacement of the source of the loan, the Revenue Center Construction Fund, with the Revenue Shortfall Reserve Fund. The bill also increases the amount that may be borrowed from \$20 million to \$50 million to maintain at least a \$50 million balance in the fund. Any funds borrowed must be used to pay benefits only. No amounts may be borrowed after Sept. 1, 2017.

CODE REFERENCE: West Virginia Code §21A-8-10 and §21A-8-16 – amended

DATE OF PASSAGE: March 1, 2016

EFFECTIVE DATE: March 1, 2016

ACTION BY GOVERNOR: Signed March 3, 2016

Senate Bill 567

Providing protection against property crimes committed against coal mines, railroads, utilities and other industrial facilities

Current law provides that it is a crime to destroy certain commercial and industrial property. This bill adds oil, timber and timber processing facilities to the list. It creates the offense of knowingly and willfully damaging or destroying property of protected entities and hindering, impairing or disrupting directly or indirectly the normal operation, with a penalty of \$5,000 to \$10,000, plus the cost to repair, or 1-5 years incarceration, or both.

In addition, the bill contains a new subsection to allow a railroad company, public utility, business or owner of the property that is damaged or disrupted to seek restitution, if ordered by the court.

CODE REFERENCE: West Virginia Code §61-3-29 – amended

DATE OF PASSAGE: March 12, 2016

EFFECTIVE DATE: June 10, 2016

ACTION BY GOVERNOR: Signed March 30, 2016

Senate Bill 578

Protecting utility workers from crimes against person

The bill adds “utility workers” and “law-enforcement officers” to the list of persons against whom certain crimes of violence (malicious wounding, unlawful wounding, battery and assault) have a higher penalty. The definition of “law-enforcement officer” includes those individuals defined as “chief executive” in W.Va. Code §30-29-1.

The bill also adds the following language to §61-2-10b(c) and (d) to be in conformity with the provisions of subsections (a) and (b) of the same article: “the person committing the [crime of violence] knows or has reason to know that the victim is acting in his or her official capacity.”

CODE REFERENCE: West Virginia Code §61-2-10b – amended

DATE OF PASSAGE: March 12, 2016

EFFECTIVE DATE: June 10, 2016

ACTION BY GOVERNOR: Signed March 30, 2016

Senate Bill 591

Relating to voter registration list maintenance and combined voter registration and driver licensing fund

This bill modifies three sections of the current West Virginia election code to permit the Secretary of State to enter into an agreement with the Division of Motor Vehicles for the DMV to provide certain information to the Secretary of State. That information would then be used by the Secretary of State “for the purpose of voter registration list maintenance comparison through an interstate data-sharing agreement as designated by the Secretary of State.” A number of particular pieces of information are required, including (1) all name fields, (2) residence and mailing address fields, (3) driver’s license or state identification number, (4) last four digits of the Social Security number, (5) date of birth, (6) license or identification issuance and expiration dates, and (7) current record status of individuals eligible to register to vote.

Additional changes are proposed to section twelve, which establishes and governs the Combined Voter Registration and Driver Licensing Fund. The list of permissible uses is amended to include payment of dues or fees associated with an interstate agreement to match and transfer data, and for “resources related to voter registration and list maintenance.”

A new subsection (c) is added, which provides that, beginning June 30, 2016, any amount in the fund over \$100,000 shall be transferred to the General Revenue fund. The same will happen at the end of each fiscal year thereafter.

The bill also expands the authority of the Secretary of State to assist county commissions with voter registration record maintenance, if the clerk fails to perform the required maintenance. The Secretary of State is required to first give notice to the county clerk of his or her failure to conduct the required maintenance, and then must wait ninety days before the Secretary of State may make changes to the voter registration database necessary to comply with the requirements of the West Virginia Code. The action by the Secretary of State is permissive.

CODE REFERENCE: West Virginia Code §3-2-3, §3-2-4a, and §3-2-12 – amended

DATE OF PASSAGE: March 11, 2016

EFFECTIVE DATE: March 11, 2016

ACTION BY GOVERNOR: Signed March 21, 2016

Senate Bill 592

Relating to pipeline safety

This bill:

- Changes the method used to calculate the amount of special licensing fees paid by pipeline companies to the PSC in order to fund the Pipeline Safety Fund.
- Establishes that the new pipeline special licensing fee be applied at a rate of \$18.60 per mile instead of at a rate based on the volume of pipe. This makes it easier for companies to predict the amount of the fee that will be paid in a year. It also allows the amount to more accurately reflect the growth in pipeline mileage within the state.
- The bill also removes the cap in the current law (\$385,000 annually).
- The PSC has been limited by this cap and wish to erase the cap in order to hire more pipeline safety inspectors.

CODE REFERENCE: West Virginia Code §24B-5-3 – amended

DATE OF PASSAGE: March 11, 2016

EFFECTIVE DATE: March 11, 2016

ACTION BY GOVERNOR: Signed March 21, 2016

Senate Bill 594

Requiring State Auditor consider for payment claim submitted by electronically generated invoice

This bill adds a new section requiring the State Auditor to consider an agency generated electronic invoice as an original invoice, if the invoice contains the vendor name, vendor address, invoice number, invoice date, invoice amount, description of the items purchased or goods provided, purchase order number and contract number, where applicable, and date of service provided or goods received. Agency generated electronic computer invoices may be considered for payment only if the agency has an established financial system which has been subjected to a financial audit by the legislative auditor or by an independent certified public accountant, duly licensed and in good standing.

CODE REFERENCE: West Virginia Code §12-3-10g – new

DATE OF PASSAGE: March 3, 2016

EFFECTIVE DATE: June 1, 2016

ACTION BY GOVERNOR: Signed March 8, 2016

Senate Bill 599

Relating generally to Uniform Unclaimed Property Act

The bill provides that obligations of insurance companies with respect to life or endowment insurance policies or annuities are guided by policies, requirements and interpretations of the Insurance Commissioner. The Unclaimed Property Act and its provisions remain unchanged.

CODE REFERENCE: West Virginia Code §36-8-2 – amended

DATE OF PASSAGE: March 11, 2016

EFFECTIVE DATE: N/A

ACTION BY GOVERNOR: Vetoed April 1, 2016

Senate Bill 601

Relating to exception from jurisdiction of PSC for materials recovery facilities or mixed waste processing facilities

This bill removes materials recovery facilities and mixed waste processing facilities from the jurisdiction of the Public Service Commission. It provides for an exception for facilities that have received a certificate of need from the Public Service Commission as of July 1, 2016, and are located within a 35 mile radius of a facility in a county that is, in whole or in part, within a karst region. These remain under the jurisdiction of the PSC. There is also language that clarifies that motor carriers remain within the jurisdiction of the Public Service Commission.

CODE REFERENCE: West Virginia Code §22-15-10 – amended; §24-2-11 – new

DATE OF PASSAGE: March 12, 2016; Repassed after technical veto March 15, 2016

EFFECTIVE DATE: March 15, 2016

ACTION BY GOVERNOR: Vetoed March 14, 2016; Signed April 1, 2016

Senate Bill 602

Relating to Patient Injury Compensation Fund

This bill eliminates the Patient Injury Compensation Fund. The fund was created in 2004 “for the purpose of providing fair and reasonable compensation to claimants in medical malpractice actions for any portion of economic damages awarded that is uncollectible as a result of limitations on economic damage awards for trauma care, or as a result of the operation of the joint and several liability principles and standards set forth in article seven-b, chapter fifty-five of this code.” To effectuate the purpose of eliminating the fund, the bill accomplishes two primary objectives: it provides for the funding of claims that have accrued or will accrue with the Patient Injury Compensation Fund before its closure on July 1, 2016, and it modifies the limitation on liability for treatment of emergency conditions when a patient’s injury arises from treatment at a designated trauma center.

With respect to the limitation of trauma center liability, current law provides that there is an inflation-adjusted cap of \$500,000, inclusive of both economic and non-economic damages. If a patient’s economic damages exceed \$500,000, then the patient may apply to the Patient Injury Compensation Fund to be compensated for economic damages of up to \$1 million. The bill modifies this cap by permitting a patient who would otherwise be eligible for moneys from the Patient Injury Compensation Fund to obtain those moneys from the defendants, but only for economic damages, and only up to an additional \$1 million.

The liability of the Patient Injury Compensation Fund is provided from four primary revenue streams. First, moneys from the Medial Liability Fund are to be transferred to the Patient Injury Compensation Fund. Second, there will be a biennial assessment on physicians (both M.D. and D.O.) in the amount of \$125. Third, there will be an assessment on trauma centers of \$25 for each trauma patient treated. Fourth, there will be a one percent assessment on the gross amount of any settlement or judgment in a claim brought against a trauma center, whether taken to verdict or settled. The assessments run for a period of four years, from July 1, 2016, through July 1, 2020. However, reports are to be submitted by the Board of Risk and Insurance Management to the Joint Committee on Government and Finance beginning January 1, 2018, to update the Legislature on the amount of remaining liability, so that the Legislature can take action, if appropriate, to shorten the length of time the assessments remain in effect.

CODE REFERENCE: West Virginia Code §29-12B-10, §29-12D-1, §29-12D-3, §55-7B-9, §55-7B-9c, §59-1-11, §59-1-28a – amended; §29-12D-1a – new

DATE OF PASSAGE: March 12, 2016

EFFECTIVE DATE: July 1, 2016

ACTION BY GOVERNOR: Signed March 29, 2016

Senate Bill 613

Defining total capital for purposes of calculating state-chartered bank's lending limit

This bill amends the definition of “unimpaired capital and unimpaired surplus” for purposes of calculating a state-chartered bank’s lending limit consistent with the definition of the term found in applicable federal regulations and as reported quarterly to the Commissioner of Financial Institutions. The term is currently defined in the Code generally as “total equity capital” less goodwill or other nonmarketable intangible assets. However, there is nothing in the Code detailing the components comprising total equity capital. The amendment clarifies the definition by referencing the definition of “tier 1 capital” used in applicable federal regulations. Tier 1 capital is defined in the Code of Federal Regulations as the sum of common stockholders’ equity, non-cumulative perpetual preferred stock, and minority interest in consolidated subsidiaries, minus certain intangible assets, identified losses, investments in certain securities subsidiaries, and deferred tax assets in excess of a certain limit. The amended definition would be consistent with that of “Total Capital” as used in call reports submitted quarterly to the Division of Financial Institutions.

CODE REFERENCE: West Virginia Code §31A-3-26 – amended

DATE OF PASSAGE: March 10, 2016

EFFECTIVE DATE: June 8, 2016

ACTION BY GOVERNOR: Signed March 23, 2016

Senate Bill 618

Allowing Economic Development Authority to make loans to certain whitewater outfitters.

The bill amends the provisions of the West Virginia Code relating to the West Virginia Economic Development Authority (EDA). The bill adds a new section to the code authorizing the EDA to make loans in order to preserve jobs and support tourism.

An applicant is a licensed entity that: (1) has applied for a loan by July 1, 2016; (2) operates in West Virginia; and (3) operates a resort comprised of at least 75 acres and employing a minimum of 100 employees. The proceeds of the loans may be used to refinance existing indebtedness, but may not exceed indebtedness of the applicant as of January 1, 2016. The loan shall be made under terms and conditions established by the EDA and collateralized as determined by the EDA. The total refinancing provided pursuant to this new section may not exceed 2.5% of the EDA’s direct loan portfolio.

CODE REFERENCE: West Virginia Code §31-15-12b – new

DATE OF PASSAGE: March 12, 2016

EFFECTIVE DATE: June 10, 2016

ACTION BY GOVERNOR: Signed March 29, 2016

Senate Bill 619

2016 Regulatory Reform Act

The bill provides for a comprehensive regulatory reform regarding the state's rulemaking process. The bill does the following:

First of all, under §29A-3-5, the bill requires all agencies proposing legislative rules to respond to public comments received during the rulemaking process. The agency must also explain why comments were incorporated or not incorporated into the rule. Failure to do so adequately is grounds for rejection of the proposed rule.

Under §29A-3-11(a), the bill removes the requirement that agencies submit 15 copies of the proposed rules to the Legislative Rule-Making Review Committee (LRMRC); instead, the Committee may request any number of copies. Along with the rule, an agency must also submit a detailed description of the objective or purpose of the rule and the proposed changes to the rule and an explanation of the statutory authority for the rule, including a detailed summary of the effect of each provision with citation to the specific statute which empowers the agency to enact such a provision. The agency must also submit an economic impact statement addressing the probable effect of the rule on the economy, which they prepare in coordination with the WVU and Marshall business and economic centers.

§29A-3-11(b) addresses what the LRMRC must determine while reviewing proposed rules. The bill adds that the committee must make a determination as to whether the proposed rule will be overly burdensome on business and industry, and it provides a non-exhaustive list of criteria to consider. It also requires the Committee review whether the agency has complied with the public comment requirements.

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

§29A-3-19 is a newly proposed section that mandates expiration provisions be incorporated into all rules newly proposed or modified after April 1, 2016. Newly proposed rules shall include a 5 year expiration provision and all modified rules shall include an expiration provision setting forth some termination date. Emergency rules and rules promulgated by the Department of Environmental Protection are exempted from this requirement. The section also gives the Committee the authority to establish a procedure for timely review of rules prior to the expiration of rules promulgated by agencies that have affirmatively sought renewal prior to expiration. This may include a requirement that the agency show cause as to why the expiring rule is required and necessary to be continued. All rules are to remain in effect after the expiration date and until the rule is reauthorized or modified.

§29A-3-19 also requires the Secretary of State to provide notice to a promulgating agency 18 months prior to a rule's expiration. The agency shall respond with certain information about the rule, and shall include such response in documents required for reauthorization.

§29A-3-20 is a newly proposed section, which requires all executive agencies with rule making authority to review all rules, guidelines, policies and recommendations under their jurisdiction which have federal counterparts, and determine whether the state equivalent is more stringent than the federal. The agency must also provide for a comment period and submit a report to the Joint Committee on Government and Finance on or prior to November 1, 2017. The report shall include a description of the state rules,

guidelines, policies and recommendations that are more stringent than their federal counterparts and comments received from the comment period.

§29A-3-20 also requires each agency review all rules within four years to determine whether the rules should be continued without change, modified or repealed to minimize the economic impact of the rules on small businesses. It requires the agency submit a report on or before July 1, 2020 to the LRMRC, which must include a description of each rule, a determination as to whether the rule should be continued or modified and the reasoning for said determination.

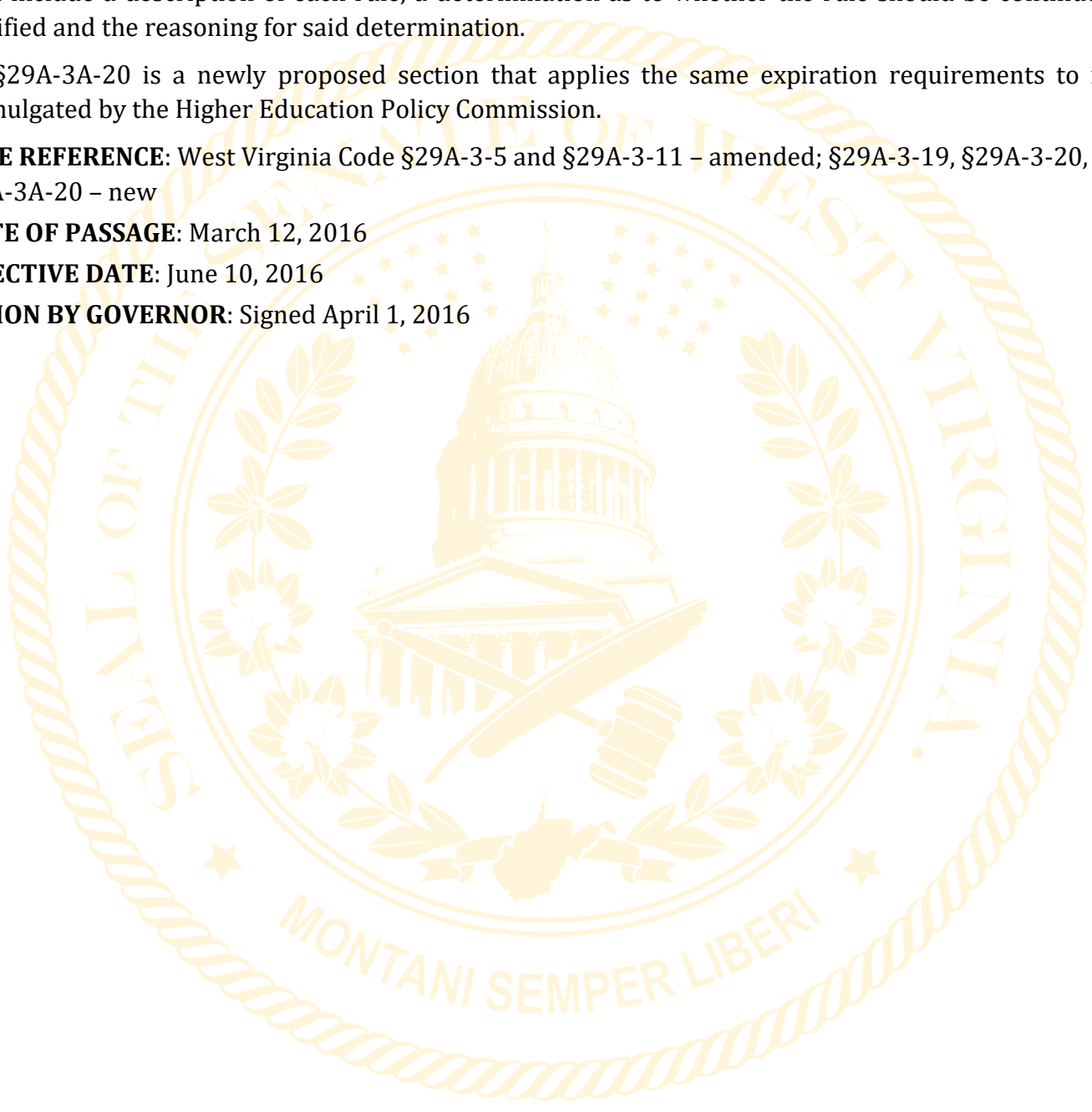
§29A-3A-20 is a newly proposed section that applies the same expiration requirements to rules promulgated by the Higher Education Policy Commission.

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

DATE OF PASSAGE: March 12, 2016

EFFECTIVE DATE: June 10, 2016

ACTION BY GOVERNOR: Signed April 1, 2016



Senate Bill 625

Revising exceptions from FOIA provided for in Aboveground Storage Tank Act

This bill clarifies what information the public has access to with respect to above ground storage tanks. Current law provides a great deal of public access unless, the information has been designated as restricted by the Division of Homeland Security and Emergency Management or is a trade secret or proprietary. Current law also provides that a list of potential sources of significant contamination may only be disclosed to the extent consistent with protection of trade secrets and proprietary information. This bill carves out an exception and provides that disclosure is permitted on any location, characteristics and approximate quantities of potential sources of significant contamination within the zone of critical concern to the extent they are in the public domain through a state or federal agency.

CODE REFERENCE: West Virginia Code §16-1-9c – amended

DATE OF PASSAGE: March 10, 2016

EFFECTIVE DATE: June 8, 2016

ACTION BY GOVERNOR: Signed March 30, 2016

Senate Bill 656

Creating Upper Kanawha Valley Resiliency and Revitalization Program

This bill creates the Upper Kanawha Valley Resiliency and Revitalization program. The program's purpose is to identify and prioritize existing resources that can be directed to support economic development efforts in the communities of Pratt, Smithers, Montgomery, and Gauley Bridge. For an initial period of five years, this revitalization program will manage activities and provide technical assistance support, services and resources. This council will be coordinated by the Development Office in the Department of Commerce, and will be subject to oversight by the secretary of the department, as well as will report annually to the Governor and the Legislature. The Development Office will work to educate businesses investing or interested in investing, and is authorized to provide for the low cost and economical use and sharing of state property and equipment to assist any business within the Upper Kanawha Valley at a nominal or reduced-cost reimbursements to the state for such use.

CODE REFERENCE: West Virginia Code §5B-2-15 – new

DATE OF PASSAGE: March 8, 2016

EFFECTIVE DATE: June 6, 2016

ACTION BY GOVERNOR: Signed March 16, 2016

Senate Bill 678

Relating to ownership and use of conduit providing telephone service

This bill prohibits telephone public utility from prohibiting a customer who has provided conduit or other underground construction at their own expense from using the conduit or other underground construction for purposes other than services provided by the telephone company. The bill also requires that as owner, the customer and all occupants shall comply with the national electrical safety code, and all reasonable standards established by the Public Service Commission.

CODE REFERENCE: West Virginia Code §24-2E-3 – new

DATE OF PASSAGE: March 8, 2016

EFFECTIVE DATE: June 6, 2016

ACTION BY GOVERNOR: Signed March 18, 2016

Senate Bill 691

Modifying certain air pollution standards

This bill makes technical clean-ups to one section of code that was modified substantially during the 2015 legislative session by passage of House Bill 2004, and requires the Department of Environmental Protection to submit its proposed plan to comply with the EPA's Clean Power Plan to the Legislature for approval prior to its submission. In subsection (c), the bill changes the word "shall" to "may" in two places – first to permit, rather than require, the plan to be on a "unit- specific performance basis," and secondly, to permit either a rate-based or mass-based model to be utilized. The term "meter-based" is also modified to "mass-based."

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

DATE OF PASSAGE: March 10, 2016

EFFECTIVE DATE: March 10, 2016

ACTION BY GOVERNOR: Signed March 23, 2016

Senate Bill 702

Relating to distribution of real estate within five years of the death of the testator

The purpose of this bill is to deal with estate real property assets not distributed by the executor. If assets are not distributed, distribution occurs five years after the testator's death whether or not the estate has closed.

CODE REFERENCE: West Virginia Code §44-8-1 – amended

DATE OF PASSAGE: March 12, 2016

EFFECTIVE DATE: June 10, 2016

ACTION BY GOVERNOR: Signed March 29, 2016

House Bill 2110

Relating generally to the tax treatment of manufacturing entities

The bill modifies the definition of a “qualified capital addition to a manufacturing facility” for the capital additions of those engaged in Small Arms Ammunition Manufacturing businesses and in Small Arms, Ordinance, and Ordinance Accessories Manufacturing businesses so that in order that their capital additions qualify for salvage valuation for property tax purposes, the required costs of their facilities and their additions are significantly less than the costs that are required of the facilities and additions of other types of manufacturing businesses. The bill also provides a significantly higher tax credit for certain investments in these two -types of manufacturing businesses than for similar investments in other types of manufacturing businesses.

CODE REFERENCE: West Virginia Code §11-F-2, §11 13S-3, and §11 13S-4 – amended

DATE OF PASSAGE: March 12, 2016

EFFECTIVE DATE: June 10, 2016

ACTION BY GOVERNOR: Vetoed April 1, 2016

House Bill 2444

Requiring the director of the West Virginia Development Office to report biennially to the Legislature regarding burdens on small businesses in West Virginia

This bill requires the Executive Director of the West Virginia Development Office to submit biennial reports to the Legislature in years 2017, 2019 and 2021 regarding the agency’s activities and proposing steps for improvement.

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

DATE OF PASSAGE: March 11, 2016

EFFECTIVE DATE: June 9, 2016

ACTION BY GOVERNOR: Signed March 24, 2016

House Bill 2588

Relating to the filing of financial statements with the Secretary of State

This bill expands the current requirement for candidates for statewide elected office (Governor, members of the Board of Public Works, and justices of the Supreme Court of Appeals) to file their financial statements electronically. Beginning January 1, 2018, all candidates who file their financial statements with the Secretary of State will be required to file those statements electronically, including candidates for State Senate, House of Delegates, circuit judge and family court judge. If a candidate is unable to file online “through or by no fault of the candidate,” he or she may file the statement in person, by electronic means of transmission, or certified mail, “postmarked at the first reasonable opportunity.”

CODE REFERENCE: West Virginia Code §3-8-5b – amended

DATE OF PASSAGE: March 10, 2016

EFFECTIVE DATE: June 8, 2016

ACTION BY GOVERNOR: Signed March 21, 2016

House Bill 2615

West Virginia Small Business Capital Act

The bill creates the West Virginia Small Business Capital Act, which authorizes businesses to offer limited amounts of investments (securities) in the equity of the businesses over the internet without meeting requirements otherwise imposed by law on the offering of securities in this state, an activity popularly known as “crowdfunding.” Currently, under the West Virginia Uniform Securities Act, an offering of securities must be registered with the State Auditor, unless such an offering meets the qualifications of an exemption under the West Virginia Securities Act. The bill allows exemptions from that requirement in the limited circumstances of the new provisions of law for securities in West Virginia businesses offered to West Virginians. The provisions of the bill amend a current section of state securities law and enact a new article WVC §32-5-501, et seq., which include:

§32-3-301 – The section is amended to exempt the offer of securities that fall under WVC §32-5-501, et seq. from the general state registration requirement.

§32-5-501 – The new section names this new Article 5 the “West Virginia Small Business Capital Act.”

§32-5-502 – The new section exempts offerings that meet the requirements of this new Article 5 from the registration requirements of the state securities law in Articles 2 and 3, Chapter 32 of the code.

§32-5-503 – The new section requires that in order to qualify for the exemption from the registration requirements, an issuer of the offering must be a for-profit entity organized in West Virginia with its principal place of business in in West Virginia. A purchaser of the offering must be a resident of West Virginia or an entity organized in West Virginia with its principal place of business in West Virginia. The section precludes an “investment company” and a “development stage company” from participating in an offering. The section identifies disqualifying events which would preclude certain persons from participating in an offering under this article.

§32-5-504 – The new section requires that the subject transaction meet the requirements of federal law, specifically section 3(a)(11) of the Securities Act of 1933, 15 U.S.C. section 77c(a)(11) and SEC rule 147, 17 CFR 230.147 of the U.S. Securities and Exchange Commission. The section limits consideration received under the exemption to \$1 million per year unless the issuer submits an audited financial statements on a quarterly basis with the State Auditor, who is the West Virginia Commissioner of Securities. If so filed, then consideration is limited to \$2 million per year. The bill limits the amount of securities that can be transferred to a particular purchaser to \$10,000 per annum, unless the purchaser is an “accredited investor.” The bill requires that all funds raised from an offering be held in escrow by an attorney licensed in West Virginia. When the escrowed funds reach a balance of at least ten percent of the offering amount sought, the attorney holding the money in escrow must, upon written request of the issuer, withdraw a portion of the money in escrow and deliver such portion of money to the issuer. The duration of an offering is limited to 12 months, but an issuer is permitted to apply for an extension with the Commissioner for up to an additional 12 months.

§32-5-505 – The new section requires that the offerings must be made through an internet-based crowdfunding portal that is organized under the laws of West Virginia. A crowdfunding portals must request affirmation, and take reasonable steps to verify, that a purchaser is a West Virginian. The crowdfunding portal must disclose certain information regarding an offering to the Commissioner at least ten days prior to the offering. A disclosure statement must be made available on the portal to prospective purchasers that includes specific information regarding the offering. A crowdfunding portal must deny an

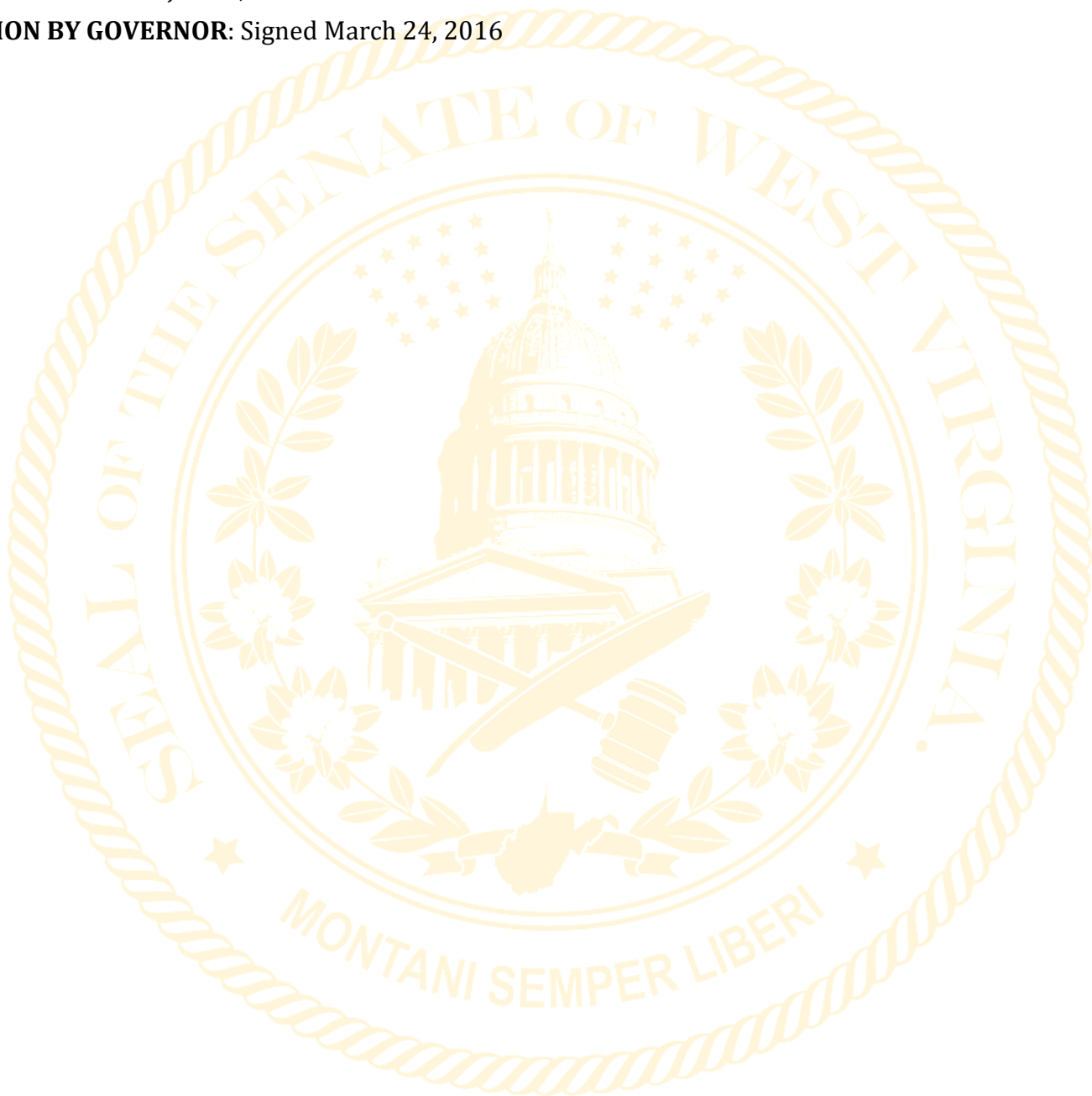
issuer access to its website if it has a reasonable belief that the issuer does not qualify for the exemption from registration. The section also precludes a crowdfunding portal from certain activities related to an issuer or an offering.

CODE REFERENCE: West Virginia Code §32-3-301 – amended; §32-5-501, et seq. – new

DATE OF PASSAGE: March 8, 2016

EFFECTIVE DATE: June 6, 2016

ACTION BY GOVERNOR: Signed March 24, 2016



House Bill 2801

Permitting county commissions and municipalities to designate areas of special interest which will not affect the use of property in those areas

This bill permits a county commission or municipality to designate areas of special or unique interest with sites, buildings and structures which are of significance. An area that has been so designated does not limit the use of any property within the area for any purpose. Commissions and municipalities are empowered to do the following:

- Publish a register setting forth information concerning designated areas;
- Place markers on private property only with the consent of the property owners;
- Place markers on public property and along highways or streets designating those areas;
- Seek and accept gifts, bequests, endowments and funds to accomplish such designations;
- Sell, lease or alter property it owns in or near the designated areas;
- Seek the advice and assistance of individuals, groups and departments and governmental agencies; and
- Seek co-designation of areas with the other governmental authorities where an area is to be designated in each jurisdiction

CODE REFERENCE: West Virginia Code §7-1-3pp and §8-12-16d – new

DATE OF PASSAGE: March 8, 2016

EFFECTIVE DATE: June 6, 2016

ACTION BY GOVERNOR: Signed March 16, 2016

House Bill 2852

Relating to legalizing and regulating the sale and use of fireworks

This bill permits and regulates the sale, possession and use of certain consumer fireworks in this state that were previously not available for sale. It repeals the current sparkler and novelty registration fee and the current prohibitions against fireworks and creates a new article §29-3E regulating the manufacture, distribution, sale, storage and use of all fireworks.

Under Section one, it is unlawful to manufacture, wholesale, distribute, import, sell or store, for the purpose of resale, consumer fireworks, sparkling devices, novelties or toy caps without a license, registration, certificate or permit from the State Fire Marshal.

Section two defines key terms.

Section three provides that a person may produce or transport a division 1.3 or division 1.4 explosive if the person meets federal requirements.

Section four states a retailer may not sell sparkling devices, novelties or toy caps without first being registered with the State Fire Marshal. This section also details the minimum application requirements and states that other information may be required by legislative rule. Registrations are non-transferrable.

Section five requires a retailer to obtain a certificate from the State Fire Marshal to sell consumer fireworks. The minimum application requirements are provided and the Fire Marshal may require additional information by legislative rule. This section further provides that the State Fire Marshal may, by legislative rule, add to the regulations established in NFPA 1124. Fees for retailers are set at \$500 for temporary retail facilities and \$1000 for permanent facilities. The fees go to the Fire Marshal to offset the cost of regulation.

Section six requires a permit issued by the State Fire Marshal for public fireworks displays. To receive a permit, application must be made to the Fire Marshal. The permittee is required to furnish proof of financial responsibility to satisfy claims for damages to property or personal injury in the amount, character and form as determined by the State Fire Marshal. In addition to the minimum requirements set forth in this section for the application, the Fire Marshal may require additional information by legislative rule. Fireworks displays must be handled by a competent operator licensed or certified by the State Fire Marshal. Displays must be located and discharged so as to be safe in the opinion of the chief of the fire department serving the area where the display is to be held.

Section seven provides that a safety fee of 12% of all sales, in addition to sales tax, shall be levied on retail sales of consumer fireworks in this state. 75% percent of the safety fee is to be deposited into the WV Veterans Facility Support Fund and 25% is paid into the Fire Protection Fund to assist volunteer fire departments. The Tax Commissioner may make all rules and regulations necessary to carry out these provisions.

Section eight provides emergency and legislative rule-making authority to the State Fire Marshal.

Section nine provides for certain exemptions including: the use of fireworks by railroad and other transportation agencies; the use of agriculture and wildlife fireworks; sale or use of blank cartridges; and possession, sale or disposal by wholesalers.

Section ten states that this new article does not affect the right of a municipality to prohibit the use of consumer fireworks within its boundaries.

Sections eleven and twelve relate to individuals violating the provisions of this new article and set forth criminal penalties.

Section thirteen deals with seizures by the Fire Marshal.

Section fourteen requires reporting by agencies collecting and receiving funds under the article to measure effectiveness of the programs.

Finally, two sections of chapter sixty-one have been amended to be made consistent with the provisions of the new article.

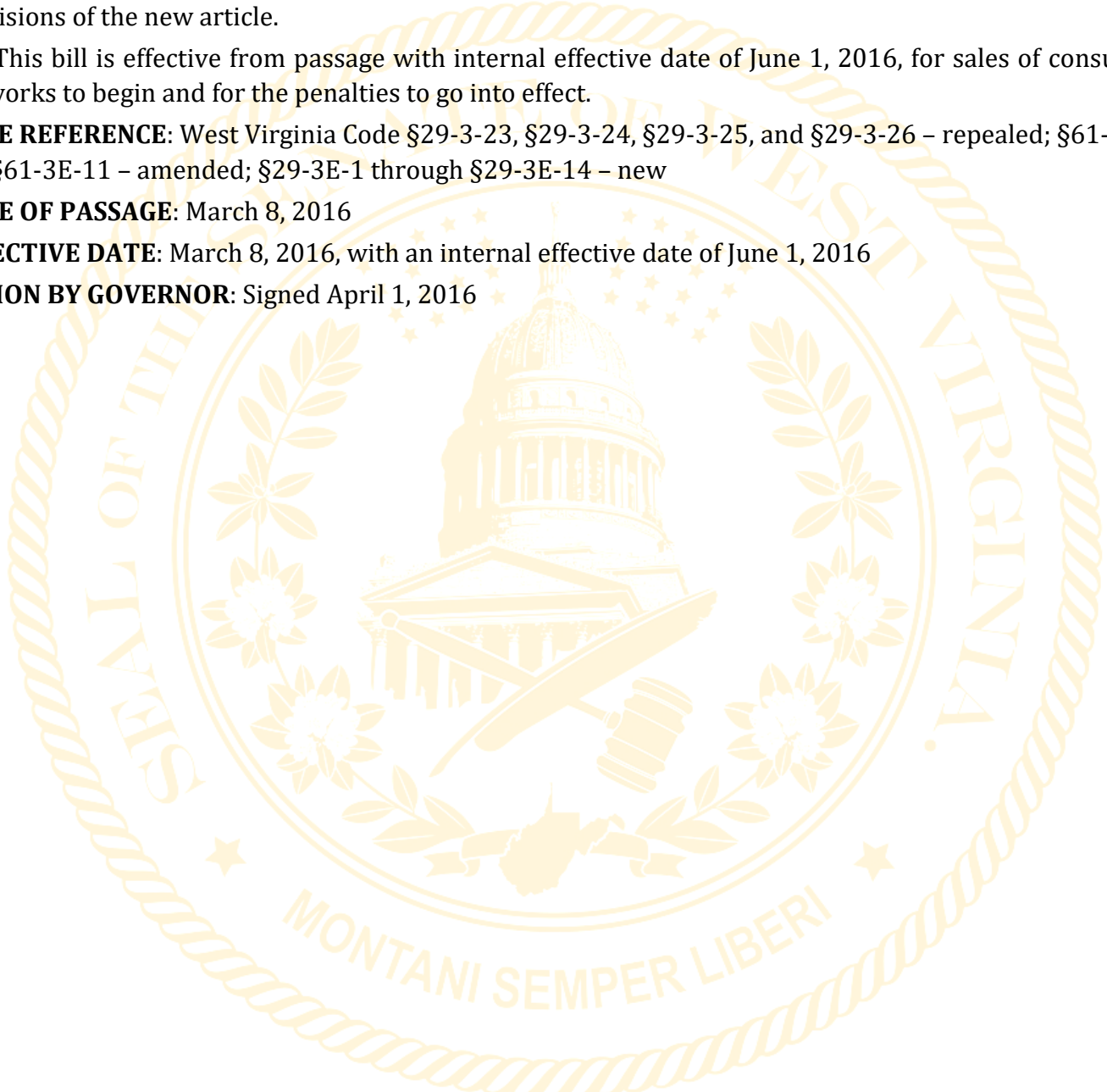
This bill is effective from passage with internal effective date of June 1, 2016, for sales of consumer fireworks to begin and for the penalties to go into effect.

CODE REFERENCE: West Virginia Code §29-3-23, §29-3-24, §29-3-25, and §29-3-26 – repealed; §61-3E-1 & §61-3E-11 – amended; §29-3E-1 through §29-3E-14 – new

DATE OF PASSAGE: March 8, 2016

EFFECTIVE DATE: March 8, 2016, with an internal effective date of June 1, 2016

ACTION BY GOVERNOR: Signed April 1, 2016



House Bill 2897

Young Entrepreneur Reinvestment Act

The bill exempts persons under thirty from the payment of certain fees required by WVC §59-1-2 for the filing of articles of incorporation of a domestic for-profit corporation, or a domestic nonprofit corporation, for which the person is an incorporator; articles of organization of a domestic limited liability company of which the person is a member; an agreement of a domestic general partnership of which the person is a partner; and a certificate of a domestic limited partnership of which the person is a partner, during the period beginning July 1, 2016, through June 30, 2018.

CODE REFERENCE: West Virginia Code §51-9-2c – new

DATE OF PASSAGE: March 12, 2016

EFFECTIVE DATE: June 10, 2016

ACTION BY GOVERNOR: Signed March 24, 2016

House Bill 2904

Requiring the clerk of a county commission to maintain a county ordinance book

This bill requires the Secretary of State to maintain a website containing county government information and to maintain and annually update the information on the internet. The purpose is so that the public shall have access to this information.

On or before January 31, 2018, the county officer information shall be updated. The website shall contain the following: The official title and name of each county office holder, contact information, email address of each office holder, and the website of each county commission.

On July 1, 2017, each county commission may, if they so choose, maintain a website providing the following information without charge: The title and name of each elected county officer holder, contact information, email address, a copy of each county code, ordinance or regulation as adopted, a copy of the approved meeting minutes, and a schedule of the meetings for each calendar year. On or before December 31, 2017, and each year thereafter, each county commission shall provide to the Secretary of State a list of each county official by title, with the name of the elected official, the office contact information, and the website address of the county commission website. On July 1, 2017, the county commission shall, within 60 days of adoption, through the clerk of the commission, enter into a separate book the complete record of all ordinances, rules and regulation adopted by the county commission. The clerk shall list, along with each ordinance in the book, the provision of Code authorizing each ordinance. The clerk shall maintain the book in their office and make available a copy to the county sheriff. Compiling of all such ordinances, rules and regulations adopted by the commission and publishing the same on a publicly available internet website shall constitute full compliance with this section. Lastly, the bill specifies that the county commission, and not the court, shall provide the two record books regarding elections, probate matters, appointments of appraisers, etc. and all matters relating to apprentices.

CODE REFERENCE: West Virginia Code §5-2-4 and §7-1-3pp – new; §7-1-7 – amended

DATE OF PASSAGE: March 12, 2016

EFFECTIVE DATE: June 10, 2016

ACTION BY GOVERNOR: Signed March 24, 2016

House Bill 3019

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

This bill requires official business and records of the state and its political subdivisions to be conducted in English. Currently, W.Va. Code is silent on linguistic issues. This bill declares that “all official business of this state shall be conducted in English” including the printing of official documents, and, would require that all government meetings be conducted English.

Subsection (b) of the bill provides numerous exceptions when other languages may be used by government officials. These include to protect the health and safety during a declared or apparent emergency; and protecting the rights of criminal defendants or victims of crime.

Subsection (c) of the bill provides limitations on the applicability of the section, noting that it may not be construed to:

- Diminish the usage of, prevent the study or development of, or discourage the use of, any Native American language in any context or for any purpose;
- Prohibit an elected official from speaking to any person in a language other than English while campaigning or providing constituent services. However, those officials are encouraged to use English as much as possible to promote fluency in English;
- Disparage any language or discourage any person from learning or using any language; or
- Prohibit informal and nonbinding translations or communications among or between representatives of government and other persons.

Subsection (d) defines the word "official" to mean “any government action or document that binds the government, is required by law, or is authorized by law.

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

DATE OF PASSAGE: February 25, 2016

EFFECTIVE DATE: May 25, 2016

ACTION BY GOVERNOR: Signed March 4, 2016

House Bill 4005

Repealing prevailing hourly rate of wages requirements

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

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

EFFECTIVE DATE: May 4, 2016

DATE OF PASSAGE: February 4, 2016

ACTION BY GOVERNOR: Vetoed February 11, 2016. Legislature overrode the Governor’s Veto on February 12, 2016

House Bill 4007

Relating generally to appointment of attorneys to assist the Attorney General

This bill codifies the process by which the Attorney General's office hires outside counsel in contingency or court-approved fee matters on behalf of the State of West Virginia. This bill substantially mirrors the policy adopted and followed by the Attorney General over the last three years. The bill authorizes the Attorney General to appoint Special Assistant Attorneys General and sets the criteria for such appointments. The bill establishes and describes the competitive bidding process for the use of private attorneys on a contingency fee basis by the Attorney General. The bill prohibits the state from entering into any contingency fee arrangement or contract with a private attorney unless the Attorney General makes a written determination, prior to entering into any such contract, that the legal representation is both cost effective and in the best interest of the public. Any such written determination shall include specific findings for four factors.

The bill sets fees for contingency fee legal arrangements or contracts between private attorneys and the Attorney General. Appointed private attorneys are to accept an award of attorney's fees in accordance with, and no greater than, the established fee limitations. Additionally, the bill sets forth supervision requirements for private lawyers representing the state on a contingency basis. Further, the bill requires the posting of certain documents relating to the Attorney General's retention of private attorneys to represent the state on a contingency fee basis. Upon appointment of a private attorney, he or she may thereafter be designated as a special assistant Attorney General and provide representation.

The bill requires the Attorney General to deliver reports on certain legal causes and matters to the Governor, President of the Senate and Speaker of the House. In addition, the bill outlines the contents of such reports. The bill also updates and removes obsolete provisions and defines several terms. Further, the bill clarifies that the appointment of a special Assistant Attorney General shall not be construed to alter, inhibit or expand the attorney-client relationship between the state in the control or conduct of a cause of action. Lastly, the bill maintains that the new provisions set forth in this article are not applicable to, and shall not impair, any contingency fee legal arrangement or contract awarded prior to the effective date.

CODE REFERENCE: West Virginia Code §5-3-3 and §5-3-4 – amended; §5-3-3a – new

DATE OF PASSAGE: March 3, 2016

EFFECTIVE DATE: June 1, 2016

ACTION BY GOVERNOR: Signed March 9, 2016

House Bill 4009

Letting Our Counties Act Locally Act

This bill gives each county commission authority to develop road construction project plans and to enter into agreements with the Commissioner of Highways for completion of the road and bridge construction projects included within that plan. Prior to finalizing its plan, the county commission is required to hold one or more public hearings and give an opportunity for the submission of written comments. Thereafter, the plans are submitted to the Commissioner of Highways for modification, if necessary, and approval. Once approved, the plan is submitted to the voters of that county via a county referendum, which will authorize the levying of county transportation sales and use taxes to fund the project, either directly or as financial backing for the issuance of special revenue bonds.

Once the plan is approved by both the county voters and the Commissioner of Highways, the bill authorizes county commissions to impose a county transportation sales and service tax and a county transportation use tax, at a rate not to exceed one percent, to finance the construction, in whole or in part, or to support the issuance of special revenue bonds, thereby accelerating the time for completion of those projects. If imposed, the taxes will be collected by the Tax Commissioner, at the same time and in the same manner as the state consumers sales and service tax and use tax are collected.

The bill directs the net county transportation sales and use taxes to be deposited in the County Road Improvement Account, a new account that would be created in the State Road Fund, to the credit of the county's subaccount in that account, which is created upon approval of the road construction project plans by the Commissioner of Highways. The funds in the subaccount can then be used to fund road and bridge construction projects on a cash basis, and special revenue bonds can then be issued, secured by the funds in the county's subaccount, to finance necessary road and bridge construction and repairs. The bill permits the Tax Commissioner to assess a service charge equal to the lesser of the actual cost or five percent. The bill provides procedures for amending the plan and terminating the taxes once the plan has been fully funded.

CODE REFERENCE: West Virginia Code §7-27-1 et seq. and §31-15-16c – new

DATE OF PASSAGE: March 12, 2016

EFFECTIVE DATE: June 10, 2016

ACTION BY GOVERNOR: Signed April 1, 2016

House Bill 4013

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

This bill requires a voter to present some form of identification when he or she desires to vote. Beginning January 1, 2018, this bill requires an individual to provide a valid identifying document to the poll clerk prior to signing the poll book. Any document that has been issued by the State of West Virginia or the United State Government and contains the name of the person desiring to vote shall be considered a valid identifying document. A number of specific documents that also satisfy this requirement are also identified, including a driver's license issued in another state, a student identification card issued by a West Virginia high school or college (public or private), a birth certificate, a hunting or fishing license, an identification card issued for public assistance, a valid bank card or debit card or a utility bill. Additionally, a voter may be accompanied by an individual who can swear an affidavit confirming the person is the voter, or a poll worker can allow a person known to the worker to vote. If none of these methods are satisfied, then the voter may cast a provisional ballot.

The bill also provides for automatic voter registration when an individual is issued or renews his or her driver's license. The bill directs the Division of Motor Vehicles to collect certain information from an individual, and to register that individual to vote unless the person affirmatively opts out of being registered to vote. The provisions of this section are to be implemented by July 1, 2017.

Finally, the bill improves the ease in which a person can obtain a driver's license or photo identification document. With respect to a photo identification card, the \$2.50 annual fee for the license is waived for any individual who intends to use the identification card for voting purposes. For individuals fifty and over, the bill expands the list of permissible documents that can be provided to the Division of Motor Vehicles to verify identity for purposes of obtaining a West Virginia driver's license or photo identification card.

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

DATE OF PASSAGE: March 12, 2016

EFFECTIVE DATE: June 10, 2016

ACTION BY GOVERNOR: Signed April 1, 2016

House Bill 4176

Permitting the Regional Jail and Correctional Facility Authority to participate in the addiction treatment pilot program

This bill allows the Regional Jail and Correctional Facility Authority to participate in the addiction treatment pilot program, developed and overseen by the Division of Health and Human Resources, in the same manner as the Division of Corrections.

Pursuant to the bill, the Regional Jail and Correctional Facility Authority would select persons in its custody whom they determine to be high risk by applying the LS/CMI assessment criteria. Those persons selected to participate must be either eligible for Medicaid, a state, federal or private grant, or other funding source that provides for the full payment of the treatment. Once accepted, the participant would receive coordinated treatment and care and participate in other types of related therapies.

In addition, the bill includes the following reduction in sentence for those individuals completing the treatment pilot program: For an individual incarcerated for a misdemeanor, up to five days off the sentence. Finally, the bill places a reporting requirement upon the Authority.

CODE REFERENCE: West Virginia Code §62-15A-1, §62-15A-2, and §62-15A-3 – amended

DATE OF PASSAGE: March 12, 2016

EFFECTIVE DATE: June 10, 2016

ACTION BY GOVERNOR: Signed March 29, 2016

House Bill 4186

Relating to additional duties of the Public Service Commission

This bill established additional duties for the Public Service Commission related to developing a process to review towing operator charges for fairness.

The bill provides rulemaking authority to the Public Service Commission, requiring it to propose legislative rules. On or before December 31, 2020, the Legislative Auditor is required to review the effectiveness of the rule and make a recommendation whether to reauthorize or repeal the rules.

The rules promulgated pursuant to this article will sunset on July 1, 2021, unless reauthorized.

CODE REFERENCE: West Virginia Code §29A-1-3 – amended; §24A-2-2b – new

DATE OF PASSAGE: March 12, 2016

EFFECTIVE DATE: March 12, 2016

ACTION BY GOVERNOR: Signed March 25, 2016

House Bill 4201

Increasing the criminal penalties for participating in an animal fighting venture

This bill:

- Modifies the definition of “animal fighting venture” to expressly exclude the lawful use of livestock, as defined in §19-10B-2, and exotic breeds of animals bred for exhibition purposes as long as those exhibition purposes do not include animal fighting;
- Adds operating, financing or knowingly allowing one’s property to be used for animal fighting to what constitutes criminal conduct;
- Criminalizes the possession of animals with the intent to engage them in fighting;
- Retains the penalty with regard to mammals and non-indigenous wildlife, which would remain a felony with an increased penalty of two to five years incarceration and increased fines of \$2,500 to \$5,000. Any person convicted would also be divested of ownership in the animals and also be responsible for care and maintenance costs;
- Criminalizes causing a minor to attend an animal fighting venture. The first offense of attending or causing a minor to attend may result in up to one year incarceration and/or a fine of \$300 to \$2000. Third or subsequent offenses are felonies that carry penalties of one to five years incarceration and/or \$2,500 to \$5,000 in fines; and creates the misdemeanor offense of wagering at an animal fighting venture with a misdemeanor penalty of up to one year incarceration and/or a fine of \$300 to \$2,000. Third and subsequent offenses are felonies subject to fines of \$2,500 to \$5,000 and/or incarceration for one to five years.

CODE REFERENCE: West Virginia Code §61-8-19a and §61-8-19b – amended; §61-8-19c – new

DATE OF PASSAGE: March 12, 2016

EFFECTIVE DATE: June 10, 2016

ACTION BY GOVERNOR: Signed March 30, 2016

House Bill 4209

Relating generally to health care provider taxes

The bill extends for another year the health care provider tax imposed upon eligible acute care hospitals for the purposes of raising additional revenues to reimburse those hospitals for certain medical services at a higher rate than otherwise authorized by Medicaid, all under the federal matching Upper Payment Limit program.

CODE REFERENCE: West Virginia Code §11-27-38 – amended

DATE OF PASSAGE: March 8, 2016

EFFECTIVE DATE: July 1, 2016

ACTION BY GOVERNOR: Signed March 16, 2016

House Bill 4218

Expanding the definition of “underground facility” in the One-Call System Act

This bill implements a formal recommendation offered by the West Virginia Commission on Oil and Natural Gas Industry Safety, which Governor Tomblin convened by executive order. Specifically, the bill expands the definition of “underground facility” in the One-Call System Act to include “any underground production or gathering pipeline for gas, oil, or any hazardous substance with a nominal inside diameter in excess of four inches and that is not otherwise subject to one-call reporting requirements under federal or state law.”

CODE REFERENCE: West Virginia Code §24C-1-2 – amended

DATE OF PASSAGE: March 12, 2016

EFFECTIVE DATE: June 10, 2016

ACTION BY GOVERNOR: Signed March 24, 2016

House Bill 4228

Relating to transportation network companies

This bill imposes conditions and duties on businesses known as transportation network companies that will operate in the state. A Transportation Network Company (TNC) is defined as “a corporation, partnership, sole proprietorship, or other entity that is licensed pursuant to this article and operating in West Virginia that uses a digital network to connect transportation network company riders to transportation network company drivers who provide prearranged rides. A transportation network company does not control, direct or manage the personal vehicles or transportation network company drivers that connect to its digital network, except where agreed to by written contract.” A TNC driver is defined as “an individual who: (A) Receives connections to potential passengers and related services from a transportation network company in exchange for payment of a fee to the transportation network company; and (B) Uses a personal vehicle to offer or provide a prearranged ride to transportation network company riders upon connection through a digital network controlled by a transportation network company in return for compensation or payment of a fee.” The bill provides definitions of terms and clarifies that TNCs or TNC drivers “are not common carriers by motor vehicle or contract carriers by motor vehicle, or motor carriers . . . nor do they provide taxicab or for-hire vehicle services.”

Provisions of the bill include:

- Requirements to operate as a TNC, including a permit to be issued by the Division of Motor Vehicles;
- Requiring an agent for service of process;
- Fares that may be charged for providing services to riders;
- The availability of identification of TNC vehicles and drivers;
- Issuance of an electronic receipt to the rider on the behalf of the TNC;
- Motor vehicle liability insurance requirements imposed upon TNCs and drivers. Minimum insurance coverage requirements are established for when the driver is merely logged on to the TNC’s digital network; those coverages are higher when the driver is driving to and transporting a rider. With respect to a person’s insurance policy, an insurance company is authorized to exclude coverage of activities performed as a driver for a TNC, unless the insurance company agrees to provide the coverage by contract with the driver;
- Requirements of disclosure of financial responsibility to TNC drivers;
- Defining the relationship between TNCs and its drivers;
- Conditions upon which a driver is deemed to be an independent contractor rather than an employee of a TNC, and if those conditions are met, providing that the TNC is not required to provide Workers’ Compensation coverage for the drive;
- Requirements that the TNC establish policies for “zero tolerance” for the use of drugs or alcohol and for “nondiscrimination with respect to riders and potential riders.”;
- Requirements and qualifications for drivers;
- Requirements for inspection of drivers’ vehicles;
- Provisions requiring background checks and other requirements before drivers accept trip requests for TNCs;
- Establishing criteria which disqualify persons from acting as TNC drivers;
- Prohibitions of solicitation and cash payments;
- Record keeping requirements;
- Prohibiting additional charges for providing services to persons with disabilities;

- Prescriptions of certain tax requirements and limitations and exemptions;
- Prohibiting certain political subdivisions from imposition of licensure or other requirements or fees.

CODE REFERENCE: West Virginia Code §17-29-1 et seq. – new

DATE OF PASSAGE: March 5, 2016

EFFECTIVE DATE: July 1, 2016

ACTION BY GOVERNOR: Signed March 15, 2016



House Bill 4235

Relating to the publication requirements of the administration of estates

This bill modifies certain deadlines for filing claims against estates when a fiduciary supervisor is utilized to make those deadlines identical to those elsewhere for the administration of estates.

The bill makes the deadline for submission of claims sixty days from the date of first publication of the required notice under §44-3A-4. After this sixty-day period has elapsed, then the fiduciary supervisor may proceed with closing the estate (§44-3A-4) or with a short form settlement (§44-3A-4a).

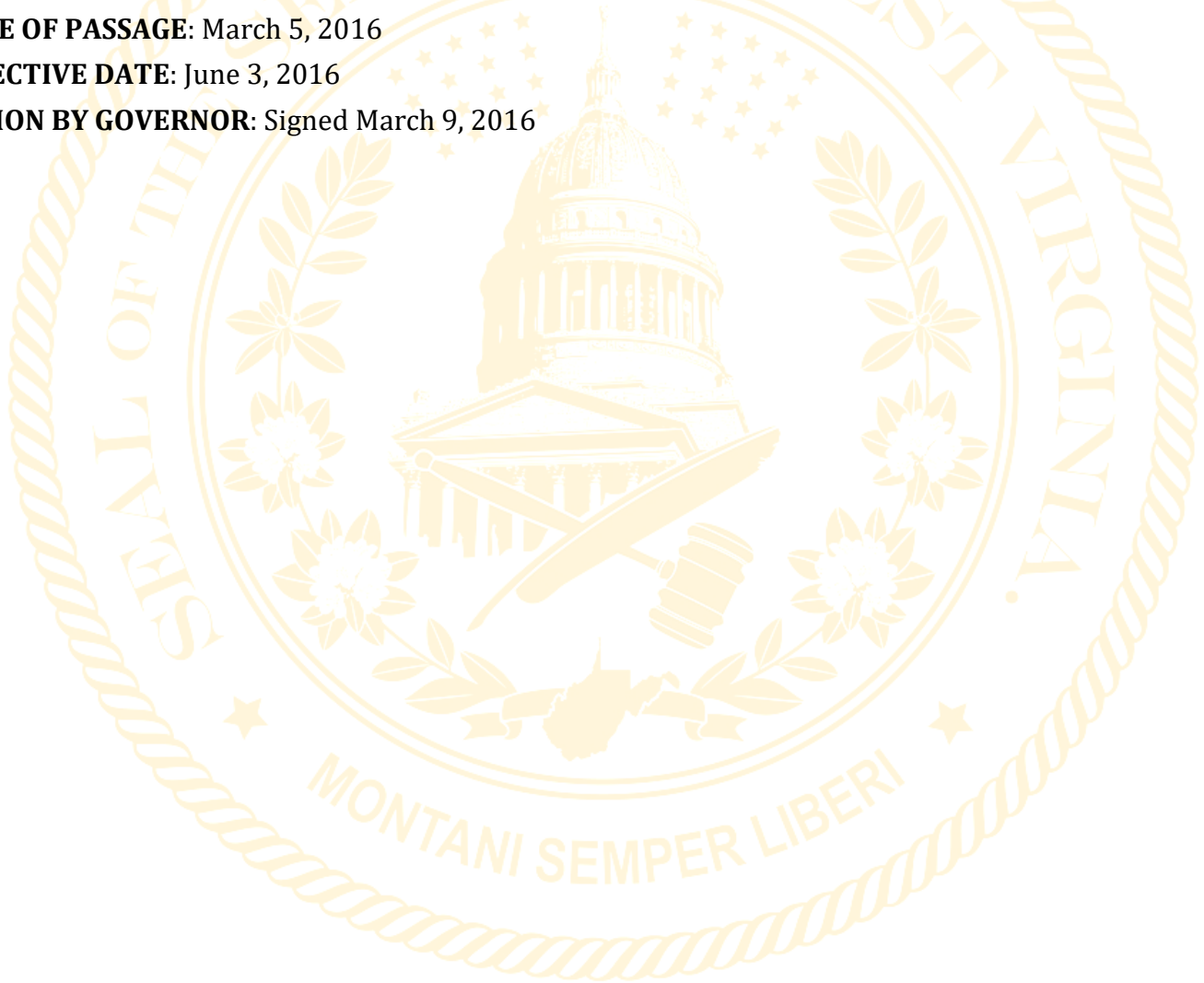
Further, the bill clarifies that claims that have not been presented to the fiduciary supervisor by the end of that sixty day period are barred from recovering, either by way of claim against the estate being settled by the fiduciary representative or from bringing a counterclaim, unless certain conditions are met.

CODE REFERENCE: West Virginia Code §44-3A-4, §44-3A-4a, and §44-3A-32 – amended

DATE OF PASSAGE: March 5, 2016

EFFECTIVE DATE: June 3, 2016

ACTION BY GOVERNOR: Signed March 9, 2016



House Bill 4237

Supporting and Strengthening Families Act

This bill permits the temporary delegation of certain custodial powers by a parent or guardian with the assistance of a qualified nonprofit organization. In practice, this program functions as an early stage foster care diversion program, under which a parent or parents can voluntarily place one or more children with a family with the assistance of a qualified nonprofit organization, who facilitates the placement of a child. The delegation of authority is temporary and is intended to allow a parent to proactively address situations which might otherwise, if left unaddressed, result in the removal of the child and his or her placement in foster care.

The bill sets forth legislative findings and the purpose, which is to “ensure that a parent, guardian or legal guardian has the right to provide for the temporary care of his or her child with the assistance of a qualified nonprofit organization,” and defines the terms “child” and “qualified nonprofit organization.” The scope of any delegation of authority under this article may be broad or narrow in scope, but cannot include delegation of the power to consent to marriage or adoption of the child, the performance or inducement of an abortion on or for the child or the termination of parental rights of the child. The delegation can be revoked at any time, in which case the child must be returned within forty-eight hours. Importantly, delegation under this provision cannot, absent other evidence, constitute abuse, neglect or abandonment, unless the parent fails to take action at the expiration of the one-year time period of the delegation. The bill requires the qualified nonprofit organization to conduct a criminal history and background check and limits the right of the designee family to move without the parent’s written approval. Any person accepting custody of a child under this article is considered to be a mandatory reporter of suspected abuse and neglect.

The terms of the form delegating parental rights are set forth in the article and the use of a substantially similar form is permitted. The qualified nonprofit organization is required to maintain copies of all power of attorney forms executed for a period of two years following the completion of the temporary placement and to make those forms available to the Division of Health and Human Resources upon request. Child protective services personnel who investigate a family, but do not remove the child, are required to inform the parent or custodian about the availability of these types of community services. The last section clarifies that neither a delegation under this article nor the qualified nonprofit organization are subject to certain requirements concerning child care facility licensing.

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

DATE OF PASSAGE: March 12, 2016

EFFECTIVE DATE: June 10, 2016

ACTION BY GOVERNOR: Signed April 1, 2016

House Bill 4265

Relating to payment by the West Virginia Municipal Bond Commission or state sinking fund commission or the governing body issuing the bonds

The bill amends various provisions of the West Virginia Code that provide for the issuing of revenue bonds by certain state and local governmental entities. The bill authorizes the direct payment of principal and interest on bonds owned by the United States or any governmental agency or department thereof by the state or local governmental entity, rather than have the payments be made into a fund for ultimate payment to the United States or one of its agencies or departments by a trustee or the Municipal Bond Commission. The bill authorizes this direct payment for the following types of bonds: (1) County Commission issuing revenue bonds for purchasing real estate and building public buildings; (2) Municipalities issuing revenue bonds for construction of public works; (3) Urban Mass Transportation Authorities issuing revenue bonds for urban mass transportation systems; (4) Counties, Municipalities or County Boards of Education issuing bonds for athletic establishments; (5) Commissioner of Highways issuing bonds for toll bridges; and (6) Municipalities or Counties issuing revenue bonds for toll bridges.

CODE REFERENCE: West Virginia Code §7-3-9; §8-16-17; §8-27-16; §10-2A-16; §17-17-22 and 34 – amended

DATE OF PASSAGE: March 11, 2016

EFFECTIVE DATE: June 9, 2016

ACTION BY GOVERNOR: Signed March 24, 2016

House Bill 4315

Air-ambulance fees for emergency treatment or air transportation

The bill limits charges that may be imposed by an air-ambulance provider on an employee or dependent of an employee who is covered by a health insurance plan provided by the West Virginia Public Employees Insurance Agency (PEIA) in two instances. First, if the air-ambulance provider does not have a contract with the PEIA plan and provides air transportation or related emergency or treatment services to the employee or dependent, then the amount the air-ambulance provider may collect in total from all sources for those services may not exceed “the reimbursement amount then in effect for the federal Medicare program.” Second, if the air-ambulance provider has a “subscription service agreement” for those services with an employee or dependent of an employee covered by the PEIA plan, and the employee or dependent is in good standing with the agreement, then the amount the air-ambulance provider may collect in total from all sources for those services may not exceed “the fee or cost of the subscription service agreement.”

CODE REFERENCE: West Virginia Code §5-16-8a – new

DATE OF PASSAGE: March 12, 2016

EFFECTIVE DATE: June 10, 2016

ACTION BY GOVERNOR: Signed March 25, 2016

House Bill 4322

Relating to expanding the Learn and Earn Program

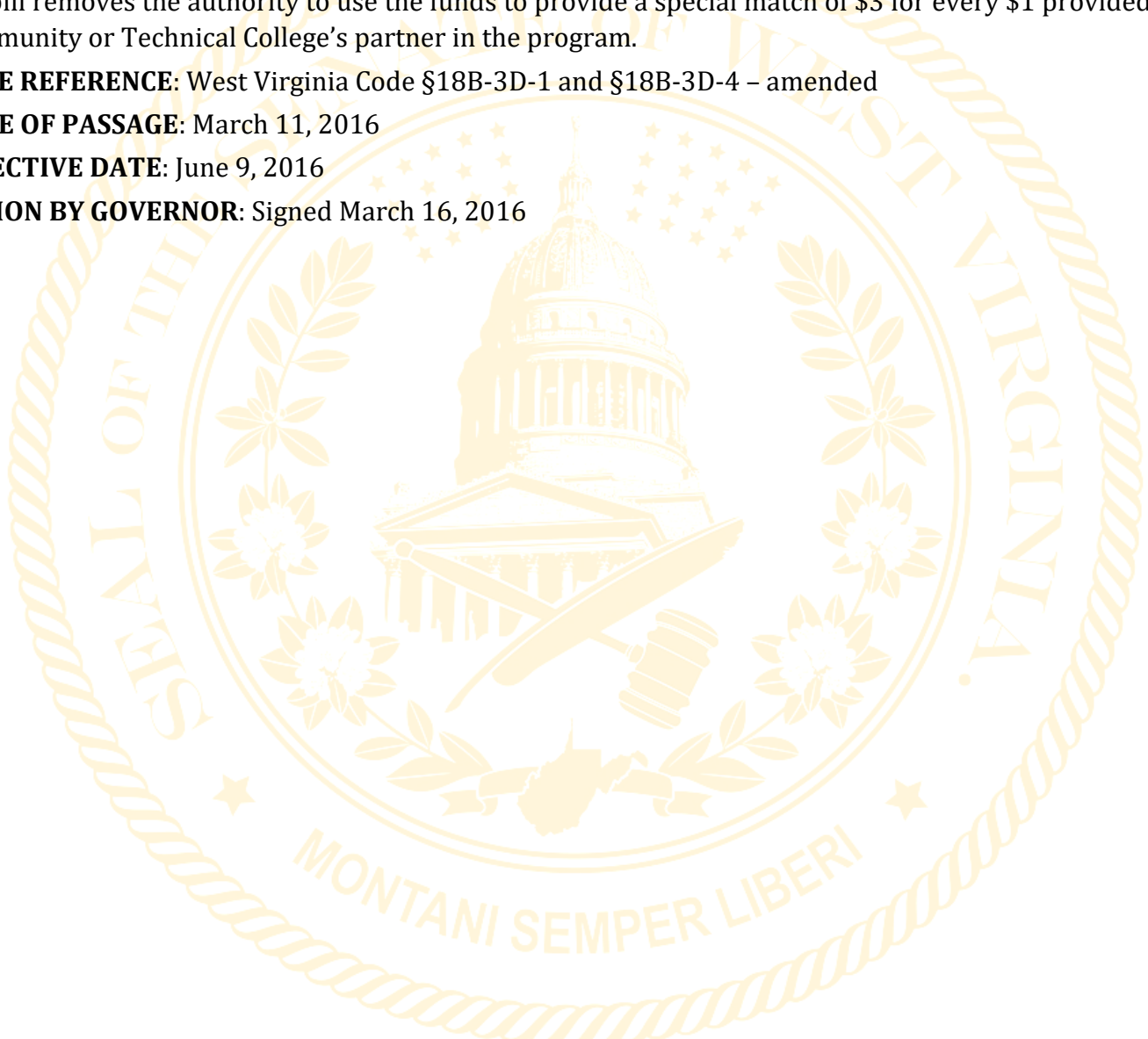
The bill modifies language concerning the Workforce Development Initiative Program through which the Legislature provides funding to the Council for Community and Technical Colleges to provide grants to the colleges to meet business or business sector needs. The bill removes language from current law that until now specifically allows the use of program grants to assist in “the modernization and procurement of equipment needed for workforce training programs.” The bill also adds language that removes any limitation on the purposes for which the Legislature’s funding for the program is being provided. Finally, the bill removes the authority to use the funds to provide a special match of \$3 for every \$1 provided by a Community or Technical College’s partner in the program.

CODE REFERENCE: West Virginia Code §18B-3D-1 and §18B-3D-4 – amended

DATE OF PASSAGE: March 11, 2016

EFFECTIVE DATE: June 9, 2016

ACTION BY GOVERNOR: Signed March 16, 2016



House Bill 4323

Relating to the reporting of emergency incidents by well operators and pipeline operators

This bill requires well and pipeline operators to report certain emergency incidents to the Division of Homeland Security and Emergency Management within fifteen minutes. A number of terms are defined, chief among them “incident,” which includes (1) an injury that results in death or serious bodily injury or that has a reasonable potential to cause death, (2) an unintended confinement of an individual in an enclosed space for longer than fifteen minutes, (3) the unintended ignition or explosion of oil, natural gas or other substance, (4) an unintended fire in or about a well, well pad or pipeline facility not extinguished within fifteen minutes of discovery, and (5) an unintended release of poisonous or combustible substances with a reasonable potential to cause death.

This bill creates a new reporting requirement, under which pipeline operators and well operators are required to report to the Division of Homeland Security and Emergency Management within fifteen minutes of “ascertaining the occurrence of an incident at a well, well pad or pipeline facility.” The requirements of this section are satisfied if the person contacts the local emergency telephone system and reports the incident orally. The information required to be reported includes: (1) the name and affiliation of the person making the report, (2) the location of the incident, and (3) a statement that an incident has occurred. Additional information shall be provided if available, including (A) the nature and extent of the incident, (B) information regarding the substance involved in a fire, and (C) information for the operator’s designated contact.

A local emergency telephone system that receives notice is directed to forward that information to the Division of Homeland Security and Emergency Management. The bill calls for documentation of all calls received by the Division, including both recordings and transcripts of calls. Those records are accessible via a Freedom of Information Act request.

Lastly, the bill requires the Director of the Division of Homeland Security and Emergency Management to impose a civil penalty of between \$2,500 and \$50,000 on the operator for failure to comply. That penalty can be waived if the failure to report (1) was due to circumstances outside the operator’s control, (2) was due to the operator’s attempt to stabilize the incident, (3) was due to the operator’s rendering of emergency assistance, or (4) was caused by the incident occurring in an area with little or no wireless communications coverage, so long as notice was provided within fifteen minutes of regaining such communication ability restored. Any civil penalty imposed may be appealed to the Director of the Division of Homeland Security and Emergency Management, and then to the Circuit Court of Kanawha County.

CODE REFERENCE: West Virginia Code §15-5C-1 and §15-5C-2 – new

DATE OF PASSAGE: March 12, 2016

EFFECTIVE DATE: June 10, 2016

ACTION BY GOVERNOR: Signed March 30, 2016

House Bill 4324

Authorizing information sharing by Workforce West Virginia

This bill updates a provision authorizing information sharing by Workforce West Virginia with the state agencies responsible for vocational rehabilitation, employment and training to reflect the passage of the Workforce Innovation and Opportunity Act (WIOA), which replaced the Workforce Investment Act. The change is required to comply with WIOA in order to continue receiving federal funding from the U.S. Department of Labor. The purpose of WIOA is to better align the workforce system with education and economic development in an effort to create a collective response to economic and labor market challenges on the national, state and local levels.

CODE REFERENCE: West Virginia Code §21A-10-11 – amended

DATE OF PASSAGE: March 7, 2016

EFFECTIVE DATE: June 5, 2016

ACTION BY GOVERNOR: Signed March 10, 2016

House Bill 4334

Clarifying the requirements for a license to practice as an advanced practice registered nurse and expanding prescriptive authority

This bill clarifies the requirements for a license to practice as an advanced practice registered nurse, and expands the prescriptive authority that may be granted to advanced practice registered nurses (APRNs).

The bill updates the practice of advanced practice registered nursing. The bill describes the requirements needed to obtain a license to practice. It removes the requirement for collaborative relationships with physicians as a continuing requirement of practice, but retains the collaborative relationship requirement for a two-year period as a prerequisite to qualify for prescriptive authority.

The bill permits advanced practice registered nurses to prescribe limited supplies of certain controlled substances: 72 hours of a Schedule 2, 30 days of Schedule 3, and 30 days of ADHD drugs. It also permits the signature of an advanced practice registered nurse to have the same force and effect as that of a physician insofar as patient care documentation is concerned.

CODE REFERENCE: West Virginia Code §30-15-1, §30-15-2, §30-15-3, §30-15-4, §30-15-5, §30-15-6, §30-15-7, §30-15-7a, §30-15-7b, §30-15-7c and §30-15-8 – repealed ; §30-7-1, §30-7-2, §30-7-6, §30-7-7, §30-7-15a, §30-7-15b and §30-7-15c – amended; §30-7-15d – new

DATE OF PASSAGE: March 12, 2016

EFFECTIVE DATE: June 10, 2016

ACTION BY GOVERNOR: Signed March 29, 2016

House Bill 4345

Repealing the West Virginia Permitting and Licensing Information Act

This bill repeals the West Virginia Permitting and Licensing Act, which was created in 2008. The purpose of the Act was to facilitate and streamline the various permitting and licensing processes for business activities to be conducted in the State by creating a central repository of such information. The Act authorized the Office of Technology to facilitate and coordinate permitting and licensing processes for business activities in the State, and directed the Office of Technology to notify all agencies, who were then to submit licensing and permitting information to the Office of Technology. That Office was then to create an “information repository” to allow individuals to obtain necessary licenses and permits.

CODE REFERENCE: West Virginia Code §5A-6A-1 through §5A-6A-9 – repealed

DATE OF PASSAGE: March 9, 2016

EFFECTIVE DATE: June 7, 2016

ACTION BY GOVERNOR: Signed March 16, 2016

House Bill 4364

Internet Privacy Protection Act

This bill creates a new article, designated §21-5G-1, Employee Personal Social Media. It prohibits an employer from requesting or requiring that an employee or potential employee:

- Disclose any user name, password or other authentication information for accessing a personal account.
- Access his or her personal account in the employer’s presence.

CODE REFERENCE: West Virginia Code §21-5G-1 – new

DATE OF PASSAGE: March 12, 2016

EFFECTIVE DATE: June 10, 2016

ACTION BY GOVERNOR: Signed April 1, 2016

House Bill 4365

Relating to the certificate of need process

This bill affects several sections of code related to the certificate of need process. Specifically, the bill does the following:

- Provides legislative findings and defines terms
- Provides powers, duties, and rule-making authority;
- Continues special revenue account;
- Provides a process to update certificate of need standards;
- Provides a process to update the state health plan;
- Provides a process to review the cost effectiveness of the certificate of need standards; providing a process for the Health Care Authority to review whether a certificate of need is required;
- Provides health services that require a certificate of need;
- Provides health services for which a certificate of need may not be granted;
- Provides an exemption process; providing exemptions to the certificate of need requirement;
- Provides criteria the authority shall use to determine whether to grant a certificate of need;
- Changes the certificate of need process;
- Provides certain timelines;
- Requires the creation of a process to review an uncontested certificate of need application;
- Requires the authority to make certain findings to approve a certificate of need;
- Provides an appeal process;
- Prohibits the transfer of a certificate of need;
- Permits the authority to perform a compliance review of an issued certificate of need;
- Permits the revocation of a license;
- Creates an injunction process;
- Establishes a statute of limitations;
- Establishes an administrative penalty

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

DATE OF PASSAGE: March 12, 2016

EFFECTIVE DATE: June 10, 2016

ACTION BY GOVERNOR: Signed April 1, 2016

House Bill 4377

Relating to eliminating exemption from hotel occupancy taxes on rental of hotel and motel rooms for thirty or more consecutive days

The bill addresses exemptions to the imposition of the local tax on the occupancy of hotel rooms. The bill eliminates the exemption from the tax where a hotel guest occupies a hotel room for 30 or more consecutive days. The bill also explicitly creates two new exemptions from the tax by excluding from the meaning of the term “hotel room” two instances of sleeping accommodations, specifically:

- “[s]leeping accommodations rented on a month to month basis or other rental arrangement for thirty days or longer at the inception at a boarding house, condominium, cabin, tourist home, apartment or home.”
- “[s]leeping accommodations rented by a hotel operator to those persons directly employed by the hotel operator for the purposes of performing duties in support of the operation the hotel or related operations.”

CODE REFERENCE: West Virginia §7-18-1 and §7-18-3 – new

DATE OF PASSAGE: March 8, 2016

EFFECTIVE DATE: June 6, 2016

ACTION BY GOVERNOR: Signed March 16, 2016

House Bill 4417

Increasing wages protected from garnishment

This bill amends W.Va. Code §46A-2-130 by increasing wages that are protected from garnishment. The bill increases the amount of disposable earnings for a week that are protected from garnishment in section (2)(b). Specifically, the bill increases the amount of weekly disposable income that is exempt to garnishment. The bill increases the threshold of disposable income subject to garnishment to wages that exceed thirty times the federal minimum hourly wage to disposable earnings that exceed fifty times the federal minimum hourly wage. This bill ensures consistency with SB 469 which changes the same threshold to the same amount in W. Va. Code §38-8-1.

CODE REFERENCE: West Virginia Code §46A-2-130 – amended

DATE OF PASSAGE: March 9, 2016

EFFECTIVE DATE: June 7, 2016

ACTION BY GOVERNOR: Signed March 16, 2016

House Bill 4433

Allowing an adjustment to gross income for calculating the personal income tax liability of certain retirees

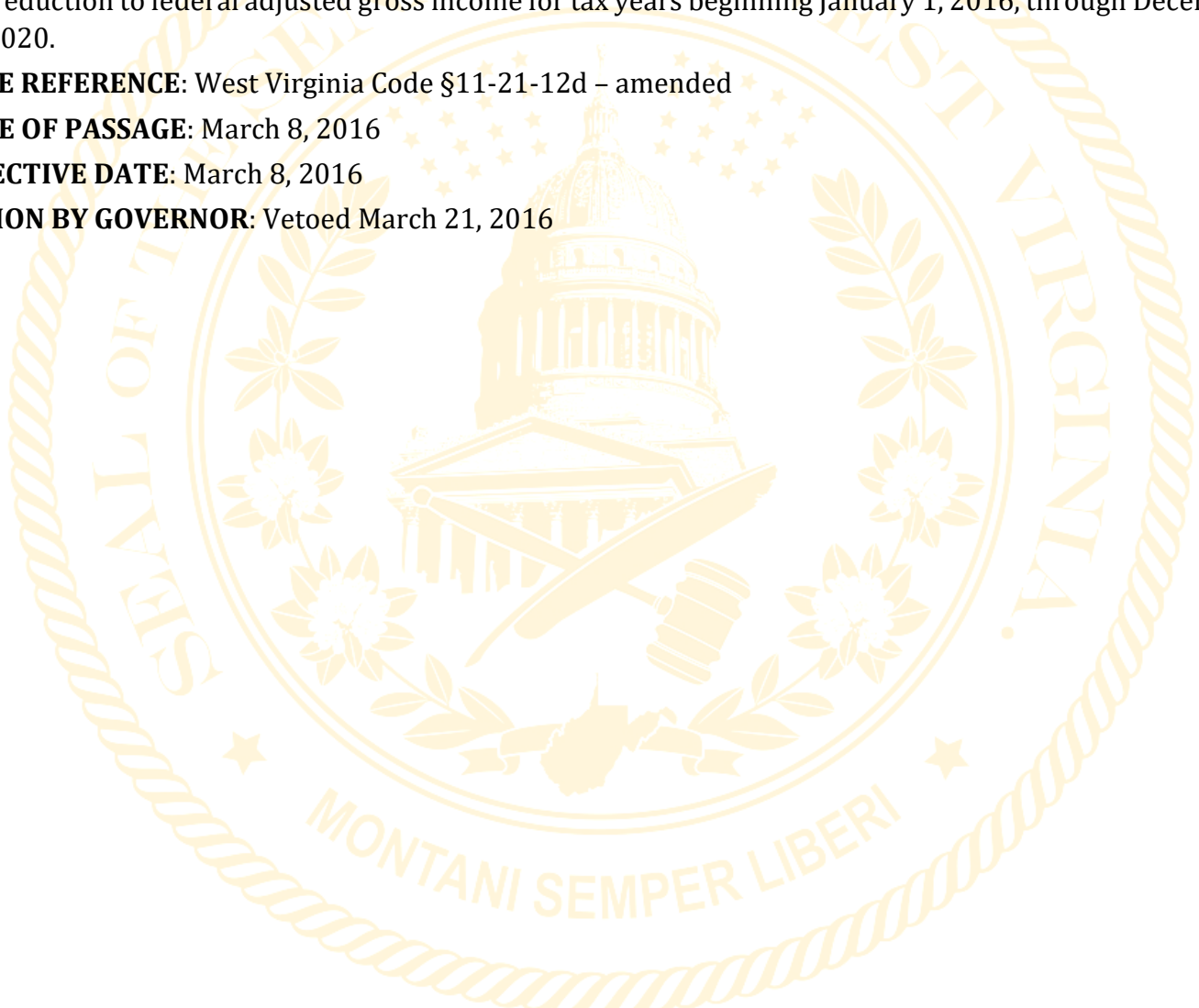
The bill amends the provisions of the West Virginia Code relating to reductions to federal adjusted gross income when determining personal income tax liability. Current law contains provisions which allow for a reduction in federal adjusted gross income through tax year 2014 for a person who retires under an employer-provided defined benefit pension plan which terminated and is being paid a reduced pension benefit from the federal Pension Benefit Guaranty Corporation. The amount of the reduction to the person's federal adjusted gross income is equal to the difference in the amount the person would have received in pension benefits had the plan not terminated and the reduced pension benefit paid. The bill reauthorizes this reduction to federal adjusted gross income for tax years beginning January 1, 2016, through December 31, 2020.

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

DATE OF PASSAGE: March 8, 2016

EFFECTIVE DATE: March 8, 2016

ACTION BY GOVERNOR: Vetoed March 21, 2016



House Bill 4435

Authorizing the Public Service Commission to approve expedited cost recovery of electric utility coal-fired boiler modernization and improvement projects

The bill amends the provisions of the West Virginia Code relating to the powers and duties of the Public Service Commission (PSC). The bill adds a new section to the code authorizing expedited cost recovery of electric utility coal-fired boiler modernization and improvement projects. The procedure created in the bill by which the PSC would approve the modernization and improvement plan would be in lieu of the current requirement for a certificate of convenience and necessity for improvements to utilities.

Pursuant to the new procedure provided in the bill, an electric utility would file a multiyear comprehensive plan for modernizing and improving the coal-fired boilers at the utility's power plants with the PSC. The plan would describe the improvement plan, the projected costs and how the costs would be paid for, the timeline for the improvements and evidence demonstrating the need for the improvements and that they will better provide and maintain adequate, efficient, safe, reliable and reasonably priced electric generation. The electric utility must also publish a notice of the application, as a Class 1 legal advertisement, which includes the anticipated rate increase by average percentage and money amount for customers within a class of service, that the PSC is to hold a hearing regarding the application within 180 days of the notice and that a final order will be entered within 270 days of the filing date. After the notice and hearing, the PSC shall approve the program and allow expedited recovery of costs related to the expenditures for the modernization program if it finds the plan to be just, reasonable, based upon prudent investments that are used and useful to the utilities' West Virginia ratepayers, not contrary to the West Virginia public interest and will allow for the provision and maintenance of adequate, efficient, safe, reliable and reasonably priced electricity generated from coal.

CODE REFERENCE: West Virginia Code §24-2-1I – new

DATE OF PASSAGE: March 11, 2016

EFFECTIVE DATE: June 9, 2016

ACTION BY GOVERNOR: Signed March 24, 2016

House Bill 4448

Clarifying that communication by a lender or debt collector which is allowed under the West Virginia Consumer Credit and Protection Act, likewise does not violate the provisions of the West Virginia Computer Crime and Abuse Act

This bill is a clarifying amendment to the West Virginia Computer Crime and Abuse Act (the "CCAA"), providing that a communication by a lender or debt collector that does not violate the West Virginia Consumer Credit and Protection Act (§46A-2-128), likewise does not violate the CCAA.

CODE REFERENCE: West Virginia Code §61-3C-14a – amended

DATE OF PASSAGE: March 12, 2016

EFFECTIVE DATE: June 10, 2016

ACTION BY GOVERNOR: Signed March 24, 2016

House Bill 4463

Permitting practice of telemedicine

This bill would authorize the practice of telemedicine. It defines necessary terms. The bill provides that the practice of telemedicine occurs where the patient is located and requires the physicians who practice telemedicine to hold a license issued by the appropriate board. There are also exceptions to the applicability of the section listed in the bill for informal consultation for a second opinion and for medical assistance during an emergency. Preclusions for establishment a physician-patient via telemedicine are also set out. The manner in which a physician-patient relationship may be established is spelled out in the bill. These include interactive audio and store and forward technology as well as a video link. The bill also sets out the requirements for the practice of telemedicine. These include patient verification, the establishment of a patient relationship, determine the appropriateness of telemedicine for this patient, the use of traditional standards of care and record keeping. There are standard of care considerations and record keeping requirements. There is also a preclusion against prescribing controlled substances from Schedule I or II of the Controlled Substances Act. The bill would also allow a physician with an established relationship with a patient providing cross coverage for a colleague and in an emergency situation to communicate audio only or text based communications. The bill grants the Board of Medicine and the Board of Osteopathic Medicine rulemaking authority to implement the requirements of the section. Finally, there is a section which indicates that this does not alter the traditional scope of practice of a physician.

CODE REFERENCE: West Virginia Code §30-3-13A – new

DATE OF PASSAGE: March 11, 2016

EFFECTIVE DATE: June 9, 2016

ACTION BY GOVERNOR: Signed March 24, 2016

House Bill 4487

Relating to state retirement systems

The bill amends various provisions of the West Virginia Code relating to the retirement systems administered by the Consolidated Public Retirement Board (CPRB). The original purpose of these changes was to correct internal cross references and reinstate provisions of the code unintentionally changed by the enactment of SB529 in RS2015. The changes proposed in this bill were originally approved by the Legislature in SB444 in RS2014, in SB469 in RS2013

The bill makes the following substantive changes:

- Changes in the Public Employees Retirement System (PERS):
- Adds an exclusion in the definition of “compensation” to restrict compensation to monetary remuneration only for members hired on or after July 1, 2014.
- Adds an exclusion to the definition of “employee” requiring that a compensated board member of a participating public employer appointed to a board of a nonlegislative body on or after July 1, 2014, must work 12 months per year and 1040 hours of service per year to be considered an employee.
- Adds a cross reference to the CPRB’s rule on the interest required for service credit previously credited by the State Teachers Retirement System for certain employees in PERS.
- Reinserts language pertaining to a deadline to purchase former service credit for legislative employees and allows the purchase of retroactive service credit to be purchased 24 months of the legislative employee beginning making contributions as a legislative employee and not when he or she becomes a member of the retirement system. It also allows the purchase of retroactive service credit for those employees from the effective date of the bill until December 31, 2016.
- Changes in the State Teachers Retirement System (TRS):
- Corrects an incorrect code reference.

CODE REFERENCE: West Virginia Code §5-10-2, §5-10-14, and §18-7A-17a – amended

DATE OF PASSAGE: March 10, 2016

EFFECTIVE DATE: June 8, 2016

ACTION BY GOVERNOR: Signed March 21, 2016

House Bill 4502

Allowing reciprocity agreements with contiguous states to establish regulations, licensing requirements and taxes for small businesses

This bill authorizes the Governor to engage agencies from contiguous states and the District of Columbia to secure reciprocal agreements to establish regulations, licensing requirements and taxation for small businesses headquartered in this state, contiguous states, or D.C., who conduct business in both.

In the discretion of the Governor, the Attorney General or secretary of an executive branch department may be delegated and empowered, in writing, to negotiate and enter into such reciprocity agreements on behalf of the Governor.

In addition, the bill requires legislative approval if taxation is involved in any such agreement.

CODE REFERENCE: West Virginia Code §5-1-29 – new

DATE OF PASSAGE: March 10, 2016

EFFECTIVE DATE: June 8, 2016

ACTION BY GOVERNOR: Signed March 25, 2016

House Bill 4507

Providing an employer may grant preference in hiring to a veteran or disabled veteran

This bill provides that an employer may voluntarily grant a preference in hiring to a veteran or disabled veteran over another qualified applicant. The veteran or disabled veteran must meet all of the knowledge, skills, and eligibility requirements of the job. The bill expressly states that granting this preference does not, in and of itself, violate any state equal opportunity law.

Currently, the Equal Employment Opportunity Commission compliance manual states that local, state or federal laws that give preference to hiring veterans does not, in and of itself, violate Title VII, but states appear to need a state law expressly permitting a voluntary veterans hiring preference for the protections to be effective.

CODE REFERENCE: West Virginia Code §5-11-9 – amended; §5-11-9a – new

DATE OF PASSAGE: March 12, 2016

EFFECTIVE DATE: June 10, 2016

ACTION BY GOVERNOR: Signed March 24, 2016

House Bill 4517

Limiting the ability of an agent under a power of attorney to take self-benefiting actions

This bill adds language to the section on an agent's duties. It states that if an agent benefits from an act to the substantial and direct detriment of an ancestor, spouse, heir or descendant of the principal, a presumption is created that the act was not within the scope of authority granted in the power of attorney, unless the authority to perform that specific act is expressed with particularity in identifying the existing property interest and provided in the power of attorney.

Current law does not allow an agent who is not an ancestor, spouse or decedent of the principal to create in the agent an interest in the principal's property by any means. This bill does not allow any agents to have an interest in the principal's property by any means, unless the power of attorney expresses the specific act in the grant of authority and identifies the existing property interest with particularity.

CODE REFERENCE: West Virginia Code §39B-1-114 and §39B-2-101 – amended

DATE OF PASSAGE: March 10, 2016

EFFECTIVE DATE: June 8, 2016

ACTION BY GOVERNOR: Signed March 24, 2016

House Bill 4520

Clarifying that certain hospitals have only one governing body whose meetings shall be open to the public

This bill sets forth what constitutes the governing body of a hospital operated by a nonprofit corporation, a hospital operated by a political subdivision of the State and a hospital operated by a nonprofit association. It specifies that the medical staff of the hospital, its executive committee or a subcommittee of the medical staff is not a governing body.

This bill states that a meeting of any subgroup of the governing body that makes recommendations to the governing body is not a meeting subject to the article which relates to open hospital proceedings, unless the subgroup is vested with and exercises independent decision-making authority at any convening. Current law prohibits a governing body from taking official action while in executive session. This bill adds several exceptions, such as protecting the confidentiality of protected health information.

Current law also delineates the reasons for which a governing body may go into executive session, including to consider the work product of the hospital's attorney or hospital administration. The bill expands upon this purpose to include conducting privileged attorney client communications and to include materials prepared by an attorney or others in anticipation of litigation, litigation strategies and reports, confidential legal settlements and discussions, negotiations and alternative dispute resolution proceedings conducted in pursuit of a legal settlement.

CODE REFERENCE: West Virginia Code §16-5G-2 and §16-5G-4 – amended

DATE OF PASSAGE: March 8, 2016

EFFECTIVE DATE: June 6, 2016

ACTION BY GOVERNOR: Signed March 23, 2016

House Bill 4566

Relating to school personnel

The bill makes numerous amendments to statutory provisions governing personnel employed in the public education system of the state. Among the areas addressed by the amendments are certifications for assistant and associate county superintendents of county school systems; termination of contracts of professionals; disqualifications to teach; notices of retirements; termination of contracts; transfers of personnel; probationary teachers; filling vacancies; competency tests; and in-service training.

CODE REFERENCE: West Virginia Code §18-4-2, §18A-2-2, §18A-2-5a, §18A-2-6, §18A-2-7, §18A-2-8a, §18A-4-7a, §18A-4-8b, §18A-4-8e, and §18A-5-8 – amended; §18A-2-7b – new

DATE OF PASSAGE: March 12, 2016

EFFECTIVE DATE: June 10, 2016

ACTION BY GOVERNOR: Signed April 1, 2016

House Bill 4587

Relating to violations associated with absent voters' ballots

This bill makes a technical change concerning the criminal offense of absentee voter fraud. Subsection (b) makes certain officials guilty of a misdemeanor if they “refuse or neglect to perform any of the duties required of him or her by any of the provisions of articles three, five and six of this chapter relating to voting by absentees or shall disclose to any other person or persons how any absent voter voted.” Current code makes reference to the “clerk of the circuit court” as one official who may be guilty of this misdemeanor, and the bill changes this to “the clerk of the county commission.”

CODE REFERENCE: West Virginia Code §3-9-19 – amended

DATE OF PASSAGE: March 10, 2016

EFFECTIVE DATE: June 8, 2016

ACTION BY GOVERNOR: Signed March 21, 2016

House Bill 4604

Relating to violations of the Ethics Act

This bill primarily makes three changes to the Ethics Act. First, it requires an investigation to be concluded and a determination to be made within eighteen (18) months of the filing of a complaint, unless agreed upon by the respondent and complainant or if good cause can be shown. Second, it alters the evidentiary standard from “beyond a reasonable doubt” (a criminal standard) to “clear and convincing”, which is more frequently the standard in civil matters. Finally, it sets a statute of limitations of five years for all violations after July 1, 2016.

CODE REFERENCE: West Virginia Code §6B-2-4 – amended

EFFECTIVE DATE: June 10, 2016

DATE OF PASSAGE: March 12, 2016

ACTION BY GOVERNOR: Signed March 25, 2016

House Bill 4612

Relating generally to tax increment financing and economic opportunity development districts

The bill amends the provisions of the West Virginia Code relating to both property and sales tax increment financing by counties and municipalities. The bill adds several new code sections which specifically authorize counties and municipalities to participate in development projects that cross multiple jurisdictions. The bill authorizes municipalities and counties to enter into intergovernmental agreements to implement the joint development projects and/or with the Commissioner of the Division of Highways for road construction or improvements. The bill also authorizes the Commissioner of the Division of Highways to propose districts and projects containing road construction or improvements.

The bill amends current statutes authorizing tax increment financing to incorporate the joint districts and the use of funds for the construction or improvement of roads. In addition, current law is amended as follows:

- As to Property tax increment financing – authorizes the designation of an official to sign for, make decisions and handle the affairs of the district;
- As to Property tax increment financing – eliminates reference to prevailing wage requirements;
- As to Sales tax increment financing – eliminates the limitation that there be a minimum investment of \$75 million if the project is proposed by the Division of Highways;
- As to Sales tax increment financing – requires the Development Office to request the certification from the Tax Commissioner as to the sales tax base amount, no longer requiring that the applicant have that information in its application. The Tax Commissioner is to give his or her certification within 30 days of the request;
- As to Sales tax increment financing – authorizes the reduction of a district;
- As to Sales tax increment financing – requires Tax Commissioner to have legislative rules that contain procedures for ensuring new taxpayers are in the database and the proper allocation of increment payments for businesses in multiple jurisdictions;
- As to Sales tax increment financing – authorizes the county or municipality to audit returns filed by taxpayers in the district; requires Tax Department to investigate issues suggested in such audit;
- As to Sales tax increment financing in municipalities – eliminates provision requiring Development Office consider if project is large enough to require mixed use development with an affordable housing component;
- As to Sales tax increment financing in municipalities – adds a provision allowing for minor modifications to districts;
- As to the administration of the taxes – allows a county commission or municipality to ask for the moneys collected and not just the district board;
- As to Property tax increment financing – specifically authorizing the use of the highway design build provisions for projects that include roads.

CODE REFERENCE: West Virginia Code §7-11B-3, §7-11B-4, §7-11B-14, §7-11B-21, §7-11B-22, §7-22-5, §7-22-7, §7-22-8, §7-22-12, §7-22-14, §8-38-5, §8-38-7, §8-38-8, §8-38-12, §8-38-14, and §11-10-11a – amended; §7-11B-29, §7-11B-30, §7-22-23, §7-22-24, §8-38-23, and §8-38-24 – new

DATE OF PASSAGE: March 11, 2016

EFFECTIVE DATE: June 9, 2016

ACTION BY GOVERNOR: Signed March 24, 2016

House Bill 4618

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

This bill repeals the current section in the Code relating to limitations on a public official's use of his or her name or likeness and replaces it with a new article with the same name.

Section one defines terms such as “advertising”, “public official”, “social media” and “trinkets”.

Section two prohibits public officials and their agents from placing the public official's name or likeness on trinkets paid for with state funds, in advertising, on vehicles, and on educational materials. It allows the expenditure of a nominal amount on the purchase of pens to be used during ceremonial signings.

Section three allows a public official's name or likeness to appear on the public agency's website and social media, subject to specified restrictions.

Section four governs the use of public resources to display or distribute items with the public official's name or likeness.

Section five allows a public official to use his or her name or likeness on any official record or report, letterhead document or certificate or instructional material issued in the course of his or her duty as a public official. It allows the Division of Tourism to use a public officials' name or likeness on material used for tourism promotion.

Section six prohibits the use of existing items after the bill's effective date. Materials may be used if the public official's name or likeness has been permanently removed or covered, if the materials are used internally or if they are donated to surplus or charity.

Section seven allows a public agency to apply to the Ethics Commission for an exemption from the provisions of the article where the provisions of the article would create an undue hardship or have a significant financial impact on the public agency.

CODE REFERENCE: West Virginia Code §6B-2-5c – repealed; §6B-2B-1 through §6B-2B-6 – new

DATE OF PASSAGE: March 12, 2016

EFFECTIVE DATE: June 10, 2016

ACTION BY GOVERNOR: Signed March 29, 2016

House Bill 4655

Prohibiting insurers, vision care plan or vision care discount plans from requiring vision care providers to provide discounts on noncovered services or materials

This bill contains new provisions related to non-covered discounts. It prohibits an insurer from seeking or requiring an eye care provider to provide services or materials at a fee limited or set by the insurer, unless they are reimbursed as covered services or covered materials under the contract. An eye care provider may not charge more for non-covered services or materials than his or her usual and customary rate. Reimbursements paid by the insurer must be reasonable and clearly listed on a fee schedule that is made available before the signing of the contract.

The bill also prohibits insurers from falsely representing benefits to groups, employers or individual enrollees. An agreement may not require an eye care provider to participate with or be credentialed by any specific plan as a condition of participation in the health care network of the insurer. New health benefit plans, vision care plans or vision care discount plans issued or renewed which provides coverage for services rendered by an eye care provider must provide the same reimbursement for services to optometrists as allowed for those services rendered by physicians or osteopaths.

Finally, the bill prohibits an insurer from requiring an optometrist to meet terms and conditions that are not required of a physician or osteopath as a condition of participation in its provider network for the provision of services that are within the scope of practice of an optometrist.

The bill specifies the process for changing or altering an agreement. It allows a person or entity adversely affected by a violation of the law or the Insurance Commissioner to seek an injunction against the insurer and the person or entity may recover monetary damages of no more than \$1,000 for each instance found to be in violation of this section, plus attorney's fees and costs.

CODE REFERENCE: West Virginia Code §33-25E-2 – amended; §33-25E-5 – new

DATE OF PASSAGE: March 12, 2016

EFFECTIVE DATE: July 1, 2016

ACTION BY GOVERNOR: Signed April 1, 2016

House Bill 4659

Authorizing local health departments to bill health insurance plans for services

The bill amends the provisions of the West Virginia Code relating to the powers and duties of local boards of health. The bill authorizes local health departments to bill a payor for medical services provided at the maximum allowable rate and that the fees for medical services are not subject to the approval of the Commissioner of the Bureau for Public Health.

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

DATE OF PASSAGE: March 12, 2016

EFFECTIVE DATE: June 10, 2016

ACTION BY GOVERNOR: Signed March 24, 2016

House Bill 4725

Relating to providing the procedures for the filling of vacancies in the offices of justices of the Supreme Court of Appeals, circuit judge, family court judge or magistrate and making certain clarifications

This bill modifies the statute relating to the filling of vacancies in the offices of justice of the Supreme Court of Appeals, circuit judge, and family court judge in order to avoid potentially unconstitutional applications. The West Virginia Constitution provides that an appointee to a judicial vacancy shall continue to hold the seat until the end of the term if the unexpired term is two years or less. This bill clarifies that an election will only be held to fill the remaining term “if the unexpired term be for a period of more than two years.” Although the language relating to the filling of magistrate vacancies is not constitutionally infirm, identical language is added to subsection (c) so that all magistrate appointees will also continue to serve until the end of the term if that term is for two years or less. Additional modifications to this section reflect situations in which the remaining term is more than two years from the date of the vacancy.

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

DATE OF PASSAGE: March 12, 2016

EFFECTIVE DATE: June 10, 2016

ACTION BY GOVERNOR: Signed March 24, 2016

House Bill 4726

Relating to coal mining generally (Coal Jobs and Safety Act II)

This bill is otherwise known as the Coal Jobs and Safety Act of 2016 and is in two parts: 1) Environmental and 2) Health, Safety and Training. The intent of the bill is to continue the reform efforts of the Coal Jobs and Safety Act of 2015 and make regulatory changes to both the Department of Environmental Protection (DEP) and the Office of Miners' Health Safety and Training (WVMHS&T) in order to create more efficiencies in carrying out the duties of both offices, while creating more certainty for the coal industry.

The environmental part of the bill would do the following: Update and make new legislative findings; Eliminate the DEP's Office of Explosives and Blasting (those duties are now transferred to the Division of Mining and Reclamation; Mandates that the DEP revise and promulgate rules on hydrologic protection and stormwater runoff analyses on mining operations and to promulgate rules that conform with the federal regulation requirements to minimize the disturbances to the prevailing hydrologic balance at a mine site and in associated off-site areas; Requires the DEP to follow deadlines for taking action on applications for site-specific water quality criteria (requiring a decision within 90 days); and Requires the DEP to conduct hydrologic impact assessments.

The miners' health, safety and training part of the bill would do the following: Transfer certification authority for mining emergency medical technicians (EMTs) to the Office of Miners' Health, Safety and Training; Modify certain ventilation and roof or rib requirements; Provide that state mine rescue teams may serve as a backup team to mine company teams; Requires the State Board of Appeals to allow evidence of substance abuse testing procedures and test results be introduced through notarized affidavits from Medical Review Officers and testify if necessary; Provide for testimony by telephone under oath, that the penalty for not reporting accidents in 15 minutes to the Office of Miners' Health, Safety and Training be modified to "up to \$100,000" from \$100,000; Provide that the Director of Office of Miners' Health, Safety and Training shall have the authority to modify assessed penalties and penalties may be modified by the State Board of Appeals based on a vote of two Board members, and allowing company input into state supervisory training and how it is scheduled during the year; and Provide that if a miners' wireless emergency communications device fails, that a miner shall be assigned to be in sight or sound of a certified miner until such time that the device is replaced.

CODE REFERENCE: West Virginia Code §22-3A-1, §22-3A-2, §22-3A-3, §22-3A-4, §22-3A-5, §22-3A-6, §22-3A-7, §22-3A-8, §22-3A-9, §22-3A-10, §16-4C-6c, §22-3-2, §22-3-4, §22-3-13, §22-3-13a, §22-3-22a, §22-3-30a, §22-3-34, §22-3-35, §22-3-36, §22-3-37, §22-3-38, §22-3-39, §22-11-6, §22A-1-13, §22A-1-14, §22A-1-15, §22A-1-31, §22A-1-35, §22A-1A-2, §22A-2-3, §22A-2-8, §22A-2-14, §22A-2-20, §22A-2-25, §22A-2-36, §22A-2-55, §22A-2-66, §22A-2-77, §22A-7-7 - amended

DATE OF PASSAGE: March 11, 2016

EFFECTIVE DATE: June 9, 2016

ACTION BY GOVERNOR: April 1, 2016

House Bill 4734

Relating to mine subsidence insurance

This bill increases available coverage for mine subsidence coverage to \$200,000.00 by increasing the total value that BRIM can reinsure from \$75,000.00 to \$200,000.00. The bill also deletes the provision that restricts loss coverage; the bill strikes language stating that loss coverage is the loss in excess of 2% of the policy's total insured value. As such, the bill would expand mine subsidence insurance coverage to cover lower amounts and higher amounts.

Under current West Virginia law, insurers issuing policies to cover structures in the state (with the exception of certain designated counties) are required to provide mine subsidence insurance unless such coverage is waived by the insured. The premium charged is set by the Board of Risk and Insurance Management ("BRIM"). The coverage is the amount of loss in excess of 2% of the policy's total insured value, and the total insured value is currently limited to \$75,000. The deductible may not be less than \$250 nor more than \$500. The amount of mine subsidence insurance may not exceed the amount of the fire insurance on the structure.

BRIM is a reinsurer on this program. When the carrier sells the mine subsidence coverage, it collects the premium and sends that, less a ceding commission (30%), to BRIM to go into the fund. The process for a claim is that the carrier presents BRIM with a claim notice and documentation that the insured has the coverage and in what amount. BRIM then investigates the claim and if it is payable, the insurer pays the loss based on the proof BRIM gets signed. The insurer then provides BRIM with a copy of both sides of the cashed check and then BRIM reimburses the carrier the amount it paid the insured. BRIM incurs the adjustment expense and will deny the claim if it is not mine subsidence. See §33-30-1 et seq.; 115 CSR 1.

CODE REFERENCE: West Virginia Code §33-30-6 and §33-30-8 – amended

DATE OF PASSAGE: March 11, 2016

EFFECTIVE DATE: October 1, 2016

ACTION BY GOVERNOR: Signed March 25, 2016

House Bill 4739

Unclaimed Life Insurance Benefits Act

The bill incorporates language from a model act regarding unclaimed life insurance benefits. The bill contains a section regarding definitions and a section regarding insurer conduct. With respect to insurer conduct, the bill provides the following:

- An insurer shall perform a comparison of its insureds' policies, annuity contracts and account owners against a Death Master File on an annual basis;
- The comparison, shall be conducted first to the extent such records are available electronically and then using the most easily accessible records that are not available electronically; and the comparison shall not apply to policies or annuity contracts for which the insurer is receiving premiums within 18 months immediately preceding the Death Master File comparison;
- The insurer is not prohibited from requesting a valid death certificate. Policies in effect as of 1986 and issued there after must be part of this search.

The bill also requires the Insurance Commissioner to promulgate legislative rules with certain provisions. If a potential match is identified or if an insurer learns of the possible death of a person otherwise, the insurer shall do the following within ninety days of the match:

- Make a documented good faith effort to confirm death; review records to determine if deceased had purchased any other products with the insurer; determine whether benefits may be due.

The bill also requires the insurer, if the beneficiary or other representative has not communicated with the insurer within the ninety-day period, to take reasonable steps to locate and contact the beneficiary or authorized representative, including, but not limited to, sending the beneficiary information regarding the insurer's claim process, including the need to provide an official death certificate. The insurer must document its reasonable steps.

The bill also, to the extent permitted by law, requires the insurer to disclose the minimum necessary personal information about a person or beneficiary that the insurer reasonably believes may be able to assist the insurer in locating the beneficiary entitled to payment of the proceeds. Insurers must implement procedures to account for nicknames, maiden names and transposed social security numbers. No charges may be assessed to any beneficiary or authorized representative for any fees or costs associated with the Death Master File searches conducted pursuant to this section.

Under the bill, the benefits from any policy plus any accrued contractual interest shall first be paid to any designated beneficiaries or, if they cannot be found, then shall be paid as unclaimed property pursuant to article eight, chapter thirty-six of the code. The bill also permits the Insurance Commissioner to make an order limiting an insurer's Death Master File comparisons to the insurer's electronic searchable files, exempting an insurer from the Death Master File comparisons required or permitting the insurer to perform such comparisons less frequently than annually upon a demonstration of hardship by the insurer or phasing-in compliance with this section according to a plan and timeline approved by the Insurance Commissioner.

CODE REFERENCE: West Virginia Code §33-13D-1 and §33-13D-2 – new

DATE OF PASSAGE: March 12, 2016

EFFECTIVE DATE: June 10, 2016

ACTION BY GOVERNOR: Signed April 1, 2016

2015 Regular Session



Senate Bill 3

Relating to liability of possessor of real property for harm to trespasser

This bill codifies the duty that possessors of real property owe to trespassers under the common law of the State of West Virginia. It does nothing to alter the duty owed and does not disturb any statutes that limit the liability of land possessors under various circumstances. This bill insulates the laws of West Virginia from a provision of the new Restatement (Third) of Torts §51, which departs substantially from the common law duty owed to trespassers as it currently exists and, if adopted, would extend to trespassers the same duty of reasonable care owed to invitees and licensees, and makes an exception to that duty only for what it terms “flagrant trespassers.”

To foreclose the adoption of this new standard into the common law of West Virginia, this bill codifies the existing common law of the State as it relates to duties of landowners to trespassers, which provides that landowners generally owe to trespassers only a duty to refrain from willful or wanton injury. The situations already identified at common law where a land possessor may also be subject to liability for the injury or death of a trespasser, including (1) the possessor discovers the trespasser in a position of peril and fails to exercise ordinary care not to cause injury to the trespasser, (2) he maintains a highly dangerous condition or instrumentality on the property under certain circumstances or (3) a child trespasser is injured or killed due to a dangerous instrumentality or condition on the property under certain circumstances, are preserved.

CODE REFERENCE: West Virginia Code §55-7-27 – new

DATE OF PASSAGE: January 29, 2015

EFFECTIVE DATE: April 29, 2015

ACTION BY GOVERNOR: Signed February 9, 2015

Senate Bill 6

Relating to medical professional liability

This bill amends and updates the Medical Professional Liability Act. A new legislative finding is added in §55-7B-1 to explain the reasons for updating the Act, explaining that the “modernization and structure of the health care delivery system necessitate and update of provisions of this article” in order to allow the Act to continue to fulfill its purposes, which are “to control the increase in the cost of liability insurance and to maintain access to affordable health care service for our citizens.”

The bill also updates and clarifies a number of definitions in §55-7B-2. The definition of “collateral source” is modified to exclude from its reach the amount of any reductions, discounts or write-offs of a medical bill. “Health care” is also amended and expanded to clarify that ordinary activities that occur in the regular course of providing treatment to patients and are related to the provision of health care fall within the definition. The terms “health care facility” and “health care provider” are expanded to bring within the scope of the definition additional types of facilities and providers. “Medical professional liability” is amended to include “other claims that may be contemporaneous to or related to the alleged tort or breach of contract or otherwise provided in the context of rendering health care services.” A new definition is provided for “related entity,” which includes all business entities “under common control or ownership . . . with a health care provider or health care facility,” or any entity that owns a health care provider or health care facility.

Next, the bill addresses testimony of expert witnesses on the standard of care in §55-7B-7, providing that an proposed expert witness may only be found competent to testify if, among other qualifications, his opinion is grounded on a scientifically valid and properly applied methodology.

A new section of code is added, §55-7B-7a, which concerns the admissibility and use of certain information. The bill creates a rebuttable presumption that certain information, including:

- surveys, audits and reviews of a health care provider or facility
- disciplinary actions against a health care provider’s license, registration or certification
- accreditation reports
- civil or criminal penalties, cannot be introduced unless it applies specifically to the injured person or involves substantially similar conduct and occurred within one year of the particular incident in question

An additional rebuttable presumption provides that, if a health care facility meets the minimum staffing ratio established under state law, that evidence of inadequate staffing cannot be admitted.

The bill provides, in §55-7B-8, for modifications to the Act’s liability limitations for noneconomic loss. Specifically, the bill clarifies the level of coverage necessary in order for a defendant to have the benefit of the limitations on noneconomic damages, explicitly stating that the coverage at issue must be at least one million dollars in the aggregate. In §55-7B-9, the bill adds language to clarify that a health care authority may not be held vicariously liable for the acts of a non-employee, unless the non-employee fails to maintain professional liability insurance in the amount of \$1 million for each occurrence.

§55-7B-9c clarifies that the Act applies to emergency medical services (EMS) authorities or EMS personnel. The bill also adds language to ensure that the \$500,000 cap on civil damages recoverable against EMS authorities and personnel is for each occurrence, regardless of the number of plaintiffs, defendants, or distributees. An inflation adjuster is also added at the end of this section, which becomes effective January 1, 2016.

A new section, §55-7B-9d, is added that limits a verdict for past medical expenses to (1) the total amount of medical expenses paid by or on behalf of the plaintiff, and (2) the total amount of medical expenses incurred but not paid for which the plaintiff or another is obligated to pay.

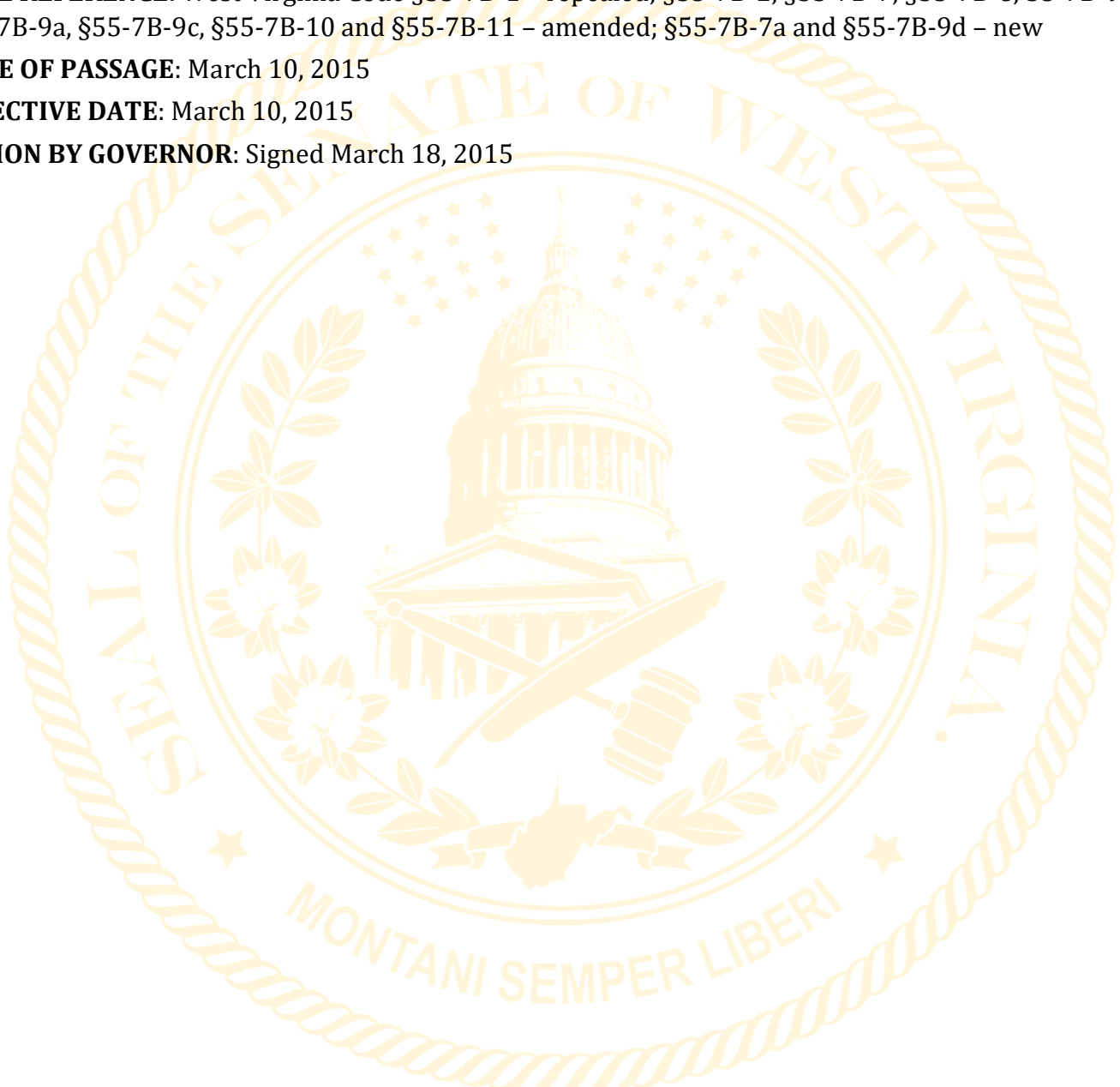
Finally, technical changes are made throughout, including in §55-7B-9a. The bill clarifies in §55-7B-10 that the changes made in this bill apply only to claims filed on or after July 1, 2015, and updates the severability language found in §55-7B-11.

CODE REFERENCE: West Virginia Code §55-7B-1 – repealed; §55-7B-2, §55-7B-7, §55-7B-8, 55-7B-9, §55-7B-9a, §55-7B-9c, §55-7B-10 and §55-7B-11 – amended; §55-7B-7a and §55-7B-9d – new

DATE OF PASSAGE: March 10, 2015

EFFECTIVE DATE: March 10, 2015

ACTION BY GOVERNOR: Signed March 18, 2015



Senate Bill 12

Relating to payment of separated employee's outstanding wages

This bill requires employers to pay outstanding wages due to separated employees by the next regular payday on which the wages would otherwise be due and payable. Under current law, employers must pay discharged employees their final paychecks no later than the next regular payday or four (4) business days, whichever comes first, but must pay employees who quit or resign no later than the next regular payday, unless the employee resigns providing one pay period's written notice of the intention to quit, in which case the final wages are required to be paid at the time of quitting.

The bill makes that time frame for payment of final wages uniform regardless of form of separation from employment, requiring that final paychecks be delivered no later than the next regular payday on which the wages would otherwise be due and payable. An exception is made for fringe benefits that are provided to an employee pursuant to an employment agreement but "to be paid at a future date or upon additional conditions which are ascertainable," which wages are to be paid pursuant to the terms of the agreement between employer and employee.

Final paychecks may be delivered in person through any manner proscribed in §21-5-3, which allows for payment in lawful money, by cash order (including checks), by deposit or electronic transfer or any other manner agreed to between employer and employee, as well as through regular pay channels, direct deposit or, if requested by the employee, by mail. The bill establishes the date final paychecks would be considered paid as the date the mailed payment is postmarked if the employee requests to be paid via mail. The bill reduces the liquidated damages available for violation of this section from three (3) times the unpaid amount to two (2) times the unpaid amount.

Lastly, the bill clarifies that §21-5-4 only regulates the timing of wage payments upon separation from employment and does not regulate whether overtime pay is due. It also clarifies that liquidated damages are not available for employees claiming they were misclassified as exempt from overtime under any state or federal wage and hour laws.

CODE REFERENCE: West Virginia Code §21-5-1 and §21-5-4 – amended

DATE OF PASSAGE: March 13, 2015

EFFECTIVE DATE: June 11, 2015

ACTION BY GOVERNOR: Signed March 31, 2015

Senate Bill 13

Relating to liability of a possessor of real property for injuries caused by open and obvious hazards

This bill reinstates and codifies the open and obvious doctrine of landowner liability as it existed in the State of West Virginia prior to the decision of the West Virginia Supreme Court of Appeals in the case of *Hersh v. E-T Enterprises, Limited Partnership*, 752 S.E.2d 336 (Nov. 12, 2013). The open and obvious doctrine is a common law rule of liability which imposes upon landowners, lessees or other lawful occupants a duty to either warn of, or mitigate, hazards upon their property which are not “open and obvious” to any entrant upon a property; that is, those dangers which may be concealed, hidden, or otherwise not obvious to a reasonable person or not within open view. The Court’s decision explicitly abolished the open and obvious doctrine in West Virginia; this bill restores it through codification. To that end, the bill states that a possessor of real property owes no duty of care to protect others against dangers that are “open, obvious, reasonably apparent or as well known to the person injured as they are to the owner or occupant.” The new section of code also clarifies no new causes of action are created by this section, and states the legislative intent of the section to reinstate the law on open and obvious as it existed prior to the *Hersh* decision. Lastly, the bill directs the court to take into consideration, as a matter of law, the “nature and severity, or lack thereof, of violations of any statute relating to a cause of action.”

CODE REFERENCE: West Virginia Code §55-7-27 – new

DATE OF PASSAGE: February 18, 2015

EFFECTIVE DATE: February 18, 2015

ACTION BY GOVERNOR: Signed March 3, 2015

Senate Bill 30

Permitting shared animal ownership agreement to consume raw milk

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

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

DATE OF PASSAGE: March 12, 2015

EFFECTIVE DATE: June 10, 2015

ACTION BY GOVERNOR: Vetoed April 1, 2015

Senate Bill 37

Creating Revised Uniform Arbitration Act

This bill amends, reenacts and expands the current law in West Virginia concerning arbitration by adopting a modified version of the Revised Uniform Arbitration Act into article 10 of Chapter 55. As background for the act, the bill sets forth certain legislative findings concerning arbitration, namely that arbitration frequently offers a more efficient and cost-effective alternative to court litigation, acknowledges the federal policy favoring arbitration and defines a number of terms.

- §55-10-4 sets forth the requirements for giving notice to a party to an arbitration proceeding.
- §55-10-5 limits the applicability of this article to arbitration agreements made on or after July 1, 2015, and allows arbitration agreements entered into prior to that date to become subject to the new provisions of Article 10 if they are subsequently ratified or continued, or if the parties mutually agree to make the arbitration agreement subject to this article.
- §55-10-6 sets forth the provisions of the article that serve as default may not be waived by agreement of the parties. These include:
 - the involvement of the court in determining whether an agreement to arbitrate is valid
 - the authority of the arbitrator to award provisional remedies
 - the use of witnesses, subpoenas, depositions and other discovery during the arbitration
 - venue of the state courts
 - appeals of adverse court determinations concerning arbitration agreement
 - unreasonable restrictions on notice requirements
 - unreasonable restriction of right to disclosure of certain facts by an arbitrator
 - right to representation by an attorney in arbitration proceedings.
 - This section also sets out the sections that cannot be waived after the arbitration proceeding has commenced.
- §55-10-7 provides the parties to an arbitration agreement with a right to seek judicial relief from the circuit courts of this State under certain circumstances as spelled out in the article.
- §55-10-8 allows a court to determine the validity and enforceability of an arbitration agreement and whether a particular controversy is covered by an agreement to arbitrate, but reserves to the arbitrator the determination as to whether a condition precedent to arbitration has been fulfilled and whether a contract containing a valid arbitration agreement is enforceable. This section allows an arbitration to continue pending a court's determination unless the court issues a stay.
- §55-10-9 describes the procedures to be used by the courts to evaluate motions to compel or stay arbitration, and requires that a court "proceed summarily to decide the issue" and that a decision on arbitrability be made before the judicial proceeding goes forward.
- §55-10-10 grants a court the authority to award provisional remedies before the arbitration proceedings commence and allows the arbitrator to do so after the arbitrator has been appointed.
- §55-10-11 describes the steps required to initiate an arbitration proceeding, including a requirement that service be accomplished in an agreed manner, service authorized for the commencement of the action or, by certified or registered mail, return receipt requested and obtained.
- §55-10-12 allows for separate arbitration proceedings to be consolidated by a court.
- §55-10-13 provides that, in the event the parties are unable to select an arbitrator, or an arbitrator becomes unable to fulfill his duties, the court can appoint an arbitrator. An arbitrator so appointed

has all the powers of an arbitrator appointed pursuant to the parties' arbitration agreement. This section also provides that, if an arbitration agreement calls for arbitrator neutrality, then no one with a "known, direct and material interest in the outcome of the arbitration proceeding or a known, existing and substantial relationship with a party" may serve as an arbitrator.

- §55-10-14 requires disclosure by an arbitrator of any facts that "a reasonable person would consider likely to affect the impartiality of the arbitrator in the arbitration proceeding," and lays out the steps to be taken if the arbitrator does disclose a conflict that merits disqualification or fails to do so.
- §55-10-15 provides that, when panels of arbitrators sit, their powers must be exercised by a majority.
- §55-10-16 grants arbitrators the same civil immunity as that afforded to judges of the State of West Virginia, and provides that arbitrators are not competent to testify in a judicial proceeding, unless certain conditions exist, such as when the arbitrator's testimony is necessary to determine the claim of an arbitrator against a party to a proceeding or on a party's motion to vacate. If a party commences an action against an arbitrator that seeks to compel actions that are prohibited by the arbitrator or arbitration organization is entitled to attorney's fees and reasonable expenses of litigation.
- §55-10-17 lays out the arbitration process generally, granting the arbitrator broad discretion to conduct the arbitration in a manner appropriate "for a fair and expeditious disposition of the proceeding." This section permits summary disposition under certain circumstances, sets the manner in which an evidentiary hearing is to be convened and lays out certain necessary elements of that hearing.
- §55-10-18 guarantees a right to representation by a West Virginia licensed attorney.
- §55-10-19 addresses procedural matters concerning witnesses, subpoenas, depositions and discovery. Specifically, this section permits an arbitrator to issue subpoenas for the attendance of witnesses and provision of records and evidence for an arbitration hearing, grants the arbitrator discretion to permit appropriate discovery, to compel a party to comply with a discovery order, and to issue a protective order if appropriate. Any order issued by an arbitrator under this section may be enforced by a court if necessary.
- §55-10-20 allows a party to submit an arbitration award to a circuit judge for enforcement and to incorporate any pre-award ruling therein. This section also requires the court to confirm the award "unless the court vacates, modifies or corrects the award" as provided under later sections of the article.
- §55-10-21 requires an arbitrator to make a record of the award. Such award must set forth findings of fact and conclusions of law that support the award, and must be done within the time specified within the agreement, or within the time ordered by the court.
- §55-10-22 identifies certain limited circumstances in which an arbitrator, on motion by a party, may modify or correct an award. A party making such a motion must provide notice to all parties, and any objections by other parties must be given within ten days. This section also allows a court to resubmit a claim to an arbitrator under certain circumstances if the award is before the court for confirmation, vacatur or modification under later provisions of the article.
- §55-10-23 permits an arbitrator to award punitive damages and/or reasonable attorney's fees if those are permitted in a civil action concerning the same cause of action, and further permits the arbitrator to award "such remedies as the arbitrator considers just and appropriate under the

circumstances of the arbitration proceeding.” This section requires a statement by the arbitrator justifying in both fact and law the award of any attorney’s fees or punitive damages. An additional provision requires that any expenses and fees that are ordered paid as part of the arbitrator’s award must be awarded pursuant to the terms of the parties’ arbitration agreement.

- §55-10-24 permits a party to apply to the court to confirm an award ordered by an arbitrator.
- §55-10-25 addresses vacating an arbitration award, and sets forth limited circumstances in which a court may vacate an award made in an arbitration proceeding, including:
 - corruption, fraud or other undue means
 - evident partiality, misconduct or corruption by an arbitrator
 - exceeding an arbitrator’s powers, among others.
 - Procedures for challenging an award and steps to be taken after an award is vacated are also laid out and include a provision that allows the court to order a rehearing.
- §55-10-26 identifies limited circumstances in which a court may modify or correct an award made by an arbitrator. A motion seeking this relief must be made within ninety days after the movant receives notice of the award or notice of a modified or corrected award.
- §55-10-27 directs court to enter judgment in conformity with the arbitration award, which allows for the judgment to be recorded, docketed and enforced. Lists certain costs that may be allowed for judicial proceedings subsequent to arbitration, including attorney’s fees in certain cases.
- §55-10-28 grants jurisdiction to enforce arbitration agreements and enter conforming judgments to courts with jurisdiction over the controversy.
- §55-10-29 specifies the appropriate venue for making application to courts.
- §55-10-30 permits appeals to be taken of certain circuit court actions, including:
 - denying a motion to compel arbitration
 - granting or denying a motion to compel arbitration issued in an action filed pursuant to the provisions of the West Virginia Consumer Credit Protection Act
 - granting a motion to stay arbitration
 - confirming or denying confirmation of an award
 - modifying or correcting an award
 - vacating an award without directing a rehearing
 - final judgment
- §55-10-31 provides that the Act will be interpreted in such a way as to “promote uniformity of the law with respect to its subject matter among states that enact it.”
- §55-10-32 confirms that the provisions in this article comply with Section 102 of the Electronic Signatures in Global and National Commerce Act, which ensures the validity of contracts entered into electronically.
- §55-10-33 clarifies that the article does not retroactively affect actions already in process at the time of its adoption, nor does not affect rights that have already accrued to the parties.

CODE REFERENCE: West Virginia Code §55-10-1, §55-10-2, §55-10-3, §55-10-4, §55-10-5, §55-10-6, §55-10-7 and §55-10-8 – amended; §55-10-9, through §55-10-25, §55-10-26 through §55-10-33 – new

DATE OF PASSAGE: March 14, 2015

EFFECTIVE DATE: July 1, 2015

ACTION BY GOVERNOR: Signed March 31, 2015

Senate Bill 88

Creating WV Clearance for Access: Registry and Employment Screening Act

This bill creates the West Virginia Clearance for Access: Registry and Employment Screening program. The program would require background and fingerprint checks on individuals who are applicants for employment with covered providers.

- “Covered provider” means the following facilities or providers:
- A skilled nursing facility;
- A nursing facility;
- A home health agency;
- A provider of hospice care;
- A long term care hospital;
- A provider of personal care services;
- A provider of adult day care;
- A residential care provider that arranges for, or directly provides, long term care services, including an assisted living facility;
- An intermediate care facility for individuals with intellectual disabilities; and
- Any other facility or provider required to participate in the West Virginia Clearance for Access: Registry and Employment Screening program as determined by the secretary by legislative rule.

The bill also sets forth disqualifying offenses that would prohibit someone from employment.

- “Disqualifying offense” means:
- A conviction of any crime described in 42 U. S. C. §1320a-7(a); or
- A conviction of any other crime specified by the secretary in rule, which shall include crimes against care-dependent or vulnerable individuals, crimes of violence, sexual offenses and financial crimes.

As structured, a person seeking employment with a covered provider will need to undergo a background check. The employer will do an initial pre-screening of the registry to determine if there are any negative findings. If no negative findings, the person may be provisionally employed for no more than 60 days pending notification of a background check. If the background check returns with no disqualifying offenses, then the person may be employed. If the person has a disqualifying offense, then the person may not be employed. The bill additionally provides a procedure for appeal if the applicant feels the information obtained during the background check is incorrect and an allowance.

CODE REFERENCE: West Virginia Code §15-2-24 – amended; §16-46-1 through §16-46-9 – new

DATE OF PASSAGE: March 14, 2015

EFFECTIVE DATE: June 12, 2015

ACTION BY GOVERNOR: Signed April 2, 2015

Senate Bill 89

Providing Prosecuting Attorneys Institute's council establish Executive Director's salary.

This bill provides that the salary of the Executive Director of the Prosecuting Attorneys Institute shall be established by the Prosecuting Attorneys Institute Executive Council and shall be at least \$70,000 annually.

CODE REFERENCE: West Virginia Code §6-7-2a and §7-4-6 – amended

DATE OF PASSAGE: March 11, 2015

EFFECTIVE DATE: June 9, 2015

ACTION BY GOVERNOR: March 18, 2015

Senate Bill 106

Excepting professional engineer member from sanitary board when project engineer is under contract

Previous code required a sanitary board, during the construction period, to have a registered professional engineer on the board. The bill removes this requirement if a registered professional engineer is under contract for the project.

CODE REFERENCE: West Virginia Code §16-13-18 – amended

DATE OF PASSAGE: March 12, 2015

EFFECTIVE DATE: March 12, 2015

ACTION BY GOVERNOR: Signed March 24, 2015

Senate Bill 140

Amending State Administrative Procedures Act

This bill was recommended for passage by the Legislative Rule-Making Review Committee. The bill makes a number of changes to Chapter 29A, the State Administrative Procedures Act, in order to better align the Code with current practice and to add additional code sections to facilitate the rule-making process.

Two new sections are added to state code.

The first, §29A-1-3a, clarifies that technical amendments to a current rule (including typos, punctuation, internal code citations, addresses and phone numbers) do not require the rule to go through the legislative rule-making review committee. Instead, agencies can file the corrected rule with the Secretary of State's office. The second new section, §29A-1-3b, concerns void rules and clarifies that when an agency ceases to exist, the agency rules are automatically void.

One section of code, §29A-2-8, is repealed. This code section placed limitations on an agency's ability to duplicate its own rules, or to obtain copies of those rules other than from the Secretary of State, except under certain circumstances. Additional amendments to the Code made by this bill include:

A new definition added in §29A-1-2 defining "legislative exempt rule," as a rule that is "promulgated by an agency or relating to a subject matter that is exempt from the rule-making provisions" of chapter 29A. Additional changes are made throughout the chapter to identify the manner in which legislative exempt rules are to be handled.

Amendments to §29A-3-1a clarifying that an agency seeking to amend an existing rule must re-file the entirety of the rule rather than simply those parts of the bill that are being changed, and further clarifying that new language be underlined and removed language must be stricken through in the rule submitted to rule-making.

§29A-3-4 sets forth the procedures for filing legislative exempt rules and notices thereof with the Secretary of State's Office, but clarifies that legislative exempt rules and other procedural and interpretive rules are not void for failure to comply with these procedures. §29A-3-8 adds language on the effective date of legislative rules to allow the effective date to be set by other sections of applicable code. Similar changes in §29A-3-13 modify the effective date of non-exempt legislative rules that are filed with the State Register to the filing date, or to another date fixed by the agency.

Finally, §29A-3-15 modifies the procedures for handling emergency legislative rules. The bill adds a requirement that an agency filing a proposed emergency rule include therewith "a listing of state agencies, professions, businesses and other identifiable interest groups affected by the proposed emergency rule." An agency's good faith failure to provide a comprehensive list is not a basis for disapproval of the emergency rule. The bill also clarifies that an emergency rule expires upon an agency's failure to file a proposed rule addressing the same subject matter following the close of the public comment period.

CODE REFERENCE: West Virginia Code §29A-1-2, §29A-3-1a, §29A-3-4, §29A-3-8, §29A-3-13 and §29A-3-15 – amended; §29A-1-3a and §29A-1-3b – new; §29A-2-8 – repealed

DATE OF PASSAGE: March 14, 2015

EFFECTIVE DATE: March 14, 2015

ACTION BY GOVERNOR: Signed March 31, 2015

Senate Bill 237

Creating Captive Cervid Farming Act

The bill amends the provisions of the WV Code by adding a new article to chapter 19 entitled the "Captive Cervid Farming Act." The act requires that any person that operates a captive cervid farming facility in the state be licensed by the Department of Agriculture. The Department would be charged with the duty of regulating captive cervid farming facilities, including the regulation of the movement of captive cervids with documentation of the origin and destination of all shipments of captive cervids and the enforcement of the prohibition of the receipt by any captive cervid farming facility of live captive cervids or any byproduct thereof, or captive cervid genetic materials from a captive cervid farming facility that has had a confirmed chronic wasting disease or tuberculosis positive cervid in the last 60 months.

The bill creates two classes of licenses for captive cervid farming facilities. Class One licenses for facilities to breed and propagate captive cervids, and create cervid byproducts for sale to others have a fee of \$375.00 each. Class Two licenses for facilities to breed, propagate, harvest or slaughter captive cervids, create cervid byproducts, permit hunting of captive cervids or sell venison to others have a fee of \$750.00 each. The licenses must be renewed annually. The Department may also issue a provisional license for those facilities not yet built, but the facility may not operate until fully constructed, inspected and approved by the Department. Licenses are not transferable and a change in ownership of a facility does not transfer the license.

The bill provides transition provisions for facilities currently operating in the state and gives these facilities the authority to continue to operate until the Department makes available applications for licenses pursuant to the Act. Current facilities must apply within 60 days of the applications becoming available.

The bill provides that the owner or the customer of an owner of a facility operating pursuant to the Act that is harvesting captive cervids from the facility is not subject to current statutory provisions relating to importation of wildlife, propagation of wildlife or private game farms regulated by the Division of Natural Resources.

The Department has the authority to inspect facilities, take samples or specimens to determine compliance with the license and with the law. If violations are found, the Commissioner may issue warnings; impose civil penalties of not more than \$1000.00 plus the costs of investigation; suspend, revoke or modify a license; obtain declaratory judgments that a violation has occurred or obtain an injunction.

The bill also provides criminal penalties for the following acts:

- the release or permitting of a release of a captive cervid from a captive cervid farming facility;
- causing the entry or introduction of wild cervids into a captive cervid farming facility; and
- the ceasing of operation or abandonment by the owner of a captive cervid farming facility without compliance with the Act or rules or regulations promulgated thereunder.

A person violating (1) or (2) above, is guilty of a misdemeanor and upon conviction, shall be confined in jail for not more than 90 days or fined not more than \$300.00 or both. A subsequent conviction would constitute a misdemeanor with a penalty of confinement in jail for up to 1 year or a fine of not more than \$1000.00 or both. A person intentionally or knowingly violating (1), (2) or (3) above, is guilty of a felony and upon conviction, shall be confined in a state correctional facility for not less than 1 nor more than 3 years, or fined not more than \$1000.00 or both.

The Commissioner is to propose legislative rules to administer the Act and any rule promulgated before September 1, 2015, may be emergency rules.

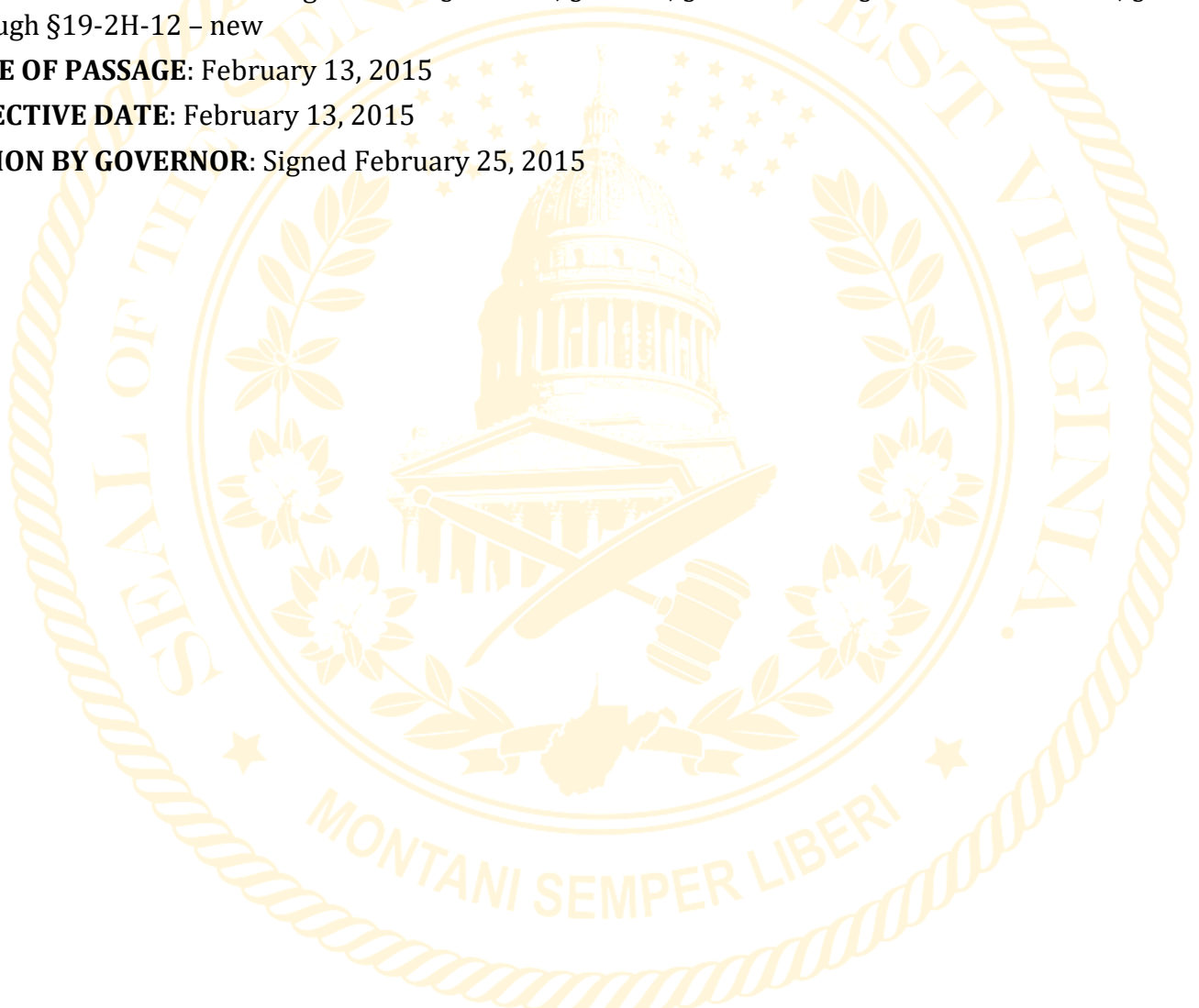
The bill also amends provisions of the WV Code relating to the production of nontraditional agriculture products by eliminating the exception for white-tailed deer and their subspecies from and adding captive cervids regulated pursuant to the Act to the current provisions of the code relating to the production of nontraditional agriculture products. It also amends the provisions of the WV Code relating to wildlife and specifically excepts captive cervids regulated pursuant to the Act from the term “game animal,” “wild animals,” and “wildlife”; and excepts captive cervid farming facilities from the term “preserve.” It also excepts captive cervids from current statutory prohibitions and regulations relating to sale or transportation of wildlife.

CODE REFERENCE: West Virginia Code §19-29-2; §20-1-2; §20-2-11 and §20-2-12 – amended; §19-2H-1 through §19-2H-12 – new

DATE OF PASSAGE: February 13, 2015

EFFECTIVE DATE: February 13, 2015

ACTION BY GOVERNOR: Signed February 25, 2015



Senate Bill 238

Exempting county boards of education from liability arising from unorganized recreation

The bill limits the liability of County boards of education for loss or injury arising from the use of school property made available for unorganized recreation. County boards remain liable for acts or omissions which constitute gross negligence or willful and wanton conduct.

CODE REFERENCE: West Virginia Code §18-5-19 and §18-5-19d – amended

DATE OF PASSAGE: February 25, 2015

EFFECTIVE DATE: May 26, 2015

ACTION BY GOVERNOR: Signed March 5, 2015

Senate Bill 248

Requiring certain insurance and owner information be provided following car accident

This bill requires the driver of any vehicle involved in an accident resulting in personal injury or destruction of property to provide, if physically able, specified insurance and vehicle owner information to the other driver. If physically able, the driver is to render aid to any person injured in the crash.

CODE REFERENCE: West Virginia Code §17C-4-3 – amended

DATE OF PASSAGE: March 14, 2015

EFFECTIVE DATE: June 12, 2015

ACTION BY GOVERNOR: Signed March 24, 2015

Senate Bill 249

Prohibiting straight party voting

This bill eliminates straight party voting by use of a single mark or punch on a ballot. To accomplish this purpose, the bill amends a number of sections of code that referenced straight party voting. First, the bill includes express language prohibiting a ballot from offering a voter a straight party voting option. With respect to electronic voting, the bill eliminates the requirement that voting machines offer a straight-ticket option. Additionally, the bill deletes references to straight-ticket voting in the voting instructions and ballot arrangement and eliminates as unnecessary directives relating to how to count votes cast on ballots in which a straight ticket vote is marked.

CODE REFERENCE: West Virginia Code §3-4A-9, §3-4A-11a, §3-4A-27, §3-6-2, §3-6-3, §3-6-5 and §3-6-6 – amended

DATE OF PASSAGE: March 11, 2015

EFFECTIVE DATE: June 9, 2015

ACTION BY GOVERNOR: Signed March 25, 2015

Senate Bill 255

Eliminating certain boards, councils, task forces, commissions and committees

This bill seeks to eliminate the following boards, councils, committees, panels, tasks forces and commissions that were determined by the Governor to be unnecessary, inactive or redundant:

- West Virginia Sheriffs' Bureau;
- Clinical Laboratories Quality Assurance Advisory Board;
- Care Home Advisory Board;
- Comprehensive Behavioral Health Commission;
- Public and Higher Education Unified Educational Technology Strategic Plan, including the Governor's Advisory Council for Educational Technology;
- West Virginia Consortium for Undergraduate Research and Engineering;
- Governor's Commission on Graduate Study in Science, Technology, Engineering and Mathematics;
- West Virginia Rural Health Advisory Panel;
- Ohio River Management Fund Advisory Board;
- Occupational Safety and Health Review Commission;
- Occupational Safety and Health Advisory Board;
- Environmental Assistance Resource Board;
- Commercial Hazardous Waste Management Facility Siting Board;
- Workers' Compensation Board of Managers;
- State Medical Malpractice Advisory Panel;
- West Virginia Steel Futures Program, including Steel Advisory Commission;
- West Virginia Health Insurance Plan Board;
- Alternative Dispute Resolution Commission; and
- Sexually Violent Predator Management Task Force.

CODE REFERENCE: West Virginia Code §15-8-1, through §15-8-12, §16-5J-5, §16-5T-1, §16-42-1 through §16-42-6, §18-2J-1 through §18-2J-7, §18B-1C-3, §18B-14-11, §18B-16-6, §20-2B-2a, §21-3A-10, §21-3A-18, §21-3B-3, §22C-5-1 through §22C-5-8, §23-1-1a, §29-12B-4, §29-12B-5, §31-16-1 through §31-16-4, §33-48-2, §33-48-3, §55-15-1 through §55-15-6, §62-11E-1 through §62-11E-3 - repealed

DATE OF PASSAGE: February 20, 2015

EFFECTIVE DATE: May 21, 2015

ACTION BY GOVERNOR: Signed March 3, 2015

Senate Bill 261

Clarifying definition of "owner" of dam

This bill refines the definition of "owner" of a dam to exclude the owner of the land upon which a dam is maintained by a sponsoring agency from responsibility for repairs, maintenance or damage arising from regular operation of the dam. The bill further protects the owner of the land on which a dam is located from liabilities for any of the deficiencies of the dam, as long as the owner of the dam does not intentionally damage or interfere with the regular operation of the same.

CODE REFERENCE: West Virginia Code §22-14-3 – amended

DATE OF PASSAGE: March 14, 2015

EFFECTIVE DATE: June 12, 2015

ACTION BY GOVERNOR: Signed March 24, 2015

Senate Bill 262

Transferring CHIP and Children's Health Insurance Agency from Department of Administration to DHHR

This bill transfers the Children's Health Insurance Program and Children's Health Insurances Agency from the Department on Administration to the Department of Health and Human Resources. The bill also provides for orderly transfer of functions, funds and accounts, and clarifies the definition of "Children's Health Insurance Agency".

CODE REFERENCE: West Virginia Code §5-16B-1 and §5-16B-2 – amended

DATE OF PASSAGE: February 18, 2015

EFFECTIVE DATE: May 19, 2015

ACTION BY GOVERNOR: Signed March 25, 2015

Senate Bill 273

Relating to brewer, resident brewer and brewpub licensing and operations

This bill clarifies, revises and adds definitions pertaining to the sale of nonintoxicating beer and nonintoxicating craft beer. The bill states the requirements for a sealed growler and also sets forth the requirement that growlers may only be thirty-two or sixty-four ounces in size. This bill authorizes brewers and resident brewers with limited manufacturing in this state to:

- Sell up to four growlers per customer per day for off premise consumption and not for resale. There is no fee.
- Offer complimentary samples of nonintoxicating beer and nonintoxicating craft beer at its manufacturing facility. The samples can only be two ounces and no person can receive more than ten two-ounce samples in one day. The brewers must offer complimentary food with the samples as well as verify that the person is twenty-one or over.
- Advertise the brands of nonintoxicating beer or nonintoxicating craft beer.
- Sell no more than 25,000 barrels per calendar year.
- There is no additional fee for a licensed brewer or resident brewer to sell growlers.

The bill authorizes licensed brewpubs, Class A retail dealers, Class B retail dealers, private clubs, Class A retail licensees or Class B retail licensees to sell up to 4 growlers per customer per day for off premise consumption and not for resale. There is an annual fee of \$100. The bill sets the requirements for filling and refilling growlers, including labeling and sanitation. It further, changes the license fees for brewers and resident brewers (was \$1,500 for all) to:

- less than 12,500 barrels - \$500 for each place of manufacture;
- 12,501 barrels up to 25,000 barrels - \$1,000 for each place of manufacture; and
- more than 25,001 barrels - \$1500 for each place of manufacture.

Provided, that the bill would allow non-resident brewers that produces less than 25,000 barrels under this section a year could choose to either pay a \$1,500 flat annual license fee and not be subject the annual reporting requirements or file a written application with the commissioner to be subject to the variable license fees under subdivision (b)(3) and the requirements under subsections (c), (d) and (e). The bill decreases the license fee for brew pubs from \$1,000 to \$500 for each place of manufacture. It also requires brewers and resident brewers to estimate and report the number of barrels it will produce during the license period. At the end of the license period, the brewer or resident brewer must report its total production and pay the higher license fee if it changes. The bill removes the bond requirement for a brewpub license.

CODE REFERENCE: West Virginia Code §11-16-3, §11-16-6, §11-16-9 and §11-16-12 – amended; §11-16-6a and §11-16-6b – new

DATE OF PASSAGE: March 14, 2015

EFFECTIVE DATE: June 12, 2015

ACTION BY GOVERNOR: Signed March 24, 2015

Senate Bill 274

Relating to TANF program

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

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

DATE OF PASSAGE: March 14, 2015

EFFECTIVE DATE: June 12, 2015

ACTION BY GOVERNOR: Signed March 31, 2015

Senate Bill 280

Allowing well work permit transfers

This bill permits the transfer of well work permits, such as in the case of an asset purchase, upon approval of the Secretary of the Department of Environmental Protection. This changes the current law, under which well work permits are nontransferable and purchasers of assets must begin the application process over upon transfer of title. Approval of the secretary of DEP must be obtained prior to the transfer of the permits, must be in written form and must be supported by a finding that the proposed transferee meets all requirements for holding a well work permit. The transfer application shall be made upon forms prescribed by the secretary of DEP and must be accompanied by a permit transfer fee of \$500.00. Additionally, the transferee must provide notice to all parties entitled to notice of the original permit application and must update the “emergency point of contact” information required by §22-6A-7(b)(13).

CODE REFERENCE: West Virginia Code §22-6A-7 – amended

DATE OF PASSAGE: January 28, 2015

EFFECTIVE DATE: January 28, 2015

ACTION BY GOVERNOR: Signed February 4, 2015

Senate Bill 283

Relating to state banking institutions

This bill deletes the current requirement of a board resolution and legal advertisement when a banking institution wants to change the hours or days it's open for business. The bill requires the institution to provide 45 days advance written notice to the Commissioner of Financial Institutions and to post signs at the bank. The bill also amends the expedited procedure for authorization of branch banks by reducing the amount of time from 35 to 21 days the notice must be filed and the Commissioner must respond accepting or rejecting of the branch.

CODE REFERENCE: West Virginia Code §31A-4-40 and 31A-8-12d – amended

EFFECTIVE DATE: June 9, 2015

DATE OF PASSAGE: March 11, 2015

ACTION BY GOVERNOR: Signed March 18, 2015

Senate Bill 286

Relating to compulsory immunizations of students; exemptions

This bill rewrites the code sections relative to compulsory immunizations for school children. It sets forth the immunizations that are required for public school attendance in code.

The passed version of the bill codifies the process for obtaining a medical exemption and provides that an exemption would be approved by the State Health Officer who is the Commissioner for the Bureau for Public Health. The Commissioner may appoint an Immunization Specialist who would be a physician who could act as his or her designee in the exemption process.

Finally, the bill alters the make-up of the Immunization Advisory Committee. This committee is to advise the Secretary on the changing needs and opportunities for immunization from known diseases.

CODE REFERENCE: West Virginia Code §16-3-4 and §16-3-5 – amended

DATE OF PASSAGE: March 18, 2015

EFFECTIVE DATE: June 16, 2015

ACTION BY GOVERNOR: Signed March 31, 2015

Senate Bill 294

Eliminating certain unnecessary, inactive or redundant councils, committees and boards

The purpose of this bill is to eliminate certain councils, committees and boards deemed unnecessary, inactive or redundant, as well as remaining antiquated unnecessary code provisions.

More specifically, the bill:

- Eliminates the Council for Community and Economic Development and moves to duties and authority to the Director of the West Virginia Development Office;
- Eliminates the Statewide Interstate Mutual Aid Committee under MAPS;
- Terminates the Principals Standards Advisory Council (Education); and
- Terminates the West Virginia Health Insurance Planning Board (Insurance).

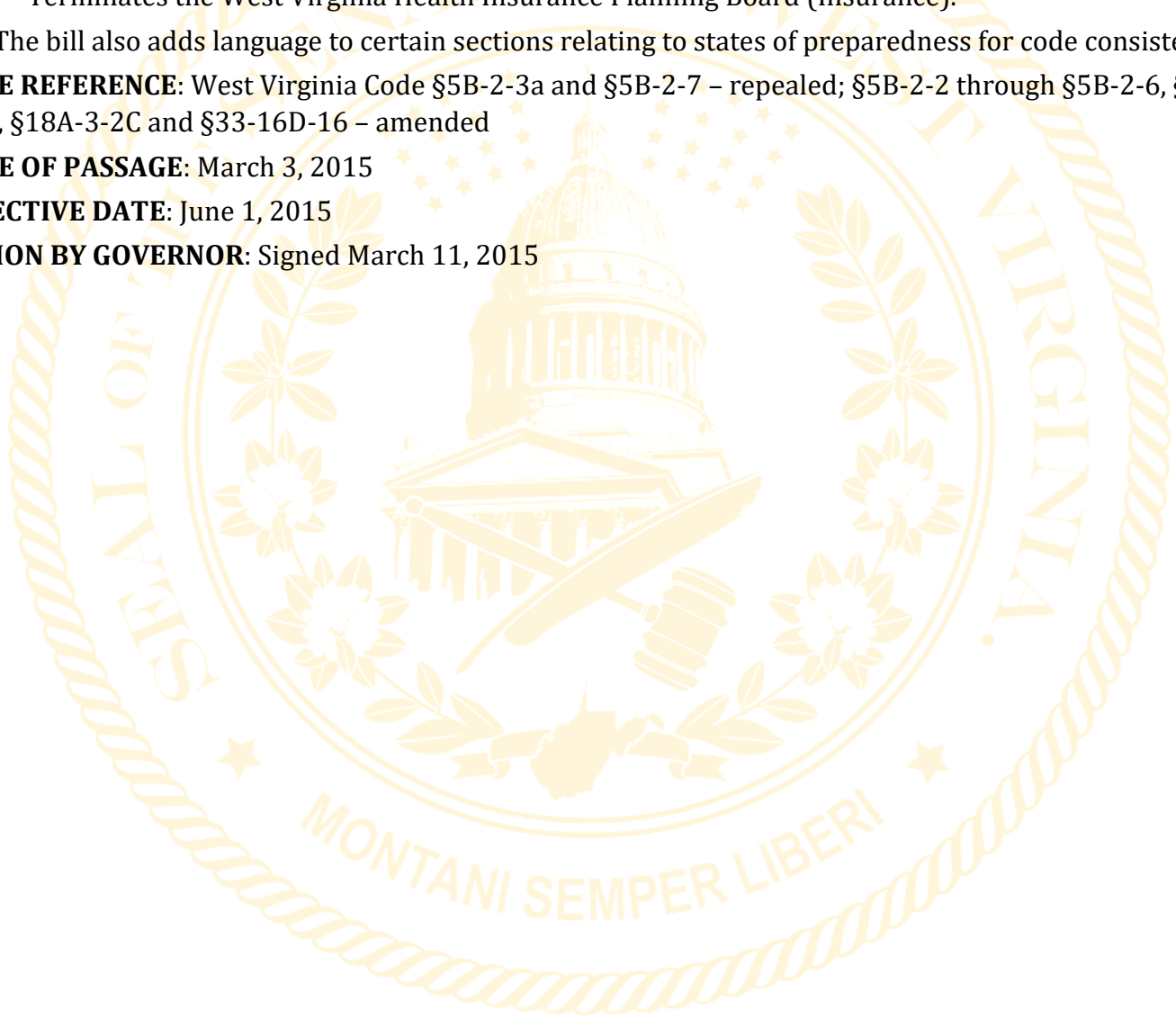
The bill also adds language to certain sections relating to states of preparedness for code consistency.

CODE REFERENCE: West Virginia Code §5B-2-3a and §5B-2-7 – repealed; §5B-2-2 through §5B-2-6, §15-5-28, §18A-3-2C and §33-16D-16 – amended

DATE OF PASSAGE: March 3, 2015

EFFECTIVE DATE: June 1, 2015

ACTION BY GOVERNOR: Signed March 11, 2015



Senate Bill 295

Establishing appeal process for DHHR Board of Review and Bureau for Medical Services decisions

This bill establishes within the Bureau for Medical Services (BMS) a Board of Review to review grievances of applicants and recipients of state assistance, federal assistance, federal-state assistance and welfare assistance, as well as to providers of Medicaid services.

The bill defines key terms. It requires the Board of Review to provide a “fair, impartial and expeditious grievance and appeal process.” Any party adversely affected or aggrieved by a final decision or order of BMS may seek judicial review. To effectuate the appeal, a copy of the petition must be served upon the agency stating the reason for the appeal. The underlying decision of the agency is not stayed or superceded by the filing of an appeal. Additionally, the agency is required to provide a copy of the entire record to the Circuit Court. The bill identifies what documents are to be included in the record and also includes provisions for the cost of preparing the record. The Circuit Court is permitted to hear issues in the record but may also take additional testimony on issues beyond what is set forth in the record.

The actions which the court may take are set forth in the bill. These include affirming the decision of the Board of Review, remanding the matter for further proceedings or reversing the decision. A reversal requires that the court find that a substantial right of the petitioner was prejudiced because of the BMS decision that:

- violated constitutional or statutory provisions
- exceeded the agency’s authority
- was made through unlawful procedures
- was affected by other error of law
- was clearly wrong based up on reliable evidence
- was arbitrary and capricious, an abuse of discretion, or an unwarranted exercise of discretion.

The judgement of the Circuit Court is final unless reversed by the Supreme Court.

CODE REFERENCE: West Virginia Code §9-2-13 – new

DATE OF PASSAGE: March 14, 2015

EFFECTIVE DATE: June 12, 2015

ACTION BY GOVERNOR: Signed April 1, 2015

Senate Bill 298

Clarifying funds within Public Employees Retirement Fund

This bill amends the current section concerning unified accounting for the Public Employees Retirement System to state that all references to the members deposit fund, the employers accumulation fund, the retirement reserve fund, the income fund and the expense fund mean the Public Employee’s Retirement Fund.

CODE REFERENCE: West Virginia Code §5-10-28 – amended

DATE OF PASSAGE: February 20, 2015

EFFECTIVE DATE: May 21, 2015

ACTION BY GOVERNOR: Signed March 3, 2015

Senate Bill 302

Relating to state retirement plans

This bill amends the provisions of the Code which disqualify a member for public retirement plan benefits. It adds the latest plan put under the administration of Consolidated Public Retirement Board, the Municipal Police Officers and Firefighters Retirement System. It also clarifies that any person who transferred from the Teachers' Deferred Compensation to the Teachers' Retirement System and whose benefits have been terminated for less than honorable service may not be refunded any transferred vested employer contributions.

CODE REFERENCE: West Virginia Code §5-10A-2 and §5-10A-6 – amended

DATE OF PASSAGE: February 20, 2015

EFFECTIVE DATE: May 21, 2015

ACTION BY GOVERNOR: Signed March 5, 2015

Senate Bill 304

Relating to farmers markets

The purpose of this bill is to require the West Virginia Department of Health and Human Resources to establish a uniform farmers market vendor permit that is valid statewide. Current permit fees and requirements for farmers market vendors are handled by local health departments and can vary widely from county to county. A permit is required in each county because food permits are currently not recognized across county lines, putting additional regulatory and fiscal burdens on vendors selling in more than one county. The bill prohibits additional, unnecessary and duplicative permits by a health department. As amended by the Senate Committee on Agriculture, the permit would cost \$15 annually. The bill defines “farm and food products” and requires that they be labeled “West Virginia grown” or otherwise properly labeled.

Four types of farmers markets are defined:

- a traditional farmers market,
- an on-farm market or farm stand
- an online farmers market
- a consignment farmers market that will require a food establishment permit and not individual vendor permits.

Nothing in the bill eliminates or limits other state and federal rules and regulations that apply to certain farm and food products. DHHR, in conjunction with the Department of Agriculture, shall establish rules to implement the article based upon already established memoranda. This bill was recommended for introduction and passage during the Regular Session of the Legislature by the Committee on Agriculture and Agribusiness following an Interim study pursuant to SCR 42 of 2014 Regular Session.

CODE REFERENCE: West Virginia Code §19-35-1 through §19-35-4 – new

DATE OF PASSAGE: March 14, 2015

EFFECTIVE DATE: June 12, 2015

ACTION BY GOVERNOR: Signed March 31, 2015

Senate Bill 310

Exempting nonprofit public utility companies from B&O tax

The bill amends the provisions of the WV Code relating to exemptions to the state business and occupation tax. The bill exempts nonprofit water and sewer companies governed by the Public Service Commission and organized and operated for the exclusive benefit of their members.

CODE REFERENCE: West Virginia Code §11-13-3 – amended

DATE OF PASSAGE: March 14, 2015

EFFECTIVE DATE: June 12, 2015

ACTION BY GOVERNOR: Signed March 27, 2015

Senate Bill 312

Relating to disqualification of general election nominees for failure to file campaign finance statements

The bill modifies the section of the West Virginia Code that sets forth penalties for a candidate's failure to file a financial statement. Specifically, the bill provides that a candidate who failed to file the required reports by the eighty-fourth day before the general election, or whose reports have not been received by the eighty-fourth day, may not have his name placed on the ballot. A vacancy thus created by a candidate's failure to file constitutes a disqualification and triggers the ballot vacancy provisions found elsewhere in the election code. The bill further defines the term "grossly" as that word is used to describe "grossly incomplete" or "grossly inaccurate" financial statements, and also directs the Secretary of State to promulgate legislative rules for providing written notice to candidates and others that are not in compliance with the filing requirement sixty days after the primary or other election.

CODE REFERENCE: West Virginia Code §3-8-7 – amended

DATE OF PASSAGE: March 14, 2015

EFFECTIVE DATE: June 12, 2015

ACTION BY GOVERNOR: Signed March 31, 2015

Senate Bill 315

Relating to civil actions filed under Consumer Protection Act

This bill provides that the West Virginia Consumer Credit and Protection Act (WVCPA) should be interpreted in accordance with FTC rulings and federal court interpretations thereof. It also provides that “actual damages” under article two of the WVCPA shall mean “out of pocket loss.” Further, it provides that corporations may sue under the provisions of the WVCCPA.

CODE REFERENCE: West Virginia Code §46A-6-101, §46A-6-10, §46A-6-105, and §46A-6-106 – amended

DATE OF PASSAGE: March 14, 2015

EFFECTIVE DATE: June 12, 2015

ACTION BY GOVERNOR: Signed April 2, 2015

Senate Bill 316

Exempting new veteran owned business from certain fees paid to Secretary of State

The bill would exempt veteran-owned businesses from paying certain fees to the Secretary of State associated with business filings. The fees to be exempted would be:

- Articles of incorporation for for-profit corporation: \$50
- Articles of incorporation for non-profit corporation: \$25
- Articles of incorporation for LLC: \$100
- Agreement of general partnership: \$50
- Certificate of limited partnership: \$100
- Agreement of voluntary association: \$50
- Articles of organization of a business trust: \$50

Most of these fees go into a special revenue account used for operations by the Secretary of State. The bill defines veteran-owned business is defined as a business that is at least 51% owned by a veteran(s). The bill exempts a veteran-owned business from paying the annual report fee for the first four years after the business’s initial registration. The fee is required of all corporations, limited partnerships, domestic and foreign LLCs doing business in the state. The veteran-owned business is still be required to file the annual report, if applicable.

CODE REFERENCE: West Virginia Code §59-1-2 and 59-1-2a – amended

DATE OF PASSAGE: March 14, 2015

EFFECTIVE DATE: June 12, 2015

ACTION BY GOVERNOR: Signed March 27, 2015

Senate Bill 318

Relating to payment of wages by employers

This bill alters the frequency with which employers must pay employees by requiring employers to pay employees twice every month with a maximum of nineteen days between settlements. The bill would still permit payroll to be processed once in every two weeks but requires employees be paid at least twice every month.

CODE REFERENCE: West Virginia Code §21-5-3 – amended

DATE OF PASSAGE: March 14, 2015

EFFECTIVE DATE: June 12, 2015

ACTION BY GOVERNOR: Signed March 26, 2015

Senate Bill 322

Eliminating mandatory electronic recount of ballots in recounts

This bill removes unnecessary language concerning the handling of ballots cast electronically during any requested recount. As part of the required canvass following an election, three percent of the precincts in each county are subject to a hand-counting requirement, the purpose of which is to ensure the accuracy of the machine voting totals. To avoid duplication of these automatic recounts, the bill eliminates the requirement that an identical mandatory electronic recount of ballots occur during an election contest. It leaves unchanged a challenging candidate's ability to request a recount of one or more precincts as part of his election challenge.

CODE REFERENCE: West Virginia Code §3-4A-28 – amended

DATE OF PASSAGE: March 10, 2015

EFFECTIVE DATE: June 8, 2015

ACTION BY GOVERNOR: Signed March 18, 2015

Senate Bill 335

Creating Access to Opioid Antagonists Act

The bill permits emergency responders, state police, sheriffs, deputy sheriffs and volunteer and paid firefighters to carry and administer an opioid antagonist (Naloxone hydrochloride) in an emergency, to respond to instances of opiate overdose.

The bill contains a purpose and objectives section and defines key terms. In addition to first responders, the bill allows prescribers to offer an opioid antagonist to patients to whom they are prescribing an opioid, a relative, friend or caregiver or someone in a position to assist a person at risk. It requires the health care professional to offer information and training to the patient and their family members or caregivers.

The bill provides immunity to licensed health care providers for prescribing and dispensing an opioid antagonist, to initial responders who act in good faith and to any person possessing an opioid antagonist who, acting in good faith, administers it to a person suspected of having an opioid overdose event. It also requires that a person who administers the opioid antagonist to seek additional medical attention for a person suspected of having an opioid overdose.

Additionally, the Office of Emergency Medical Services is required to report certain information to the Legislative Commission on Health and Human Resources Accountability and the Bureau for Behavioral Health and Health Facilities. The bill specifically lists what information is required. The Office is also granted rulemaking authority to develop training requirements for prescribers.

CODE REFERENCE: West Virginia Code §30-1-7a – amended; §16-46-1 through §16-46-6 – new

DATE OF PASSAGE: February 12, 2015 (vetoed); repassed on February 26, 2015

EFFECTIVE DATE: May 27, 2015

ACTION BY GOVERNOR: The Governor vetoed the bill on February 24, 2015, for technical deficiencies. The Legislature corrected the deficiencies on February 26, 2015, and repassed the bill. The Governor signed the corrected version on March 10, 2015.

Senate Bill 336

Eliminating Health Care Authority's power to apply certain penalties to future rate applications

This bill would alter the powers and duties of the Health Care Authority by removing their authority to apply new penalties or penalties held in abeyance to any future rate applications filed with the Authority. It would change the authority of the Health Care Authority to collect from hospitals a financial obligation based upon gross revenue to amount based upon net revenue and would eliminate the authority of the Health Care Authority regarding rate review for hospitals.

CODE REFERENCE: West Virginia Code §16-29B-19 – amended

DATE OF PASSAGE: March 11, 2015

EFFECTIVE DATE: March 11, 2015

ACTION BY GOVERNOR: Signed March 24, 2015

Senate Bill 344

Relating to duty to mitigate damages in employment claims

This bill creates a new article of code to address certain damages available in employment claims and to codify a duty on the part of an employee to mitigate his or her damages, even in instances where that discharge is determined to be malicious.

First, the bill defines the terms “front pay” and “back pay.” It sets forth legislative findings and states that the purpose of the bill is to “provide a framework for adequate and reasonable compensation to those persons who have been subjected to an unlawful employment action, but to ensure that compensation does not far exceed the goal of making a wronged employee whole.”

Finally, the bill places an affirmative duty on the employee or former employee to mitigate past and future lost wages. The malice exception to the duty to mitigate damages is explicitly abolished, and the bill states that unmitigated or flat back pay and front pay awards are not an available remedy. It remains the defendant’s burden to prove the lack of reasonable diligence. With respect to the available remedies, the bill vests the trial judge with the duty to make a preliminary ruling on whether front pay or reinstatement is the appropriate remedy. If front pay is determined to be appropriate, then the judge is to determine the appropriate amount.

CODE REFERENCE: West Virginia Code §55-7E-1, §55-7E-2 and §55-7E-3 – new

DATE OF PASSAGE: March 10, 2015

EFFECTIVE DATE: June 8, 2015

ACTION BY GOVERNOR: Signed March 26, 2015

Senate Bill 351

Relating to charitable organization contribution levels requiring independent audit reports

Charitable organizations which intend to solicit contributions, donations or grants in this state are required to file a registration statement with the Secretary of State. Currently, charitable organizations which raise more than \$200,000 per year in contributions must also submit a report of an audit by an independent certified public accountant. This bill would raise the threshold to \$500,000.

Under current law, charitable organizations which raise more than \$100,000, but less than \$200,000 are required to submit a statement of financial review by an independent certified public accountant. This bill changes the threshold to \$200,000 and the ceiling to \$500,000.

CODE REFERENCE: West Virginia Code §29-19-5 – amended

DATE OF PASSAGE: March 6, 2015

EFFECTIVE DATE: June 4, 2015

ACTION BY GOVERNOR: Signed March 12, 2015

Senate Bill 352

Expanding scope of cooperative associations to goods and services including recycling

This bill amends the laws regarding cooperative associations in order to expand their scope to include a number of different goods and services, as well as recycling.

To accomplish that end, §19-4-1 expands the definitions and scope of cooperatives by adding definitions of “qualified person,” “qualified activity” and “goods and services.” “Goods and services” include food and beverages, arts and crafts, woodworking and furniture-making, and recycling, composting and repurposing materials. Recycling cooperatives are limited to being nonprofits that can only use one noncertificated motor vehicle to haul and must be recycling their own members’ recyclable goods. However, no recycling cooperative can be formed within a thirty- five mile radius of a facility that has been permitted and classified by the West Virginia Department of Environmental Protection as a mixed waste processing resource recovery facility. An exemption for recycling cooperatives is included in the motor carrier/PSC/certificate of need requirements in §24A-1-3.

Incorporating newly defined terms, §19-4-2 provides that “three or more qualified persons engaged in the production of agricultural products or the provision of goods and services” may form a cooperative association. §19-4-3 expands the qualifying purposes for a cooperative to include the expanded definitions from Section 1 to allow an association to be engaged in “one or more qualified activities in connection with the marketing or selling of agricultural products or the goods and services of its members or those purchased from other persons.”

In §19-4-4, agriculture-specific language is eliminated from the section dealing with powers of cooperative associations to correspond with the expanded definitions. Likewise, §19-4-16, the section dealing with marketing contracts, is expanded to incorporate the expanded scope of cooperative associations from purely agricultural entities to those that can engage in a number of different activities, including recycling activities. Finally, agriculture-specific language is again deleted from §19-4-22, which deals with interest in other corporations or associations, to comply with expanded definition of cooperative associations. The eligibility criteria for membership within a cooperative association, laid out in §19-4-5, is expanded to allow membership or common stock to be issued to “qualified persons, employees, volunteers and persons engaged in qualified activities,” as those terms are defined. Changes made to §19-4-13 require that bylaws for a cooperative association provide that common stock cannot be transferred to individuals “who are not qualified persons, or organizations that are not engaged in qualified activities.”

CODE REFERENCE: West Virginia Code §19-4-1, §19-4-2, §19-4-3, §19-4-4, §19- 4-5, §19-4-13, §19-4-16, §19-4-22 and §24A-1-3 – amended

DATE OF PASSAGE: March 13, 2015

EFFECTIVE DATE: June 11, 2015

ACTION BY GOVERNOR: Signed March 24, 2015

Senate Bill 357

The Coal Jobs and Safety Act of 2015

This bill creates the Coal Jobs and Safety Act of 2015. Legislative findings related to the Act are contained in §22A-1-41.

First, the bill permits construction of a coal waste pile or other coal waste storage area using demonstrated technologies or measures consistent with good engineering practices to prevent acid mine drainage discharge in §22-3-13.

The bill directs the state Department of Environmental Protection (DEP) to promulgate rules relating to contemporaneous reclamation (see §22-3-13) and the granting of inactive status with respect to a permit previously issued (see §22-3-19), giving consideration in both cases to the adoption of federal standards.

With respect to the state's Water Pollution Control Act, the bill amends §22-11-6 to extend the Clean Water Act safe harbor for compliance with National Pollutant Discharge Elimination System (NPDES) permits to Section 303 of the Clean Water Act, and with all applicable state and federal permit conditions, with certain limitations. The bill also authorizes the Secretary of DEP to promulgate an emergency rule revising aluminum water quality values using a hardness-based equation. The bill requires, in §22-11-8, that NPDES permit water quality standards be based upon the qualities of the individual discharge point and the receiving stream, and not a wholesale incorporation of state and federal water quality standards. A new section, §22-11-22a, sets forth civil penalties for violations of the provisions of any permit issued under this article.

The bill amends provisions related to the drug testing of miners. In §22A-1A-1, the bill extends the requirement for immediate temporary suspension of miners' cards in the case of a positive test for substance abuse to miners represented by a collective bargaining agreement, where it previously applied only to miners who were not so represented. Positive tests for prescription drugs cannot be excused with a prescription dated more than one year prior to the date of the drug test result.

§22A-2-6, relating to the moving of mining equipment in areas of active working, is completely rewritten by the bill. This section now requires that mining equipment being transported or trammed underground, other than ordinary sectional movements, shall be transported or trammed by qualified personnel. If it is transported in an area where trolley wire is energized, the bill prohibits anyone from being in by the equipment in the ventilating split that is passing over such equipment, except for those directly involved with transporting or trampling the equipment and shall be under the supervision of a certified foreman. To avoid accidental contact with power lines, face equipment shall be insulated and assemblies removed, if necessary, so as to provide clearance.

A proviso is added to §22A-2-28 and §22A-2-37 to permit the use of sideboards on shuttle cars on which cameras are installed. Also, §22A-2-37 is amended to extend the distance from which track may stop from the nearest working face from five hundred to fifteen hundred feet, require shelter holes to be spaced no more than one hundred five feet apart and authorizes the mine foreman to permit persons to ride on a locomotive when safe riding facilities are provided.

Finally, the bill abolishes the Diesel Equipment Commission, transferring its duties and powers to the director of the Office of Miners' Health Safety and Training (see §22A-2A-301, §22A-2A-302, §22A-2A-303, §22A-2A-304, §22A-2A-305, §22A-2A-306 and §22A-2A-307).

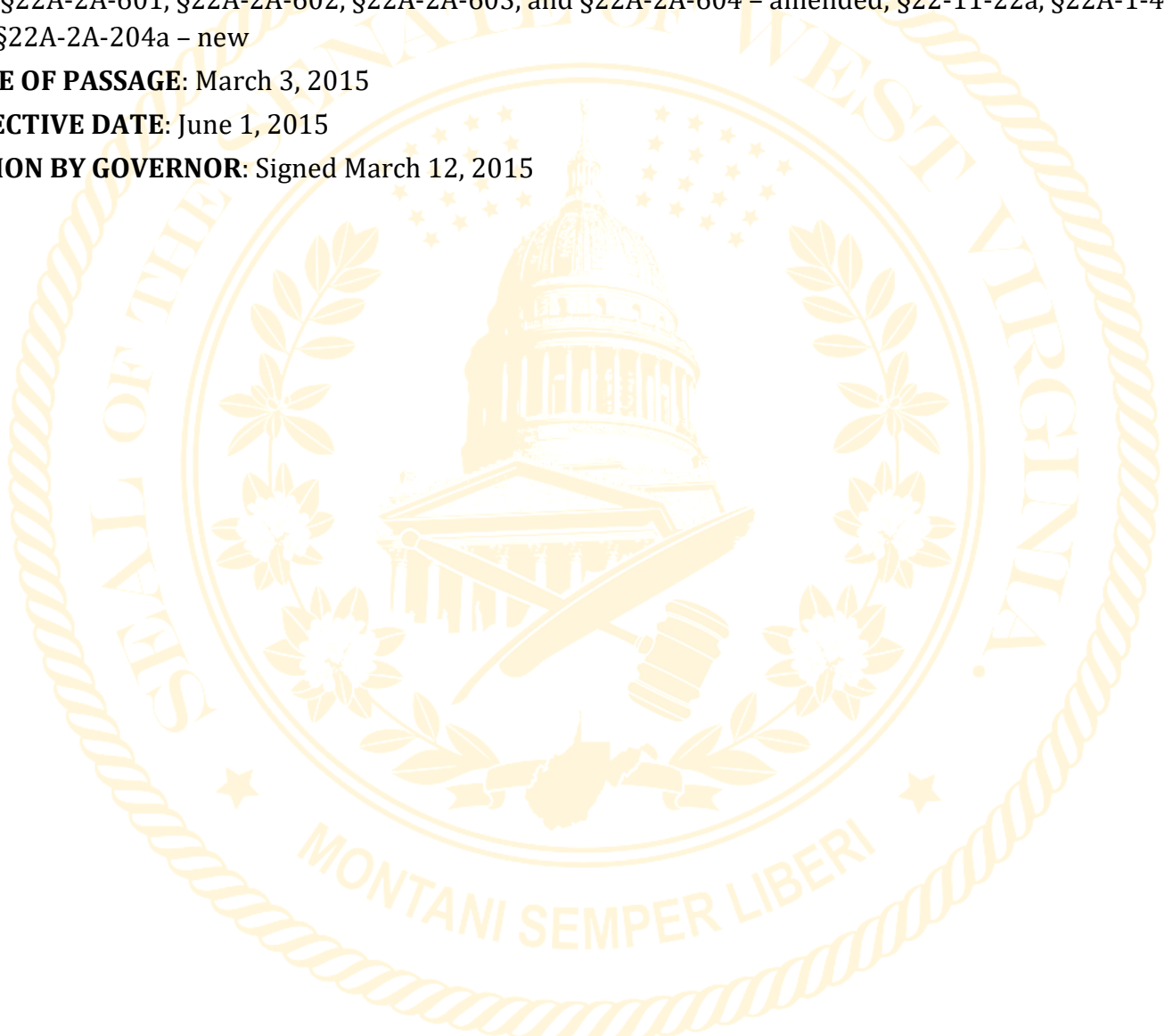
Additional references to the Diesel Equipment Commission are modified throughout the code to eliminate references to the Diesel Equipment Commission give the Director of the Office of Miners' Health, Safety and Training (defined as "director" in §22A-2A-204a) the authority previously given to the Commission (see §22A-2A-101; §22A-2A-308; §22A-2A-309; §22A-2A-310; §22A-2A-402; §22A-2A-403; §22A-2A-404; §22A-2A-405; §22A-2A-501; §22A-2A-601; §22A-2A-602; §22A-2A-603; and §22A-2A-604).

CODE REFERENCE: West Virginia Code §22A-2A-302 through §22A- 2A-307 – repealed; §22-3-13, §22-3-19, §22-11-6, §22-11-8, §22A-1A-1, §22A-2-6, §22A-2-28, §22A-2-37, §22A-2A-101, §22A-2A-301, §22A-2A-308, §22A-2A-309, §22A-2A-310, §22A-2A-402, §22A-2A-403, §22A-2A-404, §22A-2A-405, §22A-2A-501, §22A-2A-601, §22A-2A-602, §22A-2A-603, and §22A-2A-604 – amended; §22-11-22a, §22A-1-41, and §22A-2A-204a – new

DATE OF PASSAGE: March 3, 2015

EFFECTIVE DATE: June 1, 2015

ACTION BY GOVERNOR: Signed March 12, 2015



Senate Bill 360

Repealing code sections relating to book indexes and claims reports required by court clerks

This bill repeals two outdated sections of code dealing with a county circuit clerk's responsibilities. First, §51-4-9 currently requires a county circuit clerk to keep indices to such book to reference orders, records or entries. Failure to do so is punished by forfeiture of not less than \$20 nor more than \$100. Second, §51-4-11 requires Clerk of the Circuit Court to report, at the end of every term of court, a list of all claims from the court entered against the State Treasury and to keep a record book thereof. Failure to do so is punished by a forfeiture of not less than \$20 nor more than \$100.

CODE REFERENCE: West Virginia Code §51-4-9 and §51-4-11 – repealed

DATE OF PASSAGE: March 12, 2015

EFFECTIVE DATE: March 12, 2015

ACTION BY GOVERNOR: Signed March 27, 2015

Senate Bill 363

Establishing maximum rates and service limitations for reimbursement of health care services by Court of Claims

This bill allows the Court of Claims to set maximum rates and service limitation reimbursement for health care services rendered by a health care provider for claims before the court. The rates are required to be submitted to the Joint Committee on Government and Finance. There are also provisions that preclude a health care provider from charging any difference between the cost of a service and the court's payment for that service.

CODE REFERENCE: West Virginia Code §14-2A-19b – new

DATE OF PASSAGE: March 14, 2015

EFFECTIVE DATE: June 12, 2015

ACTION BY GOVERNOR: Signed March 31, 2015

Senate Bill 366

Patient Protection and Transparency Act

This bill would require the Insurance Commissioner to post information, or links to information, on its website in a consumer friendly format pertaining to each health care plan offered through the West Virginia Health Benefit Exchange. The exchange is an online portal operated in a partnership between the U.S. Department of Health Human Services and the Office of the Insurance Commissioner which enables citizens to enroll in health insurance under the ACA. The information which would be required to be made available is related to names and types of providers in the network; information about exclusions or restrictions in the plans; information on coinsurance, copayments and cost sharing under the plans; information pertaining to prescription coverage under the plans; information about appealing plan decisions; and contact information for the carrier.

CODE REFERENCE: West Virginia Code §33-50-1, §33-50-2 and §33-50-3 – new

DATE OF PASSAGE: March 11, 2015

EFFECTIVE DATE: June 9, 2015

ACTION BY GOVERNOR: Signed March 31, 2015

Senate Bill 373

Allowing wireless communication image serve as proof of motor vehicle insurance

This bill would permit an image displayed on a wireless communication device to serve as proof of insurance on a motor vehicle. This bill would require that such image contain the same information required to be contained on a certificate of insurance. The term “wireless communication device” is defined as “a handheld device used to access a wireless telephone service or a text messaging device.”

CODE REFERENCE: West Virginia Code §17D-2A-4 – amended

DATE OF PASSAGE: March 13, 2015

EFFECTIVE DATE: June 11, 2015

ACTION BY GOVERNOR: Signed March 18, 2015

Senate Bill 378

Relicensing electricians without retesting under certain circumstances

This bill permits a previously licensed electrician who did not renew his or her license to renew that license without retesting if renewed within three years of the date of the last renewal. The Committee Substitute specifies that the license may be renewed provided that the license had not been revoked and provided that the applicant pays double or triple the fee depending upon whether the license had lapsed for two or three renewal periods, respectively.

CODE REFERENCE: West Virginia Code West Virginia Code §29-3B-6 – amended

DATE OF PASSAGE: February 20, 2015

EFFECTIVE DATE: February 20, 2015

ACTION BY GOVERNOR: Signed March 3, 2015

Senate Bill 390

Authorizing PSC approve expedited cost recovery of natural gas utility infrastructure projects

This bill creates a new section of code to allow natural gas utilities to apply to the Public Service Commission to implement an infrastructure program which will permit accelerated collection of rates in compensation thereof, without waiting for a full base rate tariff filing. The bill provides for an application process, a standard for decision by the Public Service Commission and makes certain legislative findings.

CODE REFERENCE: West Virginia Code §24-2-1k – new

DATE OF PASSAGE: March 13, 2015

EFFECTIVE DATE: June 11, 2015

ACTION BY GOVERNOR: Signed March 24, 2015

Senate Bill 393

Reforming juvenile justice system

This bill was a companion piece to the committee substitute for HB 2200 which completed legislative action first. This bill is a child welfare rewrite, and part of the Governor's Juvenile Justice Package which was the result of the Pew Charitable Trust Study. This bill amends some of the sections recodified by HB 2200 and does the following:

§49-1-206 adds the following nine (9) definitions:

- "Community-based juvenile probation sanction"
- "Community services"
- "Evidence-based practices"
- "Non-violent misdemeanor offense"
- "Out-of-home placement"
- "Risk and needs Assessment"
- "Standardized Screener"
- "Technical violation"
- "Truancy Diversion Specialist"

Under current law, a juvenile who has been adjudicated delinquent may be transferred to a Division of Juvenile Services juvenile diagnosis center for a period not to exceed 60 days. As part of the diagnosis examination period, a multi-disciplinary treatment team (MDT) for the juvenile shall be convened.

Under §49-2-907, the transfer to a diagnostic center is limited to those individuals adjudicated delinquent that also have been (1) assessed as high risk by a risk and needs assessment or (2) have committed an act or acts of violence. A "risk needs assessment" is a new term defined essentially as a validated, standardized assessment that identifies specific risk factors that increase the likelihood of reoffending and the factors that can reduce the likelihood of reoffending. This bill additionally lowers the period of diagnostic examination/detention to 30 days.

§49-2-912 expressly authorizes the Division of Juvenile Services to operate community-based youth reporting centers. The Centers are intended to provide services to juveniles as an alternative to detention, corrections or out-of-home placement. This section also grants the Division of Juvenile Services rule-making authority. Additionally, the bill directs collaboration with county boards of education to provide educational services to youth.

§49-2-913 creates a new committee to oversee the implementation of reform measures intended to improve the state's juvenile justice system. The committee shall be comprised of seventeen members:

- The Governor, or his or her designee, who shall preside as chair of the committee;
- Two members from the House of Delegates, appointed by the Speaker of the House of Delegates;
- Two members from the Senate, appointed by the President of the Senate;
- The Secretary of the Department of Health and Human Resources, or his or her designee;
- The Director of the Division of Juvenile Services, or his or her designee;
- The Superintendent of the State Board of Education, or his or her designee;
- The Administrative Director of the Supreme Court of Appeals, or his or her designee;
- The Director of the Division of Probation Services, or his or her designee;
- Two circuit court judges, appointed by the Chief Justice of the Supreme Court Appeals;
- One community member juvenile justice stakeholder, appointed by the Governor;

- One juvenile crime victim advocate, appointed by the Governor;
- One member from the law-enforcement agency, appointed by the Governor;
- One member from a county prosecuting attorney's office, appointed by the Governor; and
- The Director of the Juvenile Justice Commission.

The members of the committee will serve two year terms with the ability to be reappointed. The committee directs the performance of certain functions, including an annual report by November 30th of the Governor, the President of the Senate, the Speaker of the House of Delegates and the Chief Justice of the Supreme Court of Appeals. The committee also directs the Division of Justice and Community Services to provide staff support to the Juvenile Justice Oversight Committee. The committee shall meet within 90 days of appointment and shall meet quarterly thereafter and has a sunset provision of December 31, 2020.

§49-2-1002 amends existing law relating to community-based programs and services and mandates that by January 1, 2017, at least 50% of DJS funding for community services shall be used to implement evidence-based practices. This section expands upon requirements for individualized programs of rehabilitation for any juvenile in an out-of-home placement, including a plan to return the juvenile to his or her home and a transition into community services to continue rehabilitation.

This section also requires the DHHR to create a transition plan for youth entering an out-of-home placement in their custody, and further requires that the youth transitions to nonresidential community services and out of the facility within thirty to ninety days of admission. If additional time in the facility is necessary and effective to attain rehabilitation goals, the court must find by clear and convincing evidence that additional time is necessary and may then order an extension of the time spent in the out-of-home placement facility or may order that the transition to nonresidential community services begins.

Current law requires DHHR to establish and maintain one or more rehabilitative facilities to be used exclusively for the lawful custody of status offenders. §49-2-1003 directs that rehabilitative and educational programs are to be provided at each facility. For the past decade, DHHR has contracted with DJS to place status offenders in DJS facilities. The bill expressly forbids such contracting with DJS and requires its current cessation by January 1, 2016. The bill also allows for contracting with other private and public entities.

In §49-4-403, the bill amends each judicial circuit to designate at least one day per month to hold multi-disciplinary team meetings in order to encourage attendance. It does permit additional meetings on other days when necessary.

In §49-4-406, the bill amends existing law relating to multi-disciplinary treatment to specifically include a risk and needs assessment. The bill clarifies participation to require attendance at a multi-disciplinary treatment meeting when seven days notice is provided, specifies that the appropriate school official at a multi-disciplinary team meeting is the county school superintendent or the superintendent's designee, and includes a treatment or service provider with training and clinical experience coordinating behavioral or mental health treatment in the members of the multi-disciplinary treatment team.

The bill requires the team to determine and advise the court as to the individual treatment and rehabilitation goals for each juvenile. It also requires the team to monitor progress towards the goals by each juvenile at their regular meetings and report to the court on the juveniles's progress towards his or her goals.

§49-4-409 adds out-of-home placements to the list of aftercare planning necessary by the DJS and the MDT team.

§49-4-413, requires case planning for each juvenile ordered to probation supervision, an out-of-home placement or committed to the DJS.

Case plans for juveniles sent to probations shall include:

- Identification of the actions to be taken by the juvenile and, if appropriate, the juvenile's parents, guardian or custodian to ensure future lawful conduct and compliance with the court's disposition order; and
- Identification of the services to be offered and provided to the juvenile and, if appropriate, the juvenile's parents, guardian or custodian and may include services to address mental health and substance abuse issues, education, individual, group and family counseling services, community restoration or other relevant concerns identified by the probation officer.

Case plans for juveniles sent to an out-of-home placement shall include:

- Specific treatment goals and the actions to be taken by the juvenile in order to demonstrate satisfactory attainment of each goal;
- The services to be offered and provided by the residential service providers; and
- A detailed plan designed to assure appropriate reintegration of the juvenile to his or her family, guardian, school and community following the satisfactory completion of the case plan treatment goals, including a protocol and timeline for engaging the parents, guardians or custodians prior to the release of the juvenile.

Case plans for juveniles committed to the DJS shall include:

- Specific correctional goals and the actions to be taken by the juvenile to demonstrate satisfactory attainment of each goal;
- The services to be offered and provided by the Division of Juvenile Services and any contracted service providers; and
- A detailed plan designed to assure appropriate reintegration of the juvenile to his or her family, guardian, school and community following the satisfactory completion of the case plan treatment goals, including a protocol and timeline for engaging the parents, guardians or custodians prior to the release of the juvenile.

§49-4-702 allows a court to refer a juvenile to a truancy diversion specialist for a preliminary inquiry. This section also creates a two-step diversion for juveniles, under which a prosecutor refers certain juveniles to a diversion program.

Under this diversion program:

- If the matter is a truancy offense, the referral may be to a DHHR worker, probation officer or truancy diversion specialist. Referral is mandatory unless the juvenile has a prior adjudication or "there exists a significant and likely risk of physical harm to the juvenile, a family member, or the public."
- If the matter is another status offense, referral may be to a DHHR worker or probation officer. Referral is mandatory unless the juvenile has a prior adjudication or "there exists a significant and likely risk of physical harm to the juvenile, a family member, or the public."
- If the matter is a non-violent misdemeanor, the prosecutor has the discretion whether to divert the case.

As part of the diversion program, the DHHR worker or probation officer shall:

- Assess each youth to inform the diversion agreement;
- Create a diversion agreement lasting no longer than six months;

- Obtain consent from the juvenile and his or her parents or guardian; and
- Refer the juvenile to services in the community, which, under subdivision (d)(2), may include community services, referral to services for the family, referral to community work service programs, a requirement that youth regularly attend school, community-based sanctions or any other efforts which may reasonably benefit the community, the juvenile, and his or her family or guardian.

If the DHHR worker or probation officer refers the juvenile to a service provider, the service provider must attempt to contact the juvenile and his or her family or guardian with 72 hours. The court may also issue orders to a parent or guardian that has consented to the diversion agreement. A diversion agreement tolls the statute of limitations for the underlying offense.

§49-4-702a, allows a court to refer a juvenile to a truancy diversion specialist and allows a court to refer a juvenile to community services prior to filing of a petition or during a six-month noncustodial period prior to the filing of a petition. This section also allows a court to require a parent, custodial or guardians to participate in community services ordered for a youth. It expressly bars admissibility of information obtained as a result of community services in a subsequent proceeding.

§49-4-711 requires a court to receive and consider the results of a risk and needs assessment following the adjudication of a youth but prior to or at the time of a dispositional proceeding. This section also requires a referral of a truant juvenile to a truancy diversion specialist in the dispositional options for status offenders available to the court and requires the court to include in the record the treatment and rehabilitation goals the court has accepted for the juvenile, after recommendation by the court's multi-disciplinary team, in order to guide the disposition of each juvenile.

§49-4-712 requires the DHHR to use community services for certain status offenders by prohibiting the DHHR from placing a status offender into an out-of-home placement if the juvenile (1) has had no prior adjudications for a status or delinquency matter, or (2) no prior dispositions to a pre-adjudatory improvement period or probation for the current matter. The bill provides an exception to this restriction whenever the judge "finds the existence of a significant and likely risk of physical harm to the juvenile, a family member or the public by clear and convincing evidence, and continued placement in the home is contrary to the best interests of the child."

This bill further requires a court, upon placement of a status offender in a residential facility, to issue findings of fact stating why the placement is necessary including the factors that indicate the likely effectiveness of placement in a residential facility and the community services which were previously attempted to attain the treatment and rehabilitation goals for that status offender. This bill prohibits status offenders from being placed in Division of Juvenile Services facilities after January 1, 2016.

§49-4-714 permits the court to use a standardized screener to evaluate a juvenile and obtain additional information and requires the court to receive and consider the results of a risk and needs assessment following the adjudication of a youth for a delinquent offense, but prior to or at the time of the disposition.

It ensures that court makes every effort to place a youth in the most appropriate and least restrictive alternative for each youth and the community, but requires courts to use community services for youth adjudicated (1) for a non-violent misdemeanor offense with no prior adjudications or (2) no prior dispositions to a pre-adjudatory improvement period or probation dispositions for the current matter. This section provides exclusion whenever the judge "finds the existence of a significant and likely risk of physical harm to the juvenile, a family member or the public by clear and convincing evidence, and continued placement in the home is contrary to the best interests of the child." It allows for juveniles

committed to DJS, that their maximum sentence length take into account time served in detention and requires a court to place the treatment and rehabilitation goals the court has accepted for the youth after recommendation by the MDT in the findings of fact made for each disposition.

§49-4-718 requires reports to be provided every 90 days to the court regarding juveniles on probation. Probation officers may make recommendations to the court that juveniles who are fully compliant with the terms and conditions of their probation supervision and no longer need probation supervision may be discharged. Probation officers are additionally authorized to make recommendations to the court regarding additional or changed conditions or goals necessary to achieve compliance.

§49-4-719 permits the Supreme Court of Appeals to develop a system of community-based juvenile probation sanctions and incentives. The sanctions and incentives may consist of a continuum of responses from the least restrictive to the most restrictive, developed to respond swiftly, proportionally and consistently to violations of the terms and conditions of probation.

The Supreme Court of Appeals is requested to adopt a risk and needs assessments for juvenile dispositions. §49-4-724, directs a validation study of the risk and needs assessment at least every three years. It requires that each juvenile adjudicated for a status offense or delinquent offense is required to undergo a risk and needs assessment in order to determine specific factors that predict a juvenile's likelihood of reoffending and factors that, when appropriately addressed, can reduce the likelihood of reoffending. It allows a probation officer, court official or DHHR worker trained in conducting such assessments to conduct the assessment.

§49-4-725 creates a restorative justice program to emphasize repairing the harm against the victim and the community caused by the juvenile and provides an opportunity for the youth to accept responsibility for the harm caused, and implement sanctions for the youth.

The bill allows the Court or prosecutor to divert to the restorative justice program, if the offense is (1) a status offense, or (2) a nonviolent misdemeanor offense. It directs that successful completion of a restorative justice program causes the underlying petition to be dismissed and bars the admission of information obtained as a result of a restorative justice program in a subsequent proceeding.

§49-5-103 permits Department of Health and Human Resources' social workers and Division of Juvenile Services staff access to a juvenile's records for the purpose of case planning for the juvenile.

§49-5-106 directs the Division of Juvenile Services, the Department of Health and Human Resources and the Supreme Court of Appeals to collaborate to collect aggregate outcome data for truancy diversion programs, other diversion agreements, improvement periods, probation, programs and services and out-of-home placements. Information to be collected includes referrals for a new offense within three years; subsequent adjudications within three years; and, subsequent out-of-home placements or incarceration within three years. This section also requires data collection relating to truancy and requires data collection relating to gender and race.

CODE REFERENCE: West Virginia Code §49-1-206, §49-2-907, §49-2-1002, §49-2-1003, §49-4-403, §49-4-406, §49-4-409, §49-4-702, §49-4-711, §49-4-712, §49-4-714, §49-4-718, §49-4-719 and §49-5-103 – amended; §49-2-912, §49-2-913, §49-4-413, §49-4-702a, §49-4-724, §49-4-725 and §49-5-106 – new

DATE OF PASSAGE: March 14, 2015

EFFECTIVE DATE: May 17, 2015

ACTION BY GOVERNOR: Signed March 27, 2015

Senate Bill 398

Extending expiration date for health care provider tax on eligible acute care hospitals

This bill would modify the expiration date of an upper payment limit in the state Medicaid program which allowed an additional provider taxes on eligible acute care hospitals for maximizing federal Medicaid funds. The current expiration date of June 30, 2015, would be changed to June 30, 2016. Additionally, it modifies the tax rate from the current 62/100's of one percent to 72/100's of one percent.

Current code defines what facilities are eligible. It specifically excludes state owed facilities and nonstate, but government owned facilities, critical access hospitals, licensed free-standing psychiatric or medical rehabilitation hospitals or long-term acute care hospitals.

The law provided for events that must occur prior to the imposition of the tax. These included the development of a state plan amendment, approval of the state plan amendment and a thirty day comment period. The bill also sets forth information that is required to be submitted in the state plan amendment. A special revenue account is created within the state treasury to be known as the Medicaid State Share Fund for deposits and payments to meet the provisions of the section. All of these contingencies and requirements have been met. The law also contains a list of events that would immediately suspend the collection of the tax.

CODE REFERENCE: West Virginia Code §11-27-38 – amended

DATE OF PASSAGE: February 27, 2015

EFFECTIVE DATE: July 1, 2015

ACTION BY GOVERNOR: Signed March 6, 2015

Senate Bill 403

Increasing period during which motor vehicle lien is valid

This bill increases the length of time for which a lien noted on the face of a certificate of title to any vehicle is valid, extending the current time of ten years to fifteen years. In cases in which the lien-holder refiles the lien or encumbrance, it will be valid for successive additional periods of five years from the date of each refiling, rather than the current two years. Finally, the bill also clarifies that a lien-holder is not required to obtain the consent of the owner to refile the lien or encumbrance.

CODE REFERENCE: West Virginia Code §17A-4A-15 – amended

DATE OF PASSAGE: March 12, 2015

EFFECTIVE DATE: June 10, 2015

ACTION BY GOVERNOR: Signed March 24, 2015

Senate Bill 411

Creating Asbestos Bankruptcy Trust Claims Transparency Act and Asbestos and Silica Claims Priorities Act

This bill creates two acts – the Asbestos Bankruptcy Trust Claims Transparency Act (§55-7E-1 et seq.) and Asbestos and Silica Claims Priorities Act (§55-7F-1 et seq.).

The Asbestos Bankruptcy Trust Claims Transparency Act

Broadly speaking, this portion of the bill provides mechanisms to allow defendants, juries and the courts to be informed of all of the possible trust claims that a plaintiff in an asbestos action has or could bring. To do that, this Act requires disclosures of existing and potential asbestos bankruptcy trust claims. It establishes legal standards and procedures for the handling of asbestos claims. It provides for sanctions for failing to make the required disclosure. It provides for set-offs against any award of damages in the amount of any payment that has been or reasonably could have been obtained from an asbestos bankruptcy trust.

§55-7E-1 provides the short title for the Act. §55-7E-2 sets forth legislative findings related to the existence of asbestos bankruptcy trusts outside the tort system and the lack of coordination and transparency between the two systems, and further states the purpose of the act to provide transparency and reduce fraud. §55-7E-3 defines a number of terms.

The next section, §55-7E-4, requires certain disclosures be made by plaintiffs in asbestos actions filed in the State. First, a plaintiff must provide all parties with a sworn statement identifying all asbestos trust claims that have been filed or potentially could be filed by the plaintiff or by anyone on the plaintiff's behalf, including claims with respect to asbestos-related conditions other than those that are the basis for the asbestos action. The section sets forth what information shall be included in such statement, and that it shall include an attestation under penalty of perjury that it is complete and is based on a good faith investigation of all potential claims against asbestos trusts. A plaintiff must make available to all parties all trust claims materials for each trust claim, and the plaintiff has a continuing duty to supplement those disclosures. Failure to follow the requirements of the article shall constitute grounds for the court to decline to extend the trial date in an asbestos action.

Other provisions govern the procedural aspects of the asbestos litigation. §55-7E-5 includes provisions related to the use and admissibility of trust claims documents. §55-7E-6 provides that a court shall stay an asbestos action if it finds that plaintiff has failed to make the required disclosures within 120 days prior to the trial date. It also provides that if, in its disclosures the plaintiff identifies potential trust claims, the court action shall be stayed until plaintiff files those trust claims and provides all parties with all trust claims materials for the claim. A plaintiff must also disclose the procedural posture of the claim.

§55-7E-7 lays out the actions that defendants can take if they identify an asbestos trust claim the plaintiff has not identified, and provides mechanisms for those actions. Once the defendant has made the showing required in this section, the plaintiff has 10 days to either (1) file the asbestos trust claim; (2) file a written response with the court describing why there is insufficient evidence to support the claim; or (3) file a response with the court requesting a determination that the plaintiff's anticipated expenses in filing the claim exceed his reasonably anticipated recovery from the trust. If the court determines the trust claim should have been filed, it shall order the plaintiff to file the claim and stay the asbestos action pending filing and distribution of trust claim materials to the defendants. However, if the court determines the claim is not economically worth filing, the court shall stay the action until the plaintiff provides all parties a verified

statement of his history of exposure, usage or other connection to asbestos covered by the trust. Not less than 30 days prior to trial, the court shall enter into the record a trust claims document that identifies each claim the plaintiff has made against an asbestos trust.

The next section, §55-7E-8, provides that filing of a trust claim that has not yet been resolved may be considered relevant and admissible evidence, that trust claim materials sufficient to entitle a claim to consideration for payment under the applicable trust governance documents may support a jury finding that plaintiff was exposed to products that are the subject of the trust, and that such exposure may be a substantial factor in causing plaintiff's injury at issue in the asbestos civil action. Defendants are entitled to a setoff or credit in §55-7E-9 against any judgment in the amount of the valuation established under applicable trust governance documents. If multiple defendants are found liable, the court shall distribute the amount of setoff or credit proportionately among the defendants according to their percentage of liability.

A plaintiff who fails to provide all information required by this article is, pursuant to §55-7E-10, subject to sanctions under the West Virginia Rules of Civil Procedure and any other relief the court considers just and proper. Finally, §55-7E-11 makes this Act applicable to all asbestos actions filed on or after the effective date of the article.

The Asbestos and Silica Claims Priorities Act

This portion of the bill establishes medical criteria and procedures for asbestos and silica claims. It prohibits consolidation of cases for trial except for those relating to the exposed person and members of their household, but does not prohibit consolidation of cases for pretrial and discovery purposes. It prohibits class actions and also prohibits causes of action against manufacturers of non-asbestos containing products that were then sold to a third party who added asbestos to the final product, even where such third parties are not amenable to suit due to insolvency or immunity. The Act prohibits any award of damages for fear of increased risk of future disease, and further prohibits causes of action against premises owners for off-premises exposure or any punitive damages. The Act applies to both future and pending claims.

The short title is set forth in §55-7F-1, and §55-7F-2 contains a number of legislative findings detailing the history of asbestos and silica claims in West Virginia, and states the purposes of the Act. A number of terms are defined in §55-7F-3.

§55-7F-4 requires a plaintiff in an asbestos or silica action alleging a nonmalignant condition to file a "detailed narrative medical report and diagnosis," which is signed by a qualified physician who does not work for or on behalf of the plaintiff's attorney or law firm, and accompanied by supporting documentation. A defendant must be afforded a reasonable opportunity to challenge the adequacy of the prima facie evidence, and if a prima facie case is not made, the case shall be dismissed upon a finding of failure to establish a prima facie showing. This section also identifies the information that plaintiffs must provide with their complaint and requires that asbestos and silica actions must be filed separately.

The elements required to be proven in an asbestos action alleging a nonmalignant asbestos-related condition are enumerated in §55-7F-5. Likewise, §55-7F-6 identifies the elements to be proven in an silica action alleging silicosis. In §55-7F-7, the bill sets standards that evidence of physical impairment offered in any action governed by this legislation must satisfy.

The bill lays out the procedures to govern these actions in §55-7F-8. Specifically, the bill requires that evidence relating to the required prima facie showing does not create any presumption that the exposed

person has an asbestos or silica-related injury or impairment and shall not be conclusive as to the liability of any defendant. No evidence may be introduced at trial and no jury shall be informed of the grant or denial of a motion to dismiss for failure to establish a prima facie case as defined in this bill, or the elements required to present a prima facie showing of asbestos or silica-related impairment. No discovery may take place until the plaintiff has established a prima facie case, as evidenced by the entry of an order by the court to that effect, unless the court so orders upon motion of a party and for good cause shown. This section also allows for consolidation of cases only upon consent of the parties, except that cases may be consolidated for pretrial and discovery purposes. No class actions of these claims are permitted.

§55-7F-9 provides that the statute of limitations shall not begin to run on an exposed person's cause of action before the earlier of the date the person receive the relevant medical diagnosis, the date when the person discovered facts that would lead a reasonable person to obtain a medical diagnosis, or the date of death of the exposed person. This section also provides that an asbestos or silica related action arising out of a non-malignant condition is a distinct cause of action from one for an asbestos or silica related cancer, and states that no damages shall be awarded for fear of increased risk of future disease in an asbestos or silica action.

Finally, like the Asbestos Bankruptcy Trust Claims Transparency Act, this Act is made applicable to all asbestos actions filed on or after the effective date of the article by §55-7F-17.

CODE REFERENCE: West Virginia Code §55-7E-1 through §55-7E-11 – amended; §55-7F-1 through §55-7F-10 – new

DATE OF PASSAGE: March 11, 2015

EFFECTIVE DATE: June 9, 2015

ACTION BY GOVERNOR: Signed March 18, 2015

Senate Bill 412

Relating to Real Estate Commission complaint filings

This bill expressly states that the statute of limitations for complaints filed with the Real Estate Commission is two years from the date of the acts or omissions with two exceptions:

The first exception to the two-year statute of limitations is commonly referred to as the “discovery rule”. If the licensee is alleged to have engaged in fraud, deceit, or misrepresentation, a complaint may be brought within two years of the date which the complainant discovered, or through reasonable diligence should have discovered, the alleged unprofessional conduct.

The second exception is that the two-year statute of limitations shall be tolled during any periods in which the material evidence against the licensee is unavailable due to an ongoing criminal investigation or prosecution.

This bill also requires that all complaints be submitted in writing and must fully describe the acts or omissions constituting the alleged unprofessional conduct.

CODE REFERENCE: West Virginia Code §30-40-20 – amended

DATE OF PASSAGE: March 12, 2015

EFFECTIVE DATE: June 10, 2015

ACTION BY GOVERNOR: Signed March 24, 2015

Senate Bill 418

Relating to real estate sale under deed of trust

This bill provides that, in actions to recover a deficiency judgment following a trustee sale of real property, any defense that the trustee’s sale failed to bring the fair market value for the property is not allowed.

The effect of the bill is to codify the Supreme Court of Appeals decision in the 1997 matter of Fayette County National Bank v. Lilly, which was expressly overruled by the West Virginia Supreme Court of Appeals in its November 12, 2014, *Sostaric v. Marshall* decision.

CODE REFERENCE: West Virginia Code §38-1-7 – amended

DATE OF PASSAGE: March 13, 2015

EFFECTIVE DATE: June 11, 2015

ACTION BY GOVERNOR: Signed March 24, 2015

Senate Bill 421

Relating to punitive damages in civil actions

This bill establishes certain requirements before an award of punitive damages could be made in a civil action as well as providing limits on such awards. The bill requires a showing of clear and convincing evidence that the damages suffered were the result of actual malice toward the plaintiff or a “conscious, reckless and outrageous indifference to health, safety and welfare of others” before punitive damages can be awarded.

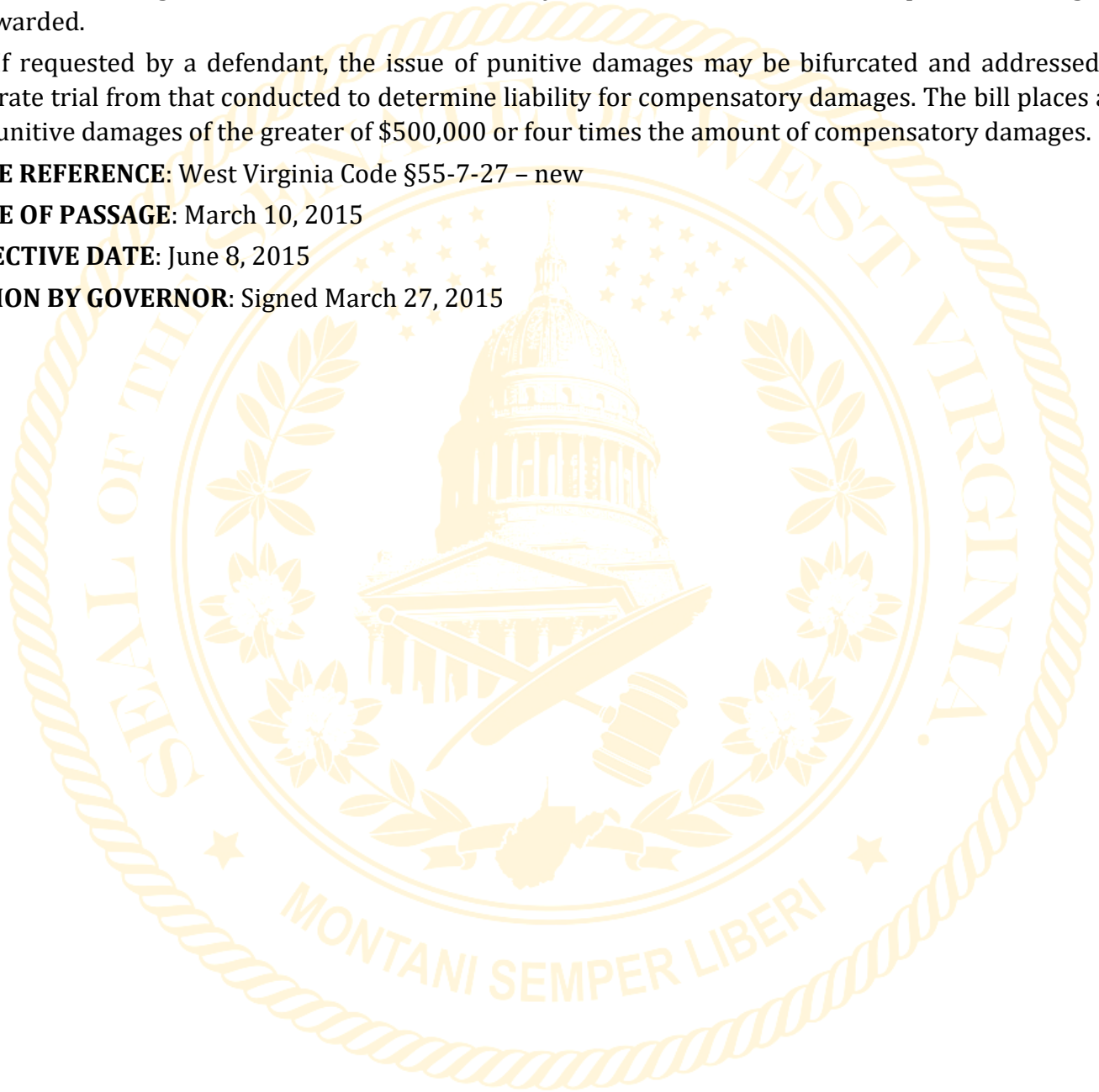
If requested by a defendant, the issue of punitive damages may be bifurcated and addressed in a separate trial from that conducted to determine liability for compensatory damages. The bill places a cap on punitive damages of the greater of \$500,000 or four times the amount of compensatory damages.

CODE REFERENCE: West Virginia Code §55-7-27 – new

DATE OF PASSAGE: March 10, 2015

EFFECTIVE DATE: June 8, 2015

ACTION BY GOVERNOR: Signed March 27, 2015



Senate Bill 423

Amending Aboveground Storage Tank Act

This bill made significant modifications to the Aboveground Storage Tank Act passed by the Legislature during the 2014 session. Overall, the bill now focuses enforcement and regulatory efforts on tanks with a capacity of 10,000 gallons or above within zones of critical concern of public water utilities. Certain definitions are amended and new ones have been added. The bill provides that the owner or operator of a tank must certify its compliance with an approved industry standard or program, or to the standards developed by the Department of Environmental Protection (DEP) by rule. Releases are defined in the same way as in other programs administered by the Department of Environmental Protection. Spill prevention and response plans are required. Much of Article 31 of Chapter 22 has been deleted, although key provisions have been moved to Article 30.

The bill adds a new section of code to the chapter relating to public health. §16-1-9f directs the Secretary of the Department of Health and Human Resources, in coordination with DEP and the Division of Homeland Security and Emergency Management, to compile an inventory of all potential sources of significant contamination within a public water system's zone of critical concern, and then to identify which of those sources are not currently permitted or subject to regulation by DEP.

Within the Aboveground Storage Tank Act itself (Article 30), slight modifications were made to the legislative findings set forth in §22-30-2.

The bill amends the definition of an "aboveground storage tank" ("AST") in §22-30-3.

The substance of the definition is maintained, but the definition now acknowledges that certain tanks, specifically those that contain hazardous waste that are regulated pursuant to 40 CFR §§ 264 and 265 (excluding those subject to regulation under 40 CFR § 265.201), fall within the definition of an AST but are not regulated tanks. Twelve categories of tanks are specifically exempted from the definition of an AST:

- Shipping containers already subject to federal law or regulation governing hazardous materials including railroad freight cars;
- Barges or boats;
- Swimming pools;
- Process vessels;
- Devices containing drinking water, surface or groundwater, demineralized water, non-contact cooling water or water stored for fire or emergency purposes;
- Devices containing food for human or animal consumption that are regulated under the Federal Food, Drug and Cosmetic Act;
- Devices located on a farm used exclusively for farm, but not commercial, purposes, except where that device is located in a zone of critical concern;
- Devices holding wastewater that is actively being treated or processed;
- Empty tanks in inventory or being offered for sale;
- Pipeline facilities including gathering lines regulated under the Natural Gas Pipeline Safety Act (1968) or Hazardous Liquid Pipeline Safety Act (1979), or intrastate pipeline regulated by the West Virginia Public Service Commission or other state law comparable to the NGPSA or HLPSA;
- Liquid traps, atmospheric and pressure vessels or associated gathering lines related to oil and gas production or gathering lines; and
- Electrical equipment.

New definitions are added for “first point of isolation,” “regulated level 1 aboveground storage tank,” “regulated level 2 aboveground storage tank,” “regulated aboveground storage tank,” and “zone of peripheral concern,” while additional definitions, such as “process vessel,” “public water system,” “release” and “zone of critical concern” are modified.

In §22-30-4, the bill deletes the requirement that an inventory of tanks include all tanks, “regardless of whether it is an operational or nonoperational storage tank.” Tank owners or operators are required to submit a registration form for their tanks no later than July 1, 2015, even if the tank is placed into service after the effective date of this section. The information required to be included in the registration form is modified to delete the requirement that the tank owner or operator identify the nearest groundwater public water supply intake or surface water downstream public water supply intake, and to add information concerning the circumstances under which the registration must be updated. The Secretary of DEP is no longer required to make certain determinations about the tank’s design, construction and leak performance. Finally, new fees are codified: \$40 registration fee for all ASTs placed in service before July 1, 2015, and \$20 per tank for those placed into service thereafter.

The AST regulatory program is detailed in §22-30-5, and has been substantially modified by the bill. This section directs DEP to develop a regulatory program for new and existing regulated ASTs and secondary containment that takes into account the size, location and contents of the tanks. This program must set out “tiered requirements” for regulated tanks, with Level 1 tanks being regulated to a higher standard than Level 2 tanks due to their proximity to an intake. The rules promulgated by DEP must include:

- criteria for the design, construction and maintenance of ASTs
- criteria for the design, construction, maintenance or methods of secondary containment
- criteria for the design, operation, maintenance or methods of leak detection including visual inspections, and inventory control system, together with tank testing or comparable system designed to identify AST leaks
- record keeping requirements
- requirements for the development of maintenance and corrosion prevention plans
- requirements for closure of ASTs, and necessary remediation resulting from an AST release
- assessment of registration fee, annual operation and response fees
- the issuance of a certificate to operate (“CTO”) after submission of an application, with review and approval by WVDEP, and,
- a procedure for administrative resolution of violations including assessment of civil penalties.

Additionally, Section 5 gives the Secretary of DEP authority to, at the request of the permittee, modify portions of permits and other plans issued pursuant to other provisions of Chapter 22 in order to include conditions pertaining to the management and control of regulated tanks.

The plans and permits that may be so amended include those issued pursuant to (1) the Surface Coal Mining and Reclamation Act, (2) the Office of Oil and Gas’s authority found in W. Va. Code §§22-6 and 22-6A, or plans required under 35 CSR 1, (3) the National Pollution Discharge Elimination System, and (4) the Solid Waste Management Act, as well as any groundwater protection plans developed pursuant to W. Va. Code §22-12. If a plan or permit is so modified to conform to the requirements of this Act, it is deemed to comply with the requirements of the Act, so long as the registration requirements are met.

The bill amends §22-30-6 to require regulated ASTs to be evaluated by a qualified individual (as defined in the bill), and to require owners and operators of ASTs to submit certifications of that evaluation

to DEP. Initial certifications of evaluation must be completed within 180 days of the effective date of the rules promulgated by DEP.

These evaluations are no longer required to be done annually, and the bill now permits DEP to set the timeline for subsequent review by legislative rule, but provides that the time in between evaluations may be no less than one year.

In §22-30-7, the provisions concerning financial responsibility are modified to limit the applicability of the section to owners and operators of regulated ASTs, and it gives the secretary of DEP authority to determine which bonds and other guarantees of performance satisfy the requirements of this section, which generally requires evidence of adequate financial resources to undertake any necessary corrective action.

With respect to corrective action, §22-30-8 is amended to eliminate the requirement that the operator or owner of an AST develop a “preliminary corrective action plan” considering the types of fluids and tanks. Further, the Secretary of DEP is authorized to use money from the Protect Our Water Fund to undertake corrective action in the event of an actual release from an AST.

The requirement to prepare and submit a spill prevention and response plan, or SPRP, as required by §22-30-9, is limited to regulated ASTs, and may be submitted for a facility or location. SPRPs must be submitted no less frequently than every five years, a change from the three year submission timetable under current law, unless an event occurs that requires updating sooner. The bill modifies the specific contents of the SPRP as well, and the requirements that these plans be site-specific and developed in consultation with the Bureau for Public Health are removed. In lieu of an SPRP meeting these requirements, AST owners or operators may certify that their AST is subject to a groundwater protection plan or spill prevention control and countermeasures plan, and such plan must be made available for review by the Secretary of DEP.

§22-30-10 directs owners and operators of regulated ASTs to give notice to the applicable public water system and relevant emergency response organizations of the contents of the ASTs, as well as provide the location of the Safety Data Sheets associated with the stored fluids. An alternative disclosure method is also provided. In both cases, the information provided is protected from disclosure under §22-30-14, which addresses public access to information provided under this article.

§22-30-11 permits the signage required under the Act to be “displayed nearby.” Minor changes are made to §22-30-12 to provide for the collection of an annual operating fee in addition to an initial registration fee.

The bill modifies the section, §22-30-13, that creates the Protect Our Water Fund. This section has been amended to allow monies from this fund to be expended to address “releases” from ASTs, and not merely leaks, and to limit the applicability of the section to regulated ASTs, rather than all ASTs. A cap is placed on the contents of the fund, and thereby the fees that can be collected, of \$1 million at the end of three years, and \$1 million in the aggregate thereafter.

The provisions of §22-30-14, addressing public access to information, are modified to restrict public access to information designated by the Division of Homeland Security and Emergency Management as restricted from public access, including trade secrets and proprietary business information, and requires that such information be “secured and safeguarded” by the department. A criminal misdemeanor penalty for unauthorized disclosure is added that carries penalties of up to 1 year in prison and a \$5,000 fine if

convicted. If there is a release into the waters of the State that could affect a public water supply, information about the release must be promptly made available to emergency responders.

In §22-30-15, the bill changes the inspection schedule, providing that “level 1” ASTs be inspected at least once every five years, and that a schedule for inspection of “level 2” ASTs be established by legislative rule. In §22-30-16, authority is given to the Environmental Quality Board to stay orders entered by the Secretary of DEP alleging violations of the Act. Appeal to the Environmental Quality Board is authorized, pursuant to §22-30-18, to challenge any “action, decision or order of the secretary,” whereas current law allows for appeals only from an “order.”

Civil and criminal penalties are modified in §22-30-17. First, the language in the section is amended to refer to “certificates to operate” rather than “permits.” Similar changes are made in §22-30-24. The misdemeanor for “knowingly and intentionally violat[ing] any provision of this article” is expanded to also cover violation of “any rule or order issued under or subject to the provisions of this article,” while felony charges are reserved only for subsequent willful violations.

A person cannot be subject to criminal prosecution for pollution when carrying out a corrective action plan approved by the secretary of DEP. Finally, civil penalties collected may be deposited either in the Protect Our Water Fund or in the AST Administrative Fund. Technical changes are made to §22-30-19, which addresses duplicative enforcement.

In §22-30-21, the bill directs the Division of Homeland Security and Emergency Management, rather than the Secretary of DEP, to coordinate with state and local emergency response agencies to facilitate a coordinated emergency response and incident command. The requirement that the Secretary of DEP coordinate with the State Fire Marshal concerning National Incident Management System Training provisions is eliminated.

§22-30-22 expands the venue in which the Secretary of DEP may bring suit to either the circuit court of the county in which the “imminent and substantial danger exists” or the circuit court of Kanawha County. In the event of such a danger, the Secretary of DEP shall require the owner or operator of the AST to provide immediate notice to appropriate governmental authorities.

The bill amends §22-30-25 to permit the secretary of DEP to designate via legislative rules additional categories of ASTs for which one or more of the requirements of the Act may be waived. Waiver will be permitted only when those categories of ASTs “do not represent a substantial threat of contamination or they are currently regulated under standards that are consistent with the protective standards and requirements set forth in this article.”

A new section, §22-30-26, which was originally contained in Article 31, provides that any person who holds an NPDES general permit for a facility containing regulated ASTs may be required by the secretary to obtain an individual permit, a change from the current law that makes such individual permit mandatory.

Article 31 of Chapter 22 is substantially repealed. This includes the repeal of §22-31-3, §22-31-4, §22-31-5, §22-31-6, §22-31-7, §22-31-8, §22-31-9, §22-31-10, §22-31-11 and §22-31-12. The Public Water System Supply Study Commission initially contained in §22-31-12 has been relocated to §22-31-2, replacing the Act’s legislative findings. The composition of the Study Commission is modified, and will now contain three members appointed by the Governor, the designation of the Commissioner of the Bureau for Public Health as chair, the elimination of the nonvoting members appointed by the President of the Senate and the Speaker of the House, the inclusion of two representatives designated by the Business Industry

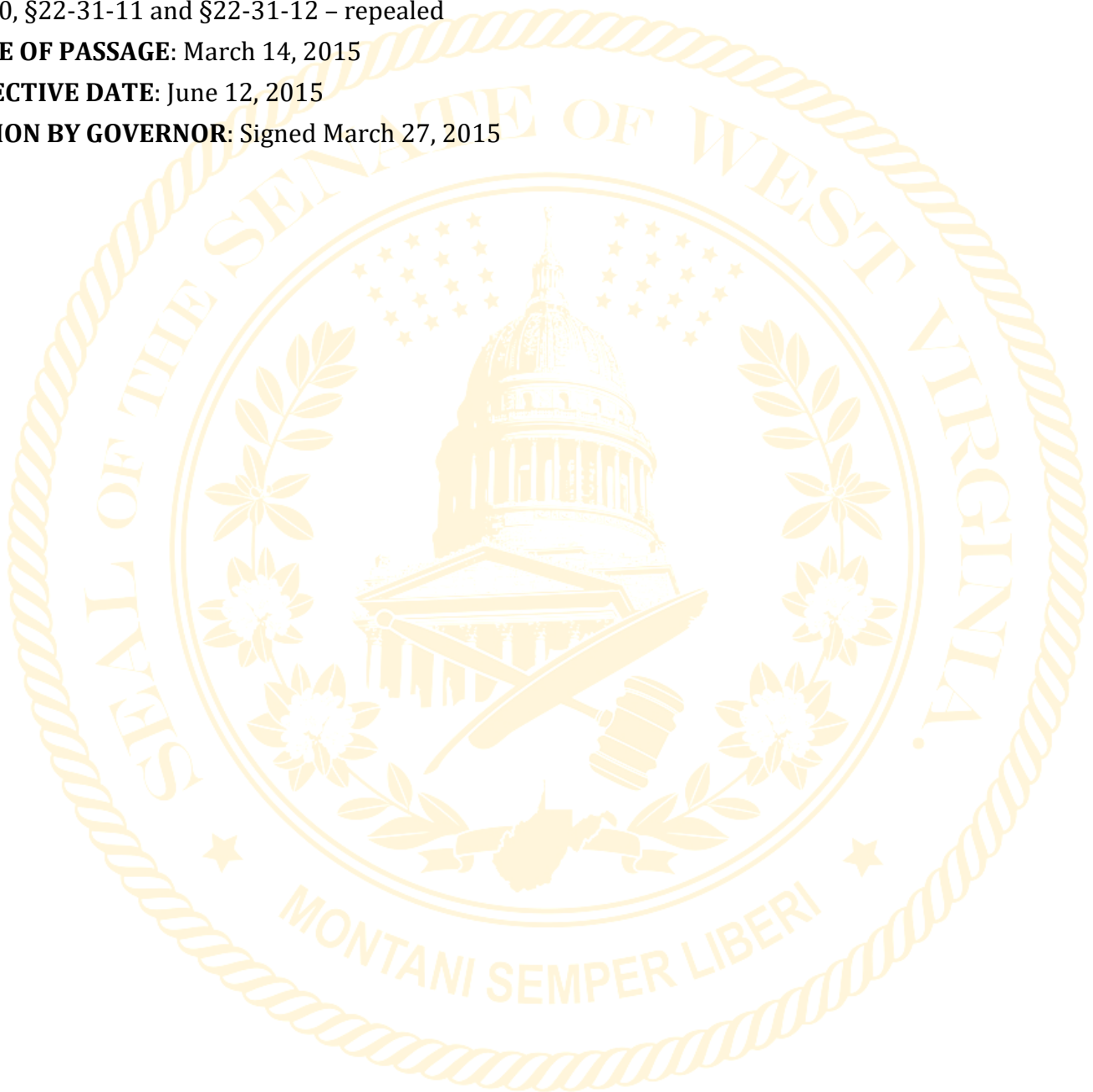
Council, and one representative designated by the West Virginia Rivers Coalition. The Study Commission shall terminate on June 30, 2019.

CODE REFERENCE: West Virginia Code §16-1-9f and §22-30-26 – new; §22-30-2, §22-30-3, §22-30-4, §22-30-5, §22-30-6, §22-30-7, §22-30-8, §22-30-9, §22-30-10, §22-30-11, §22-30-12, §22-30-13, §22-30-14, §22-30-15, §22-30-16, §22-30-17, §22-30-18, §22-30-19, §22-30-21, §22-30-22, §22-30-24, §22-30-25 and §22-31-2 – amended; §22-31-3, §22-31-4, §22-31-5, §22-31-6, §22-31-7, §22-31-8, §22-31-9, §22-31-10, §22-31-11 and §22-31-12 – repealed

DATE OF PASSAGE: March 14, 2015

EFFECTIVE DATE: June 12, 2015

ACTION BY GOVERNOR: Signed March 27, 2015



Senate Bill 454

Criminalizing trademark counterfeiting

This bill creates the criminal offense of trademark counterfeiting, which is defined as the knowing sale or distribution, or use, display, advertisement, offer for sale, sale or possession of any item that bears a counterfeit of a registered or common law trademark. The bill adds a new definition for the term “retail value.” It creates misdemeanor and felony offenses; the offense is a misdemeanor if the total retail value of the items bearing the counterfeit mark is less than

\$1,000, and it is a felony if that value is \$1,000 or more. Misdemeanor penalties are a fine of up to \$2,000 for the first offense and/or confinement in jail for a period not to exceed one year; for subsequent offenses, penalties are confinement or a fine not to exceed \$5,000. Felony penalties are one to five years in a correctional facility and/or fine not to exceed \$20,000. If the perpetrator is a firm, partnership, corporation, union, association, or other organization capable of suing or being sued in a court of law, the maximum fine is increased to \$10,000 for a misdemeanor offense and \$20,000 for a felony offense. The bill also provides for the seizure and forfeiture of property used in the commission of this crime.

CODE REFERENCE: West Virginia Code §47-2-1 – amended; §47-2-14a, §47-2-14b, §47-2-14c and §47-2-14d – new

DATE OF PASSAGE: March 10, 2015

EFFECTIVE DATE: June 8, 2015

ACTION BY GOVERNOR: Signed March 18, 2015

Senate Bill 489

Imposing statute of limitations on civil actions derived from surveying of real property

The bill adds actions relating to the actual surveying of real property to the 10-year statute of repose on actions for damages arising from activities related to improvements to real property.

CODE REFERENCE: West Virginia Code §55-2-6a – amended

DATE OF PASSAGE: March 10, 2015

EFFECTIVE DATE: June 8, 2015

ACTION BY GOVERNOR: Signed March 24, 2015

Senate Bill 508

Reorganizing Hatfield-McCoy Regional Recreation Authority

The purpose of the bill is to reorganize the Hatfield-McCoy Regional Recreation Authority to remove confusion and uncertainties about what type of government entity it is intended to be which were raised by a legislative audit.

This bill removes language and powers that ordinarily apply to a state agency and it structures the Authority as a multi-county joint development entity.

Principal changes to existing law include the following:

The bill would eliminate the existence of the Authority rangers as a police force. Instead, the Authority is authorized to contract with the DNR to have natural resources police officers assigned to provide law-enforcement coverage.

There is an added definition for "recreational purposes."

The Authority is reconstituted as a joint development entity authorized by the member counties, called "participating counties" in the bill. The bill expires the current terms of members of the Authority's board on June 30th and has each county appoint two members to begin on July 1st. Counties may reappoint previous board members but at least one of each county's appointees is to have an association with mining, logging or other natural resource extraction industry or be a licensed surveyor or professional engineer.

The bill also clarifies that the Authority is subject to the Freedom of Information Act and it establishes a fiscal year for the new entity.

The bill removes all bonding provisions as the Authority has never needed to issue bonds for revenue. It also removes legislative rule-making authority.

In place of the legislative rules for the conduct of area users, this bill defines twelve misdemeanor offenses of misconduct by users and participants.

- §20-14-9 – Consolidates existing law relating to limitations of liability for landowners and lessors of property.
- §20-15-2 – Amendments to the ATV Responsibility Act expressly include local land- owners as having no liability for the actions of participants in the Hatfield-McCoy Recreation Area.

There are four new sections:

- §20-14-4a – Provides methods for financial oversight of the Authority and requires an annual audit by a private accounting firm and authorizes the Legislative Auditor to examine revenues, expenditures and performance if the Authority receives any funds from the Legislature.
- §20-14-10 – Establishes procedures for purchasing and bidding. It includes dollar thresholds that match the state purchasing procedures and specifies the manner of advertising for and receiving bids. Vendors on contracts exceeding \$25,000 must also post completion bonds.
- §20-14-11 – Prohibits conflicts of interest and self-dealing in contracting. It precludes contracting with close family members, spouses or companies owned by close family members or spouses and provides misdemeanor criminal penalties for violation of the section.

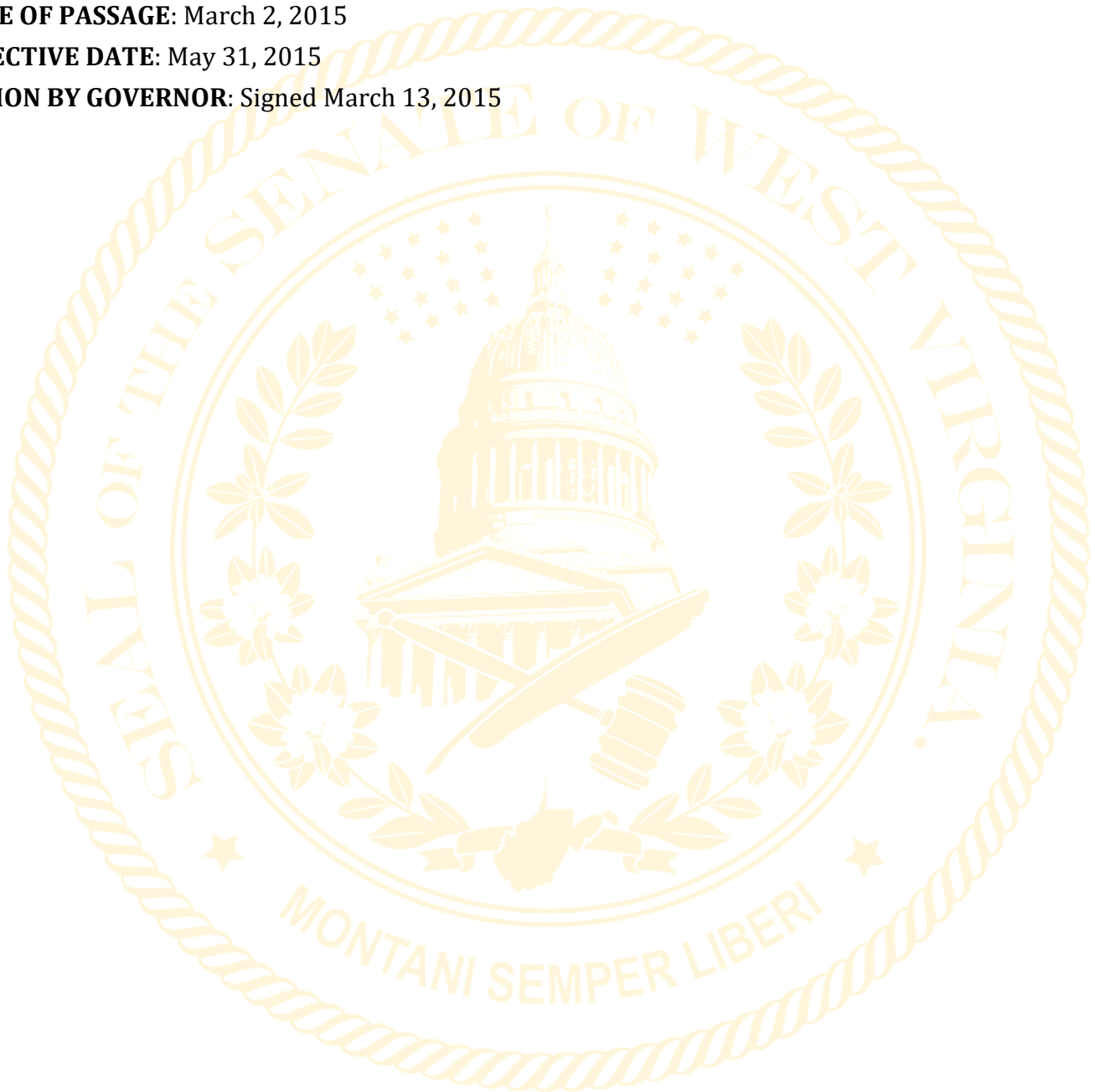
- §20-14-12 – provides for civil remedies for violation of the purchasing and conflict of interest sections. It authorizes the county commission of any member county to bring an action for declaratory or injunctive relief.

CODE REFERENCE: West Virginia Code §20-14-7 – repealed; §15-10-3, §15-10-4; §20-7-1, §20-14-1, §20-14-2, §20-14-3, §20-14-4, §20-14-5, §20-14-8, §20-14-9, §20-15-2, §20-15-5, §30-29-1 and §61-7-6 – amended; §20-14-6 and §20-14-4a, §20-14-10, §20-14-11 and §20-14-12 – new

DATE OF PASSAGE: March 2, 2015

EFFECTIVE DATE: May 31, 2015

ACTION BY GOVERNOR: Signed March 13, 2015



Senate Bill 518

Permitting county and municipal economic development authorities invest certain funds

The bill allows county and municipal development authorities to invest funds received as a result of selling, leasing or otherwise disposing of all or part of its real property or its personal property “in a manner determined by the authority's board of directors to be in the best interest of the authority under an investment policy adopted and maintained by the board that is consistent with the standards of the State’s Uniform Prudent Investor Act . . .” For its short term investments, the board of directors must consult with the State Treasurer prior to investing funds. For long term investments, the board must consult with the Investment Management Board and compare the rate of return on investment for the previous three years and compare the expense loads for the past three years; “if the comparison for the Investment Management Board is more favorable, the board must invest the funds with the Investment Management Board.”

CODE REFERENCE: West Virginia Code §7-12-7 – amended

DATE OF PASSAGE: March 14, 2015

EFFECTIVE DATE: June 12, 2015

ACTION BY GOVERNOR: Signed April 2, 2015

Senate Bill 532

Relating to civil liability immunity for clinical practice plans and medical and dental school personnel

This bill requires that the WV Board of Risk and Insurance Management provide medical professional liability insurance to the state’s medical and dental schools, including all of their clinical practice plans, all of their directors, officers, employees and agents.

A fiscal note submitted by the WV Board of Risk and Insurance Management states that it currently provides such medical professional liability insurance so there should be no additional costs or expenses.

CODE REFERENCE: West Virginia Code §55-7E-1 through §55-7E-6 – new

DATE OF PASSAGE: March 12, 2015

EFFECTIVE DATE: June 10, 2015

ACTION BY GOVERNOR: Signed March 24, 2015

Senate Bill 542

Clarifying provisions of Consumer Credit and Protection Act relating to debt collection

This bill amends a number of provisions of the Consumer Credit and Protection Act for added clarity and specificity.

Beginning with §46A-2-125, the bill prohibits debt collectors from engaging in oppressive or abusive practices, and includes among the defined practices “[e]ngaging any person in telephone conversation” when the person’s identity has not been disclosed and the purpose is to annoy, harass or threaten. The new language modifies the current law, which prohibits broadly “[t]he placement of telephone calls.” Additional specificity is added to the provision concerning repeated telephone calls, as the new bill prohibits calling any person more than thirty times per week, or engaging in telephone calls with a person more than ten times per week. To determine if a violation of this provision has occurred, the reasonable person standard is to be used. The bill also adds a presumption that convenient times for calling are between 8:00 a.m. and 9:00 p.m.

In §46A-2-126, which relates to unreasonable publication of information, the bill clarifies that a debt collector does not unreasonably publicize information relating to an individual’s alleged indebtedness by identifying themselves to the debtor by name, identifying the debt collector’s employer by name if asked, or by providing contact information to the debtor. An additional provision is added to allow creditors and debtors to communicate with other people besides the consumer to acquire or confirm the consumer’s location information, so long as the creditor or debt collector complies with federal law.

Next, the bill amends §46A-2-128 to permit debt collectors to obtain a written acknowledgment of a debt obligation by a consumer where that affirmation is obtained pursuant to applicable bankruptcy law. The bill also modifies the requirements for a debt collector or creditor once a consumer notifies that he or she has retained an attorney, modifying the current language that orders an immediate cessation of communications to language that allows seventy- two hours to cease communications. To be effective, the attorney must have been retained in regard to the specific debt, and notice of representation must be in writing (either paper or electronic) and provide contact information for the attorney. Should an attorney fail to respond to communications, then communication with the consumer is not prohibited. Finally, regular account statements do not constitute prohibited communications.

The statutorily permissible amounts for finance charges have been amended in §46A-3- 112 and §46A-3-113. While current law limits a delinquency charge to the greater of five percent of the unpaid amount or fifteen dollars, the bill changes the maximum to thirty dollars.

The bill makes a number of changes to §46A-5-101, which addresses the effect of violations of this Act on the rights of parties. Throughout, the scope of the section is expanded to apply explicitly to both creditors and debt collectors. The penalties available for various violations of the article, in addition to actual damages, are fixed at one thousand dollars per violation, with a maximum available recover of the greater of \$175,000 or the total outstanding indebtedness. These limits also apply to excess charges arising from consumer leases, and are applied severally in the event of a class action. A limitations period of four years after the violation occurs becomes effectively to all actions filed on or after September 1, 2015. When a creditor discovers an error, he has no liability for a penalty if he corrects the error within fifteen days, if the error affects no more than two persons, or within sixty days if it affects more than two persons.

Next, §46A-5-106 provides for the indexing of damages to the consumer price index, with a starting date of September 1, 2015. Finally, a new provision is added at §46A-5-107 to address venue. Venue for an

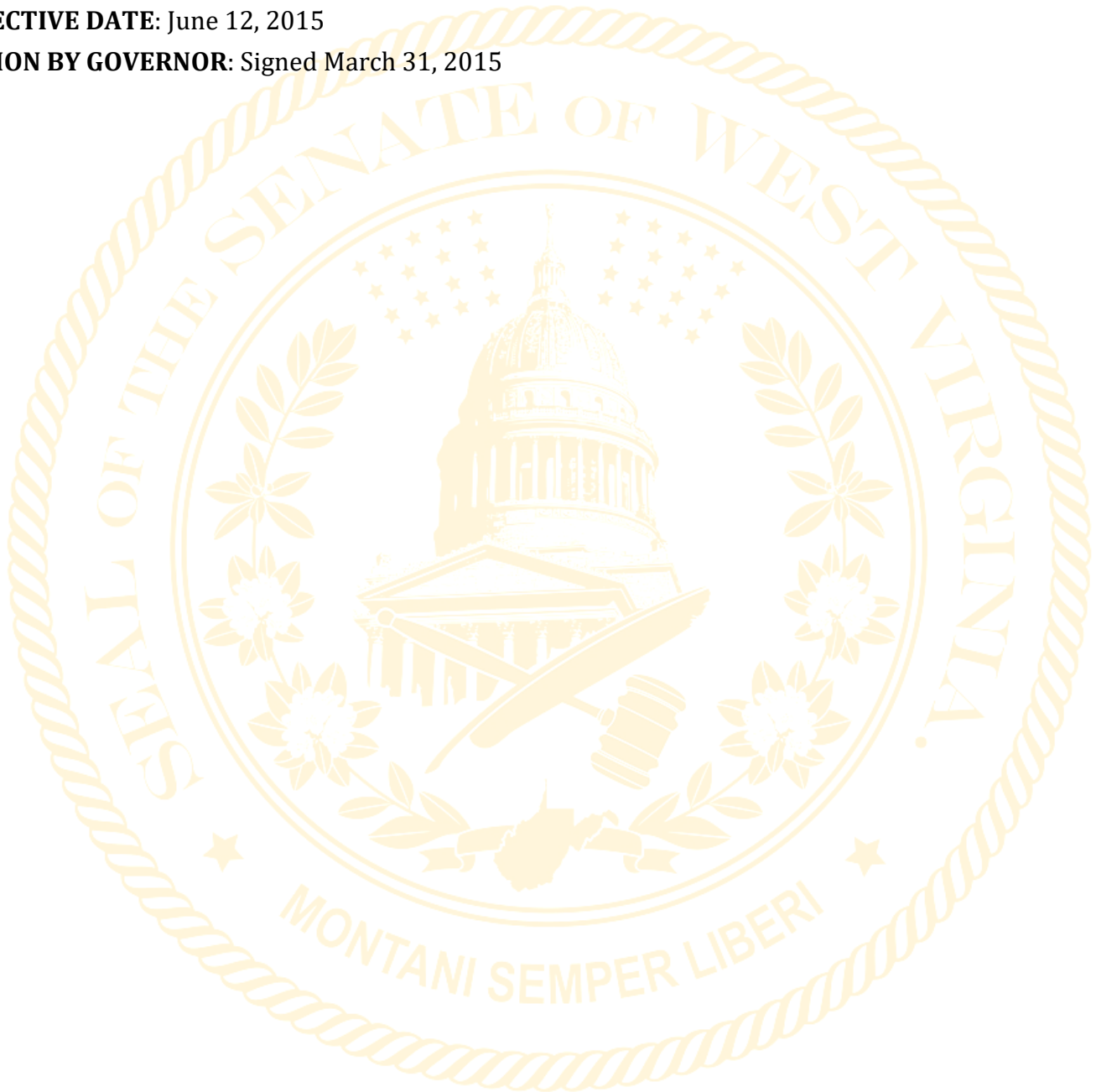
action under this chapter is appropriate in the circuit court of the county in which the plaintiff last resided in West Virginia or the circuit court of the county in which the debt collector or creditor has its principal place of business or legal residence.

CODE REFERENCE: West Virginia Code §46A-2-125, §46A-2-126, §46A-2-128, §46A-3-112, §46A-3-113, §46A-5-101 and §46A-5-106 – amended; §46A-5-107 – new

DATE OF PASSAGE: March 14, 2015

EFFECTIVE DATE: June 12, 2015

ACTION BY GOVERNOR: Signed March 31, 2015



Senate Bill 545

Removing certain prior bank overdraft approval by director or executive officer

The bill will remove the requirement of prior approval of overdrafts made by an executive officer or director of a state-chartered banking institution if the overdraft is less than \$1,000 or if there is a written pre-authorized interest-bearing extension of credit.

§31A-4-26 provides that director or executive officer of a state chartered banking institution may not borrow any money from the bank without the prior approval of a majority of the board of directors or discount committee of the banking institution.

This bill would provide an exception to this requirement for bank overdrafts by bank officers and directors, which are considered an extension of credit. The bill would provide that prior approval by the board is not required for:

- Payments of overdrafts pursuant to a preauthorized, interest bearing extension of credit plan approved by the board of directors or preauthorized transfer of funds from another account of the account holder at the bank; or
- Payments of inadvertent overdrafts on an account in an aggregate amount of \$1,000 or less: Provided, That the account is not overdrawn for more than five consecutive business days and the bank charges the director or executive officer the standard overdraft fees.

This bill will conform West Virginia Law to Regulation O of the Federal Reserve covering extensions of credit to federally regulated bank directors and officers.

CODE REFERENCE: West Virginia Code §31A-4-26 – amended

DATE OF PASSAGE: March 10, 2015

EFFECTIVE DATE: June 8, 2015

ACTION BY GOVERNOR: Signed March 24, 2015

Senate Bill 574

Relating to liquor sales by distilleries and mini-distilleries

The bill requires the Alcohol Beverage Control (ABC) commissioner to obtain for sale liquor requested by distillers and mini-distillers; it exempts distillers and mini-distillers from the usual wholesale markup percentage and handling fee; it imposes a separate wholesale markup fee and bailment fee on distillers and mini-distillers; it requires distillers and mini-distillers to charge at least as much as the price set by the ABC commissioner; it reduces the market zone payment percentage (from 10% to 2%) due from distillers and mini-distillers; it caps the market zone payment that may be paid by a distiller or mini-distiller at \$15,000 per year; it increases the number of gallons (from 20,000 to 50,000) that a mini-distiller may produce in one year; and it makes clarifying amendments.

CODE REFERENCE: West Virginia Code §60-3A-17, §60-4-3, and §60-4-3a – amended

DATE OF PASSAGE: March 14, 2015

EFFECTIVE DATE: June 12, 2015

ACTION BY GOVERNOR: Signed March 31, 2015

Senate Bill 578

Relating to occupational disease claims

Under current law, the claimant, the employer and the Workers' Compensation Commission, other private insurance carriers and self-insured employers, whichever is applicable, may negotiate a final settlement of any and all issues in a claim, wherever the worker's compensation claim is in the administrative or appellate processes, except for medical benefits for nonorthopedic occupational disease claims. This bill removes the exception for settlements of medical benefits for nonorthopedic occupational disease claims, which would permit the negotiation of final settlements of all components of worker's compensation claims, permitting settlements of medical benefits for nonorthopedic occupational disease claims, including settlements of occupational pneumoconiosis claims. The bill requires that a claimant in a settlement of medical benefits for a nonorthopedic occupational disease claims be represented by legal counsel.

The bill specifies that the amendments enacted during the current 2015 regular session of the Legislature apply to all settlement agreements executed after the effective date of the legislation.

CODE REFERENCE: West Virginia Code §23-4-8d – amended

DATE OF PASSAGE: March 10, 2015

EFFECTIVE DATE: June 8, 2015

ACTION BY GOVERNOR: Signed March 24, 2015

Senate Bill 581

Tourism Promotion and the Courtesy Patrol Program

The bill increases monies available from gaming revenues each year for state tourism promotion activities by moving the Courtesy Patrol Program to the Division of Highways on July 1, 2015, and change the allocation of Tourism Promotion Fund moneys.

The Courtesy Patrol Program is currently funded from revenues that flow from gaming activity revenues into the Tourism Promotion Fund (TPF) and are then transferred into the Courtesy Patrol Fund (CPF) for the Courtesy Patrol Program. The bill ends the funding of Courtesy Patrol Program from Tourism Promotion Fund moneys after June 30, 2015. The funds now dedicated to the Courtesy Patrol Program (up to \$4.7 million annually) will be added to other funds flowing annually into the TPF and spent to promote other tourism activities.

In addition, the bill reallocates the distribution of the TPF moneys. Currently “a minimum of five percent” of TPF revenues are used “solely for direct advertising for West Virginia travel and tourism . . .” And “no less than twenty percent of these funds” are to be expended “to effectively promote and market the state’s parks, state forests, state recreation areas and wildlife recreational resources.” This changes under the bill so that 75% of the TPF revenues will be used at the direction of the Commissioner of the Division of Tourism “solely for marketing, advertising and public relations efforts for building the brand identity of Wild, Wonderful, West Virginia and promoting travel and tourism within the state.” And “no less than one percent of these funds” will be used to promote and market the state’s parks, etc.

The balance of TPF revenues will be used for direct advertising by the Tourism Commission. The bill modifies the definition of “direct advertising.” The bill also removes language requiring the Tourism Commission’s approval for any expenditure from the TPF over \$25,000.

With respect to the tourism promotion program known as the Courtesy Patrol Program, the bill provides that on and after July 1, 2015, the administration of the Courtesy Patrol Program and the Courtesy Patrol Fund are both transferred to the Division of Highways. Any balances remaining in the Courtesy Patrol Fund at the end of fiscal year 2015 will return to the Tourism Promotion Fund. Future state funding for the Courtesy Patrol Program will be authorized from any appropriations made by the Legislature from the state road fund. Expenditures from the Courtesy Patrol Fund for the Program are also authorized if the fund receives revenues from any other source, private or public.

CODE REFERENCE: West Virginia Code §5B-2-12 and §17-1-3 – amended

DATE OF PASSAGE: March 13, 2015

EFFECTIVE DATE: July 1, 2015

ACTION BY GOVERNOR: Signed March 26, 2015

Senate Bill 583

Increasing tax rate on providers of certain nursing facility services

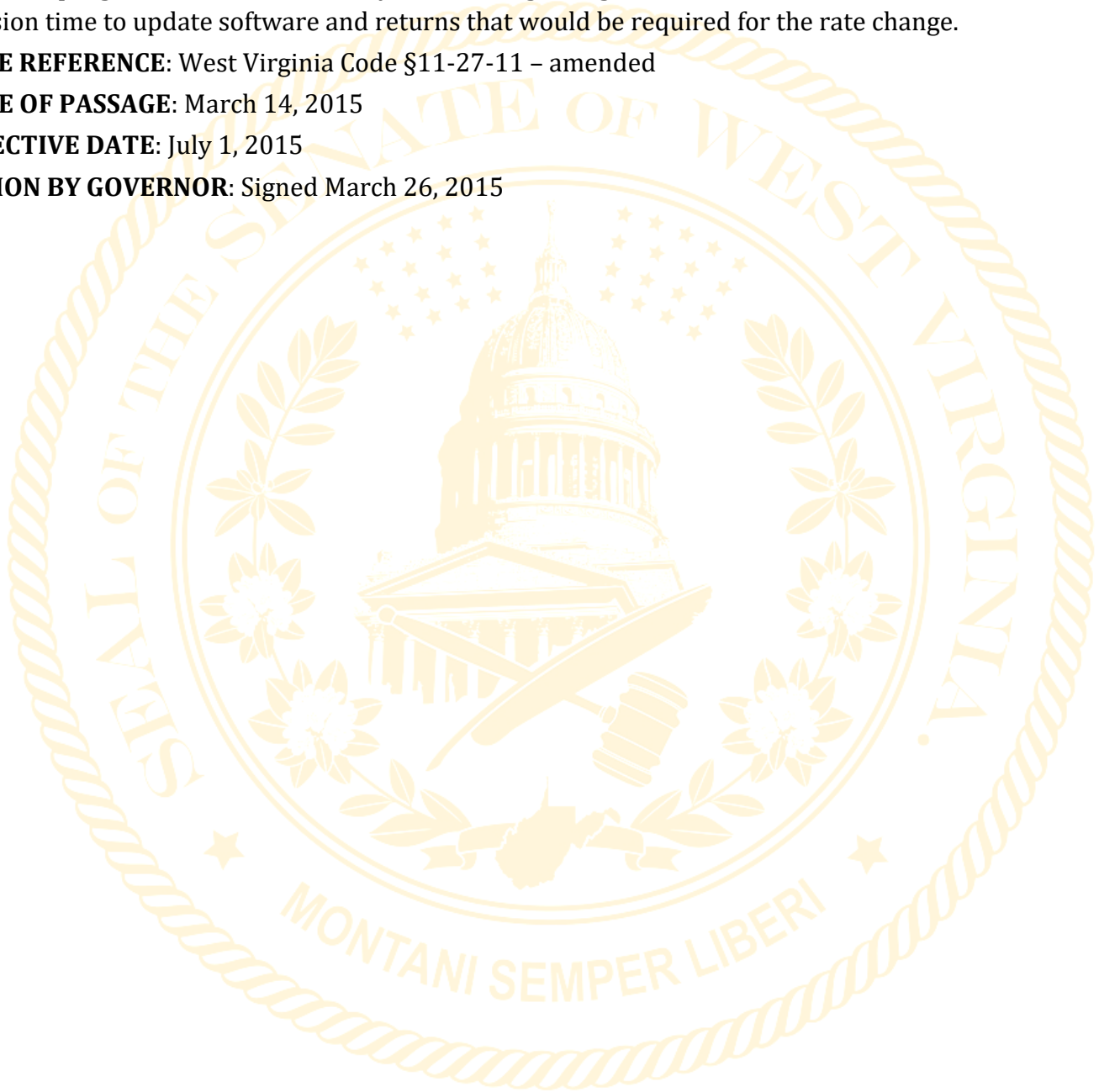
The bill changes the health care provider tax rate on providers of certain nursing facility services from 5.5% of gross receipts to 5.72% between October 1, 2015, and June 30, 2016. The tax rate then goes back to 5.5% beginning July 1, 2016. The rate increase is an effort to address increased state funding for the Medicaid program in the 2016 fiscal year. The beginning date of October 1, 2015, affords the State Tax Division time to update software and returns that would be required for the rate change.

CODE REFERENCE: West Virginia Code §11-27-11 – amended

DATE OF PASSAGE: March 14, 2015

EFFECTIVE DATE: July 1, 2015

ACTION BY GOVERNOR: Signed March 26, 2015



House Bill 2001

Repealing portions of the Alternative and Renewable Energy Portfolio Act

This bill repeals, in its entirety, the Alternative and Renewable Energy Portfolio Act, Article 2F of Chapter 24. This Act passed the House in the Regular Session of 2009 in a slightly different form, but was later passed in a Special Session in the late Spring of that year. Various minor changes were made between the two versions.

The provisions to be repealed mandate the Public Service Commission to establish a system of tradable credits stemming from the established, verified and monitored generation and sale of electricity generated from alternative and renewable energy resource facilities, as defined by section three of the article. The credits thus established were to be available for electrical power generators to trade, sell or otherwise be used to meet the portfolio standards established by section five of the article. Under the provisions of that section, each electric utility in this state is required to own an amount of credits equal to a certain percentage of electricity, sold by the electric utility in the preceding year to retail customers in West Virginia. These credits are to be phased in over a ten year period. For the period beginning January 1, 2015, and ending December 31, 2019, each utility is to own credits in an amount equal to at least ten percent of the electric energy sold by the electric utility. For the period beginning January 1, 2020, and ending December 31, 2024, an electric utility is to own credits in an amount equal to at least fifteen percent of the electric energy sold to retail customers. Commencing on January 1, 2025, this percentage is to equal 25% of all electrical energy sold.

Functionally, this means power generators have to either generate the mandated percentage from a renewable source themselves, or, alternatively, purchase the credits from power generators who have an excess of the mandated percentage generated from power generation operations derived from alternative and renewable energy resource facilities. On or before January 1, 2011, each electric utility subject to the provisions of the article was required to prepare an alternative and renewable energy portfolio standard compliance plan and to file an application with the Public Service Commission seeking approval of such plan. On or after January 1, 2015, and each year thereafter, the Commission is required to determine whether each electric utility doing business in this state is in compliance with these requirements. If, after notice and a hearing, the Commission determines that an electric utility has failed to comply with an alternative and renewable energy portfolio standard, the Commission is required by the article to impose a compliance assessment on the electric utility, in amounts delineated by guidelines contained in the article.

In furtherance of the provisions of the article, a regime of cost recovery and rate incentives is currently provided. These are designed to stimulate electric utility investment in alternative and renewable energy resources.

Additionally, and importantly, as shall be seen, the Public Service Commission was required to adopt a rule requiring that all electric utilities provide a rebate or discount at fair value, to be determined by the commission, to customer-generators for any electricity generation that is delivered to the utility under a net metering arrangement; to, further, consider adopting, by rule, a requirement that all sellers of electricity offer net metering rebates or discounts to customer-generators, and to institute a general investigation for the purpose of adopting rules pertaining to net metering.

The Public Service Commission was permitted by the article to enter into interagency agreements with the Department of Environmental Protection and the Division of Energy to carry out the responsibilities

mandated by the article, including conducting an ongoing alternative and renewable energy resource planning assessment for this state, including recommending to the Legislature additional compliance goals for alternative and renewable energy portfolio standards beyond 2025. The Public Service Commission was required to consider adopting, by rule, alternative and renewable energy portfolio requirements for rural electric cooperatives, municipally owned electric facilities or utilities serving less than thirty thousand residential electric customers in this state.

The article also established in the state Treasury a special revolving fund to be jointly administered by the Public Service Commission and the Division of Energy designated the “Alternative and Renewable Energy Resources Research Fund.” Moneys in the fund are to be used to award matching grants for demonstration, commercialization, research and development projects relating to alternative and renewable energy resources and energy efficiency technologies. Rulemaking authority was also provided to the Public Service Commission for the making of all rules required by the article.

The effect of the bill is to completely repeal all of the provisions of this article.

This Committee Substitute was drafted to address concerns raised in the Energy Committee regarding the effect of repeal of the entire article on net metering and interconnectivity; according to reports in the media this morning, the “Senate Energy Committee members delayed advancing their version of the bill Thursday, to allow a rewrite that will repeal most of the Alternative Energy Portfolio Act — but retain the net metering provisions.”

CODE REFERENCE: West Virginia Code §24-2F-1 through §24-2F-12 – repealed

DATE OF PASSAGE: January 28, 2015

EFFECTIVE DATE: January 28, 2015

ACTION BY GOVERNOR: Signed February 3, 2015

House Bill 2002

Predicating actions for damages upon principles of comparative fault

This bill changes the law in West Virginia concerning the apportionment of fault in tort actions. It repeals two sections of code. The first, §55-7-13, established a statutory claim for contribution by joint judgment debtors, while §55-7-24 set out the manner in which Courts are to apply joint and several liability to judgment debtors in West Virginia.

Four new sections of code are added by the bill. First, §55-7-13a establishes the modified comparative fault standard by defining the term “comparative fault” as “the degree to which the fault of a person was a proximate cause of an alleged personal injury or death or damage to property, expressed as a percentage” and directs recovery in tort actions to be based on principles of comparative fault whereby the fault and damages should be apportioned “in direct proportion to that person’s percentage of fault.” In §55-7-13b, a number of terms are defined, including “compensatory damages,” “defendant,” “fault” and “plaintiff.”

§55-7-13c requires in subsection (a) that in any action for damages, liability shall be several, rather than joint, and that each defendant is only liable for the amount of damages in direct proportion to that defendant’s percentage of fault. The bill allows joint liability to be imposed when two or more defendants “consciously conspire and deliberately purpose a common plan or design to commit a tortious act or omission.”

The procedure for the sitting judge to use in apportioning damages is spelled out in subsection (b), requiring the percentage of fault to be multiplied by the total damages to determine a defendant’s maximum liability.

Subsection (c) allows a plaintiff to recover, even if partially at fault, so long as the plaintiff’s fault is less than the combined fault of all other persons. An exception to a defendant’s maximum liability is provided in subsection (d), which allows a plaintiff who is unable to collect from one of the defendants to file a motion to collect the uncollectible amount from the other defendants, but the defendant’s apportionment is limited to his own percentage of fault multiplied by the uncollectible amount.

This section also identifies a number of situations in which defendants shall continue to be jointly and severally liable, and a number of sections of Code to which this provision does not apply.

Finally, in §55-7-13d, the bill spells out, in subsection (a), how fault is to be determined. In particular, the bill requires that the fault of all persons who contributed be considered, regardless of whether the person was or could have been named as a party to the litigation. Under certain circumstances the fault of a nonparty can be considered, such as if the plaintiff entered into a settlement agreement with the nonparty or if a defendant gives notice identifying that nonparty. If a nonparty is assessed fault, or if a plaintiff has settled with a nonparty, then the plaintiff’s possible recovery is reduced by that percentage. The subsection clarifies that assignments of fault for nonparties are not binding in subsequent actions. Special interrogatories are to be used by the triers of fact to determine fault.

In subsection (b), the bill clarifies that a party may still be held liable for another person’s fault if that person was acting as an agent of the party or by any other applicable provision of statutory or common law. Subsection (c) provides that a defendant is not liable for damage suffered by a plaintiff in the commission of, or while attempting to flee from the commission of, a felony criminal act, so long as the plaintiff has been convicted or the jury makes a finding that the plaintiff committed the felony.

The burden of proof established in subsection (d) rests with the person seeking to establish fault. Subsection (e) clarifies that no independent cause of action is created by this section.

CODE REFERENCE: West Virginia Code §55-7-13 and §55-7-24 – repealed; §55-7-13a, §55-7-13b, §55-7-13c and §55-7-13d – new

DATE OF PASSAGE: February 24, 2015

EFFECTIVE DATE: May 25, 2015

ACTION BY GOVERNOR: Signed March 5, 2015



House Bill 2004

Providing a procedure for the development of a state plan under section 111(d) of the Clean Air Act

This bill requires the involvement and approval of the Legislature in the development of the State's plan as required by section 111(d) of the Clean Air Act. First, the bill establishes a new subsection setting forth legislative findings that details how the plan "necessitates establishment and creation of law affecting the economy and energy policy of this State," and declaring a compelling state interest to require legislative review and passage of law prior to submission of the plan to the Environmental Protection Agency (EPA).

Subsection (b) prohibits the Department of Environmental Protection (DEP) from submitting a plan to the EPA without specific legislative action granting such authority. This subsection clarifies that DEP is permitted to develop a proposed state plan in consultation with the DEP Advisory Council and other entities, in accordance with this section.

In subsection (c), the bill sets forth the timing of a proposed state plan to the Legislature, including requiring DEP to make certain determinations of feasibility of a state plan. The plan must be on a unit-specific performance basis, and must also be based upon either a rate-based model or a meter-based model. In addition to submitting the plan to the Legislature, DEP is also directed to publish the report and any proposed state plan on its website. The Legislature may approve the state plan in either regular session or special session.

If the EPA fails to issue, or withdraws, its federal rules or guidelines for reducing carbon dioxide, then the requirements of this section are void, and no state plan is necessary. If the Legislature refuses to approve DEP's proposed state plan, DEP must submit a modified plan for reconsideration by the Legislature.

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

DATE OF PASSAGE: February 19, 2015

EFFECTIVE DATE: February 19, 2015

ACTION BY GOVERNOR: Signed March 3, 2015

House Bill 2005

Relating to alternative programs for the education of teachers

This bill relates to teacher certifications.

It expands opportunities for teachers from other states to receive a West Virginia teacher's certificate. Now a person with a teaching certificate or certificate of eligibility issued by another state can receive a West Virginia teacher's certificate if he or she graduated from an educator preparation program, even if the institution that provided the program is not regionally accredited.

The bill clarifies the eligibility requirements for teacher-in-residence program candidates. Previously, due to an ambiguity in the code, candidates for elementary school teacher-in-residence positions were sometimes required to have completed substantive courses that were entirely unwarranted by the classes that they were hoping to teach. The bill corrects this misunderstanding by removing a reference to "content area preparation courses." Now the reference is simply to "preparation courses."

The bill primarily addresses alternative certification programs for the education of teachers. Like previous code, the bill anticipates that three kinds of alternative programs will be offered. The first kind of program is designed to allow a person who did not graduate from a traditional teacher education program to transition to a career in classroom teaching. The other two programs are designed to develop qualified special education teachers.

The bill defines essential terms. Some terms are new; others are merely revised.

If a school or school district wishes to offer an alternative certification program, the bill requires it to partner with at least one other entity. Permissible partners include accredited colleges and universities, entities affiliated with accredited colleges and universities (like Teach for America), the West Virginia Department of Education and regional education service agencies (RESAs).

Partners must enter into a partnership agreement, and the bill lists the matters that must be addressed in the agreement. The bill provides partners considerable discretion in crafting their programs, but partners must not enroll an alternative teacher for a position unless (a) the position has been advertised for ten days and (b) no qualified certified teacher has applied. The bill, following previous code, contains another similar provision that requires the position to have been advertised twice in accordance with §18A-4-7a. Partners must also provide alternative certification teachers at least six credit hours, or six staff development hours, of instruction in one or more of several subject areas. As noted above, partners enjoy substantial control over the particulars of their alternative certification program. This opportunity for discretion is an important feature of the bill. Previously, the code was quite prescriptive about the kinds and durations of training that partners would have to provide.

The bill requires the State Board to develop rules that provide structure to and guidance regarding the process of establishing and seeking admission to an alternative certification program. An alternative program must be approved by the State Board, but approval is mandatory if the board determines that the program will comply, in all material respects, with the statute and the board's rules.

Like previous code, the bill provides a set of criteria for persons who wish to participate in an alternative certification program. Perhaps the most significant new requirement is that the person's academic or occupational qualifications be of a kind to suggest that the person will succeed in the teaching position that he or she would occupy during the alternative certification program. The bill assumes that subject matter similarity between the candidate's academic or occupational background and the course that he or she will be teaching is the key index of his or her success in the classroom. This feature of the bill

should limit participation in alternative certification programs, in most instances, to persons who wish to teach at the high school level.

An alternative program teacher enjoys a measure of job security, as long as he or she makes satisfactory progress. His or her contract must be renewed from year to year until he or she completes the program. On the other hand, if he or she works for a school or school district that reduces its teaching force, the alternative program teacher will be cut. The bill is quite clear that traditionally certified teachers will be preferred in such circumstances.

The bill simplifies the certification process for alternative program teachers. Previous code provided for one-year certificates that could be renewed from year to year for a cumulative duration of three years. Under the bill, alternative program teaching certificates are good for a maximum of three years but may not be renewed. The bill preserves the evaluation and recommendation procedures that occur at the end of an alternative certification program. These procedures, which were previously codified in §18A-3-1b, have been recodified in §18A-3-1i and revised for greater clarity.

The final section of the bill moves beyond alternative certification programs to address teacher certification in general. The requirements for professional teaching certificates are modified and reorganized for clarity. The alternative path to certification, for example, no longer requires that a teacher's degree be "in a discipline taught in the public schools." This is a significant change and one that should create valuable opportunities to recruit second-career professionals to the teaching profession. A chemical engineer, for example, might make an ideal chemistry teacher. But prior code would have excluded him or her because chemical engineering is not "a discipline taught in the public schools." The bill also expands opportunities for persons who wish to supervise sports and other extracurricular activities. Previous code required county boards of education to prefer professional educators for coaching positions whenever they applied. Boards now have authority to pass over a professional educator in circumstances where an interested layman would be more suitable.

CODE REFERENCE: West Virginia Code §18A-3-1, §18A-3-1a, §18A-3-1b and §18A-3-2a – amended; §18A-3-1c, §18A-3-1d, §18A-3-1e, §18A-3-1f, §18A-3-1g, §18A-3-1h and §18A-3-1i – new

DATE OF PASSAGE: March 14, 2015

EFFECTIVE DATE: June 12, 2015

ACTION BY GOVERNOR: April 2, 2015

House Bill 2008

Auditing the Division of Highways

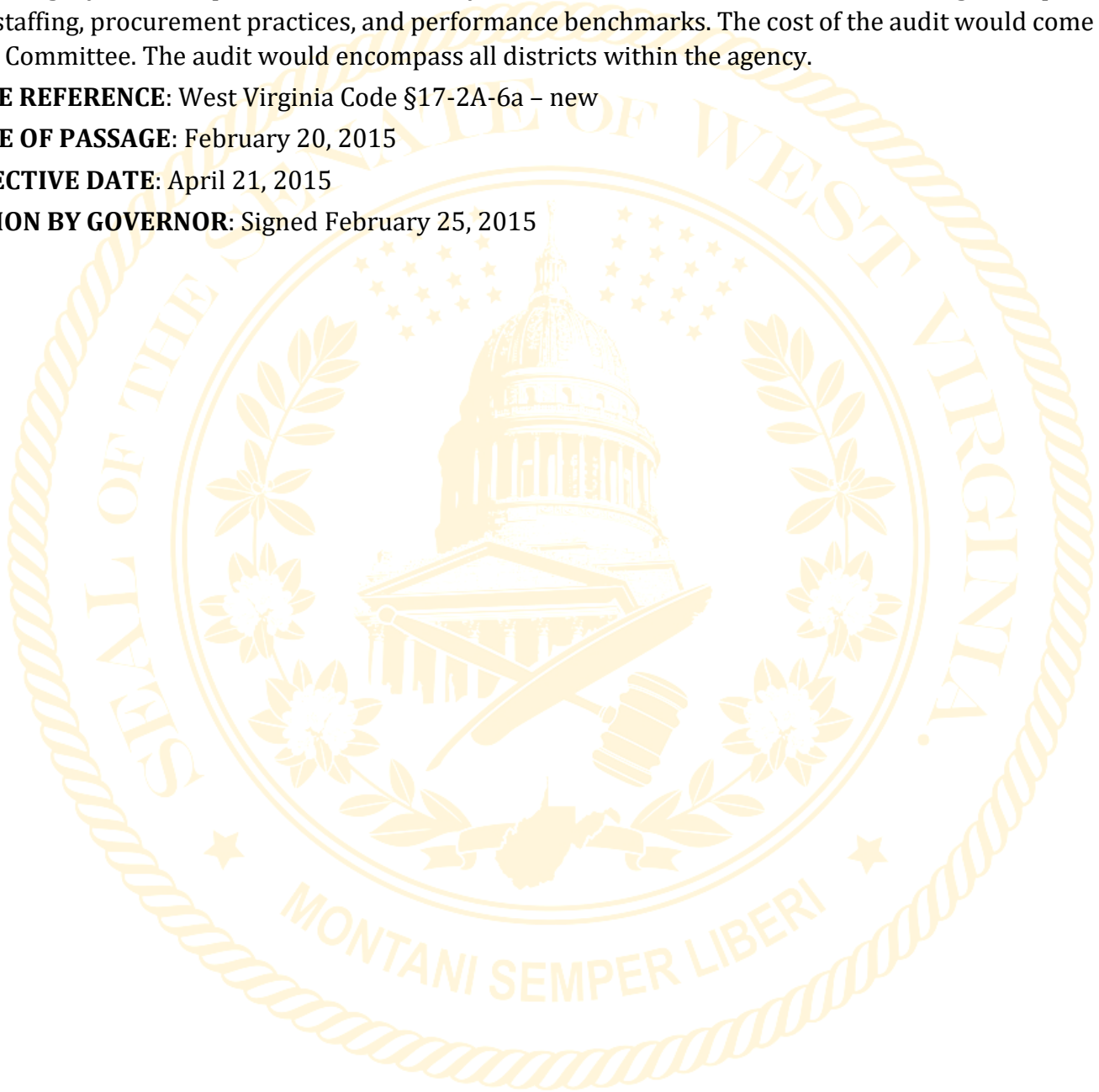
The bill requires an independent audit of the Division of Highways. The final report of the audit would be due to the Governor, House of Delegates and Senate by December 31, 2015. The audit would be performed by a firm selected on a competitive bid basis and having not been under contract with the state for the preceding 5 years. The performance audit may include but not be limited to: vehicle usage, compensation and staffing, procurement practices, and performance benchmarks. The cost of the audit would come from Joint Committee. The audit would encompass all districts within the agency.

CODE REFERENCE: West Virginia Code §17-2A-6a – new

DATE OF PASSAGE: February 20, 2015

EFFECTIVE DATE: April 21, 2015

ACTION BY GOVERNOR: Signed February 25, 2015



House Bill 2010

Requiring the elections of justices of the West Virginia Supreme Court of Appeals, circuit court judges, family court judges and magistrates be nonpartisan and by division

This bill modifies the manner in which justices of the Supreme Court of Appeals, circuit judges, family court judges and magistrates are elected by requiring that they be elected on a nonpartisan basis at the time of the primary election in May.

First, the bill provides that, beginning with the 2016 election, all elections for these positions will be done on a nonpartisan ballot (see §3-1-16 and §51-1-1 for Supreme Court of Appeals justices, §3-1-17 for circuit judges and magistrates, §50-1-1 for magistrates, and §51- 2A-5 for family court judges). For justices of the Supreme Court of Appeals and magistrates who are not currently elected by division, elections will now be by division when more than one justice or magistrate is to be elected (see §3-1-16 and §3-1-17).

These sections are further underscored by the addition of four new sections, §3-5-6a, §3-5-6b, §3-5-6c, and §3-5-6d, which provide explicitly that the election of these officers is to be done on a nonpartisan basis and by division.

Next, the bill modifies ballot design and layout. In §3-4A-11a, §3-5-13, and §3-5-13a, changes are made to include nonpartisan judicial elections on the separate nonpartisan ballot used for Board of Education elections and questions to be voted upon. §3-5-4, which addresses the nomination of candidates in primary elections, is amended to remove language relating to candidates for judicial office being nominated at the time of the primary.

Changes are made to §3-5-7, which addresses filing announcements of candidacies, to change the filing location for candidates for circuit judge and family judge. Under current law, the location for filing varies based on whether the circuit is a single or multi-county district. The bill requires that all candidates for circuit and family court judge file candidacy papers with the Secretary of State, regardless of the dimensions of the circuit. This section also allows an unsuccessful candidate in a nonpartisan judicial election to be considered to fill a ballot vacancy during the subsequent general election. §3-10-3 and §50-1-6 are amended to address the manner in which vacancies in judicial offices are to be filled. The bill updates §6-5-1, which relates to terms of office for all judicial officers.

Finally, the bill amends a number of sections related to the West Virginia Supreme Court Of Appeals Public Campaign Financing Pilot Program. §3-12-3, §3-12-6, §3-12-10, §3-12-11, §3-12-12 and §3-12-14 are amended to remove language relating to primary and general elections in favor of a defined “nonpartisan judicial election campaign period,” and references are updated throughout.

The bill eliminates any reference to campaign financing during a primary election period, and also makes unavailable any funding of campaigns that are uncontested. §51-2-1 was amended to clarify that the election of the offices is to be done on a non- partisan basis by divisions.

CODE REFERENCE: West Virginia Code §3-1-16, §3-1-17, §3-4A-11a, §3-5-4, §3-5-7, §3-5-13, §3-5-13a, §3-10-3, §3-12-3, §3-12-6, §3-12-10, §3-12-11, §3-12-12, §3-12-14, §6-5-1, §50-1-1, §50-1-6, §51-1-1 and §51-2A-5 – amended; §3-5-6a, §3-5-6b, §3-5-6c and §3-5-6d – new

DATE OF PASSAGE: March 10, 2015

EFFECTIVE DATE: June 8, 2015

ACTION BY GOVERNOR: Signed March 25, 2015

House Bill 2011

Relating to disbursements from the Workers' Compensation Fund where an injury is self inflicted or intentionally caused by the employer

This bill amends West Virginia's deliberate intent statute in an effort to clarify and clearly articulate the liability standards applicable to such a claim.

Subsection (a) adds additional specificity to the provisions permitting an employer to require an employee to undergo a blood test to determine if he or she is intoxicated by establishing a drug and alcohol testing procedure. The test must be a blood test and, if an employee tests positive as defined, then the intoxication is deemed the proximate cause of any injury.

The bill modifies subsection (c) by bifurcating the provisions related to employee injury from those related to employee death and lays out the specific rights to recovery in each case. A new provision is added to require that, unless good cause is shown, the employee or his or her representative file a claim for workers' compensation benefits.

In subsection (d), which spells out the specific factual findings that must be shown for an employer to lose the immunity provided under the workers' compensation code, the bill clarifies and adds to these findings. With respect to the second of the five findings, that the employer had actual knowledge of the specific unsafe working condition, the bill adds the requirement that actual knowledge be specifically proven by the employee or individual seeking to recover and sets forth the manner in which such actual knowledge can and cannot be proven. To satisfy the third element, the bill lays out the evidentiary standards for showing that the specific unsafe working condition was a violation of a safety statute, rule or regulation, or of a commonly accepted and well-known safety standard within the industry or business. Clarifying language is added to the fourth finding to ensure that the employer being sued under the deliberate intent exemption must be a person who has "actual knowledge" as required by the second of the five findings.

The bill also modifies the fifth of the findings in subsection (d), which requires a showing that the employee suffered "serious compensable injury or compensable death . . . as a direct and proximate result of the specific unsafe working condition." New language limits the factual circumstances supporting this finding to four:

- The injury results in a permanent physical and/or psychological impairment of at least thirteen percent, or that otherwise causes permanent serious disfigurement, permanent loss or significant impairment of a bodily function, or objectively verifiable dermatomal radiculopathy;
- The injury, as verified by a written certification by a licensed physician, is likely to result in death within eighteen months or less from the date of the filing of the complaint;
- The injury causes permanent serious disfigurement, permanent loss or significant impairment of a bodily function, or objectively verifiable dermatomal radiculopathy; or
- In the case of occupational pneumoconiosis claims, a verification from a board certified pulmonologist must be submitted showing that the employee is suffering from complicated pneumoconiosis or pulmonary massive fibrosis that has caused pulmonary impairment of at least fifteen percent, as confirmed by valid and reproducible ventilatory testing.

Certain procedural requirements for making a deliberate intent claim are also provided, including filing a verified statement from a person with "knowledge and expertise of the workplace safety statutes, rules, regulations and consensus industry safety standards" applicable to the particular injury. The

employer may request, and the court must duly consider, a request to bifurcate discovery related to liability from that related to damages.

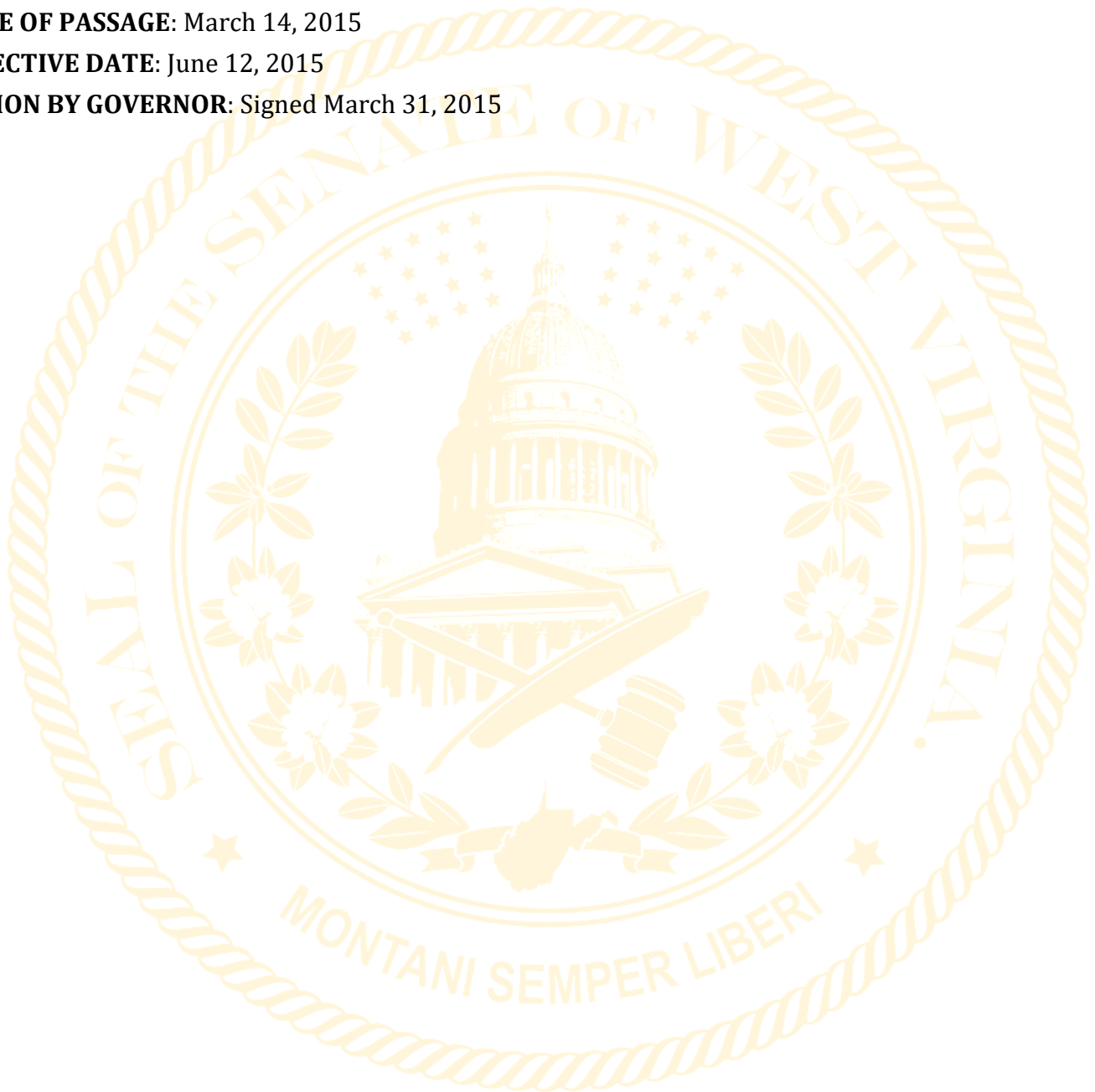
Finally, in subsection (e), the bill provides that venue is appropriate in the circuit court of the county where the alleged injury occurred, or in the circuit court of the county where the employer has its principal place of business.

CODE REFERENCE: West Virginia Code §23-4-2 – amended

DATE OF PASSAGE: March 14, 2015

EFFECTIVE DATE: June 12, 2015

ACTION BY GOVERNOR: Signed March 31, 2015



House Bill 2053

Relating to the form of trust deeds

This bill permits the filing of a memorandum of a deed of trust and in lieu of the filing of a full deed of trust in County Clerks' offices. The bill establishes minimum information which must be included in the memorandum, including:

- the names and addresses of all relevant parties
- the amount of the indebtedness secured by the deed of trust
- the date of execution of the deed of trust and the date of maturity of the indebtedness
- a description of the property encumbered by the lien
- a title in compliance with other provisions of code if the indebtedness is a line of credit
- a statement of whether advances are obligatory if the indebtedness is a line of credit
- provisions of the deed of trust regarding substitution of a trustee
- a summary of applicable notice and publication requirements in case of default
- whether the loan was originated or serviced pursuant to specified government programs
- the name of the person from whom, upon written request from any interested party, the original deed of trust, or a copy thereof, may be obtained.

The bill provides that the memorandum is as valid as in the complete deed of trust recorded on the date the memorandum is admitted to record, and includes a requirement that the original deed of trust must be recorded prior to the commencement of any foreclosure or other execution of the deed of trust.

CODE REFERENCE: West Virginia Code §38-1-2 and §40-1-9 – amended

DATE OF PASSAGE: March 10, 2015

EFFECTIVE DATE: June 8, 2015

ACTION BY GOVERNOR: Signed March 25, 2015

House Bill 2100

Caregiver Advise, Record and Enable Act

This bill would allow a person being discharged from a hospital to designate a lay caregiver to provide after-care needs.

The bill defines terms. It sets forth the means for designation of a caregiver by the patient or his or her legal guardian. The bill further provides for the hospital to notify the caregiver upon discharge and to consult with the caregiver and the patient regarding the needed care. There are provisions for a consent to receive the medical records of the patient and for instruction and of the care needed.

Finally, the bill states that the article may not be seen as interfering with the rights of a person to make health care decisions and grants a limitation of liability to the hospital, its employees or agents. It also precludes the spending of state or federal funds to pay a lay caregiver for the services.

CODE REFERENCE: West Virginia Code §16-5X-1 through §16-5X-6 – new

DATE OF PASSAGE: March 10, 2015

EFFECTIVE DATE: June 8, 2015

ACTION BY GOVERNOR: Signed March 27, 2015

House Bill 2138

Adding aircraft operations on private airstrips and farms to the definition of recreational purpose

This bill limits the liability of landowners who make land available for the use of aircraft or ultralight aircraft operations by adding aircraft or ultralight operations on private airstrips or farms to the definition of “recreational purposes” found in this section.

CODE REFERENCE: West Virginia Code §19-25-5 – amended

DATE OF PASSAGE: February 11, 2015

EFFECTIVE DATE: May 12, 2015

ACTION BY GOVERNOR: Signed February 18, 2015

House Bill 2157

Relating to absentee ballot fraud

This bill creates a new criminal offense within the State’s Election Code, making it a felony for any person “with the intent to commit fraud” to obtain, remove or disseminate an absent voter’s ballot, intimidate an absent voter or complete or alter an absent voter’s ballot. An individual convicted of this offense would be guilty of a felony and subject to either a fine between \$10,000 and \$20,000 and imprisonment for 1-5 years, or both.

CODE REFERENCE: West Virginia Code §3-9-19 – amended

DATE OF PASSAGE: March 3, 2015

EFFECTIVE DATE: June 1, 2015

ACTION BY GOVERNOR: Signed March 11, 2015

House Bill 2161

Adopting the Uniform Act on Prevention of and Remedies for Human Trafficking

This bill creates the Uniform Act on Prevention of and Remedies for Human Trafficking. Human Trafficking is committed by an individual if that person knowingly recruits, transports or harbors an individual for forced labor or to engage in commercial sexual activity, knowingly coerces an individual to provide labor or services except where permissible under law, knowingly uses a minor for commercial sexual activity, or uses coercion or deception to make an adult engage in commercial sexual activity.

The bill creates the Commission on Human Trafficking and specifies its membership. The Commission is required to hold its first meeting no later than September 1, 2015, and meetings are to be held twice a year thereafter. Victims are eligible for state benefits, awards from the Crime Victims Compensation Fund and child protective services. A law enforcement officer who encounters a victim is to notify the appropriate agencies identified in the plan. The costs associated with the bill will be to the Division of Highways for signage since the bill requires the Division of Highways to display a public-awareness poster containing the National Human Trafficking Resource Center hot line information in every public rest area and welcome center in the state.

CODE REFERENCE: West Virginia Code §61-2-17 and §62-1D-8 – amended; §15-14-1, §15-14-2, §15-14-3, §15-14-4, §15-14-5, §15-14-6, §61-2-17a and §61-2-17b – new

DATE OF PASSAGE: March 14, 2015

EFFECTIVE DATE: June 12, 2015

ACTION BY GOVERNOR: Vetoed April 1, 2015

House Bill 2201

Requiring the Public Service Commission to adopt certain net metering and interconnection rules and standards

This bill amends the net metering provisions remaining in Chapter 24, Article 2F the code following the enactment of HB 2001, which repealed all of Article 2F except for section eight. The bill defines three new terms: “net metering,” “customer-generator” and “cross- subsidization.” Subsection (d) requires that the Public Service Commission (PSC), in adopting rules concerning electric utilities providing rebates or discounts for customer-generated electricity, ensure that any net metering tariff does not create a cross-subsidization between customers within one class of service. Subsection (g) requires electric utilities to offer net metering to customer-generators that generate electricity on the customer-generator side of the meter. This net metering will be offered on a first-come, first-served basis, and the total generation capacity is capped at 3 percent of aggregate customer peak demand in the state during the previous year of which one-half percent is reserved for residential customer-generators. Subsection (h) directs the PSC to adopt a rule requiring compliance with the National Electrical Code and the Institute of the Electrical and Electronics Engineers, including disconnect readily available to utility lineworkers.

CODE REFERENCE: West Virginia Code §24-2F-8 – amended

DATE OF PASSAGE: February 28, 2015

EFFECTIVE DATE: February 28, 2015

ACTION BY GOVERNOR: Signed March 12, 2015

House Bill 2233

Requiring that legislative rules be reviewed five years after initial approval by the Legislative Rule-Making Review Committee and the Legislative Auditor's Office

This bill requires the Legislative Rule-Making Review Committee, with the assistance of the Legislative Auditor, to review any rule promulgated after January 1, 2015, within five years of its effective date. The LRMRC is to make recommendations to the Legislature for amendment or repeal of any rule. The LRMRC is to determine whether or not a rule is achieving its purpose and whether it should be eliminated, continued or amended. The LRMRC and the Legislative Auditor's Office are to submit their findings and recommendations to the Joint Committee on Government and Finance.

CODE REFERENCE: West Virginia Code §29A-3-16 – amended

DATE OF PASSAGE: March 14, 2015

EFFECTIVE DATE: June 12, 2015

ACTION BY GOVERNOR: Signed March 31, 2015

House Bill 2266

Relating to the publication requirements of the administration of estates

This bill repeals the sections of code relating to the duty of a fiduciary commissioner to publish notice of the time for receiving claims against decedents' estates and to certify such publication, and to include this notice in the publications made by the County Clerk during the course of the estate administration. The bill:

- increases the threshold for the mandatory appointment of a fiduciary commissioner from estate assets showing on the appraisal of \$100,000 to \$200,000;
- reduces the creditor claims period on estates from ninety to sixty days;
- requires the State Registrar to include any known legal residences of a decedent on forms pursuant to applying for a certificate of death; and
- permits a county clerk to require the filing of a death certificate upon opening of an estate.

CODE REFERENCE: West Virginia Code §44-2-2 and §44-2-3 – repealed; §44-1-14a – amended

DATE OF PASSAGE: March 14, 2015

EFFECTIVE DATE: June 12, 2015

ACTION BY GOVERNOR: Signed March 31, 2015

House Bill 2377

Authorizing State Board of Education to approve certain alternatives with respect to instructional time

The purpose of this bill is to allow schools to provide constructive, educational activities for students to compensate for scheduled school time that is lost due to events such as inclement weather or power failures. Schools could implement such methods as compiling instructional packets for students to work on at home when school is canceled for snow storms or extending the school day to utilize banked time.

This bill authorizes the State Board of Education to approve alternatives to the statutory provisions regarding instructional time under certain narrow conditions. A county board may propose for State Board approval an alternative to applicable statutes which meets the spirit and intent of statutory law and is intended solely to optimize student learning. The bill recognizes the constitutional authority of the State Board over the general supervision of public schools, and grants it sole discretion to determine whether a plan meets the spirit and intent of statutory law and is intended solely to optimize student learning.

The bill removes obsolete provisions regarding developmental programming and instruction and outdated provisions regarding the school entrance age which conflict with current law.

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

DATE OF PASSAGE: March 12, 2015

EFFECTIVE DATE: June 10, 2015

ACTION BY GOVERNOR: Signed March 27, 2015

House Bill 2461

Relating to delinquency proceedings of insurers

This bill amends the provisions of the West Virginia Code relating to delinquency actions brought by the Commissioner of Insurance. The bill provides that the commencement of a delinquency proceeding by the Commissioner of Insurance against an insurer that is a member of a federal home loan bank does not operate as a stay, injunction or prohibition of the exercise by the federal home loan bank of its rights regarding collateral pledged by the insurer-member. The bill prohibits the voiding by the receiver of transfers made by an insurer-member to a federal home loan bank in the ordinary course of business within four months of the commencement of a delinquency proceedings or which received prior approval of the receiver, unless the transfer was made with actual intent to hinder, delay or defraud the insurer-member, a receiver appointed for the insurer-member or existing or future creditors.

The bill requires that, upon the request of a receiver, the federal home loan bank shall, within 10 days of the request, provide a process and establish timing for:

- the release of collateral that exceeds the lending value required to support secured obligations remaining after any repayment of advances;
- the release of any collateral remaining in the federal home loan bank's possession following repayment of all outstanding obligations;
- the payment of fees and the operation of deposits and other accounts with the federal home loan bank; and
- the redemption or repurchase of deposits and other accounts with the federal home loan bank.

In addition, the federal home loan bank shall provide any options for the insurer-member to renew or restructure an advance to defer associated prepayment fees. Finally, the bill provides that nothing in the section affects a receiver's rights pursuant other federal laws.

CODE REFERENCE: West Virginia Code §33-10-4 and 33-10-26 – amended

DATE OF PASSAGE: March 12, 2015

EFFECTIVE DATE: June 10, 2015

ACTION BY GOVERNOR: Signed April 1, 2015

House Bill 2493

Relating to requirements for insurance policies and contracts providing accident and sickness insurance or direct health care services that cover anti-cancer medications

This bill would require insurance policies to cover the cost of orally administered or self-injected anti-cancer medications in the same manner as injected or intravenously administered anti-cancer medications. Specifically the bill provides that companies may not increase copayments, deductibles or coinsurance rates for injected or intravenously administered anti-cancer medications or reclassify benefits to treat the two types of drugs similarly. There is a provision that if the insurer demonstrates to the Insurance Commissioner that compliance exceeds 2% of the total costs for all policies they may apply cost containment measures to keep cost below the 2%.

CODE REFERENCE: West Virginia Code §33-15-41, §33-16-3x, §33-24-7m, §33-25-8j and §33-25A-81 – new

EFFECTIVE DATE: June 10, 2015 (internal effective date of January 1, 2016)

DATE OF PASSAGE: March 12, 2015

ACTION BY GOVERNOR: Signed March 25, 2015

House Bill 2496

Adopting the Interstate Medical Licensure Compact

This bill adopts the Interstate Medical Licensure Compact. The primary purpose of the compact is to encourage medical portability as the practice or medicine changes. It will enable physician's to become licensed in a more expeditious manner in several states.

The bill defined key terms. It also set forth eligibility requirements for participating physicians and set forth a process for application and issuance of an expedited license that includes a fee. There are also renewal standards.

Provisions in the bill provide for the development by the Compact of a database of physicians that contains pertinent information about member physicians. There are also investigatory and disciplinary provisions. The bill also set forth an Interstate Medical Licensure Compact Commission with powers and duties, membership and meeting requirements set out in the bill. Oversight of the Commission is granted to individual states.

The bill set forth eligibility requirements for states, a procedure should a state wish to withdraw, a means to dissolve the compact and a provision that makes the laws of the individual states primary over the provisions of the compact.

CODE REFERENCE: West Virginia Code §30-1C-1 through §30-1C-24 – new

DATE OF PASSAGE: March 12, 2015

EFFECTIVE DATE: June 10, 2015

ACTION BY GOVERNOR: Signed March 31, 2015

House Bill 2515

Relating to elk restoration

The bill adds provisions to the code to address elk restoration in the state. It requires the Division of Natural Resources (DNR) to take an active role in the reintroduction of the elk species in the state and to establish an effective science-based elk management plan. The Director of DNR is authorized to propose legislative rules regarding depredation permits, the management of elk outside the elk management area, the establishment of conditions and permits allowing the management and future hunting of elk, and the establishment of protocols for ensuring elk imported in the state are healthy, tested for tuberculosis, brucellosis and other diseases of critical concern and from an area where chronic wasting disease has not been detected. The elk management area is to include Logan, Mingo, McDowell, Wyoming and parts of Boone, Lincoln and Wayne counties. It provides that it is unlawful for any person to hunt, capture or kill any elk, or have possession of any elk or elk parts, except for elk lawfully killed or obtained during an established open hunting season for elk. The bill creates the "Elk Damage Fund" and requires 10% of all application fees for elk hunting permits be deposited into the fund. The DNR is to administer the fund and develop procedures through legislative rule to reimburse for damage to agricultural crops, fences and personal gardens caused by elk. In addition, the bill increases the amount remitted to DNR for the cost of replacing an elk which is unlawfully injured or killed from \$500 to \$4500; and adds elk to the protected animals that may not be lawfully possessed if accidentally struck by a motor vehicle.

The bill requires persons required to deliver wildlife, including bears, to an official checking station to electronically register the wildlife in lieu of the delivery to an official checking station.

The bill also incorporates the provisions of SB 278 which amended several sections of the WV Code relating to hunting to make the following substantive changes:

- prohibits hunting with night vision technology, drones or other unmanned aircraft;
- permits a person to carry a gun for self-defense while in the woods;
- clarifies that rifles or shotguns that are loaded or have magazines that are attached are prohibited in a vehicle;
- requires local option election ballots for Sunday hunting state that the hunting is to be on private lands with the consent of the land owner;
- permits hunting with crossbows during big game firearms season, and requires the director to designate a separate season for crossbow hunting. Other code sections addressing crossbows and Class Y licenses were also updated.

CODE REFERENCE: West Virginia Code §20-2-4, §20-2-5, §20-2-5a, §20-2-5g, §20-2-22a and §20-2-42w – amended; §20-2-5h – new

DATE OF PASSAGE: March 14, 2015

EFFECTIVE DATE: June 12, 2015

ACTION BY GOVERNOR: Signed April 2, 2015

House Bill 2536

Relating to travel insurance limited lines producers

This bill creates the “Travel Insurance Entity Producer Limited License Act.” It allows the Insurance Commissioner to issue a “travel insurance entity producer license” for an annual \$200 fee. Travel retailers and their employees would be permitted to offer travel insurance on behalf of the travel insurance entity producer.

“Travel insurance” means an individual or group policy of insurance that provides coverage for personal risks incident to planned travel, including: interruption or cancellation of a trip or event; loss of baggage or personal effects; damages to accommodations or rental vehicles; and sickness, accident, disability or death occurring during travel. It does not include major medical plans that provide comprehensive medical protection for travelers with trips lasting six months or longer.

Under the bill, a travel insurance retailer may not provide insurance coverage advice when making available informational brochures to prospective purchasers. Travel insurance entity producers must:

- maintain a register of all travel retailers that offer travel insurance on behalf of the producer
- comply with fingerprinting requirements
- pay licensing fees
- provide training for the employees offering the insurance, including instructions on the types of insurance offered, ethical sales practices and required disclosures to prospective customers.

The bill exempts producers and those operating under the travel insurance entity producer license from examination and continuing education requirements. It permits a lapsed license to be reinstated within twelve months after the expiration date with payment of a \$50 penalty.

The bill permits a travel insurance entity producer to be appointed and to act as an agent subject to the insurer filing a notice of appointment and payment of a nonrefundable appointment processing fee of \$25. It permits an insurer to appoint a travel insurance entity producer to all or some insurers within the insurer’s holding company system or group by filing a single notice of appointment.

Travel retailers are authorized to receive compensation for offering and disseminating travel insurance. The producer is liable for the acts of the travel retailer in offering and disseminating travel insurance. The bill also specifies certain enforcement measures against a travel retailer, its employees and the producer.

CODE REFERENCE: West Virginia Code §33-12-32b – new

DATE OF PASSAGE: March 12, 2015

EFFECTIVE DATE: June 10, 2015

ACTION BY GOVERNOR: Signed April 1, 2015

House Bill 2557

Clarifying that an insured driver of a motor vehicle is covered by the driver's auto insurance policy when renting or leasing a vehicle

This bill provides that the legally required security/insurance on any motor vehicle owned by anyone engaged in the business of renting or leasing the motor vehicle is secondary to coverage under any motor vehicle liability insurance or other form of security meeting or exceeding the financial minimums (20/40/10) that is available and in effect for an individual with respect to the renting, leasing, operation, maintenance, or use of the motor vehicle.

Under current law, insurance follows the vehicle, which means that the security of a rental car company provides primary coverage for a rental car driven by a customer. See *Allstate Ins. Co. v. State Auto. Mut. Ins.*, 178 W. Va. 704 (1987) (holding that the insurance policy issued to the owner of the vehicle is the primary policy; insurance follows the automobile, rather than the driver); *Miller v. Lambert*, 195 W. Va. 63 (1995) (holding that mandatory requirement of insurance coverage under financial responsibility law takes precedence over any contrary or restrictive language in an automobile liability insurance policy). This bill changes the order in which coverage applies so that a rental/leasing company's security would be secondary to the renter/lessee's insurance that meets or exceeds the legal financial minimums.

CODE REFERENCE: West Virginia Code §33-6-29 – amended

DATE OF PASSAGE: March 12, 2015

EFFECTIVE DATE: June 10, 2015

ACTION BY GOVERNOR: Signed March 25, 2015

House Bill 2562

Sales tax increment financing

The bill adds new provisions to the current statutes that govern sales tax increment financing districts (STIF District) that have been formed by county commissions. Under current law, a county commission's application to the WV Development Office for its approval to form a STIF District must include the Tax Commissioner's good faith estimate of the aggregate amount of consumers sales and service tax that was actually remitted to the Tax Commissioner by businesses in or expected to move into the proposed district "for the twelve full calendar months next preceding the date of the application." This amount is designated as the "Base Tax Revenue Amount" for the district. During the life of the district, from sales and service taxes generated from business activity in the district, the amount of the Base Tax Revenue Amount will be deposited in the state's General Revenue Fund and any excess revenues are dedicated to paying the cost of the development of the STIF District.

The bill makes several changes to current law:

- The bill requires the Base Tax Revenue Amount for a STIF District to be recalculated by the Tax Commissioner if requested by its governing county commission before April 30, 2015, but in no event may the recalculation reduce the Base Tax Revenue Amount by more than \$1 million. The recalculated Base Tax Revenue Amount will apply on and after July 1, 2015.
- In any month in which the sales tax revenue collections from the STIFF District are less than the recalculated Base Tax Revenue Amount, the entire amount of the collections are to be deposited into the state General Revenue Account and the deficiency for the month are added to the amount to be deposited in the next ensuing month(s) until the deficiency is paid in full. However, if there are monthly deficiencies remaining at the end of a fiscal year, the deficiencies are discharged.
- If bonds are issued to fund the cost of the STIF District's development, then so long as the bonds are outstanding, the Tax Commissioner must provide on a monthly basis "information on or derived from special district excise tax returns" to the trustee for bonds issued for the district. The trustee may share the information so obtained with the county commission that established the economic opportunity development district that issued the bonds pursuant to this article and with the bondholders and with bond counsel for bonds issued pursuant to this article, as well as the county commission's legal counsel, financial advisor, placement agents and underwriters. The Tax Commissioner must also provide this information to the county commission, which may share that information with its legal counsel, financial advisor, placement agents and underwriters. All persons with whom this information is shared may not otherwise disclose it.

CODE REFERENCE: West Virginia Code §7-22-7a – amended

DATE OF PASSAGE: March 10, 2015

EFFECTIVE DATE: March 10, 2015

ACTION BY GOVERNOR: March 25, 2015

House Bill 2595

Relating to certificates of need for the development of health facilities in this state

This bill would clarify that an entity considered to be an “affected person” for purposes of filings for a Certificate of Need must be located within the state of West Virginia.

CODE REFERENCE: West Virginia Code §16-2D-2 and §16-2D-6 – amended

EFFECTIVE DATE: June 12, 2015

DATE OF PASSAGE: March 14, 2015

ACTION BY GOVERNOR: Signed April 1, 2015

House Bill 2626

Use of the Abandoned Land Reclamation Fund

The bill modifies limitations on the use of federal grant funds allocated to this State to address water and land reclamation needs arising from the effects of coal mining that occurred predominantly before 1977. These funds arise from federal reclamation fees imposed upon current coal production. The grants are deposited into the State's Abandoned Land Reclamation Fund.

The changes made by the bill mirror changes to those limitations that have been made in federal law. Specifically, the bill would remove the 30% limitation that once existed in federal law upon the expenditure of funds allocated to the state “for the purpose of protecting, repairing, replacing, constructing or enhancing facilities relating to water supply, including water distribution facilities and treatment plants, to replace water supplies adversely affected by coal surface mining practices.” Also in conformance with federal law, the bill would increase from 10% to 30% the limitation that once existed in federal law upon the use of the grant funds for distribution by the Secretary of the State’s Department of Environmental Protection into either the State’s Reclamation and Restoration Fund or the State’s Acid Mine Drainage Abatement and Treatment Fund. The purposes for these two funds are described in the bill and would remain unchanged.

CODE REFERENCE: West Virginia Code §22-2-4 – amended

DATE OF PASSAGE: March 9, 2015

EFFECTIVE DATE: June 7, 2015

ACTION BY GOVERNOR: Signed March 25, 2015

House Bill 2627

Providing protection against property crimes committed against coal mines, utilities and other industrial facilities

The purpose of this bill is to increase fines and criminal penalties for those who knowingly and willfully damage certain personal property. This bill does the following:

- Adds facilities that “store oil, timber, timber processing” to the existing list: natural gas, coal, water, wastewater, stormwater, and telecommunications or cable service.
- This section contains offenses with associated penalties:
- Knowingly and willfully damage or destroy property (with added facilities above): \$2,000 fine or one year in jail or both.
- Knowingly and willfully damage or destroy property and creates substantial risk of serious bodily harm: Felony, \$5,000 or one to three years in jail or both.
- Knowingly and willfully damage or destroy property and causes serious bodily injury: \$5-50,000 or one to three years in jail or both.
- Knowingly and willfully damage or destroy property and hinders, impairs or disrupts, directly or indirectly the normal operation: \$5-10,000 plus the cost to repair or one to three years in jail or both).

CODE REFERENCE: West Virginia Code §61-3-29 – amended

DATE OF PASSAGE: March 14, 2015

EFFECTIVE DATE: June 12, 2015

ACTION BY GOVERNOR: Vetoed April 1, 2015

House Bill 2726

Clarifying choice of laws issues in product's liability actions

This bill revises one section of code, relating to choice of law in product liability actions, and expands its application to all products liability claims. The current law declares the public policy of the state to be that product liability claims brought by a nonresident against a manufacturer or distributor of a prescription drug for failure to warn shall be governed by the product liability law of the place of injury. The bill applies the doctrine *lex loci delicti* (“law of the place where the delict [tort] was committed”) to all products liability claims brought in West Virginia by nonresidents.

CODE REFERENCE: West Virginia Code §55-8-16 – amended

DATE OF PASSAGE: March 3, 2015

EFFECTIVE DATE: July 1, 2015

ACTION BY GOVERNOR: Signed April 2, 2015

House Bill 2778

State Infrastructure Fund Program

The bill establishes the West Virginia State Transportation Infrastructure Fund Program within the Division of Highways. The program is a cooperative effort between the U.S. Department of Transportation and the state to maximize funds for transportation infrastructure projects in this state. A number of other states have set up similar programs. From time to time, the federal government makes available funds for states that have established programs.

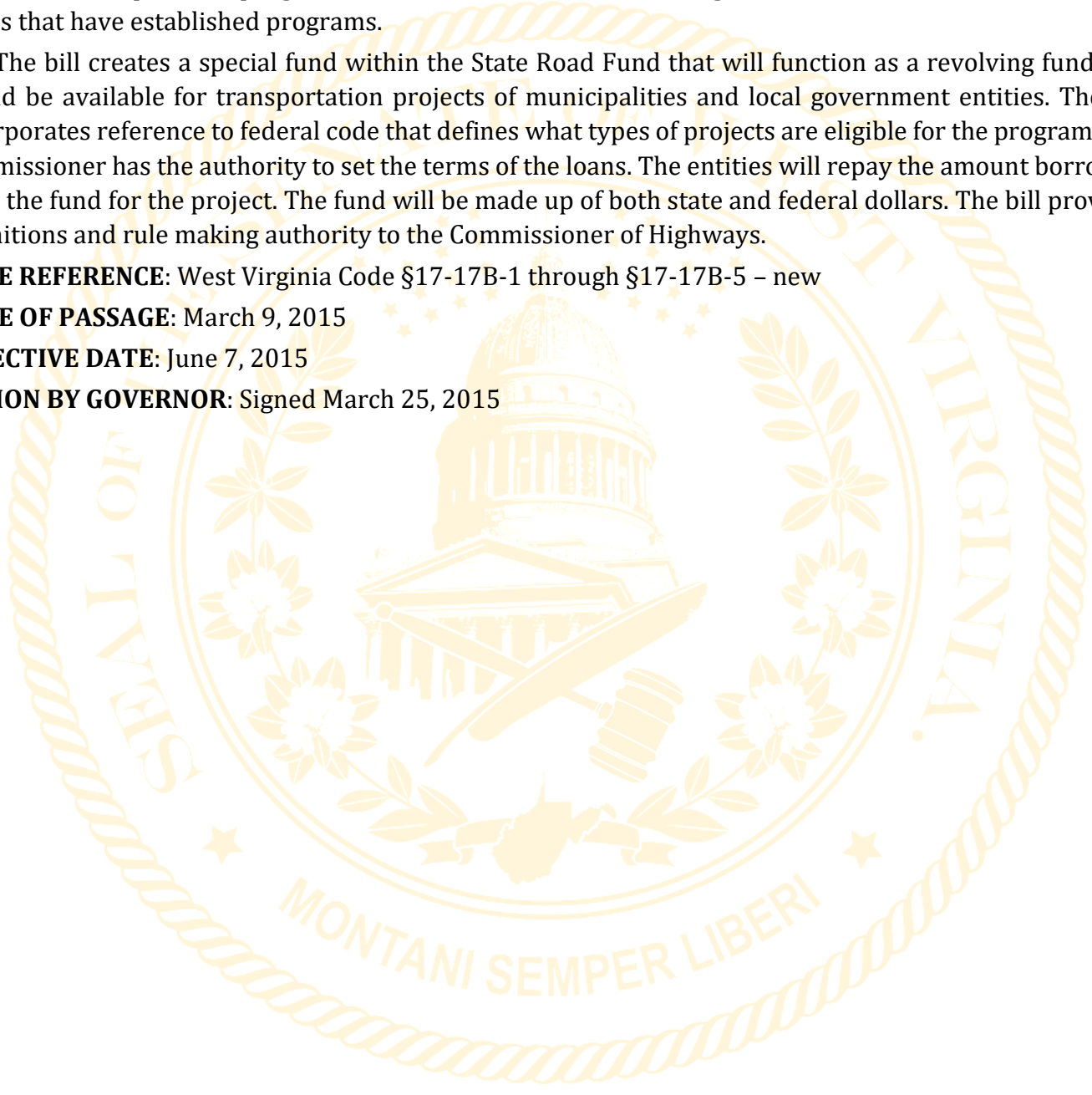
The bill creates a special fund within the State Road Fund that will function as a revolving fund that would be available for transportation projects of municipalities and local government entities. The bill incorporates reference to federal code that defines what types of projects are eligible for the program. The commissioner has the authority to set the terms of the loans. The entities will repay the amount borrowed from the fund for the project. The fund will be made up of both state and federal dollars. The bill provides definitions and rule making authority to the Commissioner of Highways.

CODE REFERENCE: West Virginia Code §17-17B-1 through §17-17B-5 – new

DATE OF PASSAGE: March 9, 2015

EFFECTIVE DATE: June 7, 2015

ACTION BY GOVERNOR: Signed March 25, 2015



House Bill 2790

Relating to minimum responsibility limits of car insurance

This bill makes certain changes with respect to the required proof of financial responsibility required for motor vehicles registered in this state.

The bill increases the minimum proof of financial responsibility to respond for liability for damages incurred in automobile accidents:

- an increase from \$20,000 to \$25,000 for bodily injury or death of one person in any one accident
- an increase from \$40,000 to \$50,000 because of injury or death to two or more persons in any one accident
- an increase from \$10,000 to \$25,000 because of injury or destruction of property of others in any one accident.

The bill provides that insurers are not required to offer new or additional uninsured and underinsured motor vehicle coverages when liability coverage on a policy is increased solely because of the new increased requirements of proof of financial responsibility. Those insurers who have issued policies that carry limits below the minimum required financial responsibility limits in effect on December 31, 2015, shall increase such limits to an amount equal to or above the new minimum required financial responsibility limits when the policy is renewed, but not later than December 31, 2016.

As a result of the decision of the West Virginia Supreme Court of Appeals in *Jones v. Motorists Mutual Insurance Company*, 177 W. Va. 763 (1987), insurers who issue policies with named driver exclusions must nonetheless provide minimum financial responsibility limits coverage for drivers who are excluded from coverage under the terms of a motor vehicle liability policy. This bill would provide that insurers who issue policies with named driver exclusions are not required to provide such coverage, notwithstanding the requirements of proof of financial responsibility.

CODE REFERENCE: West Virginia Code §17D-4-2, §17D-4-7, §17D-4-12, §33-6-31 and §31-6-31d – amended; §33-6-31h – new

DATE OF PASSAGE: March 11, 2015

EFFECTIVE DATE: June 9, 2015

ACTION BY GOVERNOR: Signed April 1, 2015

House Bill 2840

Providing an alternative plan to make up lost days of instruction

The bill allows county boards of education to develop and submit to the State Board of Education a plan to provide options through which students may receive instruction during an “emergency closure” of a school. These options may be using lessons on electronic devices provided to students, lessons posted on a board or school website, and distribution of emergency closure day packets of instructional assignments, or any combination of these instructional delivery methods.

The bill also allows more flexibility for county boards in their development of the methods and details of the plans, and specifies that instruction for students delivered in accordance with the plan count as instructional time or days that meet the 180 instructional day purposes, up to four instructional days of accumulated time, including full days.

Accordingly, rescheduling or adding days to “make up” emergency closures for which instruction was delivered in accordance with the plan during would not be necessary. Implementation of the plan is subject to approval of the State Board of Education.

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

DATE OF PASSAGE: March 14, 2015

EFFECTIVE DATE: July 1, 2015

ACTION BY GOVERNOR: Vetoed April 1, 2015

House Bill 2878

Creating a one-stop electronic business portal in West Virginia

The bill requires the Secretary of State to create a single web-based business portal that individuals and businesses can use to complete and file forms, pay taxes and fees and learn about the requirements for doing business in West Virginia. It requires the Secretary of State to develop a call center to answer questions. Provision is also made for electronic filings by city, county and other local governments.

The bill does not authorize the Secretary of State to receive or demand tax returns and other documents that must be filed with the Tax Commissioner. Additionally, the Secretary of State may not receive taxes and other payments that the Tax Commissioner is required to collect. The Secretary of State and the Tax Commissioner may, however, arrange for the Secretary of State to receive Business Registration Certificate applications, renewals and fees. Neither the Tax Commissioner nor the Tax Division of the Department of Revenue is required to disclose confidential taxpayer information to the Secretary of State.

The Secretary of State is required to develop requirements for the business portal by August 31, 2015. The Secretary of State must also propose legislative rules to give effect to the bill.

CODE REFERENCE: West Virginia Code §31D-1-131 – new

DATE OF PASSAGE: March 14, 2015

EFFECTIVE DATE: June 12, 2015

ACTION BY GOVERNOR: Signed April 1, 2015

House Bill 2880

Creating an addiction treatment pilot program

This bill allowed oversight of a pilot program by the West Virginia Department of Health and Human Resources to allow drug courts and the Division of Corrections to provide addiction treatment to specified offenders.

The bill defines key terms. It provides for medication assisted treatment of an FDA approved drug that is long acting and is used in conjunction with psychosocial support. The program would be done through drug courts or the work release program at the Division of Corrections.

Following enactment, the bill required the selection of a research partner to provide an assessment of the program. They are required to submit a report to various entities which are set out in the bill.

CODE REFERENCE: West Virginia Code §62-15A-1 through §62-15A-3 – new

DATE OF PASSAGE: March 18, 2015

EFFECTIVE DATE: June 16, 2015

ACTION BY GOVERNOR: Signed March 31, 2015

House Bill 2902

West Virginia ABLÉ Act

This bill authorizes the establishment of savings plan program to be administered by the State Treasurer for the benefit of individuals with a disability, as authorized by the recent enactment of Section 529a of the federal Internal Revenue Code of 1986, to be known as the "Achieving a Better Life Experience in West Virginia Act" or the "West Virginia ABLÉ Act". It is similar to the current 529 college savings program for college tuition administered by the Treasurer.

The savings plan program will allow the establishment of a savings account in which individuals with a disability and their families can save private funds to support the individual with a disability. The bill provides guidelines for the maintenance of such accounts.

The Treasurer may implement the program through use of financial organizations as account depositories and managers.

An ABLÉ savings account may be established by the designated beneficiary or the beneficiary's guardian or conservator. A beneficiary may have only one account. Any person may make contributions to the account, subject to federal law maximums. The bill also establishes other account requirements including transfers and distributions from the account, reports to IRS, quarterly account statements and reporting account activities. ABLÉ accounts are exempt from attachment, garnishment and execution and from execution by Medicaid until after the death of the beneficiary.

An ABLÉ savings program trust fund is established to make deposits received from contributors rather than have deposits made directly to the program manager. The treasurer is also given legislative rule making authority.

CODE REFERENCE: West Virginia Code §16-46-1 through §16-46-8 – new

DATE OF PASSAGE: March 11, 2015

EFFECTIVE DATE: June 9, 2016

ACTION BY GOVERNOR: Signed March 31, 2015

House Bill 2914

Providing for voluntary dissolution of resort area district

The bill would amend the provisions of the Code relating to Resort Area Districts. The bill makes the following substantive changes to the current code provisions:

- Provides for the voluntary dissolution of a resort area district;
- Specifies requirements for a notice for the election that resort area board members are required to send out;
- Contains provisions regarding proxy votes;
- Provides requirements for making nominations for board positions;
- Allows nominations for board positions to be made via mail or electronic means, but must be made prior to the meeting at which a vote on board members is scheduled;
- Requires board members be elected by a plurality of the votes cast as opposed to a majority;
- Limits the assessment against any one parcel of real property to 5% of the appraised value of the real property, as shown on the property tax records of the county; and
- Requires a favorable vote of by a majority of the votes cast at a meeting of the owners of the district that will be subject to the assessment before an assessment proposed by the board may be authorized by the board.

The amendments contained in the legislation are not to cause any petition creating a resort district currently before the governing body to be voided and allows the petition to be modified to conform with any new requirements.

CODE REFERENCE: West Virginia Code §7-25-6, §7-25-11 and §7-25-15 – amended; §7-25-7a and §7-25-27 – new

DATE OF PASSAGE: March 11, 2015

EFFECTIVE DATE: June 9, 2015

ACTION BY GOVERNOR: Signed March 25, 2015

House Bill 2926

Relating to deferral charges in connection with a consumer credit sale or consumer loan

This bill applies to modifications or amendments to consumer credit sales or consumer loans secured by a security interest in real estate. The bill provides that the parties to a real estate secured consumer credit sale or consumer loan, either before or after default, may agree in writing to a modification or amendment of, or allonge to, the consumer credit sale or consumer loan, and the seller or lender may make and collect a modification charge equal to the greater of \$250 or one percent of the outstanding balance of the consumer credit sale or consumer loan at the time of the modification, amendment or allonge: Provided, That no modification charge may be made where prohibited by federal law or regulation. *Note: An "allonge" is an attachment or an addendum to a promissory note.*

CODE REFERENCE: West Virginia Code §16-46-1 through §16-46-8 – new

DATE OF PASSAGE: March 14, 2015

EFFECTIVE DATE: June 12, 2016

ACTION BY GOVERNOR: Signed April 2, 2015

House Bill 2968

Exempting from property tax certain properties in this state owned by nonprofit youth organizations.

The bill amends the provisions of the West Virginia Code relating to exemptions from real property taxation. Its purpose is to implement the Constitutional Amendment entitled the Nonprofit Youth Organization Revenue Exemption approved by the voters in November of 2014. This amendment authorized an exemption from property tax for property owned by a nonprofit organization whose primary purpose is the development of youth through adventure, educational or recreational activities for young people and others, which property contains facilities built at a cost of not less than \$100 million and which is capable of supporting additional activities within the region and the state regardless of whether the property is being used for the nonprofit purpose. The Constitutional Amendment requires the Legislature to adopt enabling legislation authorizing the exemption with limitations, conditions and requirements that protect local and regionally located businesses from unfair competition and unreasonable loss of revenue.

The bill authorizes the exemption with the following conditions and limitations:

- limits the activities or uses that are outside of the nonprofit organization's primary purpose that qualify for the exemption - these uses or activities must be for profit and result in unrelated business taxable income as defined by the IRS and may only be one of the following:
- use of the property for meetings, multiday spectator sports or events or multiday recreational, celebratory or ceremonial events held on the property
- zip-line, canopy tour, wheeled sports and climbing facility activities done pursuant to a written agreement with a local licensed commercial outfitter as part of a training or advanced experience offered by the outfitter
- zip-line, canopy tour, wheeled sports and climbing facility activities when part of a spectator event
- retail sales from those attending an authorized meeting, multiday spectator sport or event or multiday recreational, celebratory or ceremonial event
- retail sales from a gift shop or welcome center located adjacent to a public highway open to the general public
- lodging and camping when in conjunction with authorized meetings, multiday spectator sports or events or multiday recreational, celebratory or ceremonial events held on the property; and
- requires that a fee of 1.25% of gross revenues derived from the activities or uses of the property listed above be paid to the Sheriff of the county where the property is located.

The moneys collected by the Sheriff are to be paid to the State Treasurer who will then distribute them each year as follows:

- 25% of the amount collected to the Tourism Promotion Fund;
- 25% of the amount collected to the Sheriff of the county or counties where the property is located to be treated as payments in lieu of taxes;
- 50% of the amount collected to the Sheriff of the county or counties where the property is located or that are served by the same regional Economic Development Authority as the county where the property is located. This money is to be used for a science, technology, engineering, art and math program approved by the Superintendent of the local school district and done in conjunction with the nonprofit organization.

The Tourism Commission is to include in its annual report to the Governor and the Legislature a summary of the funds received and any recommendation it may have regarding the exemption.

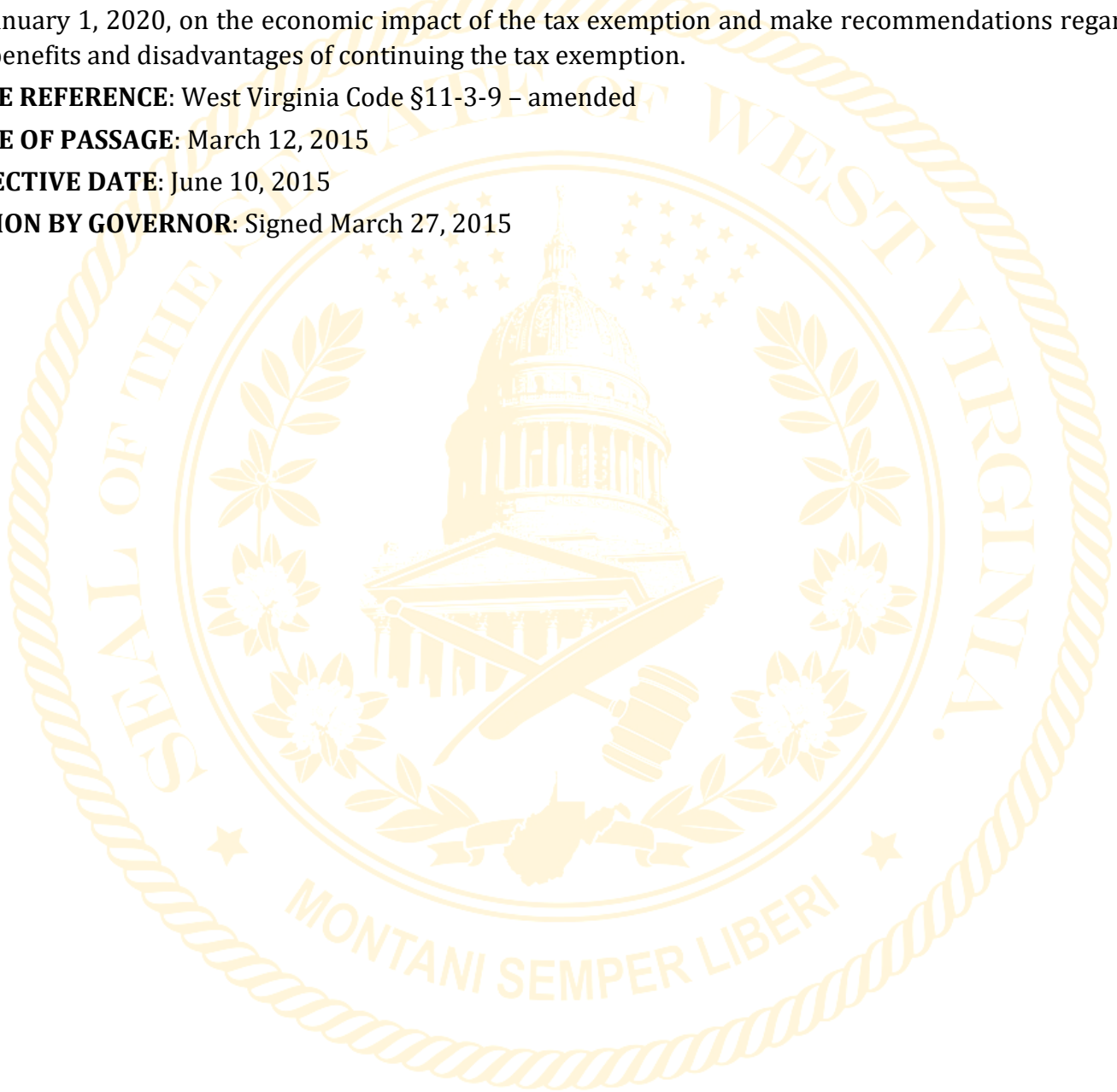
The County Commission of the county where the property is located is required to report to the Joint Committee on Government and Finance by January 1st every five years after the effective date of the bill on the effect of the exemption on businesses located in the area and the county's use of the fees. The WVU Bureau of Business and Economic Research in coordination with the Center for Business and Economic Research at Marshall University is required to report to the Joint Committee on Government and Finance by January 1, 2020, on the economic impact of the tax exemption and make recommendations regarding the benefits and disadvantages of continuing the tax exemption.

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

DATE OF PASSAGE: March 12, 2015

EFFECTIVE DATE: June 10, 2015

ACTION BY GOVERNOR: Signed March 27, 2015



House Bill 2976

Expanding the eligible master's and doctoral level programs for which a Nursing Scholarship may be awarded

This bill broadens the Nursing Scholarship Program's eligibility criteria to include appropriate degree programs through which the nurse educator shortage can be addressed. The Nursing Scholarship Program provides awards targeted toward individuals who will help fill the nursing and nurse educator shortages in WV.

Masters level students pursuing any type of nursing degree would now qualify for a scholarship. Currently only students enrolled in a nurse educator masters degree program are eligible for a masters level award. Eligibility for a doctoral level award is expanded to include students enrolled in a doctoral level education program.

Scholarship recipients at the masters and doctoral levels are required to teach nursing in the state for two years following graduation.

CODE REFERENCE: West Virginia Code §18C 3-4 – amended

DATE OF PASSAGE: March 12, 2015

EFFECTIVE DATE: March 12, 2015

ACTION BY GOVERNOR: Signed March 27, 2015

House Bill 2999

Relating to neonatal abstinence centers

This bill allow for the creation of neonatal abstinence centers in skilled nursing centers. It would exempt these facilities from Certificate of Need. It sets forth the type of services that may be offered by such facilities and requires the Secretary of the Department of Health and Human Resources to develop licensing requirements. It grants rulemaking authority to the Secretary to carry out the provisions of the newly created section.

CODE REFERENCE: West Virginia Code §16-2D-5 – amended; §16-2D-5f and §16-2M-1 through §16-2M-3 – new

DATE OF PASSAGE: March 9, 2015

EFFECTIVE DATE: June 7, 2015

ACTION BY GOVERNOR: Signed April 2, 2015

House Bill 3006

Relating to the determination of the adjusted rate established by the Tax Commissioner for the administration of tax deficiencies

The bill provides that for tax years beginning after December 31, 2016, the Tax Commissioner would fix the interest rate that is applicable to overpayments and deficiencies as the adjusted prime rate charged by banks plus three percentage points. The rate would be set based upon the adjusted prime rate on the first business day of December of the preceding year, and would be effective January 1st.

Currently, the interest rate for underpayments and deficiencies is based upon the adjusted prime rate charged by banks or 8%, whichever is higher. For the past several years, the prime rate charged by banks has been below 8%, so the effective tax rate for deficiencies has been 8%.

CODE REFERENCE: West Virginia Code §11-10-17a - amended

DATE OF PASSAGE: March 14, 2015

EFFECTIVE DATE: June 12, 2015

ACTION BY GOVERNOR: Signed April 2, 2015

