

**House Committee on the Judiciary Staff  
2015 Regular Session**

**Chairman.....Del. John Shott  
(District 27- Mercer)**

**Vice -Chairman.....Del. Patrick Lane  
(District 38-Kanawha)**

**Chief Counsel..... Marty Wright**

**Counsel..... Brian Casto**

**Counsel..... Mark Adkins**

**Counsel..... Kip Reese**

**Clerk..... Mark White**

**Executive Assistant..... Kim Jeffrey**

**Lewis McManus Fellow and Intern..... Devon Lopez**

# BILL SUMMARIES (Regular Session 2015)

## HOUSE ORIGINATED BILLS PASSED

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### H. B. 2001

**BILL NO.:** Committee Substitute for House Bill 2001

**SHORT TITLE:** Repealing portions of the Alternative and Renewable Energy Portfolio Act

**SPONSORS:** Delegates Gearheart, J. Nelson, Arvon, Ellington, Folk, B. White, Frich, Hill, Householder, Moffatt, and Shott.

**CODE:** W.Va. Code §§24-2F-1, 24-2F-2, 24-2F-3, 24-2F-4, 24-2F-5, 24-2F-6, 24-2F-7 24-2F-9, 24-2F-10, 24-2F-11, 24-2F-12 (*repealed*)

**ATTORNEY:** Brian Casto

### SUMMARY:

This bill repeals, in its entirety, the Alternative and Renewable Energy Portfolio Act, Article 2F of Chapter 24; except for one section: §24-2F-8. The provisions to be repealed mandated the Public Service Commission to establish a system of tradable credits stemming from the established, verified and monitored generation and sale of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 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. Thus, the amount of energy allowed to be generated by non-alternative and non-renewable means was -capped- and a marketplace to -trade- credits set up; giving rise to the name “cap and trade”.

The effect of the bill as introduced was 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 certain provisions on net metering and interconnectivity. Accordingly, the Committee Substitute left intact Section 8 of the Article, in order to preserve Public Service Commission rules concerning the provision of a rebate or discount for the electric utilities to provide to customer-generators for any electricity generation that is delivered to the utility under a net metering arrangement. A companion originating bill, HB 2201, adds definitional language back to that section.

**DATE OF PASSAGE:** January 27, 2015

**EFFECTIVE DATE:** Passage- January 27, 2015

**ACTION BY GOVERNOR:** Signed by Governor on February 3, 2015

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## H. B. 2002

**BILL NO.:** Committee Substitute for House Bill 2002

**SHORT TITLE:** Predicating actions for damages upon principles of comparative fault

**SPONSORS:** Delegates Wagner, Overington, A. Evans, Anderson, Waxman, Shott, Kelly, E. Nelson, Folk, Espinosa and Mr. Speaker (Mr. Armstead)

**CODE:** W.Va. Code §55-7-13 (*Repealed*)  
W.Va. Code §§ 55-7-13a through -13d (*New Sections*)  
W.Va. Code § 55-7-24 (*Repealed*)

**ATTORNEY:** Mark Adkins

### SUMMARY:

As part of an agreed conference committee, House Bill 2002 changes the way fault and damages are assessed upon the parties in civil lawsuits. In particular, the bill amended “Joint/Several” liability, making it primarily “Several” liability with some reallocation, and amended the comparative fault system into a Modified Comparative Fault system.

With respect to the Joint/Several Liability reform, House Bill 2002, the liability of each defendant shall be several and may not be joint. In other words, each defendant is only liable for own allocation (%) of fault. House Bill 2002 allows for some reallocation after 12 months if the plaintiff is unable to collect from all defendants. Specifically, if a plaintiff cannot collect from a liable defendant through good faith efforts, the plaintiff has one year after judgment becomes final - to file a motion for reallocation of the uncollectible amount. The Court will determine whether the insolvent defendant’s share of the verdict is uncollectible. If so, the uncollectible amount will be reallocated to the parties based upon their percentages of fault. However, the reallocated defendants are only liable for their allocated % of remaining amount (i.e. if 40% liable, may be 40% liable for uncollected amount) so long as the defendant’s % of fault is greater than Plaintiff’s % of fault.

In addition, House Bill 2002 provides for exceptions to the several liability law (i.e. full joint/several liability still exists):

- (1) two defendants who consciously conspire and deliberately pursue a common plan or design to commit a tortious act;
- (2) if defendant conduct constitutes DUI which is a proximate cause of damages suffered by plaintiff;
- (3) a defendant whose acts or omissions constitute criminal conduct which is a proximate cause of damages suffered by plaintiff; and
- (4) a defendant whose conduct constitutes an illegal disposal of hazardous waste which is a proximate cause of damages suffered by plaintiff

Further, the following actions are exempted from the entire law: Government Tort actions; Uniform Commercial Code actions; Medical Professional Liability actions.

With respect to the comparative fault reform, House Bill 2002 amended the percentage of fault that allowed a Plaintiff recover. Under existing law, if a plaintiff's percentage of fault equals or exceeds the percentage of fault of the defendants, then a plaintiff may not recover. However, House Bill 2002 now requires that the Plaintiff's % of fault **be greater** than combined defendants, in order to bar recovery. Hence, 50%-50% then plaintiff may still recover.

Additionally, House Bill 2002 defines certain terms and allows settling defendants to be placed on the verdict form with attribution of % of fault (i.e. "Empty chair").

**DATE OF PASSAGE:** February 24, 2015

**EFFECTIVE DATE:** Regular (90 days from passage)- May 25, 2015

**ACTION BY GOVERNOR:** Signed by Governor on March 5, 2015

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### **H. B. 2004**

**BILL NO.:** Committee Substitute for House Bill 2004

**SHORT TITLE:** Providing a procedure for the development of a state plan under section 111(d) of the Clean Air Act

**SPONSORS:** Delegates J. Nelson, Howell, Statler, Walters, Foster, Zatezalo, B. White, Moffatt, Stansbury, Gearheart and Butler

**CODE:** W.Va. Code § 22-5-20 (*amend and reenact*)

**ATTORNEY:** Marty Wright

#### **SUMMARY:**

In response to a proposed EPA rule requiring state-specific reduction in carbon dioxide emissions, HB2004 directed the WV Department of Environmental Protection to develop a proposed state plan to achieve the EPA's specific level of reduction. Under current law, the DEP was authorized to submit a proposed state plan unilaterally, and with limited flexibility in the creation of a proposed state plan. HB2004 requires the DEP to forward the proposed state plan to the Legislature for legislative review and consideration. The bill expressly prohibits any state official or state agency from submitting a proposed state plan to the EPA without legislative consideration.

HB2004 further provides that if the Legislature fails to enact or approve all or part of the proposed state plan, the DEP may propose a new or modified state plan to the Legislature in accordance with the requirements of this section. Additionally, if the Environmental Protection Agency does not approve the state plan, in whole or in part, the DEP shall as soon as practicable propose a modified state plan to the Legislature in accordance with the requirements of this section.

Finally, the bill gives the DEP greater flexibility to create a proposed plan than is currently allowable under law, and allows for input from a wide range of sources.

**DATE OF PASSAGE:** February 19, 2015

**EFFECTIVE DATE:** Passage- February 19, 2015

**ACTION BY GOVERNOR:** Signed by Governor on March 3, 2015

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## H. B. 2010

**BILL NO.:** Committee Substitute for House Bill 2010

**SHORT TITLE:** Requiring the election of justices of the Supreme Court of Appeals, circuit court judges, family court judges and magistrates to be nonpartisan and by division

**SPONSORS:** Delegates Kessinger, McCuskey, Border, Shott, Rowan, Frich, Westfall, Lane, Anderson, Sobonya and Faircloth

**CODE:** W.Va. Code §§ 3-1-16 & -17 (*amend and reenact*)  
W.Va. Code § 3-4A-11a (*amend and reenact*)  
W.Va. Code §§ 3-5-4, -7, -13 & -13a (*amend and reenact*)  
W.Va. Code §§ 3-5-6a, -6b, -6c & -6d (*New Sections*)  
W.Va. Code § 3-10-3 (*amend and reenact*)  
W.Va. Code § 3-12-3, -6, -10, -11, -12 & -14 (*amend and reenact*)  
W.Va. Code § 6-5-1 (*amend and reenact*)  
W.Va. Code §§ 50-1-1 & -6 (*amend and reenact*)  
W.Va. Code § 51-1-1 (*amend and reenact*)  
W.Va. Code § 51-2-1 (*amend and reenact*)  
W.Va. Code § 51-2A-5 (*amend and reenact*)

**ATTORNEY:** Brian Casto

**SUMMARY:**  
The purpose of this bill is to provide for the election of all levels of judicial officers in West Virginia: Justices of the Supreme Court of Appeals, Circuit Court Judges, Family Court Judges, and Magistrates on a non-partisan basis, and to require the use of the division concept in all judicial elections to provide for head to head races. The Senate amendment made technical changes to clarify certain provisions of the bill, particularly those relating to the public financing of Supreme Court campaigns, and fix issues in the title.

**DATE OF PASSAGE:** February 23, 2015 (original); March 10, 2015 (corrected)

**EFFECTIVE DATE:** Regular (90 days from passage)- June 8, 2015

**ACTION BY GOVERNOR:** Vetoed for technical reasons (title did not provide notice of all changes in the bill and the bill contained multiple typographical errors) on March 6, 2015. A corrected bill was passed by the Legislature on March 10, 2015. The bill was then signed by the Governor on March 25, 2015.

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## H.B. 2011

**BILL NO.:** Committee Substitute for House Bill 2011

**SHORT TITLE:** Disbursements from the Workers' Compensation Fund where an injury is self inflicted or intentionally caused by the employer

**SPONSORS:** Delegates Hanshaw, Shott, E. Nelson, Rohrbach, Sobonya, Weld, Espinosa, Statler, and Miller.

**CODE:** W.Va. Code § 23-4-2 (*amend and reenact*)

**ATTORNEY:** Kip Reese

**SUMMARY:** Workers Compensation and Deliberate Intent to Produce The Workplace Injury—Early Historical Context.

The West Virginia Workers' Compensation Act was enacted in 1913 during a period when most states were enacting workers compensation statutes due to increasing numbers and severity of industrial injuries. Workers compensation schemes create a system where injured workers recover lost wages, medical benefits and scaled injury compensation for work-related injuries regardless of fault, surrendering their common law right to sue their employer. *W. Va. Code* § 23-4-2(d)(1). In exchange, the participating employer pays for these benefits through the system and acquires immunity from lawsuit. *W. Va. Code* § 23-2-6. Like many other jurisdictions the 1913 West Virginia workers compensation scheme also created an exception to the employer immunity for injuries caused by the "deliberate intention" of the employer—found at *W. Va. Code* § 23-4-2©.

Eleven states do not recognize any “intentional injury” exception for employers.

### Subjective Employer Intent.

Typically, the “deliberate intention” exception expressed in 1913 was construed narrowly by the Supreme Court of Appeals of West Virginia. An injured employee had to show that work related injuries were inflicted purposefully, raising the criminal law concept of premeditation—a proof of a desire to bring about the injury to the employee. This aspect of deliberate intention, often referred to as “subjective intent”, still applies in West Virginia.

Subjective employer intent exception to workers compensation immunity from lawsuit is the majority rule in the United States.

### Constructive Employer Intent—*Mandolidis v. Elkins Industries, Inc.*, (W. Va. 1978)

In 1978, in a case of first impression in the United States, the Supreme Court of Appeals of West Virginia decided *Mandolidis v. Elkins Industries, Inc.*, which decision broadened the definition of “deliberate intention” to hold: an employer is subject to common law tort action for damages or wrongful death where the employer commits an intentional tort or engages in willful, wanton, and reckless misconduct. The *Mandolidis* court explicitly adopted the definition of intent from Restatement (2d) of Torts”. Following *Mandolidis*, nine state jurisdictions follow a modified test for deliberate intention.

### Legislative Action Since *Mandolidis*

In response to *Mandolidis*, the West Virginia Legislature amended the Workers' Compensation Act to provide a statutory definition of "deliberate intention", noting "that the intent of the Legislature in providing immunity from common lawsuit was and is to protect those immunized from litigation outside the workers' compensation system except as expressly provided in this chapter; that, in enacting the immunity provisions of this chapter, the Legislature intended to create a legislative standard for loss of that immunity of more narrow application and containing more specific mandatory elements than the common law tort system concept and standard of willful, wanton and reckless misconduct; and that it was and is the legislative intent to promote prompt judicial resolution of the question of whether a suit prosecuted under the asserted authority of this section is or is not prohibited by the immunity granted under this chapter." *W. Va. Code* § 23-4-2-(d)(1).

*W. Va. Code* 23-4-2 provides a limited exception to the general workers compensation immunity. Generally, there are two ways for an employee to bring a civil suit against his or her employer for an injury typically covered by the workers compensation system. First, if an employer or person against whom liability is asserted acted with a consciously, subjectively and with deliberately formed intention to produce the specific result of injury or death to the employee. This form of deliberate intent cause of action requires a showing of actual, specific intent and may not be satisfied with allegation or proof of conduct which produces a result that was not specifically intended, nor conduct which constitutes negligence no matter how gross or aggravated or willful, wanton or reckless misconduct.

A plaintiff may also provide a deliberate intent claim by proving five factors that must be answered by a jury in the form of special interrogatories at any trial.

### The Five Part Test

After legislative action reacting to *Mandolidis* and its progeny, an employee in West Virginia may sue his employer for a workplace injury alleging:

- (a) the employer acted with a consciously, subjectively and deliberately formed intention to produce the specific result of injury or death to an employee, *WVA. Code* §23-4-2(d)(2)(I); or,
- (b) by alleging the elements of a five part statutory test, *WVA. Code* §23-4-2(d)(2)(ii):

(ii) The trier of fact determines, either through specific findings of fact made by the court in a trial without a jury, or through special interrogatories to the jury in a jury trial, that all of the following facts are proven:

- (A) That a specific unsafe working condition existed in the workplace which presented a high degree of risk and a strong probability of serious injury or death;
- (B) That the employer, prior to the injury, had actual knowledge of the existence of the specific unsafe working condition and of the high degree of risk and the strong probability of serious injury or death presented by the specific unsafe working condition;
- (C) That the specific unsafe working condition was a violation of a state or federal safety statute, rule or regulation, whether cited or not, or of a commonly accepted and well-known safety standard within the industry or business of the employer, as demonstrated by competent evidence of written standards or guidelines which reflect a consensus safety standard in the industry or business, which statute, rule, regulation or standard was specifically applicable to the particular work and working condition involved, as contrasted with a statute, rule, regulation or standard generally

- requiring safe workplaces, equipment or working conditions;
- (D) That notwithstanding the existence of the facts set forth in subparagraphs (A) through (C), inclusive, of this paragraph, the employer nevertheless intentionally thereafter exposed an employee to the specific unsafe working condition; and,
- (E) That the employee exposed suffered serious compensable injury or compensable death as defined in section one, article four, chapter twenty-three whether a claim for benefits under this chapter is filed or not as a direct and proximate result of the specific unsafe working condition.

The Engrossed Committee Substitute for House Bill 2011 makes changes to the West Virginia deliberate intent statute, *W. Va. Code 23-4-2*, in an effort to clarify and clearly articulate the liability standards applicable to such a claim. HB2011 is not a massive overhaul of the current statute. Instead, it makes changes to existing statutory provisions.

#### The Final Version of HB 2011 as it Passed Both Houses

After lengthy and extensive negotiations between interested parties, the bill:

- ▶ eliminated obsolete language referring to the now obsolete WCC.
- ▶ adds a provision to HB2011 that establishes 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.
- ▶ makes the filing of a claim for worker's compensation benefits a prerequisite to bring a deliberate intent cause of action unless for good cause shown.
- ▶ revises code language detailing who may bring a claim under this section. Those revisions update the current code language and make clear who may assert a claim on behalf of an injured or deceased employee.
- ▶ revises the language of HB2011 as it pertains to the "actual knowledge" element of a deliberate intent claim. The amendment permits an employee to prove actual knowledge if an employer intentionally or deliberately failed to conduct an inspection, audit or assessment required by state or federal statute or regulation and such inspection is specifically intended to identify each alleged specific unsafe working condition.
- ▶ clarifies application to volunteer fire departments and what standards may be used to prove a deliberate intent claim when VFD is involved.
- ▶ provides that the determination of the applicability of a state or federal safety statute, rule or regulation is a question for judicial determination.
- ▶ alters the definition of serious compensable injury contained in HB2011. There are four ways an injured employee can prove this necessary element. The amendment provides that the first method can be satisfied with a total whole person impairment level of 13% as a final award in the employee's worker's compensation claim and is a personal injury which causes permanent serious disfigurement, causes permanent loss or significant impairment of function of any bodily organ or system, or results in objectively verifiable bilateral or multi-level dermatomal radiculopathy; and is not a physical injury that has no objective medical evidence to support a diagnosis.
- ▶ leaves category (2) and (3) of HB2011 unchanged except for relating category (3) related to impairments incapable of being rated to the category (1) definition of a serious compensable injury.
- ▶ adds a fourth category of serious compensable injury related to occupational pneumoconiosis claims. An employee may satisfy this element if he or she submits written certification from a Board certified pulmonologist that he or she suffers from complicated



pneumoconiosis or progressive massive fibrosis and that the pneumoconiosis has resulted in a pulmonary impairment of at least 15%. The certifying pulmonologist must disclose all evidence upon which the certification was based. The amendment also provides a savings provision for latent claims permitting an employee to bring a claim within one year of the date the employee meets the requirements of this section.

- ▶ requires that a verified statement from an expert be served with a copy of any complaint asserting a cause action under this section specifically the so-called “ii claims.” That certificate must state the expert’s qualifications, the specific unsafe working condition that was the cause of the injury and the specific statutes, rules, regulations or industry standards that are directly related to the specific unsafe working condition. The verified statement is not admissible at trial and the Court retains responsibility for determining applicability of the standards.
- ▶ specifies the appropriate venue for actions under this section. A claim may be brought in the county where the injury occurred or the county in which the employer has its principal place of business. This provision exclusively governs claims under this section.

**DATE OF PASSAGE:** March 14, 2015

**EFFECTIVE DATE:** Regular (90 days from passage)- June 12, 2015

**ACTION BY GOVERNOR:** Signed by Governor on March 31, 2015

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## H. B. 2025

**BILL NO.:** Committee Substitute for House Bill 2025

**SHORT TITLE:** Prohibiting certain sex offenders from loitering within one thousand feet of a school or child care facility

**SPONSORS:** Delegates Howell, Shott, Hamrick, Romine, Sobonya, Espinosa, Miller, Weld, Statler, Kurcaba and Canterbury

**CODE:** W.Va. Code § 61-8-29 (*New Section*)  
W.Va. Code § 62-12-26 (*amend and reenact*)

**ATTORNEY:** Martin J. Wright, Jr.

**SUMMARY:**

As part of an agreed conference committee, HB 2025 combined both the House and Senate versions of this bill. First, it amends WVA. Code § 62-12-26 to add a new prohibition for individuals convicted of certain sexual offenses from “loitering” within 1,000 feet of a school, child care facility, or residence of a victim. This prohibition applies to individuals that have already been convicted and sentenced to Court-ordered supervised release. HB 2025 makes the loitering provision a condition of the supervised release. In accordance with the statute, a violation of this prohibition may result in incarceration for the remainder of the supervised release period, which could possibly include life.

The second aspect of HB2025, creates a new criminal penalty for a person on supervised release for certain sexual offenses from loitering within 1,000 feet of a school, child care facility, or residence of a victim. The penalty is a misdemeanor punishable by up to 30 days in jail.

For purposes of both statutes, loitering “means to enter or remain on property while having no legitimate purpose or, if a legitimate purpose exists, remaining on that property beyond the time necessary to fulfill that purpose.” In addition, both statutes contain an exception allowing a person to be within one thousand feet of a prohibited location or facility if the person is there present for the purposes of supervision, counseling or other activity in which the person is directed to participate as a condition of supervision or where the person has the express permission of his supervising officer to be present.

**DATE OF PASSAGE:** February 25, 2015

**EFFECTIVE DATE:** Regular (90 days from passage)- May 26, 2015

**ACTION BY GOVERNOR:** Signed by Governor on March 3, 2015

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## H. B. 2053

**BILL NO.:** Committee Substitute for House Bill 2053

**SHORT TITLE:** Relating to the form of trust deeds

**SPONSORS:** Delegate Shott

**CODE:** W.Va. Code § 38-1-2 (*amend and reenact*)  
W.Va. Code § 40-1-9 (*amend and reenact*)

**ATTORNEY:** Mark Adkins

**SUMMARY:**

House Bill 2053 provides a voluntary alternative to filing complete deeds of trust with the County Clerk. Specifically, the bill enabled those that are engaged in lending transactions to have the option of recording a memorandum of deed of trust rather than the complete deed of trust. Under existing law, a party to a lending transaction is required to file a deed of trust with the County Clerk where the subject property is located. In most instances, deeds of trust can be anywhere from 15 to 50 pages and Clerks charge per page to record such documents.

This 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 property encumbered by the lien created thereby, a summary of applicable notice and publication requirements in case of default; the date of maturity of the indebtedness; provisions of the deed of trust regarding substitution of a trustee; whether the loan was originated or serviced pursuant to specified government programs; and 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 further provides that the memorandum is as valid as if the complete deed of trust were recorded on the date the memorandum is admitted to record. However, House Bill 2053 requires that the original deed of trust must be recorded prior to the commencement of any foreclosure or other execution of the deed of trust.

**DATE OF PASSAGE:** March 10, 2015

**EFFECTIVE DATE:** Regular (90 days from passage)- June 8, 2015

**ACTION BY GOVERNOR:** Signed by Governor on March 25, 2015

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**H. B. 2099**

**BILL NO.:** Committee Substitute for House Bill 2099

**SHORT TITLE:** Extending the time of meetings of local levying bodies when meetings are delayed.

**SPONSORS:** Delegates Howell, Householder, J. Nelson, Statler, Walters, Arvon, Border, Folk, Hamilton, A. Evans and McGeehan

**CODE:** W.Va. Code §11-8-9 (*amend and reenact*)

**ATTORNEY:** Kip Reese

**SUMMARY:** *W. Va. Code* §11-8-9 now provides that:

- Each local levying body shall hold a meeting between the 7th and 28th days of March to transact business;
- When a levy is placed on the ballot, that meeting may be extended to June 1st;
- State Auditor shall propose rules to include provisions for a local levying body to apply for permission to extend the time to meet to transact its business;
- If the extension is approved by the State Auditor meeting to be held in compliance with laws regarding open governmental meetings;
- State Auditor shall require all levying bodies to file a report of their meetings;
- State Auditor shall notify any levying body which has not filed its report by April 1st that the body must meet and file a report no later than April 15th; and,
- If the meeting occurs after April 15th, State Auditor may allow a late meeting and late report on or before May 1st for good cause shown.

**DATE OF PASSAGE:** February 28, 2015

**EFFECTIVE DATE:** Regular (90 days from passage)- May 29, 2015

**ACTION BY GOVERNOR:** Signed by Governor on March 11, 2015

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**H. B. 2128**

**BILL NO.:** Committee Substitute for House Bill 2128

**SHORT TITLE:** Permitting those individuals who have been issued concealed weapons permits to keep loaded firearms in their motor vehicles on the state Capitol Complex grounds

**SPONSORS:** Delegates Howell, Hamrick, Householder, Statler, Moffatt, Walters, Arvon, Blair, Kessinger, Border and Frich

**CODE:** W. Va. Code § 61-6-19 (*amend and reenact*)

**ATTORNEY:** Brian Casto

**SUMMARY:**

The purpose of this bill is to allow concealed carry permit holders to keep firearms they have in their motor vehicles on the state Capitol Complex grounds if the vehicles are locked and the weapons are out of normal view. The Senate amendment made minor linguistic changes.

**DATE OF PASSAGE:** March 12, 2015

**EFFECTIVE DATE:** Regular (90 days from passage)- June 10, 2015

**ACTION BY GOVERNOR:** Signed by Governor on March 31, 2015

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## H. B. 2138

**BILL NO.:** House Bill 2138

**SHORT TITLE:** Adding aircraft operations on private airstrips and farms to the definition of "recreational purpose"

**SPONSORS:** Delegates Folk, Gearheart, Householder, Howell, Nelson, J., Ireland, Faircloth, Williams, Lynch, Shott and McGeehan

**CODE:** W.Va. Code § 19-25-5 (*amend and reenact*)

**ATTORNEY:** Brian Casto

**SUMMARY:**

The purpose of this bill is to limit the liability of landowners who make land available for the use of aircraft or ultra light aircraft operations. Article §19-25-1 et seq. limits the liability of landowners who grant a lease, easement, or license of land to the federal, state, county or municipal government, or any agency thereof, for military training, law enforcement or homeland defense training, spelunking, recreational, or wildlife propagation purposes, by limiting their liability for injury to persons or property entering thereon and to persons injured by acts or omissions of persons entering thereon for such purposes. This bill added these light aviation uses to the list of exceptions.

**DATE OF PASSAGE:** February 11, 2015

**EFFECTIVE DATE:** Regular (90 days after passage)- May 12, 2015

**ACTION BY GOVERNOR:** Signed by Governor on February 18, 2015

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## H. B. 2148

**BILL NO.:** Committee Substitute for House Bill 2148

**SHORT TITLE:** Conforming the motor vehicle law of this state to the requirements of section 1405(a) of the federal Transportation Equity Act for the Twenty-first Century

**SPONSORS:** Delegates Gearheart, Hamrick, Smith, R., Nelson, E., Howell, Arvon, Butler, Azinger, Espinosa, Frich and Kessinger

**CODE:** W.Va. Code § 17C-5D-1, -2, -3 & -4 (*New Sections*)  
W.Va. Code § 60-6-9 (*amend and reenact*)

**ATTORNEY:** Marty Wright

**SUMMARY:**

HB 2148 prohibits the consumption of an alcoholic beverage as well as the possession of an open alcoholic beverage container in the passenger area of a motor vehicle. The prohibition would be in effect whether the vehicle was moving or parked in a public highway or right-of-way. The bill does provide exceptions for certain vehicles, including those vehicles designed for transporting large groups such as buses or limos, and recreational vehicles with a living quarters such as motor homes.

Passage of HB 2148 additionally frees up monies that had been set aside/restricted to the State of West Virginia by the federal government. The WV Department of Highways is currently apportioned federal monies under federal legislation titled “Moving Ahead for Progress in the 21<sup>st</sup> Century”. One of the provisions of the federal law requires a set-aside/restricted use of 2.5% of the federal monies if a state does not have an open container law in conformity with the federal law. With the passage of HB 2148, the state Department of Highways estimates \$9.4 million if current law will now be unrestricted.

**DATE OF PASSAGE:** March 12, 2015

**EFFECTIVE DATE:** Regular (90 days from passage)- June 10, 2015

**ACTION BY GOVERNOR:** Signed by Governor on March 25, 2015

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**H. B. 2157**

**BILL NO.:** Committee Substitute for House Bill 2157

**SHORT TITLE:** Relating to absentee ballot fraud

**SPONSORS:** Delegate Lane

**CODE:** W.Va. Code § 3-9-19 (*amend and reenact*)

**ATTORNEY:** Mark Adkins

**SUMMARY:**

House Bill 2157 creates a new felony crime for absentee ballot fraud or intimidation. Under existing law, persons committing election fraud relating to absentee ballots are only subject to a misdemeanor offense, with the following possible penalties: fined no more than \$500 and/or jailed for no more than 6 months.

House Bill 2157 creates a new subsection making it a felony offense for a person, with the intent to commit fraud:

- a. obtains, removes, or disseminates an absent voters' ballot;
- b. intimidates an absent voter; or
- c. completes or alters an absent voters' ballot.

The penalties for those convicted under this new subsection are fined \$10,000 - \$20,000 and/or imprisoned 1-5 years

**DATE OF PASSAGE:** March 3, 2015

**EFFECTIVE DATE:** Regular (90 days from passage)- June 1, 2015

**ACTION BY GOVERNOR:** Signed by Governor on March 11, 2015



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## H. B. 2200

**BILL NO.:** House Bill 2200

**SHORT TITLE:** Revising, rearranging, consolidating and recodifying the laws of the State of West Virginia relating to child welfare

**SPONSORS:** Delegates Shott, Lane, McCuskey, Manchin and Fleischauer

**CODE:** All of Chapter 49 (*amend and reenact*)

**ATTORNEY:** Marty Wright

**SUMMARY:**

HB 2200 amends Chapter 49 in its entirety by reorganizing and recodifying. Chapter 49 of the West Virginia Code was originally enacted in 1936 as the “West Virginia Child Protective Services Act”. Intended to assure care, safety, and guidance of children, the Chapter has become a collection of statutes detailing provisions and procedures relating to abuse/neglect of children as well as the juvenile justice system.

In its current form, the chapter consists of 28 articles, many of which have been added indiscriminately over the years. There have been longstanding difficulties and complaints over the structure and location of various statutes by lawyers, judges, and affected agencies. Following last session, the West Virginia Supreme Court’s Court Improvement Program organized a series of meetings and working groups to bring together all interested parties to comprehensively re-organize Chapter 49.

The intent of the reorganization was limited to reorganizing, consolidating, and recodifying the provisions of Chapter 49. The CIP stressed that the intent was not to make substantive changes to the law, but merely to reorganize. The only substantive changes that were allowed were identification and removal of outdated language or updates to comply with Court rulings concerning child welfare.

HB 2200 reflects the final version of the proposed reorganization that was approved and adopted by all interested parties. It removes the 25 articles and replaces them with 7 Articles and multiple sub-parts. As structured, the framework of the new Chapter 49 is as follows:

- Article 1- General Provisions and Definitions
- Article 2- State Responsibilities for Children
- Article 3- Specialized Advocacy Programs
- Article 4- Court Actions
- Article 5- Record Keeping and Database
- Article 6- Missing Children Information Act
- Article 7- Interstate Cooperation

**DATE OF PASSAGE:** February 16, 2015

**EFFECTIVE DATE:** Passage- February 16, 2015

**ACTION BY GOVERNOR:** Signed by Governor on February 19, 2015

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## H. B. 2201

**BILL NO.:** House Bill 2201

**SHORT TITLE:** Requiring the Public Service Commission to adopt certain net metering and interconnection rules and standards

**SPONSORS:** Delegates Ireland, Folk, Manchin, Lynch, Rowe, Fleischauer, Skinner, Fast, Fluharty, Byrd, and Summers

**CODE:** W.Va. Code § 24-2F-8 (*amend and reenact*)

**ATTORNEY:** Brian Casto

**SUMMARY:**

This bill was drafted to address concerns raised in the Energy Committee regarding the effect of repeal of certain provisions on net metering and interconnectivity. Accordingly, the Committee Substitute left intact Section 8 of the Article, in order to preserve Public Service Commission rules concerning the provision of a rebate or discount for the electric utilities to provide to customer-generators for any electricity generation that is delivered to the utility under a net metering arrangement and adds definitional language back to that section. The Senate amendment caps the amount of generating capacity subject to net metering.

**DATE OF PASSAGE:** February 16, 2015 (original), February 28, 2015 (corrected)

**EFFECTIVE DATE:** Passage- February 28, 2015

**ACTION BY GOVERNOR:** Vetoed for technical reasons (title did not provide notice of all changes in the bill and the bill contained multiple typographical and definition errors) on February 24, 2015. A corrected bill was passed by the Legislature on February 28, 2015. The bill was signed by the Governor on March 12, 2015.

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**H. B. 2224**

**BILL NO.:** House Bill 2224

**SHORT TITLE:** Providing that historical reenactors are not violating the provision prohibiting unlawful military organizations

**SPONSORS:** Delegates Howell, Manchin, Rowan, Storch, Canterbury, Stansbury, Zatezalo, Butler, D. Evans, Ambler and Cooper

**CODE:** W.Va. Code § 15-1F-7 (*amend and reenact*)

**ATTORNEY:** Brian Casto

**SUMMARY:**

The purpose of this bill is to provide that historical reenactors are not violating the provision prohibiting unlawful military organizations. Persons acting “as a military company or organization for historical, artistic or fictional performances; or, for an individual or group of individuals to drill, perform or parade at public ceremonies, including funerals” may not be prosecuted.

**DATE OF PASSAGE:** March 13, 2015

**EFFECTIVE DATE:** Passage- March 13, 2015

**ACTION BY GOVERNOR:** Signed by Governor on March 25, 2015

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## H.B.2233

**BILL NO.:** Committee Substitute for House Bill 2233

**SHORT TITLE:** Requiring that legislative rules be reviewed five years after initial approval by the Legislative Rule-Making Review Committee and the Legislative Auditor's Office

**SPONSORS:** Delegates Walters, Sobonya, Rohrbach, Ambler, Mr. Speaker (Mr. Armstead), Storch, H. White, R. Philips, Ireland, Hanshaw and E. Nelson

**CODE:** W.Va. §29A-3-16 (*new*)

**ATTORNEY:** Mark Adkins

**SUMMARY:**

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 5 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 is to submit a of their findings and recommendations to the Joint Committee.

**DATE OF PASSAGE:** March 14, 2015

**EFFECTIVE DATE:** Regular - 90 days from passage

**ACTION BY GOVERNOR:** Signed by the Governor on March 31, 2015

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## H.B. 2234

**BILL NO.:** Committee Substitute for House Bill 2234

**SHORT TITLE:** Requiring a court to permit a party in a divorce proceeding to resume using the name he or she used prior to the marriage.

**SPONSORS:** Delegates Ashley, Shott, Lane, E. Nelson, Upson, Hanshaw, Mr. Speaker (Mr. Armstead), McCuskey, Manchin, Campbell and Rowe

**CODE:** W.Va. Code §48-5-613 (*amend and reenact*)

**ATTORNEY:** Devon Lopez (Intern)

**SUMMARY:**

HB 2234 would allow a court to permit a party in a divorce proceeding to resume using the name he or she used prior to the marriage without the necessity of filing a separate petition in a separate action.

This section required filing a separate petition in order to resume using a former name in a divorce proceeding following a divorce proceeding. The purpose of the committee substitute is to enable a court to permit a party to resume using a former name without the necessity of filing a petition pursuant to WVA. Code §48-25-10.

If a name change is requested during a divorce proceeding, the court shall also issue a certificate of divorce reflecting that change in name. The certificate shall:

- Be no longer than one page;
- Not be considered an order;
- Include the style of the divorce case;
- Include the name on the birth certificate of the party requesting the name change;
- Include the party's date of birth;
- Include the party's social security number;
- Include the date on which the name change is effective; and
- Include the new name of that party

In order to be valid the certificate shall be certified by a clerk of the court. The certified certificate may be used by that person for all lawful purposes, including as a proof of legal name change for driver licensing purposes or state identification card at the Division of Motor Vehicles.

**DATE OF PASSAGE:** February 25, 2015

**EFFECTIVE DATE:** Regular (90 days from passage)- May 26, 2015

**ACTION BY GOVERNOR:** Signed by Governor on March 3, 2015

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## H. B. 2266

**BILL NO.:** Committee Substitute for House Bill 2266

**SHORT TITLE:** Relating to the publication requirements of the administration of estates

**SPONSORS:** Delegates Shott, Ellington and Gearheart

**CODE:** W.Va. Code § 16-5-9a (*New Section*)  
W.Va. Code § 44-1-14a (*amend and reenact*)  
W.Va. Code § 44-1-30 (*New Section*)  
W.Va. Code §44-2-1 (*amend and reenact*)  
W.Va. Code §§ 44-2-2 and -3 (*Both Sections repealed*)

**ATTORNEY:** Mark Adkins

**SUMMARY:**

House Bill 2266 eliminates the requirement that the fiduciary commissioner file a nearly identical notice for potential creditors of an estate to the required notice published by the county commission. Under existing law, both a fiduciary commissioner and the clerk of the county commission are required to publish notices for potential creditors of an estate to submit their claims within a certain time period. House Bill 2266 repeals the laws requiring notice by the fiduciary commissioner.

Further, the bill requires the clerk of a county commission to file a notice of administration of any estate either: (a) within thirty days of filing the appraisalment (the inventory of the assets of the estate); or (b) one hundred twenty days of the date of qualification of the personal representative if an appraisalment is not filed.

House Bill 2266 additionally clarifies the responsibilities relating to claims against an estate. In particular, the bill changes the requirement to file claims against an estate from ninety days to sixty days from the date of the first publication of the notice of administration of the estate, and increases the threshold for requiring a fiduciary commissioner from more than \$100,000 to more than \$200,000.

Finally, House Bill 2266 adds a new provision authorizing the clerk of a county commission to require a certified copy of a decedent's death certificate.

**DATE OF PASSAGE:** March 14, 2015

**EFFECTIVE DATE:** Regular (90 days from passage)- June 12, 2015

**ACTION BY GOVERNOR:** Signed by Governor on March 31, 2015

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## H. B. 2274

**BILL NO.:** House Bill 2274

**SHORT TITLE:** Authorizing the Commissioner of Corrections to enter into mutual aid agreements

**SPONSORS:** Delegates Hanshaw, Hamilton, A. Evans and Azinger

**CODE:** W.Va. Code § 25-1-5a (*new code*)

**ATTORNEY:** Marty Wright

**SUMMARY:**

House Bill 2274 authorizes the Division of Corrections to enter into written agreements with other governmental entities to render mutual aid. According to the Division, requests for assistance typically come from the State Police, Department of Homeland Security and Emergency Management, the Regional Jail Authority, and county sheriff/local police departments. Unlike other state agencies, there was nothing in existing law that expressly authorized the Division of Corrections to enter into such mutual aid agreements.

The bill additionally requires the Commissioner of the Division of Corrections to obtain the consent and approval of the Secretary of the West Virginia Department of Military Affairs and Public Safety (DMAPS) prior to entering into a mutual aid agreement. Similarly, the bill requires each agreement to contain a provision allowing for immediate termination of the agreement by the Secretary of DMAPS.

**DATE OF PASSAGE:** February 20, 2015

**EFFECTIVE DATE:** Regular (90 days from passage)- May 21, 2015

**ACTION BY GOVERNOR:** Signed by Governor on February 25, 2015

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## H. B. 2283

**BILL NO.:** Committee Substitute for House Bill 2283

**SHORT TITLE:** Authorizing the Department of Environmental Protection to promulgate legislative rules

**SPONSORS:** Delegate Sobonya

**CODE:** W.Va. Code § 64-3-1 (*amend and reenact*)

**ATTORNEY:** Brian Casto

**SUMMARY:**

This is the bundled rules bill for the Department of Environmental Protection. It contains the following rules:

- (a) Department of Environmental Protection (permits for construction and major modification of major stationary sources for the prevention of significant deterioration of air quality, [45 CSR 14](#))
- (b) Department of Environmental Protection (standards of performance for new stationary sources, [45 CSR 16](#))
- (c) Department of Environmental Protection (control of air pollution from hazardous waste treatment, storage or disposal facilities, [45 CSR 25](#))
- (d) Department of Environmental Protection (requirements for operating permits, [45CSR30](#))
- (e) Department of Environmental Protection (emission standards for hazardous air pollutants, [45 CSR 34](#))
- (f) Department of Environmental Protection (awarding of WV Stream Partners Program Grants, [60 CSR 4](#))
- (g) Department of Environmental Protection (hazardous waste management system, [33 CSR 20](#))
- (h) Department of Environmental Protection (requirements governing water quality standards, [47 CSR 2](#))
- (I) Department of Environmental Protection (WV/NPDES rule for coal mining facilities, [47 CSR 30](#))
- (j) Department of Environmental Protection (waste management, [33 CSR 1](#))

**DATE OF PASSAGE:** March 12, 2015

**EFFECTIVE DATE:** Passage- March 12, 2015

**ACTION BY GOVERNOR:** Signed by Governor on March 31, 2015



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**H.B. 2377**

**BILL NO.:** Committee Substitute for House Bill 2377

**SHORT TITLE:** Authorizing State Board of Education to approve certain alternatives with respect to instructional time.

**SPONSORS:** Delegates Pasdon, Statler, Duke, Wagner, Romine, Ambler and Espinosa.

**CODE:** W. Va. Code § 18-2-5 (*amend and reenact*)

**ATTORNEY:** Kip Reese

**SUMMARY:**

This bill allows the State Board of Education to approve alternatives to the statutory requirements for instructional time under certain circumstances. A county board or a school may propose an alternative to the requirements in order to optimize student learning, but only if it meets the spirit and intent of applicable statutes. The bill recognizes the State Board's constitutional authority over the general supervision of public schools, and stipulates that the State Board has sole discretion in determining whether a proposed alternative meets the spirit and intent of the law.

The bill would allow schools to provide constructive, educational activities for students to compensate for scheduled school time that is lost due to such things as inclement weather or power failures. Schools could implement such methods as compiling snow-day packets for students to work on when a school cancellation is anticipated, or extending the school day to utilize banked time.

The bill removes obsolete provisions regarding developmental programming and instruction, and removes outdated provisions regarding the school entrance age which conflict with current law

**DATE OF PASSAGE:** March 12, 2015

**EFFECTIVE DATE:** Regular (90 days from passage)- June 10, 2015

**ACTION BY GOVERNOR:** Signed by Governor on March 27, 2015

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## H. B. 2395

**BILL NO.:** Committee Substitute for House Bill 2395

**SHORT TITLE:** Storm Scammer Consumer Protection Act

**SPONSORS:** Delegates Westfall, Pasdon, B. White, Frich, O’Neal and Ashley

**CODE:** W.Va. Code §§ 46A-6M-1 through -6 (*New Article with 6 sections*)

**ATTORNEY:** Mark Adkins

**SUMMARY:**

House Bill 2395 provides consumers with the right to cancel residential roofing contracts where the contract is expected to be paid from a property and casualty insurance policy. In particular, the bill allows a consumer to cancel the roofing contract within 5 business days after the owner has received notice from the insurer that all or part of the claim is not a covered loss under the property and casualty insurance policy. The bill further directs that contracts expressly provide for this right to rescind.

House Bill 2395 further provides that a contractor may not require advance payment for anticipated insurance proceeds, and further directs the contractor to return monies paid within 10 days of notice that the contract is being cancelled due to denial of insurance coverage.

The bill does provide an exception for emergency repair services. Specifically, a roofing contractor that performs any emergency repair services authorized by the owner of residential real estate, may collect a reasonable and customary amount for the emergency repair services performed for the authorizing owner. “Emergency Repair” is defined as “a repair that is necessary to prevent the risk of imminent injury to a person or further damage to the homeowner’s residence.”

Finally, House Bill 2395 provides for criminal and civil remedies for violation of the article. In particular, it provides a right to bring a civil action by an insured or an insurer against a roofing contractor for damages incurred as a consequence of the contractor's violation of the article. It additionally makes a willful violation of the article by a contractor a misdemeanor offense, and upon conviction, the contractor may be fined not more than \$5000 or confined in jail for not more than a year, or both fined and confined.

**DATE OF PASSAGE:** March 14, 2015

**EFFECTIVE DATE:** Regular (90 days from passage)- June 12, 2015

**ACTION BY GOVERNOR:** Signed by Governor on April 1, 2015

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## H. B. 2457

**BILL NO.:** Committee Substitute for House Bill 2457

**SHORT TITLE:** Prohibiting the use of the name or likeness of elected or appointed officials on publicly-owned vehicles

**SPONSORS:** Delegates Sobonya, Miller, Frich, Foster, Overington, J. Nelson, Ellington, Rohrbach and Walters

**CODE:** W.Va. Code § 6B-2-5c (*New Section*)

**ATTORNEY:** Mark Adkins

**SUMMARY:**

House Bill 2457 adds a new section to the West Virginia Governmental Ethics Act which limits a public official's use of public funds to promote his or her name or likeness on vehicles, trinkets, advertising materials. The bill defines "trinkets" as "items of tangible personal property that are not vital or necessary to the duties of the public official's or public employee's office, including, but not limited to, the following: magnets, mugs, cups, key chains, pill holders, band-aid dispensers, fans, nail files, matches and bags." House Bill 2457 also prohibits a public official from using public funds or public employees, other than employees for security services, for entertainment activities within forty-five days of an election.

However, House Bill 2457 does not prohibit public officials from using their names or likenesses on any official record or report, letterhead, document or certificate, or instructional material issued in the course of their duties as public officials, or on promotional materials used for tourism promotion. It additionally does not prohibit public officials from using public funds to communicate with constituents in the normal course of their duties as public officials so long as such communications do not include any reference to voting in favor of the public official in an election.

Finally, the bill authorizes the WV Ethics Commission to promulgate emergency and legislative rules to implement the new prohibitions.

**DATE OF PASSAGE:** February 27, 2015

**EFFECTIVE DATE:** Regular (90 days from passage)- May 28, 2015

**ACTION BY GOVERNOR:** Signed by Governor on March 14, 2015

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## H. B. 2461

**BILL NO.:** House Bill 2461

**SHORT TITLE:** Relating to delinquency proceedings of insurers

**SPONSORS:** Delegates Walters, McCuskey, Frich, Azinger, Westfall, Moore, Skinner, Perry, Perdue, Bates, Nelson, E.

**CODE:** W.Va. Code § 33-10-4 (*amend and reenact*)  
W.Va. Code §33-10-26 (*amend and reenact*)

**ATTORNEY:** Mark Adkins

**SUMMARY:**

House Bill 2461 amends the provisions of the WV Code relating to delinquency actions brought by the Commissioner of Insurance. In particular, the bill provides that if the Insurance Commissioner initiates a delinquency proceeding against an insurance company that is also a member of a federal home loan bank, the delinquency proceeding will not stay the federal home loan bank from asserting its rights against the insurance company's pledged collateral.

Further, the bill provides that transfers made by an insurer to a federal home loan bank in the normal course of business shall not be voided by the receiver if made within four months of commencement of a delinquency proceeding or which received prior approval from the receiver; except if the transfer was made in bad faith

Finally, this bill outlines reporting requirements that a federal home loan bank must make to a receiver, upon request, in a delinquency proceeding, including the following: (a) the release of collateral that exceeds the lending value required to support secured obligations remaining after any repayment of advances; (b) 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 (d) the redemption or repurchase of deposits and other accounts with the federal home loan bank.

**DATE OF PASSAGE:** March 12, 2015

**EFFECTIVE DATE:** Regular (90 days from passage)- June 10, 2015

**ACTION BY GOVERNOR:** Signed by Governor on April 1, 2015

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## H.B. 2496

**BILL NO.:** Committee Substitute for House Bill 2496

**SHORT TITLE:** Adopting the Interstate Medical Licensure Compact

**SPONSORS:** Delegates Ellington, Howell, Householder, Sobonya, Fleischauer and Frich

**CODE:** W. Va. Code §§ 30-1C-1 through 24 (*new article*).

**ATTORNEY:** Kip Reese

### SUMMARY:

The practice of medicine in the 21<sup>st</sup> century involves technical advances in the area of tele-health technology and practice, such as “tele-medicine” which, for example, permits a radiologist to timely read and interpret radiological studies from great physical distance. The Compact is expected to significantly reduce barriers to the process of gaining licensure in multiple states at a time when tele-medicine is growing and millions of new patients are likely to enter into the U.S. health care system.

In April 2013 the Federation of State Medical Boards (FSMB) unanimously endorsed development of an interstate compact to expedite medical licensure and facilitate multi-state practice. FSMB convened representatives from state medical boards and special experts to explore the formation of an Interstate Compact to enhance license portability. A team of state medical board representatives and experts from the Council of State Governments (CSG) developed and drafted a framework for an Interstate Medical Licensure Compact — a new licensing option under which qualified physicians seeking to practice in multiple states would be eligible for expedited licensure in all states participating in the Compact.

Medical board representatives from a diverse collection of states, in terms of population, size, and geographic region, worked in conjunction with compact experts from CSG and FSMB staff to define eight component principles that guide the compact:

- Participation in an interstate compact for medical licensure will be strictly voluntary for both physicians and state boards of medicine.
- Participation in an interstate compact creates another pathway for licensure, but does not otherwise change a state’s existing Medical Practice Act.
- The practice of medicine occurs where the patient is located at the time of the physician-patient encounter, and therefore, requires the physician to be under the jurisdiction of the state medical board where the patient is located.
- An interstate compact for medical licensure will establish a mechanism whereby any physician practicing in the state will be known by, and under the jurisdiction of, the state medical board where the practice occurs.
- Regulatory authority will remain with the participating state medical boards, and will not be delegated to any entity that would administer a compact.

- A physician practicing under an interstate compact is bound to comply with the statutes, rules and regulations of each compact state wherein he / she chooses to practice.
- State boards participating in an interstate compact are required to share complaint / investigative information with each other.
- The license to practice can be revoked by any or all of the compact states.

Model legislation — Interstate Medical Licensure Compact is now pending in fourteen (14) state legislature, including West Virginia. South Dakota, Utah, and Wyoming – have already passed the Interstate Medical Licensure Compact. Participation in the Compact would be voluntary, for both states and physicians. Seven states must pass the compact for it take effect.

Endorsements include a bipartisan group of 16 U.S. Senators who have publicly commended the FSMB for its efforts, including former Senator Rockefeller.

**DATE OF PASSAGE:** March 12, 2015

**EFFECTIVE DATE:** Regular (90 days from passage)- June 10, 2015

**ACTION BY GOVERNOR:** Signed by Governor on March 31, 2015

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## H.B. 2502

**BILL NO.:** Committee Substitute for House Bill 2502

**SHORT TITLE:** Possessing deadly weapons on school buses or on the premises of educational facilities

**SPONSORS:** Delegates Espinosa, Upson, Gearheart, Cooper, Ambler, O’Neal, Miller, Sobonya, Shott, Arvon and Blair

**CODE:** W. Va. Code § 61-7-11a (*amend and reenact*)

**ATTORNEY:** Kip Reese

**SUMMARY:**

This bill allows certain law enforcement officers and retired law enforcement officers to carry a gun on school property for the purpose of serving as school security:

- Removes the provision allowing active law enforcement officers to carry guns only while serving as school security, and allows them to carry guns on school property at all times;
- Clarifies that retired law enforcement officers serving as school security must be employed by a law enforcement agency and covered for liability purposes;
- Decreases the time limit for a principal to report a gun free zone violation from 72 hours to as soon as possible;
- Expands the law enforcement agencies to which the principal can report a violation to include county and municipal law enforcement offices; and,
- Makes technical and stylistic changes, including amending the article title to reflect evolution of family law masters to family courts.

**DATE OF PASSAGE:** March 11, 2015

**EFFECTIVE DATE:** Regular (90 days from passage)- June 9, 2015

**ACTION BY GOVERNOR:** Signed by Governor on March 27, 2015

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## H. B. 2536

**BILL NO.:** Committee Substitute for House Bill 2536

**SHORT TITLE:** Relating to travel insurance limited lines producers

**SPONSORS:** Delegates Westfall, Walters, B. White, Ashley, Frich and Kurcaba

**CODE:** W.Va. Code § 33-12-32b (*New Section*)

**ATTORNEY:** Mark Adkins

**SUMMARY:**

House Bill 2536 authorizes the Insurance Commissioner to issue limited lines travel insurance producer licenses to business entities and to allow travel retailers and their employees to offer and disseminate travel insurance under this license. “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.

House Bill 2536 additionally provides for licensing requirements and conditions for travel insurance entity producers as well as requirements for travel retailers who sell the travel insurance. In particular, conditions for the travel insurance retailer would include not providing insurance coverage advice, as well as making available informational brochures to prospective purchasers. Requirements for the travel insurance entity producers would include maintaining a register of all travel retailers that offer travel insurance on behalf of the producer, compliance with fingerprinting requirements, payment of licensing fees, and training for the employees offering the insurance, including instructions on the types of insurance offered, ethical sales practices, and required disclosures to prospective customers.

**DATE OF PASSAGE:** March 12, 2015

**EFFECTIVE DATE:** Regular (90 days from passage)- June 10, 2015

**ACTION BY GOVERNOR:** Signed by Governor on April 1, 2015



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## H.B. 2549

**BILL NO.:** Committee Substitute for House Bill 2549

**SHORT TITLE:** Relating to the preparation and publication of county financial statements.

**SPONSORS:** Delegates Lane, E. Nelson, Walters, Stansbury, B. White, Rowe, McCuskey, Guthrie, Byrd and Pushkin

**CODE:** W.Va. Code §7-5-16 (*amend and reenact*)

**ATTORNEY:** Devon Lopez (Intern)

**SUMMARY:**

This bill requires county commissions prepare and publish financial statements by October 15th of each year. Under current law, commissions are required to do so within 90 days after the first session held after the beginning of each fiscal year. The statements must reveal receipts and expenditures of the county; the name of each firm, corporation and person who received more than \$50 from any county fund; and all debts of the county. It requires that by October 15 of each fiscal year commissions publish the financial statement as a Class I-0 legal advertisement. It also permits commissions to publish the statement on a website.

This bill is single referenced in the Senate to the Committee on Government Organization. It was referenced in the House to the Committee on Political Subdivisions and the Judiciary. House Judiciary adopted a committee substitute which was passed by the House.

There was a Senate Floor Amendment adopted that would change subsection (e) to read as;

(e) By October 15 of each fiscal year, each county commission shall publish the financial statement as a Class I-0 legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county.

**DATE OF PASSAGE:** March 14, 2015

**EFFECTIVE DATE:** Regular (90 days after passage)- June 12, 2015

**ACTION BY GOVERNOR:** Signed by Governor on March 31, 2015

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## H.B. 2550

**BILL NO.:** Committee Substitute for House Bill 2550

**SHORT TITLE:** Increasing the number of unexcused absences of a student before action may be taken against the parent.

**SPONSORS:** Delegates Cowles, Miller, Householder, Moffatt, McGeehan, Sponaugle, H. White, Campbell, Skinner, Rowe and Perry

**CODE:** W. Va. Code § 18-8-4 (*amend and reenact*)

**ATTORNEY:** Kip Reese

**SUMMARY:**

This bill increases from 5 to 10 the number of unexcused absences that a student has before an action for truancy can be taken against the parent.

The bill sets forth 3 separate triggers for unexcused absences with the following consequences: 1) notification to the parent; 2) required conference with the parent, student and school and 3) court action. HB 2550 sets forth those triggers at 3 unexcused absences, 5 unexcused absences and 10 unexcused absences, respectively

The bill deletes the word “inexcusable” and substitutes “unexcused absence”, which is defined as anything except an excused absence:

(A) “Excused absence” includes:

- (I) Personal illness or injury of the student or in the family;
- (ii) Medical or dental appointment with written excuse from physician or dentist;
- (iii) Chronic medical condition or disability that impacts attendance;
- (iv) Participation in home or hospital instruction due to an illness or injury or other extraordinary circumstance that warrants home or hospital confinement;
- (v) Calamity, such as a fire or flood;
- (vi) Death in the family;
- (vii) School-approved or county-approved curricular or extra-curricular activities;
- (viii) Judicial obligation or court appearance involving the student;
- (ix) Military requirement for students enlisted or enlisting in the military; and
- (x) Personal or academic circumstances approved by the principal.

Absences of students with disabilities shall be in accordance with the Individuals with Disabilities Education Improvement Act of 2004 and the federal and state regulations adopted in compliance therewith.

**DATE OF PASSAGE:** March 12, 2015

**EFFECTIVE DATE:** Regular (90 days from passage)- June 10, 2015

**ACTION BY GOVERNOR:** Signed by Governor on March 25, 2015

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## H. B. 2557

**BILL NO.:** Committee Substitute for House Bill 2557

**SHORT TITLE:** Clarifying that an insured driver of a motor vehicle is covered by the driver's auto insurance policy when renting or leasing a vehicle

**SPONSORS:** Delegates Walters, Westfall, Pasdon, Moffatt, Morgan, Perry, Hartman, McCuskey, Frich, Storch and H. White

**CODE:** W.Va. Code § 33-6-29 (*amend and reenact*)

**ATTORNEY:** Mark Adkins

**SUMMARY:**

House Bill 2557 clarifies which liability insurance policies are primary and secondary when an insured driver is operating a rental vehicle. Under current West Virginia case law, the liability insurance coverage of the owner of a leased or rented car is primary and the insurance coverage for the driver leasing or renting the vehicle is secondary.

This bill amends existing code to provide that the liability insurance or security maintained by the person or entity in the business of renting or leasing vehicles would be secondary to the valid insurance coverage or security of the driver/renter of the person renting the vehicle. However, the bill expressly provides that the that insurance purchased from the rental or leasing company shall be primary to the renter's personal insurance.

House Bill 2557 further requires that the entity in the business of renting or leasing vehicles must satisfy the minimum financial responsibility laws relating to liability insurance coverage or security in this State.

**DATE OF PASSAGE:** March 12, 2015

**EFFECTIVE DATE:** Regular (90 days from passage)- June 10, 2015

**ACTION BY GOVERNOR:** Signed by Governor on March 25, 2015

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## H. B. 2568

**BILL NO.:** Committee Substitute for House Bill 2568

**SHORT TITLE:** The Pain-Capable Unborn Child Protection Act

**SPONSORS:** Delegates Sobonya, Arvon, Kessinger, Rowan, Summers, Border, Blair, Espinosa, Waxman, Moye and Eldridge

**CODE:** W.Va. Code § 16-2M-1 *et seq.* (New article with seven sections)

**ATTORNEY:** Marty Wright

**SUMMARY:**

House Bill 2568 prohibits an abortion of a fetus that has a pain capable gestational age. As defined in the bill, "pain capable gestational age" means twenty-two weeks since the first day of the woman's last menstrual period. This time period is also generally consistent with the time that is twenty weeks after fertilization.

As specified in HB 2568, prior to any abortion being performed or induced, a physician must first make a determination of the pain capable gestational age of the fetus. In making this determination, the physician is required to make inquiry of the patient and perform medical examinations and tests as a reasonably prudent physician, knowledgeable about the case and the medical conditions involved, would consider necessary to perform in making an accurate diagnosis with respect to gestational age. However, the bill does allow for two exceptions to this determination prior to performance of an abortion. Specifically, if there is a medical emergency or if it involves a nonmedically viable fetus. Both terms/exceptions are defined in the bill.

The bill further states that if a physician determines that the fetus has attained a pain capable gestational age, then an abortion is prohibited. As with the determination requirement, the bill does allow for exceptions in the following situations:

- (i) a nonmedically viable fetus; or
- (ii) the patient has a condition that so complicates her medical condition as to necessitate the abortion of her pregnancy to avert her death or to avert serious risk of substantial and irreversible physical impairment of a major bodily function, not including psychological or emotional conditions. No condition may be deemed a medical emergency if based on a claim or diagnosis that the woman will engage in conduct which she intends to result in her death or in substantial and irreversible physical impairment of a major bodily function.

The bill additionally provides that if an abortion occurs according to one of the above exemptions, the physician shall terminate the pregnancy in a manner in which, in reasonable medical judgment provides that best opportunity for the fetus to survive.

With respect to violations of this prohibition, House Bill 2568 sets forth the following penalties:

- (a) Any physician or other licensed medical practitioner who intentionally or recklessly performs or induces an abortion in violation of this article is considered to have acted outside the scope of practice permitted by law or otherwise in breach of the standard of care owed to patients, and is subject to discipline from the applicable licensure board for that conduct, including, but not limited to, loss of professional license to practice.

(b) Any person, not subject to subsection (a) of this section, who intentionally or recklessly performs or induces an abortion in violation of this article is considered to have engaged in the unauthorized practice of medicine in violation of section thirteen, article three, chapter thirty of this code, and upon conviction, subject to the penalties contained in that section.

The bill expressly states that no penalty may be assessed against any patient, and a patient may still seek any remedy otherwise available to such patient by applicable law.

In addition to the prohibition and penalties, House Bill 2568 requires that physicians performing an abortion report certain information about the abortion to the WV Bureau of Public Health. The bill makes clear that the name or address of the patient not be reported. The West Virginia Department of Health and Human Services is required to annually publish a report providing the statistics and data collected for the prior year.

**DATE OF PASSAGE:** February 25, 2015

**EFFECTIVE DATE:** Regular (90 days from passage)- May 26, 2015

**ACTION BY GOVERNOR:** Vetoed by Governor on March 2, 2015; Veto overridden by Legislature on March 6, 2015

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### **H.B. 2586**

**BILL NO.:** Committee Substitute for House Bill 2586

**SHORT TITLE:** Allowing for an alternative form of service of process in actions against nonresident persons by petitioners seeking domestic violence or personal safety relief

**SPONSORS:** Delegates Shott, Lane, Miller, Frich, Rowan, Fleischauer, Sobonya, Border, Pasdon, Waxman and Summers

**CODE:** W. Va. Code §48-27-311 (*amend and reenact*)

**ATTORNEY:** Devon Lopez (Intern)

#### **SUMMARY:**

W.Va. Code §48-27-311 states that a protective order may be served in a domestic violence action by means of a by a Class I legal advertisement if personal service is unavailable. This bill amends W.Va.. Code §48-27-311 regarding service of process in domestic violence matters to add a subdivision to provide for service of process upon a non resident person in accordance with chapter 56 of the code.

This bill creates section §56-3-33a which outlines the means to service process upon a non resident who;

- (1) Any act constituting domestic violence or abuse as defined in W.Va. Code §48-27-202;
- (2) Any act constituting a basis for seeking personal safety relief as defined in W.Va. Code §53-8-4
- (3) Any act or omission violating the provisions of a duly authorized protective or restraining

order, whether issued by this state or another jurisdiction, for the protection of any person within this state.

§56-3-33a nearly mirrors the existing code provisions permitting service of process upon non residents in civil actions (W.Va. Code §56-3-33)

The committee substitute of this bill amends W.Va. Code §48-27-311 to add an additional means of service of a protective order in a domestic violence action upon a nonresident through the West Virginia Secretary of State's office in the same manner that nonresident defendants in a civil action are served pursuant to W.Va. Code §56-3-33.

Removes the word "circuit" on page 3, line 20.

Removes "and the fee required by section two, article one, chapter fifty-nine of this code" on line 4, page 4.

Removes the reference to service in a civil action on page 4, line 18-19.

The committee substitute also adds a new section, §56-3-33a, which outlines the process that a person may serve a domestic violence protective order upon a nonresident through the Secretary of State.

Delegate McCuskey moved to amend the committee substitute of bill HB2586 on page 3, Section 33a, line 1, to read as follows:

§56-3-33a

(1) If such conduct was not committed in this state if but the conduct was purposely directed at a resident and has an effect within this state.

and on page 4, Section 33a, line 4 all to read as follows:

§56-3-33a

(4) Such nonresident: Provided, That notice of such service and a copy of the summons and complaint petition and order shall forthwith be sent by registered or certified mail, return receipt requested, by a means which may include electronic issuance and acceptance of electronic return receipts, by the Secretary of State to the defendant at his or her nonresident address and the defendant's return receipt signed by himself or herself or his or her duly authorized agent or the registered or certified mail so sent by the Secretary of State which is refused by the addressee and which registered or certified mail is returned to the Secretary of State, or his or her office, showing thereon the stamp of the post-office department that delivery has been refused.

**DATE OF PASSAGE:** March 11, 2015

**EFFECTIVE DATE:** Regular (90 days from passage)- June 9, 2015

**ACTION BY GOVERNOR:** Signed by Governor on March 27, 2015

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**H.B. 2595**

**BILL NO.:** House Bill 2595

**SHORT TITLE:** Relating to certificate of need for the development of health facilities in this state.

**SPONSORS:** Delegates McGeehan and Canterbury

**CODE:** W. Va. Code §16-2D-2 and §16-2D-6 (*amend and reenact*)

**ATTORNEY:** Devon Lopez (Intern)

**SUMMARY:**

HB 2595 would eliminate out-of-state health care facilities and providers from the definition of “affected persons”

The bill also removes out-of-state health care facilities or providers from consideration by the WV Healthcare Authority in reviewing applications for certificates of needs.

Certificates of need are the first step in the process to develop any health care facility in the state of WV. Certificates of needs consider “affected persons” as people within a certain radius of the proposed destination of the new facility, which could include large health care facilities in a bordering state within the geographical area.

**DATE OF PASSAGE:** March 12, 2015

**EFFECTIVE DATE:** Regular (90 days from passage)- June 10, 2015

**ACTION BY GOVERNOR:** Signed by Governor on April 1, 2015

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**H. B. 2606**

**BILL NO.:** House Bill 2606

**SHORT TITLE:** Clarifying the potential sentence for disorderly conduct

**SPONSORS:** Delegates Sponaugle and Shott

**CODE:** W.Va. Code § 61-6-1b (*amend and reenact*)

**ATTORNEY:** Brian Casto

**SUMMARY:**

The purpose of this bill is to clarify the potential sentence for disorderly conduct by removing language that a person may be "committed to the custody of the Division of Corrections" rather than "confined in jail" which is inserted.

**DATE OF PASSAGE:** March 11, 2015

**EFFECTIVE DATE:** Regular (90 days from passage)- June 9, 2015

**ACTION BY GOVERNOR:** Signed by Governor on March 25, 2015



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## H.B. 2607

**BILL NO.:** House Bill 2607

**SHORT TITLE:** Relating to the violation of interfering with emergency services communications and clarifying penalties

**SPONSORS:** Delegates Sponaugle and Shott

**CODE:** W.Va. Code §61-5-17 (*amend and reenact*)

**ATTORNEY:** Devon Lopez (Intern)

**SUMMARY:**

The bill amends West Virginia Code § 61-5-17 by correcting potentially conflicting language relating to the possible penalties for violators under article 5 “CRIMES AGAINST PUBLIC JUSTICE.” These penalties include obstructing an officer, fleeing from an officer, making false statements to an officer, and interfering with emergency communications. The penalties incorrectly use the conjunction “and” along with “or both” when listing penalties. This bill changes the “and” to “or” consistent with statutory drafting. The first correction can be found under subsection (d) by inserting fined and confined on line 21 after the word “or both.” Additionally on line 12 of subdivision (4), the bill strikes out the term “and” and inserts or, and also inserts fined and confined on line 13 after the word “both.” The same corrections apply to subdivisions (5) on lines 16 and 17, and (6) on line 20.

The Senate passed a committee amendment which cleaned up the title and language of the bill. The House concurred.

**DATE OF PASSAGE:** March 14, 2015

**EFFECTIVE DATE:** Regular (90 days from passage)- June 12, 2015

**ACTION BY GOVERNOR:** Signed by Governor on March 25, 2015.

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## **H. B. 2608**

**BILL NO.:** House Bill 2608

**SHORT TITLE:** Cleaning up redundant language in the statute relating to misdemeanor offenses for violation of protective orders

**SPONSORS:** Delegates Sponaugle and Shott

**CODE:** W.Va. Code §48-27-903 (*amend and reenact*)

**ATTORNEY:** Brian Casto

**SUMMARY:**

Current law provides that persons convicted of a violation of this provision shall upon conviction be jailed “which jail term shall include actual confinement of not less than thirty days, and fined not less than \$500 nor more than \$3,000. or both [sic]” and that a person convicted of a subsequent offense “which [sic] the violation occurs within ten years of a prior conviction of this offense is guilty of a misdemeanor .” The bill eliminates the words “or both”; eliminating a redundancy as persons convicted of a violation of these provisions already must be both jailed and fined and changes the word “which” to “when” to eliminate the absurdity in subsection © relating to subsequent offenses.

**DATE OF PASSAGE:** March 12, 2015

**EFFECTIVE DATE:** Regular (90 days from passage)- June 10, 2015

**ACTION BY GOVERNOR:** Signed by Governor on March 27, 2015

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### **H.B. 2625**

**BILL NO.:** House Bill 2625

**SHORT TITLE:** Continuing the current hazardous waste management fee

**SPONSORS:** Delegates Ashley and Ireland

**CODE:** W.Va. Code §22-18-22 (*amend and reenact*)

**ATTORNEY:** Devon Lopez (Intern)

**SUMMARY:**

The purpose of this bill is to continue the current hazardous waste management fee until 2020. An annual certification fee shall be assessed for all facilities that manage hazardous waste. All monies collected from the fees assessed pursuant to this rule shall be deposited in the State Treasury in a special fund designated "The Hazardous Waste Management Fee Fund."

**DATE OF PASSAGE:** March 12, 2015

**EFFECTIVE DATE:** Regular (90 days from passage)- June 10, 2015

**ACTION BY GOVERNOR:** Signed by Governor on March 27, 2015

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### **H. B. 2636**

**BILL NO.:** Committee Substitute for House Bill 2636

**SHORT TITLE:** Exempting information contained in a concealed weapon permit application from the Freedom of Information Act

**SPONSORS:** Delegates Folk, R. Phillips, Faircloth, McGeehan, J. Nelson, Householder, Butler, Marcum, Frich, H. White and Shott

**CODE:** W.Va. Code § 29B-1-2; §29B-1-3 & §29B-1-4 (*amend and reenact*)  
W.Va. Code § 29B-1-3a (*New Section*)  
W.Va. Code § 61-7-4 (*amend and reenact*)

**ATTORNEY:** Marty Wright

**SUMMARY:**

House Bill 2636 amends the West Virginia Freedom of Information Act by expanding the types of documents to be disclosed, establishing a statewide database, eliminating the hourly charge for collection and reproduction of documents, and exempting certain personal information contained on concealed weapon permit documents from public disclosure.

In particular, the bill modifies the definition of "public records" to expand the type of

documents subject to public disclosure. The definition now allows consideration of both context or content in deciding whether a writing contains information relating to the conduct of the public's business.

Further, House Bill 2636 mandates the Secretary of State establish a database that is available to the public via the Internet and that lists each freedom of information request received by a public body and the outcome of the request. The bill requires the Secretary of State establish on the website a form for use by a public body to report the results of the freedom of information request, providing the nature of the request and the public body's response thereto, whether the request was granted, and if not, the exemption asserted to deny the request. All public bodies are required to start providing this information effective January 1, 2016.

House Bill 2636 additionally reverses the recent West Virginia Supreme Court King v. Nease, 757 S.E.2d 782 (W.Va. 2014) which held that a public agency may charge a search and retrieval fee based on hourly wages of the employee responding to the FOIA request. The bill amends the statute to expressly state that "a public body may not charge a search or retrieval fee or otherwise seek reimbursement based on a man-hour basis as part of costs associated with making reproduction of records."

Finally, House Bill 2636 adds an exemption from public disclosure of certain personal information. Under existing law, FOIA affords every person the right to inspect or copy any public record of a public body in this state, unless it is expressly exempted in the Act. The bill adds an exemption for any information that would identify an applicant for or holder of a concealed weapon permit. This exemption includes applications, supporting documents, permits, renewals, or other information that reveal the identity of the holder of a permit. A violation of this confidentiality is made a misdemeanor criminal offense punishable by a fine of not less than \$50 or more than \$200 for each offense. The bill allows an exception for disclosure to a law enforcement agency or officer: (I) to determine the validity of a permit, (ii) to assist in a criminal investigation or prosecution, or (iii) for other lawful law-enforcement purposes. The bill, however, allows information in the aggregate that does not identify any permit holder other than by county or municipality to be disclosed.

**DATE OF PASSAGE:** March 14, 2015

**EFFECTIVE DATE:** Regular (90 days from passage)- June 12, 2015

**ACTION BY GOVERNOR:** Signed by Governor on April 1, 2015

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## H.B. 2648

**BILL NO.:** Committee Substitute for House Bill 2648

**SHORT TITLE:** Allowing authorized entities to maintain a stock of epinephrine auto-injectors to be used for emergency.

**SPONSORS:** Delegates Pasdon, Stansbury, Ellington, Statler, Kurcaba, Householder, Fleischauer and Rohrbach.

**CODE:** W.Va. Code §§ 16-46-1 through 5 (*new*).

**ATTORNEY:** Kip Reese

**SUMMARY:**

The bill provides a necessary and reasonably safe means of care for emergent situations where an allergic reaction to food, insect venom or other allergen is causing a life threatening allergic reaction, by making epinephrine auto-injectors (known commonly as epipens) available to entities and organizations where allergens may exist (hotels, restaurants, recreation camps, youth sports leagues, parks and resorts and sports arenas). This is not the first time the legislature has dealt with epipens.

In the 2013 Regular Session the Legislature passed HB2729, enacting WVA. Code § 18-5-22C to permit WVA. schools (public or private) to possess and maintain a supply of epipens at the school for emergency care or treatment of anaphylactic reactions

epinephrine -

HB 2648 provides training for emergency administration, and authority to administer epinephrine for emergency care or treatment of anaphylactic reactions anyplace where allergens may be capable of causing a severe allergic reaction. The bill authorizes DHHR to promulgate legislative rules, conduct and approve education training programs, establishes minimum curriculum requirements for that education, provides prescriptive authorized health care practitioners, permits acquisition and maintenance of a supply of epipens, authorizes use of epipens in certain circumstances, and provides that administration of an epipen is not the practice of medicine.

**DATE OF PASSAGE:** March 11, 2015 (original); March 18, 2015 (corrected)

**EFFECTIVE DATE:** Regular (90 days from passage)- June 11, 2015.

**ACTION BY GOVERNOR:** Vetoed for technical reasons (used same new article number as another bill) on March 17, 2015. A corrected bill was passed by the Legislature on March 18, 2015. The bill was then signed by the Governor on April 2, 2015.

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## H. B. 2664

**BILL NO.:** Committee Substitute for House Bill 2664

**SHORT TITLE:** Creating "Andrea and Willy's Law"; increasing certain penalties for driving under the influence of alcohol, controlled substances or drugs

**SPONSORS:** Delegates Sobonya, Butler, McCuskey, Stansbury, E. Nelson, Ihle, Householder, Ellington, Westfall, Marcum and Byrd

**CODE:** W.Va. Code § 17C-5-2 (*amend and reenact*)  
W.Va. Code § 17C-5A-2 (*amend and reenact*)

**ATTORNEY:** Brian Casto/Marty Wright

**SUMMARY:**

As part of an agreed conference committee, House Bill 2664 increased the penalties for driving under the influence causing death as well as other DUI violations. The bill additionally included a provision requiring the adherence to the West Virginia Rules of Evidence in administrative revocation hearings.

With respect to the increased penalties, House Bill 2664 made significant changes to the provisions relating to DUI causing death by making a singular Felony provision for all DUI causing death. Under existing law, there is both a felony and a misdemeanor offense for DUI causing death, and penalties depend on whether certain factors or additional violations of law occurred at the same time as the DUI. The bill removed both the misdemeanor offense as well as the requirement for additional violations of law to occur in order to be charged with a felony offense. Instead, the bill made all DUI resulting in the death of another person a felony offense. The penalty is increased from 2 to 10 years and a fine, to 3 to 15 years and a fine.

House Bill 2664 additionally created a new felony offense of DUI causing serious bodily injury. Serious bodily injury is defined as “bodily injury that creates a substantial risk of death, that causes serious or prolonged disfigurement, prolonged impairment of health or prolonged loss or impairment of the function of any bodily organ.” The penalty for such an offense is imprisonment in a state correctional facility for not less than 2 nor more than 10 years and a fine of not less than \$1,000 nor more than \$3,000.

House Bill 2664 also increased the penalty for 3<sup>rd</sup> and subsequent DUI offenses from 1 to 3 years to 2 to 5 years.

Finally, House Bill 2664 added in a requirement that the West Virginia Rules of Evidence apply in all proceedings before the DMV Office of Administrative Hearings. This would include all license revocation hearings.

**DATE OF PASSAGE:** March 14, 2015 (original); March 18, 2015 (corrected)

**EFFECTIVE DATE:** Regular (90 days from passage)- June 16, 2015

**ACTION BY GOVERNOR:** Vetoed for technical reasons (Conference Committee Report included an incorrect title for the bill) on March 17, 2015. A corrected bill was passed by the Legislature on March 18, 2015. The bill was then signed by the Governor on April 1, 2015.

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## H. B. 2726

**BILL NO.:** House Bill 2726

**SHORT TITLE:** Clarifying choice of laws issues in product's liability actions

**SPONSORS:** Delegates Shott, Folk, Overington, Sponaugle, Azinger, Deem and Waxman

**CODE:** W.Va. Code § 55-8-16 (*amend and reenact*)

**ATTORNEY:** Mark Adkins

**SUMMARY:**

House Bill 2726 expands the existing choice of law statute to cover all product liability civil cases, not just those relating to prescription drug civil actions. In 2011, the Legislature passed a law directing Court's to apply the law of the state where the injury took place when a **nonresident plaintiff** filed suit against a manufacturer or distributor of a prescription drug for failure to warn. House Bill 2726 amends that statute to expand its applicability to all product liability claims asserted by **nonresident plaintiffs** in West Virginia.

The bill does not affect West Virginia citizens. Rather, it is intended to deter forum shopping and decrease the number of civil actions filed by nonresident plaintiffs who seek better recovery/laws under West Virginia law than their own state's laws.

**DATE OF PASSAGE:** March 3, 2015

**EFFECTIVE DATE:** July 1, 2015

**ACTION BY GOVERNOR:** Signed by Governor on April 2, 2015

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## H. B. 2790

**BILL NO.:** House Bill 2790

**SHORT TITLE:** Relating to minimum responsibility limits of car insurance

**SPONSORS:** Delegates Westfall, Waxman, Shott and Frich

**CODE:** W.Va. Code §§ 17D-4-2, -7 & -12 (*amend and reenact*)  
W.Va. Code § 33-6-31 (*amend and reenact*)  
W.Va. Code § 33-6-31d (*amend and reenact*)  
W.Va. Code § 33-6-31h (*New Section*)

**ATTORNEY:** Mark Adkins

**SUMMARY:**

House Bill 2790 increases the minimum proof of financial responsibility each motor vehicle is required to have 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; and
- ▶ an increase from \$10,000 to \$25,000 because of injury or destruction of property of others in any one accident.

The limits for uninsured and under insured motorist policies are not required to increase until those policies are renewed during 2016.

House Bill 2790 also clarifies that the minimum proof of financial responsibility is not required for those who are identified under the policy as “named driver exclusion”- meaning the insurance company is not required to provide minimum requirements for those persons who are specifically identified to not be covered under that insurance policy.

**DATE OF PASSAGE:** March 11, 2015

**EFFECTIVE DATE:** Regular (90 days from passage)- June 9, 2015

**ACTION BY GOVERNOR:** Signed by Governor on April 1, 2015



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## H. B. 2797

**BILL NO.:** House Bill 2797

**SHORT TITLE:** Changing the term "mentally retarded" to "intellectually disabled;" and changing the term "handicapped" to "disabled"

**SPONSORS:** Delegates Campbell, Perry, Moye, Fleischauer, Bates, Guthrie, Ellington, Householder, Ashley, P. Smith and McCuskey

**CODE:** W.Va. Code § 17A-3-4 (*amend and reenact*)  
W.Va. Code § 18-20-1a (*amend and reenact*)  
W.Va. Code § 28-1-2 (*amend and reenact*)  
W.Va. Code § 28-5-31 (*amend and reenact*)

**ATTORNEY:** Marty Wright

**SUMMARY:**

House Bill 2797 replaces terminology used in the code when referencing the words “mentally retarded” and “handicapped”. Specifically, the bill changes these terms to the following:

- “mentally retarded” changed to “intellectually disabled”
- “handicapped” changed to “disabled”

The bill makes no substantive change in the meaning or use of the words in the code. It only replaces the use of the words.

**DATE OF PASSAGE:** March 12, 2015

**EFFECTIVE DATE:** Regular (90 days from passage)- June 10, 2015

**ACTION BY GOVERNOR:** Signed by Governor on March 25, 2015

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## H. B. 2810

**BILL NO.:** Committee Substitute for House Bill 2810

**SHORT TITLE:** Implementing the West Virginia Property Rescue Initiative to reduce the number of properties posing a threat to public health and safety

**SPONSORS:** Delegates Guthrie, Pushkin, Byrd, Rowe, McCuskey, B. White, Stansbury and Walters

**CODE:** W.Va. Code § 31-18-28 (*New Section*)

**ATTORNEY:** Mark Adkins

**SUMMARY:**

House Bill 2810 creates the West Virginia Property Rescue Initiative to address the large number of dilapidated housing in the State. This program will be administered by the West Virginia Housing Development Fund and will provide technical assistance, training and consulting services to counties and municipalities regarding the identification, purchase, removal, or rehabilitation of dilapidated structures and properties throughout the state.

This program will not be funded with State money, but rather will be solely funded by the Housing Development Fund. Specifically, a revolving loan fund will be created and the Housing Development Fund will deposit \$5 million dollars into the revolving loan fund over a five year period. The revolving loan fund will make funding available to counties and municipalities to aid in the training and resources to deal with these dilapidated structures and return the property to a condition beneficial to their communities.

House Bill 2810 further requires the executive director of the Housing Development Fund to issue reports to the Joint Committee on Government and Finance on the progress of this Initiative.

**DATE OF PASSAGE:** March 14, 2015

**EFFECTIVE DATE:** Regular (90 days from passage)- June 12, 2015

**ACTION BY GOVERNOR:** Signed by Governor on April 1, 2015

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## H. B. 2931

**BILL NO.:** House Bill 2931

**SHORT TITLE:** Adding drugs to the classification of schedule I drugs

**SPONSORS:** Delegates Ashley and Westfall

**CODE:** W.Va. Code § 60A-2-204 (*amend and reenact*)

**ATTORNEY:** Marty Wright

**SUMMARY:**

House Bill 2931 updates the list of Schedule I drugs under the Uniform Controlled Substances Act to account for recently created synthetic drugs. Specifically, the bill:

(a) Adds 3 Hallucinogenic Substances (or which contains any of its salts, isomers and salts of isomers, whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

(b) Adds 11 Tryptamines

(c) Adds 10 Amphetamines

The Board of Pharmacy is authorized with the classification of substances using the following general criteria and classifications:

Schedule I High potential for abuse and has no accepted medical use

Schedule II High potential for abuse, has currently accepted medical use, and Abuse of the substance may lead to severe psychic or physical dependence.

Schedule III Potential for abuse, has currently accepted medical use, and abuse of the substance may lead to moderate or low physical dependence or high psychological dependence.

Schedule IV Substance has a low potential for abuse relative to substances in Schedule III, has a currently accepted medical use, and abuse of the substance may lead to limited physical dependence or psychological dependence relative to the substances in Schedule III.

Schedule V Low potential for abuse relative to Schedule IV, substance has currently medical use, and has limited physical dependence or psychological dependence relative to substances listed schedule IV.

**DATE OF PASSAGE:** March 12, 2015

**EFFECTIVE DATE:** Regular (90 days from passage)- June 10, 2015

**ACTION BY GOVERNOR:** Signed on April 2, 2015.

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## H. B. 2939

**BILL NO.:** Committee Substitute for House Bill 2939

**SHORT TITLE:** Relating to requirements for mandatory reporting of sexual offenses on school premises involving students

**SPONSORS:** Delegate B. White

**CODE:** W.Va. Code § 49-1-201 (*amend and reenact*)  
W.Va. Code § 49-2-803 (*amend and reenact*)  
W.Va. Code § 49-2-812 (*amend and reenact*)  
\*\*\*\* NOTE: These are the revised statutory citations created by  
passage of HB2200

**ATTORNEY:** Marty Wright

### **SUMMARY:**

As part of an agreed conference committee, HB 2939 closed and corrected an existing loophole in the reporting requirements of sexual incidents involving students on school premises. Under existing law, teachers and school personnel are only required to notify law enforcement if the sexual incident involved a parent, guardian, or custodian. Student on student offenses or teacher on student offenses are not required to be reported.

House Bill 2939 closed this loophole by expressly requiring any school teacher or other school personnel who receives a disclosure from a witness, which a reasonable prudent person would deem credible, or personally observes any sexual contact, sexual intercourse or sexual intrusion of a child on school premises or on school buses or other similar transportation shall immediately, but not more than 24 hours, report the circumstances or cause a report to be made to the State Police or other law-enforcement agency.

The bill contains a teacher safe-harbor provision that exempts the requirement to report the information to law enforcement if the teacher immediately informs the school principal, assistant principal or similar person in charge of the alleged conduct. The principal, assistant principal or similar person informed of such information then has the obligation to immediately, but not more than 24 hours, report the information to law enforcement. The bill further provided an exception from reporting conduct that would otherwise not be in violation of law (e.g. consensual kissing between two students).

House Bill 2939 further establishes that the penalty for failing to report any person, official or institution required to report a case involving a child known or suspected to be sexually assaulted or sexually abused, or student known or suspected to have been a victim of any non-consensual sexual contact, sexual intercourse or sexual intrusion on school premises is guilty of a misdemeanor and shall be confined in jail not more than six months or fined not more than \$10,000, or both. The bill also increased the penalty for failure to report abuse or neglect from 30 days to 90 days in jail.

In addition to closing the loophole, House Bill 2939 also implemented a requirement that county boards of education and private school administrators provide all employees with a written statement setting forth the requirements contained in this bill and make them aware of the new reporting requirements. The bill further required the school boards to obtain and preserve a signed acknowledgment from school employees that they have received and understand the reporting

requirement.

**DATE OF PASSAGE:** March 14, 2015

**EFFECTIVE DATE:** Regular (90 days from passage)- June 12, 2015

**ACTION BY GOVERNOR:** Signed on March 25, 2015

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## SENATE ORIGINATED BILLS PASSED

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### S.B. 3

**BILL NO.:** Senate Bill 3

**SHORT TITLE:** Liability of possessor of real property for harm to trespasser

**SPONSORS:** Senators Palumbo, Leonhardt, Boley, Ferns, D. Hall, Karnes, Maynard, Nohe, Sypolt, Trump, Blair, Williams, Plymale, Kirkendoll, Stollings and Cole (Mr. President)

**DATE:** March 16, 2015

**CODE:** W.Va. Code §55-7-27 (*new section*)

**ATTORNEY:** Kip Reese 3258

**SUMMARY:**

SB 3 codifies the duty possessors of real property owe to trespassers under the common law of West Virginia.

- Liability for injury to a trespasser is currently a matter of common law which establishes that land possessors may be subject to liability for injury or death to a trespasser if:
  - (1) the possessor fails to refrain from willful or wanton conduct;
  - (2) the possessor discovers the trespasser in a position of peril and fails to exercise ordinary care not to cause injury to the trespasser;
  - (3) the possessor maintains a highly dangerous condition or instrumentality on the property (under certain circumstances); or
  - (4) a child trespasser is injured or killed due to a dangerous instrumentality or condition on the property (under certain circumstances).

- WVA. follows a four-part test for addressing "dangerous conditions":

For a trespasser to establish liability against the possessor of property who has created or maintains a highly dangerous condition or instrumentality upon the property, the following conditions must be met:

- (1) the possessor must know, or from facts within his knowledge should know, that trespassers constantly intrude in the area where the dangerous condition is located;
- (2) the possessor must be aware that the condition is likely to cause serious bodily injury or death to such trespassers;
- (3) the condition must be such that the possessor has reason to believe trespassers will not discover it; and,
- (4), in that event, the possessor must have failed to exercise reasonable care to adequately warn the trespassers of the condition.

Whether the instrument or condition may reasonably be considered dangerous under the circumstances is a legal question, and whether the instrument or condition is, in fact, dangerous under the circumstances is a question for jury determination.

- WVA. Code contains two statutory provisions related to specific instances of landowner liability for injury to someone upon their property.

- (1) W. Va. Code §§ 19-25-1, *et. seq.* (limiting liability of landowners ; and,

- (2) W. Va. Code § 55-7-2 (“Stand Your Ground”).

The bill does not alter the duty owed a trespasser under current common law, and does not disturb statutes that specifically address the liability of land possessors under various circumstances

**DATE OF PASSAGE:** January 29, 2015

**EFFECTIVE DATE:** 90 days.

**ACTION BY GOVERNOR:** Signed by Governor on February 9, 2015

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### S.B. 6

**BILL NO.:** Committee Substitute for Senate Bill 6

**RELATING TO:** Medical professional liability.

**SPONSORS:** Senators Ferns, Boley, Carmichael, Gaunch, Leonhardt, Mullins, Nohe, Trump, Blair, Plymale, Stollings, Cole (Mr. President) and Takubo.

**DATE:** March 17, 2015

**CODE:** W.Va. Code §55-7B-1, (*repealed*);  
W.Va. Code §55-7B-2, §55-7B-7, §55-7B-8, §55-7B-9, §55-7B-9a, §55-7B-9c and §55-7B-11 (*amend and reenact*);  
W.Va. Code §55-7B-7a and §55-7B-9d (*new*).

**ATTORNEY:** Kip Reese 3258

### SUMMARY:

SB 6 addressees the Medical Professional Liability Act (MPLA), more particularly: legislative findings, definitions, testimony of experts, admissibility of certain information, limits on non-economic loss, several liability, the effect of collateral sources on economic losses, treatment of emergency conditions, adjustment of non-economic damage caps, adjustment of past medical expenses verdict, and the severability clause. The Senate Committee Substitute presents several modifications of the original bill, noted below in the affected sections. Amendments were adopted to reinsert legislative findings removed by the Senate in the committee substitute. Analysis of particular code sections follows.

- §55-7B-1—Reincorporates the legislative findings with proposed language that modifies the

original bill.

- §55-7B-2—Definitions.

- (b)(2) Amends the definition of “collateral source” to exclude reductions, discounts or write-offs of a medical bill.
- (e) Amends the definition of “health care” to include
  - (1) actions, services or treatment pursuant to physician’s or health care facility’s plan of care, medical diagnosis or treatment;
  - (2) adds “service” to treatment preformed or furnished and extends health care activities to persons acting under the supervision or direction of a health care provider or licensed professional, specifically including staffing, medical transport, custodial care or basic care, infection control, positioning, nutrition and similar patient services; and,
  - (3) adds the process by providers and facilities for appointment, employment, contracting, credentialing, privileging and supervision of healthcare providers;
- (f) Amends the definition of “health care facility” by deleting “personal care home” and “residential board and care home”, and to add a pharmacy, end-stage renal disease facility, home health agency, child welfare agency, group residential facility health center, intellectual/developmental disability center, or other ambulatory health care facility - licensed, regulated or certified under state or federal law and any related entity.
- (g) Amends “health care provider” by adding physician assistant, advanced practice registered nurse, health care facility, speech language pathologist and audiologist, occupational therapist, psychologist, pharmacist, technician, certified nursing assistant, emergency medical service personnel, any person under direction of a licensed professional, any person acting pursuant to a plan of care, medical diagnosis or treatment. See, *Phillips v Larry’s Drive-in Pharmacy, Inc.*, 647 S.E.2d 920 (2007).
- (I) Amends the definition of “medical professional liability” to include “other claims contemporaneous to tort or breach of contract provided in the context of health care services.”
- (n) Adds the definition of “related entity”- related to a healthcare provider or facility or an entity which owns any part of a healthcare provider or facility.

The bill was amended to clarify that Medicare benefits are not collateral sources when considering damages.

- §55-7B-7—Testimony of expert witness on standard of care.

The proposed Committee Substitute eliminated the original bill language dictating de novo standard of review of the circuit court’s application of expert standards, qualification, and admission of expert testimony. Concern was raised that mandatory de novo review would violate the separation of powers between the Legislature and the Judiciary, and .

- (a) adds language that an expert witness’ opinion must be grounded on scientifically valid and properly applied methodology.

The original bill was amended to require expert use of peer review scientific studies if



available.

- §55-7B-7a—Admissibility and use of certain information. (NEW SECTION) . In 55-7B-7a, the proposed Committee Substitute provides that disciplinary actions against a health care provider's license, registration or certification, or an assessment of a civil or criminal penalty is not admissible until it has been affirmed by the entry of a final order of the applicable state or federal board, agency or department and after exhaustion of any applicable administrative or civil appeal and is not subject to further appeal. Text:

- (a) refutable presumption that following information may not be introduced as evidence unless it applies specifically to the injured person or involves substantially similar conduct that occurred within one year of the incident:
  - (1) state or federal survey, audit, review or report of a healthcare provider or facility;
  - (2) disciplinary actions against a provider's license, registration or certification;
  - (3) accreditation report of a provider or facility;
  - (4) assessment of a civil or criminal penalty;
- (b) if provider or facility demonstrates compliance with minimum staffing requirements under state law, the provider or facility is entitled to a reputable presumption that staffing was appropriate;
- (c) any information introduced under this section must also be admissible under the WVRE

NOTES: WVRE 301 - party against whom a presumption is directed has the burden of producing rebuttal evidence. In 55-7B-7a, the proposed Committee Substitute also eliminated language in the original bill prohibiting certain lawyer advertising, citing first amendment and separation of powers concerns.

- §55-7B-8—Limit on Liability for noneconomic loss.
- (a-b) noneconomic damages capped at \$250,000 for each occurrence with inflationary increase—capped at \$500,000 in cases of wrongful death, permanent and substantial physical deformity or functional injury;
- (c) each year since 2004 damage limits increase for inflation at CPI (DOL) rate; increase cannot exceed 150% of \$250,000 (\$375,000) or 150% of \$500,000 (\$750,000);

NOTE: Original bill provides for a 50% capped inflationary increase. The Senate Committee Substitute raised this to 150%.

- (d) noneconomic damages limits do not apply to any defendant which does not have medical professional liability insurance in the aggregate amount of at least \$1M.
- §55-7B-9—Several liability.
- (g) Healthcare provider cannot be held vicariously liable for acts of a nonemployee under

theory of ostensible agency unless the alleged agent does not maintain professional liability insurance in the aggregate amount of \$1M for each occurrence.

- §55-7B-9a—Reduction in compensatory damages for economic losses for payments from collateral sources for the same injury.

The bill also contains technical changes to this provision.

- §55-7B-9c—Limit on liability for treatment of emergency conditions for which patient is admitted to a designated trauma center; exceptions; emergency rules.

Adds “certified emergency service personnel” and “emergency medical services authority” to this section.

- (a) Total civil damages may not exceed \$500,000 for each occurrence , regardless of the number of plaintiffs or distributees;
- (l) As of January 1, 2016 and thereafter, damages shall increase for inflation by an amount equal to the CPI published by the US DOL, not to exceed 150% (\$750,000).

NOTE: Original bill provided for a 50% capped inflationary increase.

- §55-7B-9d —Adjustment of verdict for past medical expenses. (NEW SECTION)

A verdict for past medical expenses is limited to: (1) total amount of medical expenses paid by or on behalf of the plaintiff AND (2) total amount of medical expenses incurred but not paid for which the plaintiff or another is obligated to pay.

- §55-7B-10—Effective Date.

The amendments to this article apply to all causes of action alleging medical professional liability which are filed on or after July 1, 2015..

- §55-7B-11—Severability.

Any enactments in 2015 found invalid do not affect other provisions of the article.

**B. ORIGINAL STAFF SUGGESTED AMENDMENTS:** A strike and insert was suggested which reinstates the MPLA’s legislative findings, reincorporating language from the original bill.

**DATE OF PASSAGE:** March 14, 2015

**EFFECTIVE DATE:** From passage

**ACTION BY GOVERNOR:** Signed by the Governor on March 18, 2015

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### **S.B.13**

**BILL NO.:** Committee Substitute for Senate Bill 13

**SHORT TITLE:** Relating to liability of a possessor of real property for injuries caused by open and obvious hazards.

**SPONSORS:** Senators Nohe, Boley, Ferns, D. Hall, Karnes, Maynard, Mullins, Sypolt, Trump, Blair, Williams and Cole (Mr. President)

**DATE:** March 16, 2015

**CODE:** W.Va. Code §55-7-27 (*new section*)

**ATTORNEY:** Kip Reese 3258

**SUMMARY:**

From 1902 until the case of *Hersh v. E-T Enterprises*, the “open and obvious” doctrine applied to West Virginia premises liability actions. The “open and obvious” doctrine establishes that “a property owner is not liable for injuries sustained as a result of dangers that are obvious, reasonably apparent, or as well known to the person injured as they are to the owner.” The *Hersh* case abolished the open and obvious doctrine in 2013.

SB 13 reinstates and codifies the open and obvious doctrine of landowner liability as it existed in the State of West Virginia prior to the *Hersh* decision.

The Judiciary Committee passed an amendment to SB 13 which provided that where the danger on the landowner’s property is a violation of a law intended for public safety and that violation caused the injury, the landowner is still responsible. After a conference committee with the Senate, the two houses agreed that a court shall appropriately apply the open and obvious doctrine and consider the nature and severity of any violations of statutes relating to the action.

**DATE OF PASSAGE:** February 25, 2015

**EFFECTIVE DATE:** From passage

**ACTION BY GOVERNOR:** Signed by Governor on March 3, 2015

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## S.B. 37

**BILL NO.:** Committee Substitute for Senate Bill 37

**SHORT TITLE:** Relating to Arbitration

**SPONSORS:** Senator Palumbo.

**DATE:** March 16, 2015

**CODE:** W.Va. Code §§ 55-10-1 to 55-10-8 (*amend and reenact*)  
W.Va. Code §§55-10-9 to 55-10-33 (*new*)

**ATTORNEY:** Kip Reese 3258

### SUMMARY:

The Uniform Law Commission (ULC), also known as the National Conference of Commissioners on Uniform State Laws, established in 1892, provides states with non-partisan legislation designed to bring clarity and stability to critical areas of state statutory law. ULC members are practicing lawyers, judges, legislators and legislative staff and law professors, appointed to research, draft and promote enactment of uniform state laws in areas of state law where uniformity is desirable and practical. The ULC can only propose—no uniform law is effective until a state legislature adopts it.

The Uniform Arbitration Act (UAA) was first adopted by the Conference in 1955 and has been widely enacted (in 35 jurisdictions, and in similar form in additional 14 jurisdictions). The UAA closely tracks the provisions of the Federal Arbitration Act (FAA) which was adopted in 1925. Neither the UAA nor FAA have been amended since each were enacted. Therefore, for all practical purposes, American arbitration statutes have not been revised over the past 75 years.

The 2000 Revised Uniform Arbitration Act represents a modified version of its predecessor, the 1955 Uniform Arbitration Act (amended in 1956), which had been adopted in 49 states. The 2000 revisions reflect developments in arbitration law, which became an increasingly utilized method of alternative dispute resolution since the time of the original Uniform Arbitration Act.

Endorsements: American Bar Association ; American Arbitration Association; the National Academy of Arbitrators.

Enactments: Alaska, Arizona, Arkansas, Colorado, District of Columbia, Florida, Hawaii, Michigan, Minnesota, Nevada, New Jersey, New Mexico, North Carolina, North Dakota, Oklahoma, Oregon, Utah, Washington. 2015 Introductions: Pennsylvania, West Virginia.

SB 37 enacts the Uniform Arbitration Act (UAA) of 2000, with some modifications. West Virginia's current article on arbitrations, W. Va. Code §55-10-1, *et seq.*, was last modified in 1931.

A conference committee adopted three amendments to the Uniform Arbitration Act (all proposed by the House):

1. exclude its requirement for written findings of fact and conclusions of law for arbitrations conducted by organizations subject to the Securities Exchange Act and the Commodity Exchange Act because these arbitrations have historically not provided those findings unless specifically requested by the parties to the arbitration.

2. modified declarations of public policy that West Virginia favors enforcement of arbitration agreements and arbitration provisions contained in other contracts or agreements ; and,
3. permits appeal could be taken form an order granting (as well as) denying a motion to compel in matters involving Chapter 46A (Consumer Credit Transactions).

Otherwise, the Act was adopted as presented.

**§55-10-1** - Short title: “Revised Uniform Arbitration Act”.

**§55-10-2** - Legislative findings and policy declarations:

(1) Arbitration, as a form of alternative dispute resolution, offers in many instances a more efficient and cost-effective alternative to court litigation.

(2) The United States has a well-established and emphatic federal policy in favor of arbitral dispute resolution, as identified both by the Federal Arbitration Act, 9 U.S.C. §1, *et seq.*, and the decisions of the Supreme Court of the United States.

(3) Arbitration already provides participants with many of the same procedural rights and safeguards as traditional litigation, and ensuring that those rights and safeguards are guaranteed to participants will ensure that arbitration remains a fair and viable alternative to court litigation and guarantee that no party to an arbitration agreement is unfairly prejudiced by agreeing to an arbitration agreement or provision.

(b) In the public interest it is the policy of the State of West Virginia to favor the enforcement of arbitration agreements, including arbitration provisions contained in other contracts or agreements.

**§55-10-3** - Definitions.

**§55-10-3** - Notice. Reasonably necessary action to notify; knowledge or receipt of notice effectuates notice; delivery to place of residence, business or established location fro notice.

**§55-10-5** - limits the applicability of this article to arbitration agreements made on or after July 1, 2015. Significantly, the bill omits UAA language that would allow arbitration agreements entered into before the effective date of this bill to become subject to the provisions of this law at a specified date in the future.

**§55-10-6** - the provisions of the article that may not be waived by agreement of the parties. These include (1) the involvement of the court in determining whether an agreement to arbitrate is valid, (2) the authority of the arbitrator to award provisional remedies, (3) the use of witnesses, subpoenas, depositions and other discovery during the arbitration, (4) venue of the state courts, (5) appeals of adverse court determinations concerning arbitration agreement, (6) unreasonable restrictions on notice requirements, (7) unreasonable restriction of right to disclosure of certain facts by an arbitrator, and (8) 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** - parties 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 of an arbitration agreement.

**§55-10-9** - addresses 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** - sets forth manner in which separate arbitration proceedings can be consolidated by a court.

**§55-10-13** - if the parties are unable to select an arbitrator, or an arbitrator becomes unable to fulfill his duties, the court can appoint an arbitrator. Also provides for arbitrator neutrality.

**§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 the steps to be taken if the arbitrator does disclose a conflict that merits disqualification, or fails to do so.

**§55-10-15** - when panels of arbitrators sit, their powers must be exercised by a majority.

**§55-10-16** - grants arbitrators the same civil immunity as that given to judges of the State of West Virginia, and states that they are not competent to testify in a judicial proceeding, absent certain exceptions.

**§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,” permitting summary disposition under certain circumstances, setting the manner in which an evidentiary hearing is to be convened, and setting forth certain necessary elements of that hearing.

**§55-10-18** - guarantees a right to representation by an attorney. The bill adds language to the UAA language to ensure that attorneys representing clients in arbitration proceedings subject to the West Virginia laws are duly licensed to practice law in the State of West Virginia.

**§55-10-19** - addresses procedural matters concerning witnesses, subpoenas, depositions, and discovery.

**§55-10-20** - allows a party to submit an arbitration award to a judge for enforcement, and to incorporate any pre-award ruling therein. 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, and to do so within the time specified within the agreement, or within the time ordered by the court.

**§55-10-22** - sets forth certain limited circumstances in which an arbitrator, on motion by a party, may modify or correct an award.

**§55-10-23** - allows 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. Further permits the arbitrator to award “such remedies as the arbitrator considers just and appropriate under the circumstances of the arbitration proceeding.” Requires a statement by the arbitrator justifying in both fact and law the award of any attorney’s fees or punitive damages.

**§55-10-24** - permits a party to apply to the court to confirm an award ordered by an arbitrator.

**§55-10-25** - sets forth limited circumstances in which a court may vacate an award made in an arbitration proceeding, including (1) corruption, fraud or other undue means, (2) evident partiality, misconduct or corruption by an arbitrator, and (3) 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.

**§55-10-26** - identifies limited circumstances in which a court may modify or correct an award made by an arbitrator.

**§55-10-27** - directs the 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 the arbitration.

**§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 venue for making application to courts.

**§55-10-30** - permits appeals to be taken of certain circuit court actions, including one (1) denying a motion to compel arbitration, (2) granting a motion to stay arbitration, (3) confirming or denying confirmation of an award, (4) modifying or correcting an award, (5) vacating an award without directing a rehearing, or (6) 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** - provisions which address validity and enforceability of electronic signatures governed by shall conform to the requirements of Section 102 of the Electronic Signatures in Global and National Commerce (2000).

**§55-10-33** - article does not affect an action or proceeding commenced, or right accrued, before this article takes effect.

**DATE OF PASSAGE:** March 15, 2015

**EFFECTIVE DATE:** July 1, 2015.

**ACTION BY GOVERNOR:** Signed by Governor on March 31, 2015

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**S. B. 88**

**BILL NO.:** Committee Substitute for Committee Substitute for S.B.88

**SHORT TITLE:** Creating WV Clearance for Access: Registry and Employment Screening Act

**SPONSORS:** Senators Stollings and Plymale

**CODE:** W.Va. Code § 15-2-24 (*amend and reenact*)  
W.Va. Code §16-46-1, §16-46-2, §16-46-3, §16-46-4, §16-46-5, §16-46-6, §16-46-7, §16-46-8 and §16-46-9 (*new*)

**ATTORNEY:** Marty Wright

**SUMMARY:**

Senate Bill 88 requires potential employees at a covered provider to undergo state and federal background checks prior to employment. “Covered provider” means the following facilities or providers: (i) A skilled nursing facility; (ii) A nursing facility; (iii) A home health agency; (iv) A provider of hospice care; (v) A long-term care hospital; (vi) A provider of personal care services; (vii) A provider of adult day care; (viii) A residential care provider that arranges for, or directly provides, long-term care services, including an assisted living facility; (ix) An intermediate care facility for individuals with intellectual disabilities.

If the person has a disqualifying offense, then he or she may not be hired by the nursing facility or other covered provider. A “disqualifying offense” includes: “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 in the bill, a person seeking employment with a covered provider will need to undergo a background check. The employer will also 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 through the West Virginia State Police. 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 for a variance.

Senate Bill 88 additionally authorizes the WV DHHR and the WV State Police to charge a fee for completion and processing of the background check. The bill additionally authorizes the WV DHHR to establish legislative rules for implementation of the plan.

**DATE OF PASSAGE:** March 14, 2015

**EFFECTIVE DATE:** Regular (90 days from passage)- June 12, 2015

**ACTION BY GOVERNOR:** Signed by Governor on April 2, 2015



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**S.B. 140**

**BILL NO.:** Committee Substitute for Senate Bill 140

**SHORT TITLE:** Amending State Administrative Procedures Act

**SPONSORS:** Senators Snyder, Romano and Facemire

**CODE:** W.Va. Code §29A-2-8, §29A-1-2, §29A-1-3a and §29A-1-3b (*new*); §29A-3-1a, §29A-3-4, §29A-3-8, §29A-3-13 and §29A-3-15 (*amend and reenact*)

**ATTORNEY:** Brian Casto

**SUMMARY:**

The purpose of this bill is to amend the state Administrative Procedures Act. It defines the term "legislative exempt rule" and adds that term to the provisions regarding the requirements for amendments to existing rules, proposed new rules and the repeal of existing rules. Provisions are added regarding rules of agencies which cease to exist and technical amendments to existing rules. The bill also establishes filing and adoption requirements for legislative exempt rules. The bill makes all legislative rules effective from passage and requires a list of interested parties be provided with emergency rules. The bill changes the number of copies required when filing an emergency rule. The Senate's language limited the definition in §29A-1-3a concerning what constitutes a technical amendment and added the phrase "good faith" to §29A-3-15 to ensure that agencies are diligent in their efforts to compile a comprehensive list of affected parties. The House Judiciary Amendment made minor technical changes.

**EFFECTIVE DATE:** Passage

**DATE OF PASSAGE:** March 12, 2015

**ACTION BY GOVERNOR:** Signed by Governor on March 31, 2015

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## S. B. 142

**BILL NO.:** Committee Substitute for Senate Bill 142

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

**SPONSORS:** Senator Snyder

**CODE:** W.Va. Code § 64-2-1 (*amend and reenact*)  
W.Va. Code § 64-2-2 (*amend and reenact*)  
W.Va. Code § 64-2-3 (*amend and reenact*)

**ATTORNEY:** Marty Wright

**SUMMARY:**

Senate Bill 142 is the Rules Bundle for the Department of Administration's Rules. The bundle includes the following rules:

- Department of Administration
  - ▶ 148 CSR 1 (*Purchasing Div.*)
  - ▶ 148 CSR 3 (*State Fleet Management*)
  - ▶ 148 CSR 4 (*State Surplus*)
- Consolidated Public Retirement Board
  - ▶ 162 CSR 7 (*Employee Error*)
  - ▶ 162 CSR 8 (*Sick & Annual Leave*)
  - ▶ 162 CSR 10 (*Retirement Systems*)
- Office of Technology
  - ▶ 163 CSR 1 (*Retirement & Disposition of Equipment*)

Each rule is summarized as follows:

**RULE: 148 CSR 1**

This Rule relates to the Department of Administration's Purchasing Division. The rule addresses changes in law created by passage of Senate Bill 356 during the 2014 Regular Legislative Session. In particular, S.B. 356 mandated that the Purchasing Division establish a master contract/direct order process. A “**master contract**” is an agreement, having a term of no more than one year, between the Purchasing Division and at least two preapproved vendors authorizing a spending unit to purchase a commodity directly and on a recurrent basis through the direct ordering process. Single orders pursuant to a master contract may not exceed \$1 million for information technology or \$50,000 for other commodity purchases without the approval of the Director. If all bid

received are in excess of the applicable dollar threshold, the direct order process must be terminated and competitive bids must be solicited. The Director has the authority to reduce the dollar threshold.

The current rule was also amended to include provisions for buyer qualifications, encumbrance of state funds, debarment and change orders. Finally, the rule attempted to change mandatory “shall” language to a more ambiguous “will” requirement, but this was rejected through an amendment to the Rule.

#### **RULE: 148 CSR 3**

This Rule relates to the State Fleet Management Office (FMO) that oversees the state owned vehicles. The Rule makes four primary changes:

First, the rule allows state agencies to provide the FMO with a copy of the vehicle title and registration, in lieu of the original. Upon decommissioning of the vehicle through a means other than surplus property, the agency must provide the executed title.

Second, the FMO deletes the requirement state-owned and long-term leased vehicles be clearly and permanently marked with the State seal or seal or insignia of the agency, board or commission and the words “State of West Virginia”. Instead, the rule goes back to the original identification of vehicles. Specifically, each vehicle must display the official state license plate on the rear bumper and the green state car license plate on the front bumper. This provision retains the exception for law enforcement vehicles.

Third, the FMO amended its rules relating to mileage by requiring agencies to enter the odometer readings monthly into OASIS for the purpose of monitoring mileage criteria for fleet vehicles.

Finally, the rule is amended to require all preventive maintenance, service and safety recalls to be performed pursuant to the manufacturers’ recommendations. Additionally, all repairs must be reported and approved by the Fleet Management Office.

#### **RULE: 148 CSR 4**

This Rule relates to the state plan for the operation of the West Virginia State Agency for Surplus Property. Federal law requires that the State Agency for Surplus Property (a sub-unit of the Purchasing Division) maintain a state plan of operation governing the federal surplus property program and also requires that the state plan of operation be approved by the state legislature. In order to be in compliance with this federal requirement, the Purchasing Division has historically submitted the state plan of operation to the Legislature for approval as a legislative rule. The last revision of the state plan of operations occurred in 1983, and since that time, federal officials responsible for the surplus property program have suggested that new revisions are in order.

#### **RULE: 162 CSR 7**

This Rule relates to the Consolidated Public Retirement Board. The rule is amended to account for correction of errors other than “employer errors”. Under the prior rule, the CPRB was only authorized to correct errors made by employers and appropriately credit at the designated interest rate. The amended rule removes the limitation of “employer” errors and allows for errors by other persons or individuals to be corrected.

The rule amends the subdivision relating to Deputy Sheriff Retirement System; the Public Employee Retirement System; the Teachers’ Retirement System; the Emergency Medical Services Retirement System; and the Municipal Police Officers and Firefighters Retirement System.

**RULE: 162 CSR 8**

This is another Consolidated Public Retirement Board Rule and relates to sick and annual leave. The Retirement Board amend the existing rule to clarify the application of the accrued and unused sick and annual leave when a member of the Teacher's Retirement System takes a deferred retirement.

**RULE: 162 CSR 10**

This is the last Consolidated Public Retirement Board Rule and relates to clarifying how to handle "concurrent employment" under the Deputy Sheriff Retirement System. "Concurrent employment" means simultaneous employment in multiple positions that require participation in more than one retirement system administered by the CPRB. Under the revised rule, the CPRB computes the member and employer contribution amounts due the system and provide notice of the amounts.

If payment is not made within 60 days of the notice, the member and non-deputy sheriff employer are required to pay the actuarial interest rate assumption approved by the CPRB for the plan year preceding the plan year in which the concurrent service purchase is made, compounded per annum. Accrual of the loss in earnings owed to the DSRS continues until the contributions are paid. Retirement contributions and interest must be paid to DSRS before the retirement of the member from DSRS.

The rule additionally limits concurrent service to lengths of overlapping service of more than 5 days.

**RULE: 163 CSR 1**

This Rule relates to the Office of Technology and the proper disposal of Technology equipment. The Rule is amended to comply with statutory changes relating to the establishment of procedures for the sanitization, retirement and disposition of information technology equipment. The revised rule contains procedures for the sanitization, retirement and disposition of information technology equipment, and provides for the use of "certified information technology refurbishers" to aid in the cleansing of media when needed.

**DATE OF PASSAGE:** March 14, 2015

**EFFECTIVE DATE:** Passage- March 14, 2015

**ACTION BY GOVERNOR:** Signed by Governor on April 2, 2015

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**S.B. 170**

**BILL NO.:** Committee Substitute for Senate Bill 170

**SHORT TITLE:** Rules Bundle for agencies of the Department of Commerce

**SPONSORS:** Senator Snyder

**CODE:** W.Va. Code §64-10-1,-2,-3, and -4 (*amend and reenact*)

**ATTORNEY:** Brian Casto

**SUMMARY:**

This is the Rules Bundle for agencies of the Department of Commerce and includes authorizing the following rules:

Office of Miners' Health, Safety and Training (rules governing the safety of those employed in and around quarries in West Virginia, 56 CSR 20)

Division of Natural Resources (defining the terms used in all hunting and trapping rules), 58 CSR 46;

Division of Natural Resources (hunting, trapping and fishing license and stamp fees, 58 CSR 71);

Division of Natural Resources (general hunting, 58 CSR 49);

Division of Natural Resources (lifetime hunting, trapping and fishing licenses, 58 CSR 67);

Division of Natural Resources (wildlife damage control agents, 58 CSR 41);

Division of Natural Resources (special boating, 58 CSR 26);

Division of Natural Resources (commercial white water outfitters, 58 CSR 12);

Division of Labor (Amusement Rides and Amusement Attractions Safety Act, 42 CSR 17);

Division of Labor (child labor, 42 CSR 9);

Division of Labor (supervision of plumbing work, 42 CSR 32);

Division of Labor (Verifying the Legal Employment Status of Workers, 42 CSR 31);

Division of Labor (regulation of heating, venting and cooling work, 42 CSR 34);

Division of Labor (weights and measures calibration fees, 42 CSR 26);

Division of Forestry (ginseng, 22 CSR 1)

The House floor amendment did -not- authorize the fee increases contained in the two DNR licensure rules and the Senate receded and concurred.

**EFFECTIVE DATE:** Passage

**DATE OF PASSAGE:** March 13, 2015

**ACTION BY GOVERNOR:** Signed by Governor on April 2, 2015

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**S.B.175**

**BILL NO.:** Committee Substitute for Senate Bill 175

**SHORT TITLE:** Authorizing DHHR promulgate legislative rule relating to public water systems

**SPONSORS:** Senator Snyder

**DATE:** March 16, 2015

**CODE:**

- (a) Department of Health and Human Resources (public water systems, 64 CSR 3);
- (b) Department of Health and Human Resources (chronic pain management clinic licensure, 69 CSR 8);
- (c) Department of Health and Human Resources (medication administration and performance of health maintenance tasks by approved medication assistive personnel, 64 CSR 60);
- (d) Department of Health and Human Resources (nurse aid abuse and neglect registry, 69 CSR 6);
- (e) Department of Health and Human Resources (nursing home licensure, 64 CSR 13);
- (f) Department of Health and Human Resources (state-wide trauma/emergency care system, 64 CSR 27); and,
- (g) Department of Health and Human Resources (Fatality and Mortality Review Team, 64 CSR 29).

**ATTORNEY:** Kip Reese 3258

**SUMMARY:**

This is the bundled rules bill for the Department of Health and Human Resources.

**A. Public water systems, 64 CSR 3**

The updates include definitions: the Bureau and the Department.; conjunctive delineation; Hydrologic Unit Code; Ohio River Valley Water Sanitation Commission; potential source of significant contamination; public ground water supply source; public surface water supply source; public surface water-influenced groundwater supply source; public water utility; unaccounted for water; watershed; wellhead protection area and zone of critical concern.

The rule also adopts by reference the National Primary Drinking Water Regulation. In adopting this the rule excludes adoption of Subpart Y regarding Revised Total Coliform which allows the state to more frequently monitor small public water systems than provided for by the federal regulation.

There is also a requirement that public water systems be required to report any changes in chemical used in treatment processing and any changes in fluoridation to the Bureau of Public Health. Additionally, public water systems are required to update their existing Source Water

Protection Plan, or file a new one. These plans are to allow for greater protection of water supply sources from contamination by substances entering the water supply either from groundwater or surface sources. The rule includes a comprehensive schedule of submission of the plan. The rule provides that the public, local governments, local emergency planners, local health departments and affected residents should be involved in the development of the plan.

The rule allows the commissioner to organize the public water systems who are required to submit a plan by watershed. The watershed designations are listed in the rule and are designated by the Department of Environmental Protection. Plan submission dates by watershed are detailed in the rule.

Continued within the rule is the Well Head Source Water Protection Grant Program. These funds reside in a Special Revenue Account and are available for use by appropriate from the Legislature. The fund is administered by the Commissioner of the Bureau for Public Health. Priority of the grants are to be given to public water systems where there is the highest probability of contamination to the water source.

Finally, the penalty section has been updated to comply with the new penalties provided for in Senate Bill No. 373. These are as follows:

1. Any individual or entity who violates any provision of this rule is liable for a civil penalty not less than \$1,000 nor more than \$5,000. Each day's violation shall constitute a separate offense.
2. For a willful violation of a provision of the rule an individual or entity shall be subject to a civil penalty of not more than \$10,000 and each day's violation shall be grounds for a separate penalty.
3. Civil penalties are payable to the commissioner. All moneys collected under this section shall be deposited into a restricted account known as the Safe Drinking Water Fund. All moneys deposited into the fund shall be used by the commissioner to provide technical assistance to public water systems.
4. The commissioner, or his or her authorized representative, may also seek injunctive relief in the circuit court of the county in which all or part of the public water system is located.

**FISCAL ANALYSIS:** First Year: \$1,500,000 of which \$295,000 is for personal services - 5 full time FTE's - and the remainder is for office, equipment, development and training. Thereafter the annual cost would be \$387,395.

#### **B. Chronic pain management clinic licensure, 69 CSR 8).**

This is an amendment to an existing rule of the Office of Facility Licensure and Certification. This rule passed the Legislature in 2013. At that time, the effective date of the rule provided that it would become effective upon funding for implementation being included within a "duly enacted appropriation bill authorizing the expenditure of funds for that purpose". That funding was in the Fiscal Year 2015 Budget which became effective on July 1, 2014. The only change to the rule was to amend the effective date to make it effective July 1, 2014. All other provisions of the rule remain intact as passed by the Legislature during the 2013 regular session.

Due to the contentious nature of the rule included herein is a description of the provisions for informational purposes to the Committee:

The rule was made necessary by the passage of Senate Bill No. 437 during the 2013 regular session of the Legislature. It establishes the standard for operation of a pain management clinic.

The rule contains standard scope, applicability, purpose and enforcement sections. It also defines key terms. Notable among these are:

- Chronic Pain - which is pain that has persisted after reasonable medical efforts have been made to relieve the pain or cure its cause and that has continued, either continuously or episodically, for longer than three continuous months. Chronic Pain does not include pain associated with a terminal condition or with a progressive disease that, in the normal course of progression, may reasonably be expected to result in a terminal condition.
- Opioid Drug Product - any finished dosage form that contains as one of its active ingredients a drug substance that has pharmacological properties similar to morphine, including its analgesic action and its addiction-forming or addiction-sustaining liability, or that can be converted by the body into a drug substance having such properties. Opioid drug products include, but are not limited to, those containing morphine, codeine, hydrocodone and oxycodone.

The rule contains a separate definition section that defines a pain clinic and sets forth exemptions. This is a privately owned clinic facility or office that treats patients for chronic pain and where more than 50% of all patients are prescribed tramadol, carisoprodol, opioid drugs or other Schedule II or III controlled substances. To reach the 50% mark you divide the average monthly total of patients over a 12 month period by the number of unique patient encounters during any one month for a diagnosis of chronic pain and being prescribed the aforementioned drugs. Exemptions from pain clinics include: a facility associated with a medical school, a facility that does not prescribe controlled substances for treatment of chronic pain, a hospital, a physician practice owned by a hospital, hospice programs, nursing homes, ambulatory surgical facilities, facilities conducting clinical research, state owned hospitals and any facility granted an exemption by the Secretary.

There are fairly standard licensing procedures. It specifically provides that a license is non-transferrable. Changes in ownership and management are to be reported. The rule also allows the Secretary to enter any premises to ascertain if it is operating as a pain clinic without a license and requires such facilities to apply for the appropriate license if it is determined that a pain clinic is being operated. The rule specifies what must be included in an application for a license, provisions for an initial license, a license renewal and a denial of a license. Licenses expire after one year.

The rule contains licensing fees based upon capacity. Facilities are also required to cover the cost of a required inspection.

The rule provides for unannounced inspections and sets forth guidelines for conducting these inspections. Deficiencies found during an inspection may result in a plan of correction. Owners, employees, volunteers and associates of the clinic are required to have a criminal background check. Persons with felony convictions may not own, be employed or associate with a pain clinic. There are also restrictions when a DEA number has been revoked, a license to prescribe controlled substances has been denied or when someone entered a guilty plea on a felony drug charge.

Responsibilities and duties of ownership are spelled out in the rule. These include an annual review of clinic operations. There are also specified licensing, training, education and experience requirements for physician owners. There are also requirements for a clinic Administrator. These include job responsibilities and duties and education requirements.

The rule sets forth clinic and facility requirements regarding space, maintenance, security and parking. There are also staffing requirements relative to licensing and credentialing, experience,



prohibitions set forth in the rule, developing job descriptions and personnel files.

The rule spells out patient rights regarding being informed, the right to receive treatment, the right to participation in developing their plan of care, knowledge of the need to access the controlled substance monitoring database, required drug testing, confidentiality, a safe setting and a grievance procedure.

The requirements for coordination of patient care set out an initial assessment and all that is required of that, the need for subsequent assessments, a plan of care and medication security and administration. This section limits dispensing of any controlled substance to a 72 hour supply. It also requires physicians to access the Controlled Substances Monitoring Database at specified times during the course of treatment. There are also storage, handling, documentation and access requirements set forth in the rule.

Record keeping requirements are set forth in the rule. These include both patient and business records. The rule specifies what must be included in patient records. They are required to meet all state and federal laws - most specifically HIPAA. Records are required to be maintained for 5 years post treatment and shall be kept confidential.

There are specified laboratory requirements that state all clinics need to have the capacity to obtain medication blood levels and urine samples. There is also a requirement that the clinics access quality and performance improvements for patient care at least annually. They are also required to have internal policies regarding quality assessment and performance improvement. This information is to be provided upon request to the Secretary.

The rule requires an effective infection control program that meets nationally recognized standards. The clinic is required to designate a persons to oversee this. They are also required to develop policies regarding adverse events. The rule specifies that these include medication errors, patient suicide, patient deaths, harm to other from ingesting a patient's medication, selling drugs on the premises, drug diversion, harassment or patients by staff, threats and intimidation of staff and violence. Adverse events are required to be reviewed quarterly. Deaths are required to be reported to the Secretary within 48 hours.

Any advertisement regarding the pain management clinic is required to contain the name of the physician owner.

The rule states the grounds for revocation or suspension of a license. A suspension may not last longer than 1 year. There are also requirements for a stay to properly refer an place patients, the need to remove identifying signs, disposition of drugs and a preclusion for a new application within 5 years. Following a revocation the Secretary may considered a new application if all deficiencies have been corrected.

There is a section that permits the Secretary to access a civil penalty for operating a pain clinic without the appropriate license. This section also contemplates injunctive relief to be sought by the Secretary. Finally, the rule allows for necessary due process requirements prior to suspension or revocation of a license and allows the owner to appeal a decision of the Secretary to the Circuit Court of Kanawha County or in a county where the petitioner resides or does business.

## **FISCAL ANALYSIS:**

The rule is estimated to have a total cost during the first year of \$503,202. Of that figure \$286,090 is for personal services, \$207,245 is for expenses and \$9,867 is for equipment. Subsequent years are identical with the exception of the \$9867 equipment cost which is a one time expense. There is anticipated to be \$94,050 in revenue the first year and \$25,550 thereafter. This would be generated from licensing fees, survey licensing fees and renewal fees.

**C. Medication administration and performance of health maintenance tasks by approved medication assistive personnel, 64 CSR 60**

This is an amendment to an existing rule. Last session this rule was also amended. Those amendments provided for updates to definitions and to the administration of medication which was altered to account for the performance of health maintenance tasks to specifically limit delegation only to those tasks which, after a registered professional nurse makes the appropriate decision, may be properly delegated.

The current changes add definitions that were included in House Bill 4287. These include definitions of family, immediate family, natural supports, pre-filled insulin or insulin pen and primary health care professional. Most substantive are modifications to the definitions of “health maintenance tasks” which now includes administration of pre-filled insulin pens, performing tracheotomy care and ventilator care. These were all permitted under the 2014 statutory change.

The rule also makes modifications to the instruction and training section. These changes are also consistent with the 2014 statutory changes. These include a reorganization of the competency evaluation section and additional retraining requirements.

Finally, the rule was updated to allow orders by a physician or authorized health care professional. Previously, the rule would only allow orders from a physician. There is also a preclusion from performing tracheotomy and ventilator care in specified facilities not authorized by the statute.

**FISCAL ANALYSIS:** No impact.

**D. Nurse aid abuse and neglect registry , 69 CSR 6**

This is an amendment to an existing rule. The changes being made update the rule to industry best practices to protect the rights of residents in nursing homes and to protect the rights of nurse aides.

The definition section was amended to expand the definition of abuse which now includes a definition of “emotional abuse”. There were also modification made to the definition of sexual abuse to include “sexual exploitation, sexual contact, or graphic images of a resident’s body - including private areas”. The definition of verbal abuse was rewritten for clarification.

A new section was added to the rule providing detail regarding the responsibilities of a nurse aide. These duties will include:

1. Safeguarding a resident to provide for a dignified existence;
2. Ensuring the resident is free of abuse and neglect;

3. Reporting requirements for abuse and neglect;
4. Maintaining information with the registry regarding personal data of the nurse aide;
5. Maintaining current employment data with the registry by the nurse aide;
6. Reporting of changes in criminal history to the registry;
7. Maintaining a copy of this rule; and,
8. Appearing as a witness to an abuse and neglect hearing pursuant to a valid subpoena.

The reporting requirements section was updated to current practices and to be consistent with other sections throughout the rule. The section regarding determination was added to provide detail on the requirements for disposition of an investigative report. Finally, the section regarding hearings was rewritten to provide that all hearings are now held by the Board of Review. This section also provides specific notice and confidentiality requirements and clarifies the nurse aide's right to appear with counsel. There are also specific requirements for issuing a written decision by the Board of Review.

**FISCAL ANALYSIS:** No impact.

#### **E. Nursing home licensure, 64 CSR 13.**

This is an amendment to an existing rule of the Office of Health Facility Licensure and Certification for licensure procedures for nursing homes. The changes were made necessary by the passage of House Bill No. 3108 during the 2014 Regular Session. That bill required criminal background checks on all applicants prior to permanent employment.

The changes to the rule include updates of definitions. Added are definitions that are relative to criminal background checks such as "conviction", "direct access", "direct access personnel", "disqualifying offense", "fitness determination" and "negative finding". There were also additions or modifications to existing definitions. These include: "abuse", "full time employee", "legal representative", "Office of Health Facility Licensure and Certification", "repeat deficiency", "resident resource amount", "state board of review" and "substantial compliance".

The rule contains a number of updates to make the rule compliance with federal law and recent statutory changes. These include a rewriting of the section regarding Legal Representation. The provisions of that section were not materially changed, just clarified. There were also changes to make it more clear that a resident may choose his or her personal physician and pharmacy. Changes for consistency were also made to the section pertaining to Conveyance Upon Death or Discharge.

Patient rights regarding discharge was made more clear and a section regarding Discharge Against Medical Advice was added. Clarity was also given to the section regarding Visitation to make it clear that 24 hour visitation privileges may be granted to any individual approved by the resident. A nursing home is permitted to impose reasonable restrictions for security purposes.

New language was added regarding paid feeding assistants. This includes duties that are

permitted to be performed by a paid feeding assistant. There is also new language regarding posting of nurse staffing information which includes what data must be posted.

There is a new section regarding the requirement for a criminal background check. This section includes pre-screening procedures, fingerprinting - which includes notice requirements, retention and lapses in employment - a determination of the employees fitness for the position, the use of conditional employees pending the background check, variances which may be granted by the Secretary, an appeal process, responsibilities of the nursing home - which include record retention, the need to complete the background check and civil penalties for failure to comply. There is also a provision for changes in employment to a subsequent nursing home.

**F. State-wide trauma/emergency care system, 64 CSR 27**

This is an update to an existing rule. The rule pertains to the designation of health care facilities for purposes of trauma and emergency care. The current changes to the rule update the rule to guidelines published by the American College of Surgeons, Committee on Trauma. More particularly, the rule now gives the Commissioner of the Bureau for Public Health great latitude in working with health care facilities to meet the requirements necessary for a trauma designation

**FISCAL ANALYSIS:** No impact

**G. Fatality and Mortality Review Team, 64 CSR 29**

This is an amendment to an existing rule. Last session this rule was also amended. Those amendments provided for updates to definitions and to the administration of medication which was altered to account for the performance of health maintenance tasks to specifically limit delegation only to those tasks which, after a registered professional nurse makes the appropriate decision, may be properly delegated.

The current changes add definitions that were included in House Bill 4287. These include definitions of family, immediate family, natural supports, pre-filled insulin or insulin pen and primary health care professional. Most substantive are modifications to the definitions of “health maintenance tasks” which now includes administration of pre-filled insulin pens, performing tracheotomy care and ventilator care. These were all permitted under the 2014 statutory change.

The rule also makes modifications to the instruction and training section. These changes are also consistent with the 2014 statutory changes. These include a reorganization of the competency evaluation section and additional retraining requirements.

Finally, the rule was updated to allow orders by a physician or authorized health care professional. Previously, the rule would only allow orders from a physician. There is also a preclusion from performing tracheotomy and ventilator care in specified facilities not authorized by the statute.

**FISCAL ANALYSIS:** No impact.

**DATE OF PASSAGE:** February 28, 2015

**EFFECTIVE DATE:** February 28, 2015

**ACTION BY GOVERNOR:** Signed by Governor on March 11, 2015

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## S.B. 182

**BILL NO.:** Committee Substitute for Senate Bill 182

**SHORT TITLE:** Authorizing the Department of Military Affairs and Public Safety promulgate legislative rules.

**SPONSORS:** Senator Snyder

**DATE:** March 17, 2015

**CODE:** W. Va. Code §§ 64-6-1; 64-6-2; and, 64-6-3. (*amend and reenact*)

**ATTORNEY:** Kip Reese 3258

**SUMMARY:** This bill bundles and authorizes the following rules relating to the Department of Military Affairs and Public Safety:

- State Police (regulations and procedures pertaining to the West Virginia DNA databank, 81 CSR 9);
- State Fire Commission (volunteer firefighters' training, equipment and operating standards, 87 CSR 8); and
- State Fire Marshal (supervision of fire protection work, 103 CSR 3).

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### ANALYSIS OF PROPOSED LEGISLATIVE RULE

**Agency:** West Virginia State Police.

**Subject:** Regulations and Procedures Pertaining to the West Virginia DNA Data Bank.

**CSR Cite:** Title 81 Series 9 (*Amended* )

**Fiscal Impact:** In a fiscal note dated June 25, 2014, and signed by Colonel Jay Smithers, The WV State Police did not attempt to estimate the fiscal costs of implementing the rule. In the fiscal note, he observed that a fee of up to \$150 will be charged to each individual convicted of a qualifying offense to help offset the cost of taking the required DNA samples and maintaining the DNA Databank program. In that same document, he also noted that any or all of the \$150 fee can be waived by the sentencing judge. The WV State Police did not attempt to estimate the costs or fees generated, and noted that the number of qualifying individuals could not be predicted.

#### A. PROPOSED RULE

The proposed rule amends the provisions of Title 81, Series 9 of WV Code of State Regulations, which pertains to the methods, standards and administration of the West Virginia DNA Databank by the West Virginia State Police. Article 2B, Chapter 9 of the West Virginia Code

requires the WV State Police to establish and administer a DNA identification system, consisting of a state DNA database and a state DNA databank which is compatible with procedures specified by the FBI. Pursuant to that same article, the State Police establishes standards for the DNA testing and quality assurance, and the exchange of DNA information in a manner which is consistent with the standards and provisions established by the corresponding legislation.

The West Virginia State Police first promulgated rules pertaining to the DNA database in 1996, and last amended these rules in 2007. During the 2011 Regular Session, the West Virginia Legislature amended this article by the passage of the Committee Substitute for HB 3054, which was passed on March 12, 2011, and became effective within 90 days thereafter.

The 2011 legislation made a number of changes to the way DNA evidence is to be collected, used and stored. The new provisions incorporated a number of statutory changes, as follows:

- added a number of new statutory definitions;
- eliminated a prior requirement that DNA evidence be destroyed under certain circumstances;
- clarified that all people who must register as sex offenders must also provide a DNA sample;
- required samples from offenders who are transferred to West Virginia from another state;
- required any person who should have given a sample, but for some reason was overlooked, to provide a sample;
- allowed agencies who have custody or control of a person who must give a sample to establish policies for DNA collection and to contract with third parties to collect samples; it required incarcerated persons who were convicted of a qualifying offense to provide sample;
- provided that DNA samples are not public records;
- allowed for the use of DNA data in the identification of human remains;
- imposed a \$150 fee to be levied and collected by the court against persons when they are convicted of a qualifying offense which requires the collection of a DNA sample. (The fee would only be imposed by the court against persons who were convicted of a qualifying offense on or after July 1, 2011, and the assessment of the fee could be waived by the court for financial hardship);
- Allowed the State Police to use “partial match analysis” as “an investigative tool” in the investigation of more serious crimes.

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## ANALYSIS OF PROPOSED LEGISLATIVE RULE

**Agency:** West Virginia State Fire Commission

**Subject:** Volunteer Firefighters’ Training, Equipment and Operating Standards

**CSR Cite:** Title 87 Series 8 (*Amend*)

**Fiscal Impact:** In a fiscal note dated May 22, 2014, the West Virginia State Fire Commission (hereinafter “the Commission”) indicates that the proposed new rules series will have *no* impact on the costs and revenues of the Commission.

## **A. PROPOSED RULE**

The Commission proposes to amend the current rule series by updating the training curriculum for the state's volunteer fire fighters. The rule will now require all active members and firefighters to be National Incident Management System (NIMS) compliant. (§ 3.2)

The NIMS is a systematic, proactive approach to guide departments and agencies at all levels of government, nongovernmental organizations, and the private sector to work together seamlessly and manage incidents involving all threats and hazards—regardless of cause, size, location, or complexity—in order to reduce loss of life, property and harm to the environment. (<http://www.fema.gov/national-incident-management-system>). The NIMS is the essential foundation to the National Preparedness System (NPS) and provides the template for the management of incidents and operations in support of all five National Planning Frameworks.

The purpose of the NIMS is to provide a common approach for managing incidents. The concepts contained herein provide for a flexible but standardized set of incident management practices with emphasis on common principles, a consistent approach to operational structures and supporting mechanisms, and an integrated approach to resource management.

Incidents typically begin and end locally, and they are managed daily at the lowest possible geographical, organizational, and jurisdictional level. There are other instances where success depends on the involvement of multiple jurisdictions, levels of government, functional agencies, and/or emergency-responder disciplines. These instances necessitate effective and efficient coordination across this broad spectrum of organizations and activities. By using NIMS, communities are part of a comprehensive national approach that improves the effectiveness of emergency management and response personnel across the full spectrum of potential threats and hazards (including natural hazards, terrorist activities, and other human-caused disasters) regardless of size or complexity.

In addition to requiring active members and firefighters to be NIMS compliant, the amended rule series clarifies that non-certified active members are not prohibited from operating a fire department vehicle for the purpose of training so long as he or she is accompanied by a certified operator and is operating the vehicle in a non-emergency capacity (§ 3.8.3); clarifies that persons desiring to instruct or test others in any approved curriculum must maintain a valid part-time teaching permit issued by the West Virginia Department of Education (§ 3.9); and require that all Self Contained Breathing Apparatus (SCBA) equipment must be positive pressure (§ 6.9.1).

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## **ANALYSIS OF PROPOSED LEGISLATIVE RULE**

**Agency:** West Virginia State Fire Marshal

**Subject:** Supervision of Fire Protection Work

**CSR Cite:** Title 103 Series 3 (*Amend*)

**Fiscal Impact:** In a fiscal note dated May 27, 2014, the office of the West Virginia State Fire Marshal (hereinafter “the Fire Marshal”) indicates that it anticipates that the proposed rules series amendments will result in a \$15,000 increase in revenue. The Fire Marshal further indicates that the increase in revenue should off-set the costs associated with the anticipated increase in workload

attributed to administering two additional licensure classifications.

## **A. PROPOSED RULE**

The proposed rule series amends the current rule series to provide for the licensure of persons who install, repair or maintain smoke and/or fire dampers in heating, ventilation and air conditioning systems – – “fire protection damper technicians” and “fire protection damper technicians in-training”. The new licenses were authorized by the legislature in H.B. 4392 enacted during the 2014 Regular Legislative Session. As authorized by H.B. 4392, the proposed rule amendments include the Fire Marshal’s authority to enter into an interagency agreement with the Commissioner of Labor for the mutual purpose of enforcing *WVA. Code* § 29-3D-1 *et. seq.*, and *WVA. Code* § 21-16-1 *et. seq.* (§2.3)

The rule amendments contain new terms and their definitions:

Section 5 is amended to include the licensure of persons performing or offering to perform damper work in this state. (§5.2) Section 6 is amended to remove obsolete language and include provisions related to the licensure of fire protection damper technicians and fire protection damper technicians in-training. (§6.2) Section 7 is amended to provisions related to the licensure of fire protection damper technicians (§7.7) and fire protection damper technicians in-training (§7.7.a.).

Applicants for a fire protection damper technician license are required to submit to the Fire Marshal copies of all pertinent certifications in accordance with the HVAC Fire Life Safety Level I Technician of the International Certification Board as accredited by the American National Standards Institute (ANSI) Personnel Certification Accreditation Program, or its functional equivalent as determined by the Fire Marshal.

The Fire Marshal may not require a fire protection damper technician in-training to produce documentation of the hours the applicant has worked, but instead must require the technician in-training to produce proof of their enrollment in a training program.

A business employing a technician in-training must produce, upon request by the Fire Marshal, a list of persons employed as technicians in-training. Technician in-training must be supervised by a person licensed as fire protection damper technician. A licensed fire protection damper technician may not supervise more than one technician in-training at any one time.

Section 8 is amended to remove outdated provisions and by including references to fire protection damper technicians and fire protection damper technicians in-training. (§8.1) Section 9 is amended by removing a provision that regulated the period the Fire Marshal could suspend a license. (§9.3)

The rule series amendments also include fee increases and two new fees.

**DATE OF PASSAGE:** March 13, 2015

**EFFECTIVE DATE:** Passage.

**ACTIONS BY GOVERNOR:** Signed by the Governor on April 3, 2015



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**S. B. 187**

**BILL NO.:** Committee Substitute for Senate Bill 187

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

**SPONSORS:** Senator Snyder

**CODE:** W.VA. Code § 64-7-1, -2, -3 & -4 (*amend and reenact*)

**ATTORNEY:** Mark Adkins

**SUMMARY:**

Senate Bill 187 is the Rules Bundle for the Department of Revenue's Rules. The bundle is comprised of the following 6 rules:

**Rule 178 CSR 1 (*Racing Commission*)-** This rule relates to thoroughbred horse racing. This rule updates the tables for medication schedules for thoroughbred horses as well as addresses multiple medications violations by a trainer and creates a point system for violations and related penalties.

**Rule 110 CSR 1Q (*State Tax Department*)-** This is a new rule authorizing the Tax Department to provide notice to county assessors failing to follow applicable guidelines regarding the assessment of property and the appointment of special assessors to bring the county in compliance with applicable law.

**Rule 114 CSR 45 (*Insurance Commission*)-** This rule is amended to incorporate the 2012 annuity mortality tables for use in determining reserve liabilities for annuities and specify the application of such tables.

**Rule 114 CSR 11E (*Insurance Commission*)-** The rule amend existing rules regarding to the disclosure of certain minimum information about annuity contracts. Changes are based on a modification of the Annuity Disclosure Model Regulation by the National Association of Insurance Commissioners (NAIC).

**Rule 176 CSR 1 (*Alcohol Beverage Commission*)-** This rule is amended by: (a) adding definitions; (b) clarifying licensing with regard to limited liability companies and brew pubs; © addressing nonintoxicating beer labels; (d) outlining unlawful acts regarding pricing of nonintoxicating beer; and (e) adding language regarding line extensions and franchise agreements with brewers.

**Rule 175 CSR 2 (*Alcohol Beverage Commission*)-** The rule amends the definition of "public place" with respect to where alcohol may be sold in order to permit alcohol at certain NCAA facilities and in locations connected to or adjoining a licensed location.

**DATE OF PASSAGE:** February 28, 2015

**EFFECTIVE DATE:** Passage- February 28, 2015

**ACTION BY GOVERNOR:** Signed by Governor on March 5, 2015

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## S. B. 192

**BILL NO.:** Committee Substitute for Senate Bill 192

**SHORT TITLE:** Authorizing Department of Transportation promulgate legislative rules

**SPONSORS:** Senator Snyder

**CODE:** WVA. Code § 64-8-1 & -2 (*amend and reenact*)

**ATTORNEY:** Mark Adkins

### SUMMARY:

Senate Bill 192 is the Rules Bundle for the Department of Transportation's Rules. The bundle is comprised of the following 2 rules:

**Rule 91 CSR 4 (*Division of Motor Vehicles*)-** The revised rule makes multiple changes and updates to the existing DMV rule including, specifically, the following:

- Permits use of a valid U.S. Passport or a military ID card to be instead of a birth certificate;
- Requires completion of a Gender Designation Form as proscribed by the DMV Commissioner, in cases in which an applicant wants to change the gender on a driver's license or ID card;
  - the Gender Designation Form must be accompanied by a certification by a medical doctor that a sex change has been completed.
- Requires two, instead of one, documents verifying residency;
- Requiring a minimum of 50 hours of behind the wheel instruction with a minimum of ten hours of nighttime driving, instead of only 30 hours of behind the wheel instruction;
- Adds language that an applicant may choose a driver's license or identification card that is either for federal use or not for federal use;
- Directs, instead of permits, the DMV to send an application for renewal to each licensee at least 90 days, instead of 30 days, via first class mail and permitting DMV to do so by electronic means instead of by regular mail; and
- Giving the DMV discretion to issue or renew a license online.

**Rule 105 CSR 1 (*Office of Administrative Hearings*)-** The revised rule makes multiple changes and updates to the existing OAH rule including, specifically, the following:

- Requiring all pleadings filed with the OAH shall be signed by the party or their counsel;
- Requiring written objections to be accompanied by a filing fee and creating a process for seeking a waiver of the filing fee;
- Grants the Office of Administrative Hearings the discretion to grant a motion for a continuance of a hearing;
- Outlines the procedure and form for a party desiring to submit evidence regarding a blood draw and blood analysis evidence at a hearing and to cross-examine such

- evidence;
- Adds a \$50 filing fee for each written objection form filed and a \$25 transcript request processing fee in addition to the per page transcript fees. It also provides that the OAH will refund the \$50 filing fee to a prevailing party in an appeal;
- Permits the Office of Administrative Hearings to correct certain clerical errors and omissions in orders retroactively, as long as a higher court hasn't modified or reversed the decision.

**DATE OF PASSAGE:** March 14, 2015

**EFFECTIVE DATE:** Passage- March 14, 2015

**ACTION BY GOVERNOR:** Signed by Governor on March 31, 2015

### **S. B. 195**

**BILL NO.:** Senate Bill 195

**SHORT TITLE:** Authorizing Conservation Committee promulgate legislative rule relating to financial assistance programs

**SPONSORS:** Senator Snyder

**CODE:** WVA. Code § 64-9-1 (*amend and reenact*)

**ATTORNEY:** Marty Wright

**SUMMARY:**

Senate Bill 195 was a new rule relating to the WV Conservation Agency and was **NOT** authorized. The rule was proposed to comply with a change in law last year with respect to handling applications for financial assistance in which a district supervisor may have a financial interest. Current law requires the transfer of all applications to a neighboring conservation district for consideration and approval.

The Rule was **NOT** authorized because the current enabling statute has an unintended consequence in its wording and interpretation by the conservation agency. The enabling statute was amended (Senate Bill 250) to alter the approval process by changing approval to the state conservation agency. Hence, the proposed rule conflicted with newly passed law.

**DATE OF PASSAGE:** March 14, 2015

**EFFECTIVE DATE:** Passage- March 14, 2015

**ACTION BY GOVERNOR:** Signed by Governor on March 31, 2015

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**S.B. 199**

**BILL NO.:** Committee Substitute for Senate Bill 199

**SHORT TITLE:** Rules Bundle for a number of miscellaneous boards and agencies.

**SPONSORS:** Senators Snyder, Romano and Facemire

**CODE:** W.Va. Code §64-9-1, §64-9-2, §64-9-3, §64-9-4, §64-9-5, §64-9-6, §64-9-7, §64-9-8, §64-9-9, §64-9-10, §64-9-11 (*amend and reenact*)

**ATTORNEY:** Brian Casto

**SUMMARY:**

**This is the Rules Bundle for a number of miscellaneous boards and agencies.**

**§64-9-1. Board of Registration for Professional Engineers.**

The legislative rule relating to the Board of Registration for Professional Engineers (examination, licensure and practice for professional engineers, 7 CSR 1), is not authorized.

**§64-9-2. Governor's Committee on Crime, Delinquency and Correction.**

The legislative rule relating to the Governor's Committee on Crime, Delinquency and Correction (law-enforcement training and certification standards, 149 CSR 2), is authorized.

**§64-9-3. Real Estate Appraiser Licensing and Certification Board.**

The legislative rule relating to the Real Estate Appraiser Licensing and Certification Board (requirements for registration and renewal of appraisal management companies, 190 CSR 5), is authorized.

**§64-9-4. Board of Medicine.**

The legislative rule relating to the Board of Medicine (licensure, disciplinary and complaint procedures, continuing education and physician assistants, 11 CSR 1B), is authorized.

**§64-9-5. Enterprise Resource Planning Board.**

The legislative rule relating to the Enterprise Resource Planning Board (enterprise resource planning system user fee, 213 CSR 1), is authorized.

**§64-9-6. Board of Physical Therapy.**

The legislative rule relating to the Board of Physical Therapy (fees for physical therapists and physical therapist assistants, 16 CSR 4), is authorized.

**§64-9-7. Board of Osteopathic Medicine.**

(a) The legislative rule relating to the Board of Osteopathic Medicine (fees for services rendered by the board, 24 CSR 5), is authorized.

(b) The legislative rule relating to the Board of Osteopathic Medicine (osteopathic physician assistants, 24 CSR 2), is authorized.

**§64-9-8. Board of Pharmacy.**

(a) The legislative rule relating to the Board of Pharmacy (immunizations administered by pharmacists, 15 CSR 12), is authorized.

(b) The legislative rule relating to the Board of Pharmacy (registration of pharmacy technicians, 15 CSR 7), is authorized with an amendment taking the number of supervised pharmacy technicians back to four.

© The legislative rule relating to the Board of Pharmacy (controlled substances monitoring, 15 CSR 8), is authorized.

(d) The legislative rule relating to the Board of Pharmacy (licensure and the practice of pharmacy, 15 CSR 1), is authorized.

**§64-9-9. Board of Dental Examiners.**

(a) The legislative rule relating to the Board of Dental Examiners (formation and approval of professional limited liability companies, 5 CSR 2), is authorized..

(b) The legislative rule relating to the Board of Dental Examiners (rule for the West Virginia Board of Dental Examiners, 5 CSR 1), is authorized.

© The legislative rule relating to the Board of Dental Examiners (dental recovery networks, 5 CSR 15), is authorized.

(d) The legislative rule relating to the Board of Dental Examiners (formation and approval of dental corporations; and dental practice ownership, 5 CSR 6), is authorized.

**§64-9-10. Commissioner of Agriculture.**

(a) The legislative rule relating to the Commissioner of Agriculture (frozen desserts and imitation frozen desserts, 61 CSR 4B), is authorized.

(b) The legislative rule relating to the Commissioner of Agriculture (animal disease control, 61 CSR 1), is authorized.

© The legislative rule relating to the Commissioner of Agriculture (auctioneers, 61 CSR 11B), is authorized.

(d) The legislative rule relating to the Commissioner of Agriculture (fee structure for the Pesticide Control Act of 1990, 61 CSR 12), is authorized.

(e) The legislative rule relating to the Commissioner of Agriculture (West Virginia Plant Pest Act, 61 CSR 14), is authorized.

(f) The legislative rule relating to the Commissioner of Agriculture (inspection of meat and poultry, 61 CSR 16), is authorized.

(g) The legislative rule relating to the Commissioner of Agriculture (West Virginia Spay Neuter Assistance Program, 61 CSR 24), is authorized.

(h) The legislative rule relating to the Commissioner of Agriculture (livestock care standards, 61 CSR 31), is authorized.

(I) The legislative rule relating to the Commissioner of Agriculture (equine rescue facilities, 61 CSR 32), is authorized.

(j) The legislative rule relating to the Commissioner of Agriculture (Rural Rehabilitation Loan Program, 61 CSR 33), is authorized with amendment.

(k) The legislative rule relating to the Commissioner of Agriculture (aquaculture importation, 61 CSR 35), is authorized.

(l) The legislative rule relating to the Commissioner of Agriculture (industrial hemp, 61 CSR 29), is authorized.

(m) The legislative rule relating to the Commissioner of Agriculture (dangerous wild animals, 61 CSR 30), is authorized with amendments striking numerous animals from the list, including certain snakes and crocodilians.

**§64-9-11. Secretary of State.**

(a) The legislative rule relating to the Secretary of State (procedures for recount of election results, 153 CSR 20), is authorized.

(b) The legislative rule relating to the Secretary of State (standards and guidelines for electronic notarization, 153 CSR 45), is authorized with amendments

© The legislative rule relating to the Secretary of State (notaries public, 153 CSR 46), is authorized.

(d) The legislative rule relating to the Secretary of State (schedule of fees for notaries public, 153 CSR 50), is authorized.

**§64-5-12. Family Protection Services Board.**

(a) The legislative rule relating to the Family Protection Services Board (perpetrator intervention programs licensure, 191 CSR 3), is authorized

(b) The legislative rule relating to the Family Protection Services Board (domestic violence program licensure standards, 191 CSR 2), is authorized.

© The legislative rule relating to the Family Protection Services Board (Monitored Parenting and Exchange Program Certification, 191 CSR 4), is authorized.

(d) The legislative rule relating to the Family Protection Services Board (Operation of the Family Protection Services Board, 191 CSR 1), is authorized.

(e) The legislative rule relating to the Family Protection Services Board (perpetrator intervention programs licensure for correctional institutions, 191 CSR 5), is authorized.

**EFFECTIVE DATE:** Passage

**DATE OF PASSAGE:** March 12, 2015

**ACTION BY GOVERNOR:** Signed by the Governor on April 2, 2015

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### **S.B.234**

**BILL NO.:** Committee Substitute for S.B.234

**SHORT TITLE:** Exempting certain water and sewer utilities owned by political subdivisions from PSC jurisdiction

**SPONSORS:** Senators Trump, M. Hall, Blair and Plymale

**CODE:** W.Va. Code §8-12-17, §8-16-19, §8-19-4, §16-13A-1a, §16-13A-9, §16-13A-25, §24-1-1, §24-1-1b, §24-1-2, §24-2-1, §24-2-2, §24-2-3, §24-2-4a, §24-2-4b, §24-2-7, §24-2-11 and §25-3-5. (*amend and reenact*)

**ATTORNEY:** Mark Adkins

**SUMMARY:**

The purpose of this bill is to remove Public Service Commission jurisdiction over municipal and public service districts with at least 4,500 customers and \$3 million dollars in annual gross revenues.

**§8-12-17:** Provides that in situations where a municipality owns a gas system, electrical system, waterworks system, a sewer system, or other public utility, and sixty percent of the members of the governing body may sell or lease a gas system, electrical system, waterworks system, or other public utility so long as publication of notice of hearing before the governing body of the municipality in a newspaper published and in general circulation in the municipality. If an offer to buy such utility has been made it requires the approval by sixty percent of the members of that governing body.

**§8-16-19:** Technical cleanup to clarify that appeal to Public Service Commission permitted for any party in interest who is dissatisfied with the rates fixed by a municipally owned

water and/or sewer utility having less than four thousand five hundred customers and \$3 million dollars in annual combined gross revenues.

**§8-19-4:** This code section relates to providing bondholders a recourse in the event of insufficiencies in bond revenue or bond reserve accounts. The Engrossed Senate Bill made technical cleanup and removed language from introduced bill that permitted bondholders to petition the Circuit Court of Kanawha County for redress.

**§16-13A-1a:** This code section relates to the jurisdiction of the Public Service Commission over public service districts. The Engrossed Senate Bill amends the code by allowing the Public Service Commission to assist any public service board upon written request to assist the public service board in deliberations regarding a proposed rate change or project.

**§16-13A-9:** This section relates to service rates and changes, among other things, for public service districts. The Engrossed Senate Bill amends the code to allow public service districts with at least 4,500 customers and an annual gross revenue of three million dollars or more from its combined services to create and enforce all rules required. The bill also sets minimum rules regarding adequate public notice of changes to rates, fees, and charges by publication and details what is required to be within said publication. The bill also provides that the county commission where the majority of the utilities customers reside may approve the rates.

**§16-13A-25:** This section relates to prohibiting PSD's from borrowing money or enter into contracts for engineering, design or feasibility studies, or issue bonds without the prior consent of the PSC. The bill amends the code to allow a public service district to borrow money, enter into contracts for design, engineering or feasibility studies, and issue revenue bonds. The bill also provides that upon written request PSC shall provide technical support to the public service board, including but not limited to design, engineering or feasibility studies.

**§24-1-1:** This section relates to the legislative purpose of the Public Service Commission. The bill adds an additional legislative purposes providing that public water and sewer utilities with at least 4,500 customers and \$3 million dollars in annual gross revenues are more fairly and effectively regulated by the local governing body with respect to rates, borrowing and capital projects.

**§24-1-1b:** This section permits the PSC to create a division to provide legal, engineering, financial and accounting assistance to municipalities and public service districts. The bill provides that upon written request of the governing body of a political subdivision that operates a water, sewer, and/or stormwater utility, the Public Service Commission will create a division which will provide legal, operational, engineering, financial and rate making advice to the political subdivision.

**§24-1-2:** Adds language the expressly define the term "governing body" to mean the municipal body charged with the authority and responsibility of enacting ordinances of the municipality.

**§24-2-1:** Provides that the jurisdiction of the PSC over municipal water, sewer, and/or storm water utilities and public service districts providing a separate service or a combination of services have at least four thousand five hundred customers and an annual combined gross revenue of three million dollars or more is limited to: (1) general supervision of public utilities (2) regulation of measurements, practices and acts (3) regulation of system of accounts (4) submission of

information to the commission regarding rates, tolls, charges or practices (5) authority to subpoena witnesses, take testimony and administer oaths to witness in any proceeding before the commission (6) investigate and resolve disputes involving political subdivisions for the state regarding inter-utility agreements (7) resolve formal or informal complaints by customers of water and sewer

**§24-2-2:** This section relates to the general power of the PSC to regulate public utilities. The bill amends the code to expressly state that the general powers of the commission under this section do not apply to municipal water, sewer, and/or storm water utilities and public service districts with at least 4,500 customers and an annual combined gross revenue of three million dollars or more.

**§24-2-3:** This section relates to the general power of the PSC with respect to rates. The bill amends the code to provide an exception for public water and/or sewer utilities with at least 4,500 customers and an annual combined gross revenue of \$3 million dollars or more.

**§24-2-4a:** This section relates to procedures for changing rates after June 30, 1981. The bill amends the code to expressly state that the rate change rules in this section do not apply to those entities that have at least 4,500 customers and an annual gross revenue of three million dollars or more.

**§24-2-4b:** This section relates to procedures for changing rates. The bill amends the code to provide that all rates and charges shall be based upon the measured or reasonably estimated cost of service and the equitable sharing of those costs between customers based upon the cost of providing the service received by the customer, including a reasonable plant-in-service depreciation expense. The bill also provides that the forty-five day waiting period may be waived by public vote of the governing body if the governing body finds and declares that the public utility is in financial distress. The bill also removes language in subsection (g) which requires the refund of revenues from rates that are disapproved or modified by the PSC. The bill also allows municipally owned utilities, including water and/or sewer utilities having at least 4,500 customers and \$3 million dollars in annual combined gross revenues to petition for emergency rates. The bill also includes that the PSC will provide technical assistance upon written request in its deliberations regarding a proposed rate increase.

**§24-2-7:** Technical cleanup only.

**§24-2-11:** This section relates to the requirements for certificate of public convenience and necessity. The bill expressly exempts a political subdivision of the state providing water, sewer and/or stormwater services and public service districts with at least 4,500 customers and an annual combined gross revenue of less than three million dollars from this section. The bill requires the exempt public utilities to provide adequate notice and sets forth the specific requirements for the notice process.

**§24-3-5:** Technical clean up only.



## **ABSTRACT OF COMMITTEE AMENDMENT:**

The strike and insert amendment makes further technical corrections throughout the strike and insert. It adds subsection (k) to §24-1-1 regarding legislative purposes of the PSC, stating that public water and sewer utilities must have an adequate cash working capital reserve of no less than 1/8th of actual annual operation and maintenance expense. The amendment also adds a subdivision (8) to subsection (b) of §24-2-1 which provides that a bondholder may petition the PSC for redress in the event a political subdivision has a deficiency in its bond revenue or bond reserve accounts or is otherwise in breach of a bond covenant. This amendment was adopted and is included in the final version of the bill passed by both Chambers of the Legislature.

**FISCAL ANALYSIS:** The Fiscal Note from the Public Service Commission states that its revenue will be reduced by approximately \$1.7 million.

**DATE OF PASSAGE:** March 14, 2015

**EFFECTIVE DATE:** Regular

**ACTION BY GOVERNOR:** Signed on March 31, 2015

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### **S.B.238**

**BILL NO.:** Senate Bill 238

**SHORT TITLE:** Exempting county boards of education from liability arising from unorganized recreation.

**SPONSORS:** Senators D. Hall, Nohe, and Stollings

**DATE:** March 16, 2015

**CODE:** W.Va. Code §§18-5-19 and §18-5-19d (*amend and reenact*)

**ATTORNEY:** Kip Reese 3258

## **SUMMARY:**

SB 238 limits the liability of County boards of education for loss or injury arising from the use of school property for unorganized recreation. County boards would remain liable for acts or omissions which constitute gross negligence or willful and wanton conduct.

Current Code already provides School Board immunity for formal organizations who wish to use school facilities for meetings or activities.

With protection from frivolous lawsuits, SB238 eliminates a major barrier to schools that want to open their doors to the community for recreational use.

Schools are a central part of nearly every community and already have safe, clean facilities designed for physical activity. By providing Boards of Education protection from liability when they allow use of school property for play and exercise West Virginia children and adults are

encouraged to exercise. People get to use property supported by their taxes to improve their health and sense of community.

The bill limits the liability of County boards of education for loss or injury arising from the use of school property when made available for unorganized recreation. County boards would remain liable for acts or omissions which constitute gross negligence or willful and wanton conduct. 30 states have already passed similar legislation.

**DATE OF PASSAGE:** February 25, 2015.

**EFFECTIVE DATE:** 90 days.

**ACTION BY GOVERNOR:** Signed by Governor on March 5, 2015

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### **S. B. 242**

**BILL NO.:** Committee Substitute for Senate Bill 242

**SHORT TITLE:** Creating criminal penalties for certain automated telephone calls during state of emergency or preparedness

**SPONSORS:** Senators Cole (Mr. President) and Kessler (*by request of the Governor*)

**CODE:** W.Va. Code § 15-5-19b (*new*)

**ATTORNEY:** Marty Wright

#### **SUMMARY:**

Senate Bill 242 was introduced in response to the water crisis last year and creates a misdemeanor offense for disseminating false, misleading or deceptive information regarding matters effected by or effecting the state of emergency or state of preparedness.

Under the bill, it is a crime for any person to

- (1) Knowingly and willfully disseminates false, misleading or deceptive information regarding matters effecting or effected by the declaration; and
- (2) by means of an automated telephone call or calling device, including, but not limited to, technology designed to disseminate a previously recorded message.

The penalty for such crime is a misdemeanor punishable by up to one year in jail and/or a \$5,000 fine. Senate Bill 242 additionally provides that each call constitutes a violation of this section.

**DATE OF PASSAGE:** March 14, 2015

**EFFECTIVE DATE:** Regular (90 days from passage)- June 12, 2015

**ACTION BY GOVERNOR:** Signed by Governor on March 24, 2015

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**S.B. 248**

**BILL NO.:** Committee Substitute for Senate Bill 248

**SHORT TITLE:** Requiring certain insurance and owner information be provided following car accident.

**SPONSORS:** Senator Williams

**CODE:** W. Va. Code §17C-4-3 (*amend and reenact*)

**ATTORNEY:** Devon Lopez (Intern)

**SUMMARY:**

S.B. 248 requires a person involved in a car crash to provide certain insurance and car owner information.

Under current law, the driver of any vehicle involved in a crash resulting in injury, death or damage to any vehicle is required to give, to the person struck or the driver or occupant of or person attending any vehicle collided with, certain information. This information includes his or her name, address and the registration number of the vehicle he or she is driving. The driver is also required to exhibit his or her driver's license to the persons involved in the accident.

This bill would add a requirement to provide proof of insurance and the policy number for the vehicle, as well as the name and address of the owner of the vehicle, if such owner is different from the driver.

The Senate Judiciary committee passed a committee substitute striking language on line 4 of the bill and also striking completely subsection (b).

The Committee on Banking and insurance passed a strike and insert amendment making stylistic changes and clarifying disclosure requirements as follows:

- removes the requirements that a driver disclose his or her address or the address of the owner of the vehicle, if different than the driver and that a driver exhibit his or her driver's license;

- removes the requirement of disclosure of the vehicle registration (which contains the address of the owner) and instead requires disclosure of the year, make, model and the last four digits of the VIN;

- changes requirements for insurance disclosure to include disclosure of proof of financial responsibility, and if it is insurance, that the disclosure include the information provided on the certificate of insurance, including the name of the insured, the name and contact information of the insurer and the policy number;

- allows the driver to meet the information disclosure requirements by providing the information to a law enforcement officer;

- provides that a driver disclose the required information only if he or she is physically able to do so.

The House Banking and Insurance Committee also passed a title amendment to the bill.

The House Committee on the Judiciary adopted the HB&I committee amendment and also made stylistic changes.

**DATE OF PASSAGE:** March 14, 2015

**EFFECTIVE DATE:** 90 days from passage

**ACTION BY GOVERNOR:** Signed by Governor on March 18, 2015

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### **S. B. 249**

**BILL NO.:** Committee Substitute for Senate Bill 249

**SHORT TITLE:** Prohibiting straight party voting in general election

**SPONSORS:** Senators Trump, Blair, Ferns, M. Hall and Walters

**CODE:** W.Va. Code §§ 3-4A-9, -11a & -27 (*amend and reenact*)  
W.Va. Code §§ 3-6-2, -3, -5 & -6 (*amend and reenact*)

**ATTORNEY:** Mark Adkins

#### **SUMMARY:**

Senate Bill 249 eliminates straight party voting in elections. The bill amends a number of sections of code that reference 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.

**DATE OF PASSAGE:** March 11, 2015

**EFFECTIVE DATE:** Regular (90 days from passage)- June 9, 2015

**ACTION BY GOVERNOR:** Signed by Governor on March 25, 2015

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**S. B. 250**

**BILL NO.:** Senate Bill 250

**SHORT TITLE:** Relating to Conservation Agency financial assistance applications from district supervisors

**SPONSORS:** Senators Trump, Blair, Carmichael, M. Hall, Leonhardt, Miller, Snyder, Unger, Williams and Plymale

**CODE:** W.Va. Code § 19-21A-4a (*amend and reenact*)

**ATTORNEY:** Marty Wright

**SUMMARY:**

Senate Bill 250 transfers review and approval of applications from local district supervisors to the State Conservation Agency instead of the neighboring district. Under the existing law, if an elected conservation district supervisor applies or intends to apply to participate in a West Virginia Conservation Agency financial assistance program then all the applications for that program be evaluated and approved by another conservation district. The Legislature passed this neighboring district review requirement last year in an effort to address an issue raised by the Ethics Commission.

Since passage last year, there has been difficulty in processing and approving the applications. In addition, last year's legislation created an ambiguity that has caused further confusion. Because the statute says all applications, the Conservation Agency has interpreted this to be everyone's applications relating to a project in which the district supervisor has applied must be transferred to another district, not just the district supervisor's application.

Senate Bill 250 corrects both issues by transferring review of an elected conservation district supervisor's application to the WV Conservation Agency and limits it to just the specific district supervisor's application.

**DATE OF PASSAGE:** March 14, 2015

**EFFECTIVE DATE:** Passage- March 14, 2015

**ACTION BY GOVERNOR:** Signed by Governor on March 24, 2015

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**S.B. 261**

**BILL NO.:** Committee Substitute for Senate Bill 261

**SHORT TITLE:** Clarifying definition of “owner” of dam.

**SPONSORS:** Senators D. Hall, Miller, Snyder, Beach and Facemire

**CODE:** W. Va. Code §22-14-3 (*amend and reenact*)

**ATTORNEY:** Devon Lopez (Intern)

**SUMMARY:**

S.B. 261 revises 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, and further protecting 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.

**DATE OF PASSAGE:** March 14, 2015

**EFFECTIVE DATE:** 90 days from passage

**ACTION BY GOVERNOR:** Signed by Governor on March 18, 2015

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**S.B. 267**

**BILL NO.:** Senate Bill 267

**SHORT TITLE:** Repealing code relating to Governor's Office of Health Enhancement and Lifestyle Planning

**SPONSORS:** Senators Cole (Mr. President) and Kessler

**CODE:** W. Va. Code §16-29H-1, §16-29H-2, §16-29H-3, §16-29H-4, §16-29H-5, §16-29H-6, §16-29H-7, §16-29H-8, §16-29H-9 and §16-29H-10 (*Repeal*)

**ATTORNEY:** Devon Lopez (Intern)

**SUMMARY:**

The purpose of this bill is to repeal the Governor's Office of Health Enhancement and Lifestyle Planning. That Office was created by Code in 2009, and it's stated purpose was "to coordinate all state health care system reform initiatives among executive branch agencies, departments, bureaus and offices."

The Office creates the position of Director, as well as creating a Health Enhancement and Lifestyle Planning Advisory Council, composed of the Secretary of the Department of Health and Human Resources, the Director of the Public Employees Insurance Agency, the Commissioner of the Office of the Insurance Commissioner, the Chair of the West Virginia Health Care Authority, and the director of the West Virginia Children's Health Insurance Program, or their designees, along with a number of public members. The director was tasked with developing a five year strategic plan for "implementation of any and all health care system reform initiatives," was directed to consult and coordinate with higher education institutions and the Higher Education Policy Commission, and was to consult with the Bureau for Medical Services and the Public Employee Insurance Agency concerning medical home pilot projects.

The GOHELP office also incorporated the rule-making authority previously granted to the Pharmaceutical Cost Management Council, which was repealed at the same time.

**FISCAL NOTE:**

The following fiscal note was received from the Governor's Office:

There is an appropriation (Fund 0101, Appropriation 11600) of \$242,357 for the Governor's Office of Health Enhancement and Lifestyle Planning. The intent is that the staff and function currently residing under GO HELP would be moved under the authority of Secretary of the Department of Health and Human Resources (DHHR). It is assumed that this appropriation will transfer to the DHHR to cover current personnel costs and current expenses, however the transfer language is not currently included in the bill.

In other words, the repeal itself will save \$242,357 for the State, but will ultimately have no net fiscal impact on the State, as the functions will be transferred to DHHR, along with the funding.

**DATE OF PASSAGE:** March 13, 2015  
**EFFECTIVE DATE:** 90 days from passage  
**ACTION BY GOVERNOR:** Signed by Governor on March 18, 2015

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**S. B. 273**

**BILL NO.:** Committee Substitute for Committee Substitute for Senate Bill 273

**SHORT TITLE:** Relating to brewer, resident brewer and brewpub licensing and operations

**SPONSORS:** Senators Cole (Mr. President) and Kessler (*By Request of the Governor*)

**CODE:** WVA. Code §§ 11-16-3, -6, -9 & -12 (*amend and reenact*)  
WVA. Code §§ 11-16-6a & -6b (*New*)

**ATTORNEY:** Mark Adkins

**SUMMARY:**

Senate Bill 273 clarifies, revises and adds definitions pertaining to the sale of beer and craft beer. The bill authorizes brewers and brew pubs in this State to sell growlers as well as sets out the requirements for filling and refilling growlers, as well as labeling and sanitation. Further, Senate Bill 273 changes the license fees for brewers to be dependent on the brewers annual production. It also outlines the brewers' disclosure requirements to the Alcohol Control Beverage Administration.

In particular, the bill authorizes brewers and resident brewers with limited manufacturing in this state to:

- (a) Sell up to four growlers per customer per day for off premise consumption and not for resale. There is no fee.
- (b) Offer complimentary samples 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.
- (c) Sell no more than 25,000 barrels per calendar year.

With respect to fees, Senate Bill 273 changes the license fees for brewers and resident brewers (was \$1,500 for all) to:

- (a) less than 12,500 barrels - \$500 for each place of manufacture;
- (b) 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.

The bill decreases the license fee for brew pubs from \$1,000 to \$500 for each place of manufacture.

The bill 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. Finally, the bill removes the bond requirement for a brewpub license.

**DATE OF PASSAGE:** March 14, 2015  
**EFFECTIVE DATE:** Regular (90 days from passage)- June 12, 2015  
**ACTION BY GOVERNOR:** Signed by Governor on March 24, 2015



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**S.B. 274**

**BILL NO.:** Committee Substitute for Senate Bill 274

**SHORT TITLE:** TANF program

**SPONSORS:** Senators Cole (Mr. President) and Kessler (by Request of the Executive).

**DATE:** March 17, 2015

**CODE:** *W. Va. Code § 9-9-11 (amend and reenact)*

**ATTORNEY:** Kip Reese 3258

**SUMMARY:**

Removes permissible sanctions which the Secretary of the Department of Health and Human Resources may levy against a recipient of Temporary Assistance to Needy Families (TANF).

Current sanctions are replaced by allowing the Secretary to develop a policy identifying violations and then establishing the means and manner in which to address those violations, with the goal to deter other needy families from moving to WV to take advantage of less stringent sanctions. The effect is to allow greater latitude for the Secretary to impose sanctions and grant recipients opportunities to address a violation.

**A. EXISTING LAW:**

- Dept may terminate cash assistance when:
  - fraud or deception;
  - substantial breach of obligations and requirements of personal responsibility contract (PRC); and,
  - violation of any provision of the PRC
- If dept determines benefits subject to reduction or termination - notice at hearing beneficiary has burden of proof. Secretary determines by rule what is a de minimis violation as well as violations subject to sanctions and maximum penalty
  - 1<sup>st</sup> violation: reduction by 1/3
  - 2<sup>nd</sup> violation: reduction by 2/3
  - 3<sup>rd</sup> and subsequent violations: total termination of benefits for 3 months
- if beneficiary found to have good cause for noncompliance no reduction and does not count toward three strike incremental penalties
  - if third violation before previous sanction expires - termination with three month hiatus before reinstatement

**B. THIS BILL:**

- requires secretary to promulgate rules setting forth a schedule of sanctions for any violation;
- rules shall make sanctions graduated and sufficiently stringent when compared to contiguous states to discourage persons to move from that state to WV to take advantage of less stringent sanctions here

- Current formula for graduated penalties stricken Department to provide a report addressing sanctions, contiguous state stringency, success of the sanctions as a deterrence, and provide to legislative Oversight Commission on Health and Human resources every January 1<sup>st</sup> with copies to the President of the Senate and Speaker of the House

**DATE OF PASSAGE:** March 14, 2015

**EFFECTIVE DATE:** 90 days.

**ACTION BY GOVERNOR:** Signed by Governor on March 31, 2015

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### **S.B. 277**

**BILL NO.:** Committee Substitute for Senate Bill 277

**SHORT TITLE:** Requiring issuance of certificate of birth resulting in stillbirth.

**SPONSORS:** Senators Miller, D.Hall, Laird, Williams and Kirkendoll

**CODE:** W.Va. Code §16-5-20a (*New*)

**ATTORNEY:** Devon Lopez (Intern)

**SUMMARY:**

S.B. 277 allows either parent of a stillborn child to request a certificate of birth resulting in stillbirth. Under specified circumstances only the mother may request a certificate. There is a provision for a fee which would be the same as a fee for a death certificate. The bill also specifies the information that would need to be included in the certificate.

The Senate Committee Substitute replaces language in the bill titled “Noah’s Law.”

**DATE OF PASSAGE:** March 9, 2015

**EFFECTIVE DATE:** 90 days from passage

**ACTION BY GOVERNOR:** Signed by Governor on March 27, 2015

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**S.B. 284**

**BILL NO.:** Committee Substitute for Senate Bill 284

**RELATING TO:** Relating to chief law-enforcement officer's requirement to certify transfer or making of certain firearms

**SPONSORS:** Senator Trump

**CODE:** W.Va. Code §61-7-16 (*new*)

**ATTORNEY:** Brian Casto

**SUMMARY:**

The purpose of this bill is to regulate the law enforcement certification process for applications to make, transfer or possess firearms regulated by the National Firearms Act. Currently, Federal law requires that the chief law enforcement officer of the jurisdiction of residence of an applicant certify that the applicant is not prohibited from possessing firearms in order to obtain agency approval. The bill also allows for a criminal background check, allows for appeal of a sheriff's refusal to certify an applicant to the circuit court and specifically prohibits refusal to certify on any grounds other than that the applicant is prohibited from possessing firearms.

**EFFECTIVE DATE:** Regular

**DATE OF PASSAGE:** March 12, 2015

**ACTION BY GOVERNOR:** Signed by the Governor on April 3, 2015

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## S. B. 286

**BILL NO.:** Committee Substitute for Senate Bill 286

**SHORT TITLE:** Relating to compulsory immunizations of students; exemptions

**SPONSORS:** Senators Ferns, Trump, D. Hall, Blair, Boley, Gaunch, Leonhardt, Mullins and Karnes

**CODE:** W.Va. Code §16-3-4 and §16-3-5 (*amend and reenact*)

**ATTORNEY:** Mark Adkins

**SUMMARY:**

Senate Bill 286 amends the code section relative to compulsory immunizations for school children. It sets forth the immunizations that are required for attendance at a public, private, or parochial school or a state regulated child care center and puts a schedule of when they are needed in code. Those immunizations are:

- chickenpox
- hepatitis-b
- measles
- meningitis
- mumps
- diptheria
- polio
- rubella
- tetanus
- whooping cough

The bill further alters the process for obtaining a medical exemption for immunizations, and provides that an exemption would be approved by the State Health Officer who is the Commissioner for the Bureau for Public Health.

Senate Bill 286 also authorizes the Commissioner to appoint an Immunization Specialist who would be a physician who could act as his or her designee in the exemption process.

Finally, Senate Bill 286 alters the make-up of the Immunization Advisory Committee. This committee is to advise the Commissioner of the Bureau for Public Health on the changing needs and opportunities for immunization from known diseases. The bill further prohibits members of the advisory committee from participating in matters that will have a direct and predictable effect on their financial interests. The Commissioner shall serve as the chair of the advisory committee. Also, the terms of the members of the advisory committee will be extended from two to four years.

**DATE OF PASSAGE:** March 14, 2015 (original); March 18, 2015 (corrected)

**EFFECTIVE DATE:** Regular (90 days from passage)- June 16, 2015

**ACTION BY GOVERNOR:** Vetoed for technical reasons (Bill Title did not reflect all components of the committee substitute amendments) on March 18, 2015. A corrected bill was passed by the Legislature on March 18, 2015. The bill was then signed by the Governor on March 31, 2015.

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## S. B. 295

**BILL NO.:** Senate Bill 295

**SHORT TITLE:** Establishing appeal process for DHHR Board of Review and Bureau for Medical Services decisions

**SPONSORS:** Senators Ferns and Trump

**CODE:** W.Va. Code § 9-2-13 (*New*)

**ATTORNEY:** Marty Wright

**SUMMARY:**

Senate Bill 295 establishes and clarifies the manner in which appeals from the WV DHHR Board of Review may be taken to a Circuit Court. The bill sets forth the procedures to effectuate an appeal; the applicable standard of review; and time frames for perfection of the appeal.

Under existing law, final decisions of the Board of Review are appealable only to the Kanawha County Circuit Court. The review by the Circuit Court is *de novo*, meaning, the Court starts anew on the appeal, with minimal deference to the underlying decision. Senate Bill 295 will allow petitioners to appeal any decision of the Board of Review through the Circuit Court of the county in which the petitioner resides or Kanawha County Circuit Court. The bill removes the *de novo* review of the record, and requires deference to the underlying record developed in the administrative process (consistent with most administrative appeal matters). However, Senate Bill 295 does allow the Circuit Court to take additional testimony on issues beyond what is set forth in the record if the Court finds “irregularities in procedure before the agency that are not shown in the record.”

Finally, Senate Bill 295 clarifies the available remedies to the Circuit Court. Specifically, the Circuit Court may affirm the decision of the Board of Review, remand the matter for further proceedings or reverse the decision.

**DATE OF PASSAGE:** March 14, 2015

**EFFECTIVE DATE:** Regular (90 days from passage)- June 12, 2015

**ACTION BY GOVERNOR:** Signed by Governor on April 1, 2015

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## S. B. 312

**BILL NO.:** Senate Bill 312

**SHORT TITLE:** Relating to disqualification of general election nominees for failure to file campaign finance statements

**SPONSORS:** Senators Nohe, Boley, Leonhardt, Palumbo, and D. Hall

**CODE:** W.Va. Code § 3-8-7 (*amend and reenact*)

**ATTORNEY:** Marty Wright

**SUMMARY:**

Senate Bill 312 relates to the handling of a disqualification of a candidate for failure to file appropriate financial statements with the Secretary of State. Under existing law, candidates for primary and general election are required to file with the Secretary of State financial statements relating to all financial transactions (i.e. monies received and monies expended). If a “person, candidate, financial agent or treasurer of a political party” fails to file a required financial statement, W.Va. Code 3-8-7 sets forth the following penalties:

(a) misdemeanor criminal penalty, fine of not less than \$500 and/or confined in jail for not more than 1 year

(b) civil penalty by Secretary of State of \$25 a day

(c) not have his or her name on the ballot; be administered an oath; nor may he or she receive salary.

The current statute, however, has some undefined terms (namely “grossly”) and is unclear as to how to handle the disqualification on the ballot. Senate Bill 312 addressed both of these issues.

First, the bill makes clear that a disqualification will be deemed a vacancy under law and subject to the vacancy provisions in the code. Second, Senate Bill defined “grossly” as meaning “substantive and material, and specifically includes false or misleading representations and acts of omissions”.

Finally, Senate Bill 312 directs the Secretary of State to provide by rules for the written notice via certified mail for the person, candidate, financial agent or treasurer of a political party committee that is not in compliance with the requirements of this section.

**DATE OF PASSAGE:** March 14, 2015

**EFFECTIVE DATE:** Regular (90 days from passage)- June 12, 2015

**ACTION BY GOVERNOR:** Signed by Governor on March 31, 2015

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## S. B. 315

**BILL NO.:** Senate Bill 315

**SHORT TITLE:** Relating to civil actions filed under Consumer Protection Act

**SPONSORS:** Senator Mullins

**CODE:** W.Va. Code §§ 46A-6-101; -102; -105 & -106 (*amend and reenact*)

**ATTORNEY:** Marty Wright

**SUMMARY:**

Under existing law, consumers may bring a civil action under the West Virginia Consumer Credit and Protection Act (WVCCPA) if a business has engaged in unfair or deceptive acts or practices. Pursuant to W.Va. Code §46A-6-106(a), any person who suffers an “ascertainable loss” of money or property “as a result of” an unfair methods of competition and unfair or deceptive acts or practices may bring suit to recover actual damages or \$200, whichever is greater. Case law relating to the causation aspect (i.e. “as a result of”) of §106(a) has further held that:

A private cause of action brought pursuant to the provisions of West Virginia Code § 46A-6-106(a) (2005) of the West Virginia Consumer Credit and Protection Act must allege: (1) unlawful conduct by a seller; (2) an ascertainable loss on the part of the consumer; and (3) proof of a causal connection between the alleged unlawful conduct and the consumer's ascertainable loss. Where the alleged deceptive conduct or practice involves affirmative misrepresentations, reliance on such misrepresentations must be proven in order to satisfy the requisite causal connection.

Syl. Pt. 5, White v. Wyeth, 227 W.Va. 131, 705 S.E.2d 828 (2010).

Senate Bill 315 adopts the holding of White v. Wyeth in statute and makes clear that the aggrieved consumer have an actual loss. Senate Bill 315 doesn't change existing law, it just codifies case law in statute.

**DATE OF PASSAGE:** March 14, 2015

**EFFECTIVE DATE:** Regular (90 days from passage)- June 12, 2015

**ACTION BY GOVERNOR:** Signed by Governor on April 2, 2015

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**S.B. 318**

**SHORT TITLE:** Payment of wages by employers

**SPONSORS:** Senator s Trump, Karnes, Carmichael and Blair.

**DATE:** March 17, 2015

**CODE:** *W. Va. Code* §21-5-3

**ATTORNEY:** Kip Reese 3258

**SUMMARY:**       **A.       EXISTING LAW: 21-5-3(a):**

- employer shall settle with its employees at least once in every two weeks.

**B.       THIS BILL: 21-5-3(a):**

- employer shall settle with its employees at least twice every month with no more than nineteen days between settlements.

**DATE OF PASSAGE:** March 14, 2015

**EFFECTIVE DATE:** 90 days.

**ACTION BY GOVERNOR:** Approved by Governor on March 26, 2015



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**S.B. 322**

**BILL NO.:** Senate Bill 322

**SHORT TITLE:** Eliminating mandatory electronic recount of ballots in recounts

**SPONSORS:** Senators Miller, D.Hall, Laird, Williams and Kirkendoll

**CODE:** W.Va. Code § 3-4A-28 (*Amend and Reenact*)

**ATTORNEY:** Devon Lopez (Intern)

**SUMMARY:**

S.B. 322 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. The proposed bill eliminates the requirement that this automatic recounting of precincts occur. It would leave unchanged a challenging candidate's ability to request a recount of one or more precincts as part of his election challenge.

**DATE OF PASSAGE:** March 10, 2015

**EFFECTIVE DATE:** 90 days from passage

**ACTION BY GOVERNOR:** Signed by Governor on March 18, 2015

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## S. B. 335

**BILL NO.:** Committee Substitute for Senate Bill 335

**SHORT TITLE:** Creating Access to Opioid Antagonists Act

**SPONSORS:** Senators Cole (Mr. President) and Kessler (*By Request of the Governor*)

**CODE:** W.Va. Code §§ 16-46-1 through -6 (*New Article with 6 sections*)  
W.Va. Code § 30-1-7a (*amend and reenact*)

**ATTORNEY:** Marty Wright

### SUMMARY:

Senate Bill 335 is intended to address the rising use of heroin and other opiate-based drugs resulting in overdoses in this state. A class of drugs, generally referred to as opioid antagonists, are able to counter the immediate effects of an overdose, and can typically save that individual's life. Currently, opioid antagonists are only available by prescription and only certain medical providers can administer this drug to a person in an active overdose.

Senate Bill 335 allows emergency responders, police officers and firefighters (volunteer and paid) to carry and administer an opioid antagonist in an emergency to respond to instances of an opiate overdose. The opioid antagonists are typically administered by a shot (similar to an epi pen) but it can also be administered nasally. The bill provides for legislative rules and the establishment of a program to be developed to distribute and to train first responders on administering the antagonist. More importantly, Senate Bill 335 provides for a limited immunity to first responders to give this antagonist to a person in an active overdose.

In addition to first responders, Senate Bill 335 allows a relative, friend, and caregiver to possess and administer an opioid antagonist, and equally gives them a limited liability for administering the antagonist. The bill requires the person to be taken to a medical facility immediately thereafter.

Finally, 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.

**DATE OF PASSAGE:** February 12, 2015 (original); February 26, 2015 (corrected)

**EFFECTIVE DATE:** Regular (90 days from passage)- May 27, 2015

**ACTION BY GOVERNOR:** Vetoed for technical reasons (failed to use full name of the Office of Emergency Medical Services and had an internal cross-reference typo) on February 24, 2015. A corrected bill was passed by the Legislature on February 26, 2015. The bill was then signed by the Governor on March 9, 2015.

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## S. B. 344

**BILL NO.:** Committee Substitute for Senate Bill 344

**SHORT TITLE:** Relating to duty to mitigate damages in employment claims

**SPONSORS:** Senators Trump, Carmichael and Blair

**CODE:** W.Va. Code §§ 55-7E-1, -2 & -3 (*NEW Article with 3 sections*)

**ATTORNEY:** Mark Adkins

**SUMMARY:**

Senate Bill 344 reverses a 1982 West Virginia Supreme Court case that created a unique exception under West Virginia law that did not exist in any other jurisdiction. Specifically, Senate Bill 344 requires a duty on the part of a discharged employee to mitigate his or her damages by looking for obtaining similar employment, even in instances where that discharge is determined to be malicious.

Under existing law, if a plaintiff proves malice on the part of the employer, the employer cannot assert failure to mitigate damages as a defense. West Virginia is the **ONLY** state that has this malicious exception to a plaintiff's duty to mitigate their damages. As a result, a plaintiff can receive an award of front pay from the time of trial until the plaintiff's time of retirement without any consideration of the plaintiff's efforts or ability to gain similar employment.

Senate Bill 344 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. However, an employee under those circumstances would still be able to receive punitive, or exemplary, damages. Senate Bill 344 defines the terms "front pay" and "back pay" and clarifies that it remains the employer's burden to prove the lack of reasonable diligence to mitigate. With respect to the available remedies, Senate Bill 344 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.

**DATE OF PASSAGE:** March 10, 2015

**EFFECTIVE DATE:** Regular (90 days from passage)- June 8, 2015

**ACTION BY GOVERNOR:** Signed by Governor on March 26, 2015

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**S. B. 357**

**BILL NO.:** Committee Substitute for Senate Bill 357

**SHORT TITLE:** Coal Jobs and Safety Act of 2015

**SPONSORS:** Senators Mullins, Blair, Boley, Boso, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Carmichael, Kirkendoll, Leonhardt, Maynard, Nohe, Plymale, Prezioso, Stollings, Sypolt, Takubo, Trump, Walters and Williams

**CODE:** W.Va. Code §22A-2A-302 (**repeal**); §22A-2A-303 (**repeal**); §22A-2A-304 (**repeal**); §22A-2A-305 (**repeal**); §22A-2A-306 (**repeal**); §22A-2A-307 (**repeal**); §22-3-13; §22-3-19; §22-11-6; §22-11-8; §22-11-22a (**new section**); §22A-1-41 (**new section**); §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; §22A-2A-604; §22A-2A-204a (**new section**).

**ATTORNEY:** Brian Casto

**SUMMARY:** The bill does the following:

1) Abolishes the Diesel Equipment Commission, transferring its duties and powers to the director of the Office of Miners' Health Safety and Training

2) Permits construction of and coal waste pile or other coal waste storage area out using demonstrated technologies or measures consistent with good engineering practices to prevent acid mine drainage discharge

3) Directs the state DEP to promulgate rules, considering the adoption of federal standards, for contemporaneous reclamation and the granting of inactive status; and explicitly authorizes, but does not require, the rules promulgated by DEP on the issues of contemporaneous reclamation and inactive status to be emergency rules

4) Extends the Clean Water Act safe harbor for compliance with NPDES permits to Section 303 of the Clean Water Act, and with all applicable state and federal permit conditions with certain limitations

5) Directs DEP to promulgate an emergency rule revising aluminum water quality values using a hardness-based equation

6) Requires 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

7) Provides for civil penalties

8) Makes certain legislative findings, contained in 22A-1-41

9) 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

10) Establishes that 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

11) Provides for the means whereby off-track mining equipment is moved in areas of active workings

12) Permits the use of sideboards on shuttle cars on which cameras are installed or when the shuttle cars are manufactured with sideboards, committee amendment fixes this to include the latter only if this is permitted by the Director of the Office of Mine Health Safety and

13) Extends the distance from which track may stop from the nearest working face from five hundred to fifteen hundred feet

14) Provides for spacing of shelter holes at not more than one hundred five feet apart, up from the current standard of one hundred feet, to bring the state standard into line with the federal standard

15) Restores the requirement that each locomotive, personnel carrier, barrier tractor or other related equipment carry a suitable lifting jack and handle

16) Authorizes the mine foreman to permit persons to ride on a locomotive when safe riding facilities are provided

17) Fixes a potential problem with double civil exposure by providing for a credit against any penalties in Article 11 for any penalties imposed under Article 3 for violations of water standards; and

18) Conforms the title.

**DATE OF PASSAGE:** February 27, 2015

**EFFECTIVE DATE:** Regular (90 days from passage)–May 28, 2015

**ACTION BY GOVERNOR:** Signed by Governor on March 12, 2015

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### **S. B. 363**

**BILL NO.:** Senate Bill 363

**SHORT TITLE:** Establishing maximum rates and service limitations for reimbursement of health care services by Court of Claims

**SPONSORS:** Senator Cole

**CODE:** W.Va. Code §14-2a-19b (new)

**ATTORNEY:** Brian Casto

#### **SUMMARY:**

This bill would allow the Court of Claims to set maximum rates and service limitation reimbursement for health care services rendered by a health care provider for claims brought before the court by persons seeking a recovery from the Crime Victim's Compensation Fund, as revenues for that fund have been lower than anticipated in recent years. The proposed rates are required to be submitted to the Joint Committee on Government and Finance. There are 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.

**EFFECTIVE DATE:** Regular

**DATE OF PASSAGE:** March 14, 2015 (90 days from passage)–June 12, 2015

**ACTION BY GOVERNOR:** Signed by Governor on March 31, 2015

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## S. B. 370

**BILL NO.:** Senate Bill 370

**SHORT TITLE:** Reorganizing Governor's Committee on Crime, Delinquency and Correction and certain subcommittees

**SPONSORS:** Senators Cole (Mr. President) and Kessler (*By Request of the Governor*)

**CODE:** W.Va. Code §§ 15-9-1, -2, -3 & -5 (*amend and reenact*)  
W.Va. Code § 15-9-6 (*New Section*)  
W.Va. Code §§ 15-9A-1, -2 & -3 (*amend and reenact*)  
W.Va. Code §§ 15-9B-1 & -2 (*amend and reenact*)  
W.Va. Code §§ 30-29-2 through -7 (*amend and reenact*)  
W.Va. Code §§ 62-11C-2, -3, -4, -6 & -8 (*amend and reenact*)

**ATTORNEY:** Marty Wright

**SUMMARY:**

Senate Bill 370 reorganizes the Governor's Committee on Crime Delinquency and Correction and its various subcommittees.

The Governor's Committee on Crime, Delinquency and Correction was created by executive order in 1966. The purpose was to develop a comprehensive plan that would direct efforts to improve the state's criminal justice system. In furtherance of this executive order, the West Virginia Division of Justice and Community Services (DJCS) was created as the statewide planning agency dedicated to the improvement of the state's criminal justice system. Over the years, formal "subcommittees" have been formed within the Governor's cabinet to address various issues. These subcommittees now include the:

- ▶ Sexual Assault Forensic Examination Commission
- ▶ Law Enforcement Professional Standards Subcommittee
- ▶ Community Corrections Subcommittee
- ▶ Juvenile Justice Subcommittee

Over the years, as each subcommittee/commission is developed under the Governor's cabinet, each of its respective boards has become full members of the Governor's committee. The result has been the overgrowth of the Committee to the point that its membership now exceeds 65 voting members. Further, given the creation of subcommittees at varying times over the years, there has been a lack of conformity as to the staffing, administration, creation, and responsibilities in relation to the Governor's Committee.

Accordingly, SB370 brought clarity and codification of the practices that have been ongoing since 1966. It additionally reconstitutes the membership of the Governor's Committee.

First, SB 370 codifies and reorganizes the make-up of the Governor's Committee. It codifies the executive order and adjusts the overgrown composition of the Committee. SB370 reorganizes the Governor's Committee into 10 members and 1 ex-officio/non-voting. It also establishes that the Secretary of the Department of Military Affairs and Public Safety chairs the Governor's Committee and that the Director of the Division of Justice and Community Services shall serve as the Executive

Director. Finally, it establishes that the Division of Justice and Community Services shall provide support staff to Committee and the various subcommittees.

Second, SB370 amends and codifies the responsibilities/roles of the Division of Justice and Community Services. In addition to staffing the Governor's Committee, the bill directs the Division to provide staffing to the other established subcommittees under the Governor's Committee. The bill additionally expressly authorizes the Division of Justice and Community Services to be the designated state administrative agency for funds and grants relating to the Governor's Committee and subcommittees. Finally, it authorizes the Division to promulgate rules.

Third, SB 370 updates and clarifies the composition/powers of Sexual Assault Forensic Examination Committee. In particular, it clarifies selection of this subcommittee's membership, and allows the Commission to select its own chair/vice-chair. The bill further grants the subcommittee the power to adopt by-laws, policies, procedures for meetings.

Fourth, SB370 updates and clarifies the composition/powers of the Law Enforcement Professional Standards subcommittee. In addition to clarifying the procedural make-up and procedures of the subcommittee, the bill directs the Law Enforcement Professional Standards subcommittee to promulgate rules with regard to the identification, investigation, reporting and prosecution of suspected child abuse and neglect. The bill further grants the subcommittee the ability to modify fees pursuant to legislative rule.

Finally, SB 370 updates and clarifies the composition/powers of the Community Corrections Subcommittee. In particular, it clarifies selection of this subcommittee's membership, and allows the Commission to select its own chair/vice-chair. The bill further grants the subcommittee the power to adopt by-laws, policies, procedures for meetings. Finally, the bill grants the subcommittee the ability to modify fees pursuant to legislative rule.

**DATE OF PASSAGE:** March 13, 2015

**EFFECTIVE DATE:** Regular (90 days from passage)- June 11, 2015

**ACTION BY GOVERNOR:** Signed by Governor on March 26, 2015

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**S.B. 373**

**BILL NO.:** Committee Substitute for Senate Bill 373

**SHORT TITLE:** Allowing wireless communication image serve as proof of motor vehicle insurance.

**SPONSORS:** Senators Nohe, Gaunch, D.Hall, Karnes and Blair

**CODE:** W. Va. Code §17D-2A-4 (*amend and reenact*)

**ATTORNEY:** Devon Lopez (Intern)

**SUMMARY:**

S.B. 373 permits an image displayed on a wireless communication device to serve as proof of insurance on a motor vehicle. This bill would require that the image contain the same information required to be contained on a certificate of insurance.

The Senate Committee on the Judiciary passed a committee substitute that defines “wireless communication device” as it is currently defined in W. Va. Code §17B-1-1, as “a handheld device used to access a wireless telephone service or a text messaging device.”

**DATE OF PASSAGE:** March 13, 2015

**EFFECTIVE DATE:** Regular (90 days from passage)- June 11, 2015

**ACTION BY GOVERNOR:** Signed by Governor on March 18, 2015



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**S.B. 374**

**BILL NO.:** Senate Bill 374

**SHORT TITLE:** Permitting *in absentia* parole hearings in certain instances

**SPONSORS:** Senators Trump and D. Hall

**CODE:** W.Va. Code §62-12-13

**ATTORNEY:** Brian Casto

**SUMMARY:**

The purpose of this bill is to allow in absentia parole hearings in certain instances and waiving a personal appearance by an inmate who is too debilitated, either physically or cognitively, to appear. This exception to the statutory requirement that an inmate attend his or her parole hearing will result in an easier transfer of ill inmates from Dept. of Corrections custody to medical facilities, resulting in a net cost savings.

**DATE OF PASSAGE:** March 6, 2015

**EFFECTIVE DATE:** Passage

**ACTION BY GOVERNOR:** Signed by Governor on March 13, 2015

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**S.B. 375**

**BILL NO.:** Committee Substitute for Senate Bill 375

**SHORT TITLE:** Specifying who receives parole hearing notices via regular or certified mail

**SPONSORS:** Senator Trump

**CODE:** W.Va. Code § 62-12-23 (*Amend and Reenact*)

**ATTORNEY:** Devon Lopez (Intern)

**SUMMARY:**

Current law requires notice of parole hearings and notice of release be sent to numerous persons listed on the Parole Hearing Notification Form and Notice of Release by certified mail, return receipt requested. Among the listed persons are the primary law enforcement officers involved. The bill would allow law enforcement only to be noticed by regular U.S. Mail.

S.B. 375 specifies who receives notice of parole hearings via regular or certified mail. The Senate Committee Substitute amended the bill to make release notifications consistent with hearing notices under subsection (e).

**DATE OF PASSAGE:** March 6, 2015

**EFFECTIVE DATE:** From Passage

**ACTION BY GOVERNOR:** Signed by Governor on March 13, 2015

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**S.B. 390**

**BILL NO:** Senate Bill 390

**SHORT TITLE:** Authorizing the PSC to approve expedited cost recovery of natural gas utility infrastructure projects

**SPONSORS:** Senator Trump

**CODE:** W.Va Code §24-2-1k

**ATTORNEY:** Brian Casto

**SUMMARY:**

The bill proposes to allow natural gas utilities to apply to the Public Service Commission to implement a comprehensive program of replacing, upgrading and expanding infrastructure. The bill will permit accelerated collection of rates in compensation for completion of these infrastructure projects, to allow cost recovery to the entities involved, without the necessity of their 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. The House amendment allowed for waiver of a hearing if there was no opposition and made certain technical changes.

**EFFECTIVE DATE:** Regular

**EFFECTIVE DATE:** Ninety Days from Passage

**ACTION BY GOVERNOR:** Approved by Governor March 24, 2015

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## S. B. 393

**BILL NO.:** Committee Substitute for Senate Bill 393

**SHORT TITLE:** Reforming juvenile justice system

**SPONSORS:** Senators Cole (Mr. President) and Kessler (*By Request of the Governor*)

**CODE:** W.Va. Code §§ 49-1-206, 49-2-907, 49-2-1003, 49-4-403, 49-4-407, 49-4-409, 49-4-702, 49-4-711, 49-4-712, 49-4-714, 49-4-718, 49-4-719, 49-5-103 (*amends and reenacts*)

W.Va. Code §§ 49-2-912, 49-2-913, 49-4-413, 49-4-702a, 49-4-724, 49-4-725, and 49-5-106 (*New sections*)

**ATTORNEY:** Marty Wright

### SUMMARY:

Senate Bill 393 is the Governor's Juvenile Justice reform bill and makes a significant change in the approach to juvenile justice and the current manner in which our state handles status and delinquent offenders. Specifically, SB393 shifts to a community-based approach that focuses on individual case planning and premises decisions on specific risk and needs assessments.

Last year, the State contracted with the Pew Charitable Trust Study to evaluate and make recommendations regarding the juvenile justice system in West Virginia. The Pew Study recommended the State shift the juvenile justice system away from confinement and towards a community-based approach that disfavors out-of-home placement. SB393 adopts this philosophical change recommended by the Pew Study, and sets forth both procedural and substantive changes to the state juvenile justice system.

The community-based approach discourages out-of-home placements, especially for status offenders, and makes greater use of multi-disciplinary teams (which are often referred to as MDTs) in developing case plans to address identified risk factors that increase the likelihood of re-offending. SB393 also refocuses the Court system and DHHR in the manner in which status offenders (i.e. truancy, runaways, incorrigibles) are handled. The focus is now on local community services aided by local juvenile probation officers and truancy diversion specialists. The bill further changes the procedures and time frames in which juvenile matters are handled.

While there is a lot contained in this bill, I want to take a few moments and highlight some of the key aspects of this bill.

**First, SB393 creates and establishes an Juvenile Justice Oversight Committee.** The Oversight Committee will be comprised of the following 18 individuals:

- (1) The Governor, who shall preside as chair of the committee;

- (2) Two members from the House of Delegates, appointed by the Speaker of the House of Delegates; who shall serve *ex officio*, non-voting
- (3) Two members from the Senate, appointed by the President of the Senate; who shall serve *ex officio*, non-voting
- (4) The Secretary of the Department of Health and Human Resources;
- (5) The Director of the Division of Juvenile Services;
- (6) The Superintendent of the State Board of Education;
- (7) The Administrative Director of the Supreme Court of Appeals; who shall serve *ex officio*, non-voting
- (8) The Director of the Division of Probation Services;
- (9) Two circuit court judges, appointed by the Chief Justice of the Supreme Court of Appeals; who shall serve *ex officio*, non-voting
- (10) One community member juvenile justice stakeholder, appointed by the Governor;
- (11) One juvenile crime victim advocate, appointed by the Governor;
- (12) One member from the law-enforcement agency, appointed by the Governor;
- (13) One member from a county prosecuting attorney's office, appointed by the Governor;
- (14) The Director of the Juvenile Justice Commission; and
- (15) A lawyer who regularly represents juveniles" to be appointed by the Governor.

SB393 further directs the oversight committee to perform certain functions, including an annual report every November 30 to the Governor, the President of the Senate, the Speaker of the House of Delegates and the Chief Justice of the Supreme Court of Appeals on the status of these reforms. The bill also directs the Division of Justice and Community Services to provide staff support to the Juvenile Justice Oversight Committee and has a sunset provision of December 31, 2020.

**A SECOND highlight of SB393 is the reliance upon Youth Reporting Centers regionally located around the state.** The bill 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. SB393 grants DJS rulemaking authority and additionally directs collaboration with county boards of education to provide educational services to juveniles

**A THIRD highlight of SB393 relates to the shift in funding and resources away from confinement and detention.** The bill mandates that by January 1, 2017, at least 50% of the Division Juvenile Services funding for community services shall be used to implement evidence-based practices. SB393 additionally 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. Further, current law requires DHHR to establish and maintain one or more rehabilitative facilities to be used exclusively for the lawful custody of status offenders. For the past decade, DHHR has contracted with the Division of Juvenile Services to place status offenders in DJS facilities. SB393 expressly forbids this practice of contracting with DJS and requires its current process to cease by January 1, 2016. The bill does allow DHHR the ability to contract with other private and public entities. In addition, SB393 requires the DHHR to create a transition plan for youth entering an out-of-home

placement in their custody, and further requiring that the youth transitions to nonresidential community services and out of the facility within thirty to ninety days of admission.

**A FOURTH highlight of the bill relates to the use of MDTs in the establishment of individualized treatment and rehabilitation goals for each juveniles.** SB393 places a centralized focus on multi-disciplinary teams to guide and oversee the implementation and adherence to the rehabilitation goals for a juvenile. The bill requires MDT involvement throughout the process and continued focus on the MDTs goals for the juvenile. Further, to ensure attendance at these MDT meetings, SB393 mandates that each circuit court set an established day each month for MDTs to take place.

**A FIFTH highlight of the bill relates to pre-petition diversions for status offenders.** The bill sets up a procedural framework designed to avoid an out-of-home placement or detention for a status offender, unless it is warranted by an assessment or for public safety concerns. SB393 sets up a two-step diversion program for status offenders. It involves the prosecutor's office and a local juvenile probation officer focused on truancy matters. Some of these probation officers are referred to as Truancy Diversion Specialist and are a school-based probation officer or truancy social worker within a school. The intent is to identify truancy issues early, and have a hands-on approach at the school level to discourage greater problems from arising.

**DATE OF PASSAGE:** March 14, 2015

**EFFECTIVE DATE:** May 17, 2015

**ACTION BY GOVERNOR:** Signed by Governor on April 2, 2015

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**S. B. 403**

**BILL NO.:** Senate Bill 403

**SHORT TITLE:** Increasing period during which recorded and refiled motor vehicle liens are valid

**SPONSORS:** Senators Walters and Nohe

**CODE:** W.Va. Code § 17A-4A-15 (*amend and reenact*)

**ATTORNEY:** Marty Wright

**SUMMARY:**

Senate Bill 403 increases the period of time during which a lien on a certificate of title for a vehicle is valid. Under existing law, a title lien is valid for 10 years, and allows for a renewal every 2 years.

Senate Bill 403 increases the initial lien time period from 10 to 15 years. Liens for mobile home or manufactured home remains 33 years and is unaffected by this bill. Senate Bill 403 also extends the renewal period from 2 to 5 years. The bill further clarifies that a lienholder is not required to obtain the consent of the owner in order to refile the lien or encumbrance.

**DATE OF PASSAGE:** March 12, 2015

**EFFECTIVE DATE:** Regular (90 days from passage)- June 10, 2015

**ACTION BY GOVERNOR:** Signed by Governor on March 24, 2015

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**S. B. 409**

**BILL NO.:** Committee Substitute for Senate Bill 409

**SHORT TITLE:** Establishing Fair and Open Competition in Governmental Construction Act

**SPONSORS:** Senators Carmichael, Blair, Boso, Gaunch, M. Hall, Walters and Williams

**CODE:** W.Va. Code § 5-22-3 (*New Section*)

**ATTORNEY:** Marty Wright

**SUMMARY:**

Senate Bill 409 prevents a government entity from contracting with a specific labor organization before the bid process and award of a public construction project. Instead, SB409 leave open the selection of the contractor and workforce until after the bidding process.

Currently, a government entity in this State may reach an agreement with a labor organization on a government construction project *prior to* the project going to bid. This agreement before bid is called a pre-hire collective bargaining agreement. It is also generally referred to as a Project Labor Agreement. This pre-hire agreement then becomes a required term and/or condition of the subsequent bid for the government contract. Hence, a contractor seeking to bid on the public construction project must agree to use the pre-selected workforce from the union or use its own workers in compliance with the underlying pre-hire agreement.

SB409 would expressly prohibit this type of pre-bid selection of workforce in government construction bid requirements. It additionally forbids government entities from awarding a grant, tax abatement, or tax credit on acceptance of a project labor agreement bid.

This bill only applies to public construction projects. It does not apply to private construction projects. Further, SB409 does not prohibit an entity that is awarded the construction project (i.e. post-bid) from entering into a project labor agreement after award. Finally, SB409 provides for an exception in special circumstances to avert an imminent threat to public health or safety.

**DATE OF PASSAGE:** March 12, 2015

**EFFECTIVE DATE:** Regular (90 days from passage)- June 10, 2015

**ACTION BY GOVERNOR:** Signed by Governor on March 26, 2015



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## S. B. 411

**BILL NO.:** Committee Substitute for Senate Bill 411

**SHORT TITLE:** Creating Asbestos Bankruptcy Trust Claims Transparency Act and Asbestos and Silica Claims Priorities Act

**SPONSORS:** Senators Takubo, Carmichael, Ferns, Gaunch and Mullins

**CODE:** W.Va. Code §§ 55-7E-1 through -11 (*amend and reenact*)  
W.Va. Code §§ 55-7F-1 through -10 (*New Article with 10 sections*)

**ATTORNEY:** Mark Adkins

### SUMMARY:

Senate Bill 411 is divided into two Acts: (A) The “Bankruptcy Trust Claims Transparency Act” and (B) the “Asbestos and Silica Claims Priorities Act.”

#### 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.

#### 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 of 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.

**DATE OF PASSAGE:** March 11, 2015

**EFFECTIVE DATE:** Regular (90 days from passage)- June 9, 2015

**ACTION BY GOVERNOR:** Signed by Governor on March 18, 2015

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**S. B. 412**

**BILL NO.:** Senate Bill 412

**SHORT TITLE:** Relating to Real Estate Commission complaint filings

**SPONSORS:** Senator Blair

**CODE:** W.Va. Code § 30-40-20 (*amend and reenact*)

**ATTORNEY:** Mark Adkins

**SUMMARY:**

Senate Bill 412 establishes a two year statute of limitations for complaints to be filed with the Real Estate Commission. The two year statute applies from the date of the acts or omissions. However, the bill allows for two exceptions to this 2 year statute of limitations.

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.

Senate Bill 412 also requires that all complaints be submitted in writing and must fully describe the acts or omissions constituting the alleged unprofessional conduct.

**DATE OF PASSAGE:** March 12, 2015

**EFFECTIVE DATE:** Regular (90 days from passage)- June 10, 2015

**ACTION BY GOVERNOR:** Signed by Governor on March 24, 2015

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**S.B. 415**

**BILL NO.:** Committee Substitute for Senate Bill 415

**SHORT TITLE:** All relating to adding circuit judges to certain judicial circuits; providing for currently serving circuit judges to remain in office until December 31, 2016; and providing for the terms of office of circuit judges elected in the year 2016.

**SPONSORS:** Senator Trump.

**CODE:** WV Code §51-2-1-12

**ATTORNEY:** Brian Casto

**SUMMARY:**

The purpose of this bill is to authorize the addition of four new Circuit Court judges as follows: one additional circuit judge for the fifth circuit (Calhoun, Jackson, Mason and Roane counties - for a new total of three judges); the tenth circuit (Raleigh County - for a new total of four judges); the twenty-third circuit (Berkeley, Jefferson and Morgan counties - for a total of six judges); and the twentieth-sixth circuit (Lewis and Upshur counties - for a total of two judges). The new judges are to be elected in the regularly-scheduled election in the year 2016, to take office on January 1, 2017. The additional judgeships are distributed based upon the West Virginia Circuit Judge Workload Study, conducted by the State Justice Institute of the National Center for State Courts. A judiciary committee amendment added language to the section to mirror provisions of HB2010; noting that “Beginning in 2016, all elections for circuit court judge are to be held in the nonpartisan judicial election, by division, as set forth in article five of chapter three of this code, and all indications of party identification on election ballots for circuit court judge shall be omitted.”

**DATE OF PASSAGE:** March 13, 2015

**EFFECTIVE DATE:** Regular (90 days from passage)- June 11, 2015

**ACTION BY GOVERNOR:** Signed by Governor on March 24, 2015

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**S.B. 418**

**BILL NO.:** Senate Bill 418

**SHORT TITLE:** Real estate sale under deed of trust.

**SPONSORS:** Senators Nohe and Gaunch

**DATE:** March 16, 2015

**CODE:** *W. Va. Code* § 38-1-7

**ATTORNEY:** Kip Reese 3258

**SUMMARY:**

In 1997, the Supreme Court of Appeals of West Virginia held in the unanimous *Lilly* decision, that one “ may not assert, as a defense in a deficiency judgment proceeding, that the fair market value of real property was not obtained at a trustee foreclosure sale.

Under the law expressed in the *Lilly* case, the real property foreclosure scheme recognized a conclusive presumption that, at the point of a deficiency judgment proceeding, the property sold was sold for as fair market value, unless that sale price shocked the conscience.

In 2014, in the case of *Sostaric v. Marshall*, the WVSCA specifically overruled *Lilly* and established a new rule of law: as a defense in a lawsuit seeking a deficiency judgment, the debtor could assert that the fair market value of the secured real property was not obtained at the trust deed foreclosure sale. Chief Justice Davis dissented noting this rule was a question for the legislature.

**THIS BILL:** Codifies the long-standing rule of law in the *Lilly* case related to foreclosure sales: the debtor may not assert, as a defense in a deficiency judgment proceeding, that the fair market value of real property was not obtained at a trustee foreclosure sale

**DATE OF PASSAGE:** March 13, 2015

**EFFECTIVE DATE:** Regular (90 days from passage)- June 11, 2015

**ACTION BY GOVERNOR:** Signed by Governor on March 24, 2015

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**S. B. 421**

**BILL NO.:** Committee Substitute for Senate Bill 421

**SHORT TITLE:** Relating to punitive damages in civil actions

**SPONSORS:** Senators Trump, Carmichael, Blair and Gaunch

**CODE:** W.Va. Code § 55-7-27 (*New Section*)

**ATTORNEY:** Mark Adkins

**SUMMARY:**

Senate Bill 421 establishes certain requirements before an award of punitive damages could be made in a civil action as well as providing limits on such awards. Under this bill, a plaintiff would qualify for punitive damages if he or she proves, by clear and convincing evidence, that the conduct of the defendant was carried out with:

- a. Actual Malice; or
- b. a conscious, reckless and outrageous indifference to the health, safety and welfare of others.

Senate Bill 421 places a cap on punitive damages of the greater of \$500,000 or four times the amount of compensatory damages.

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. Under bifurcation, the jury would first consider the issue of liability and compensatory damages. Then, if the jury finds liability against the defendant and awards compensatory damages, the trial judge would determine whether sufficient evidence exists to proceed with the punitive damage phase of the trial. If sufficient evidence exists, the same jury will determine if the defendant is liable for punitive damages and may award punitive damages. If the award of punitive damages is greater than the statutory cap set forth in this bill, the trial court will reduce the punitive damage award accordingly.

**DATE OF PASSAGE:** March 10, 2015

**EFFECTIVE DATE:** Regular (90 days from passage)- June 8, 2015

**ACTION BY GOVERNOR:** Signed by Governor on March 26, 2015

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**S.B. 423**

**BILL NO.:** Committee Substitute for Senate Bill 423

**SHORT TITLE:** Amending Aboveground Storage Tank Act.

**SPONSORS:** Senators M. Hall, Blair, Carmichael, Facemire, D. Hall, Kirkendoll, Mullins, Plymale, Romano, Trump, Williams, Woelfel and Stollings.

**DATE:** March 16, 2015

**CODE:** **Repeal:** W.Va. Code §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

**Add two new sections:** §16-1-9f and §22-30-26

**Amend and reenact:** §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 and §22-30-25;

**Amend and reenact:** §22-31-2.

**ATTORNEY:** Kip Reese 3258

**SUMMARY:**

**Chapter 16. Public Health; Article 1. State Public Health System**

- W. Va. Code §16-1-9f. Inventory of potential sources of significant contamination. (State Public Health System-New Code section).
- The obligation to compile an inventory of potential sources of contamination located within a Zone of critical concern (ZCC), not subject to regulation by West Virginia Department of Environmental Protection (WVDEP) has been moved to Article 1 of Chapter 16 (Department of Health and Human Resources).
- Utilize information provided by registrations submitted pursuant to 22-30-4 and information provided to the Division of Homeland Security and Emergency Management (DHSEM ) pursuant to § 312 of the federal Emergency Planning and Community Right to Know Act, and other information available to the agency.
- Provide list to DEP and DHSEM.

**Above Ground Storage Tank Act (W. Va. Code §§ 22-30-1 to 22-30-25).**

- §22-30-3. Definitions.

- **Aboveground storage tank (“AST”)** – An AST under the statute is:
  - Device with a capacity of 1320 gallons or greater of fluids that are liquid at standard temperature and pressure;
  - More than 90 percent of the capacity of which is above the surface of the ground;
  - Includes all ancillary pipes and dispensing systems up to the first point of isolation;
  - Mobile tanks do not qualify as “ASTs” until they remain in one location on a continuous basis for 365 days;
  - AST containing hazardous waste subject to 40 CFR 264 and 265 (excluding tanks subject to 40 CFR 265.201) are included in the definition of an AST BUT are not regulated tanks.

The definition includes 12 specific exemptions for certain categories of tanks:

1. Shipping containers already subject to federal law or regulation governing hazardous materials including railroad freight cars;
  2. Barges or boats
  3. Swimming pools
  4. Process vessels
  5. Devices containing drinking water, surface or groundwater, demineralized water, noncontact cooling water or water stored for fire/emergency purposes
  6. Devices containing food for human or animal consumption (21 USC §§ 301-392)
  7. Device located on a farm used exclusively for farm purposes (not commercial purposes) EXCEPT when in a zone of critical concern
  8. Devices holding wastewater being treated or processed
  9. Empty tanks in inventory or offered for sale
  10. Pipeline facilities including gathering lines regulated under NGPSA (1968) or HLPSC (1979) or intrastate pipeline regulated by the WVPSC or other state law comparable to NGPSA or HLPSC
  11. Liquid traps, atmospheric and pressure vessels or associated gathering lines related to O&G production or gathering lines
  12. Electrical equipment.
- **First point of isolation** – The valve, pump, dispenser or other device or equipment on or nearest to the AST where the flow of fluids into or out of the tank may be shut off manually or where it automatically shuts off in the event of a pipe or tank failure.
  - **Process vessel** – A tank that forms an integral part of a production process through which there is a steady, variable, recurring or intermittent flow of materials during the operation of the process or in which a biological, chemical or physical change in the material occurs.
  - **Public water system** –now includes an express exclusion for a bathhouse located on coal company property solely for the use of its employees.

- **Regulated Level 1 AST (New Term)** – This category represents those tanks that have been determined to pose the greatest potential for harm to public drinking water supplies. It includes:
  - an AST located within a zone of critical concern, source water protection area, public surface water influenced groundwater supply source area, or any AST designated by WVDEP as a Level 1 tank;
  - an AST that contains a “hazardous substance” under CERCLA, 42 U.S.C. § 9601(14) or is on USEPA’s “List of Lists” in a concentration of one percent or greater, regardless of the AST’s location, except ASTs containing petroleum are not Level 1 tanks based solely upon containing constituents on these lists; and
  - ASTs with a capacity of 50,000 gallons or more, regardless of contents or location.
- **Regulated Level 2 AST or “level 2 regulated tank” (New Term)**– This category represents tanks that have been determined to pose a lesser potential for harm to public drinking water supplies, but still merit regulation. Level 2 ASTs are located within a “zone of peripheral concern” that are not Level 1 ASTs.
- **Regulated aboveground storage tank or “regulated tank”** – A Level 1 or Level 2 regulated tank. While all ASTs would be subject to the registration requirements of the AST Act, only “regulated tanks” would be subject to the remaining substantive requirements of the statute (except signage).
- **Release** – The definition of “release” no longer includes an escape of fluids from an AST into secondary containment. It includes any spilling, leaking, emitting, discharging, escaping or leaching of fluids from an AST into the waters of the state or escaping from secondary containment. Language indicating that reporting is not required for spillage up to 20 gals during loading or unloading if spillage is wholly contained has been removed or is promptly cleaned up with no escape on to the ground or adjacent surface water has been removed.
- **Secondary containment** – The definition includes a new requirement that earthen dikes and similar containment structures must be designed and constructed to contain fluid that escapes from a tank for a minimum of 72 hours.
- **Zone of critical concern (“ZCC”) – (for a public surface water supply source and - for a public water surface influenced groundwater supply source)** The definition is now limited to a five-hour time of travel of water above an intake (removing the additional one-fourth mile area below the intake). The width of the ZCC is 1,000 feet on each side of the bank of the principal stream upon which the intake is located and 500 feet on each side of the bank of tributaries thereto.
- **Zone of peripheral concern (“ZPC”)– (New Term)** Another area of scrutiny for a public surface water supply source and for a public water surface influenced groundwater supply source - a corridor along streams with a watershed that warrants scrutiny due to proximity to surface after intake and intake’s susceptibility to contaminants within the corridor. Based on an additional five-hour time of travel of water in a stream above the ZCC, thereby creating



a protection zone of ten hours above a water intake. The width of the ZPC is the same as for the ZCC.

➤ §22-30-4. Inventory and registration of existing AST's.

- Deletes requirement for inventory whether operational or nonoperational tanks.
- Owner and operator of AST submits registration form by July 1, 2015, including AST's placed into service after effective date prior to storing fluids ; previous registration counts.
- Registration no longer requires identify an distance to nearest groundwater public water supply intake and/or nearest surface water downstream public water supply intake, but now includes circumstances for updating the registration.
- Owner of registered tank under existing state or federal program no longer required to provide regulatory standard required for the AST
- Inventory form no longer required for an AST placed into service after 2014 effective date;
- Accordingly, secretary no longer required to make determinations: minimum design, construction, inspection, secondary containment, leak reporting and performance standards.
- This section now establishes initial registration fees of
  - (1) \$40 per tank for all ASTs in service prior to July 1, 2015 and
  - (2) \$20 per tank for all ASTs placed into service on or after July 1, 2015.
- WVDEP to propose emergency or legislative rules setting out the procedure for fee assessment and collection, but recognizing need to expeditiously capitalize the AST Admin Fund and Protect Our Water Fund, secretary would be authorized to send invoices for and collect the fees provided for in this section in advance of such rulemaking. After July 1, 2015, it shall be unlawful to operate or use an AST that has not been properly registered or for which the applicable registration fee has not been paid.

➤ §22-30-5. AST Regulatory Program.

- Though not noted by underlining or strike-throughs, this section has been almost entirely rewritten.
- WVDEP is directed 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 WVDEP must include:
  - (1) criteria for the design, construction and maintenance of ASTs,
  - (2) criteria for the design, construction, maintenance or methods of secondary containment,

(3) 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

(4) record keeping requirements

(5) requirements for the development of maintenance and corrosion prevention plans

(6) requirements for closure of ASTs, and necessary remediation resulting from an AST release

(7) assessment of registration fee, annual operation and response fees

(8) the issuance of a certificate to operate (“CTO”) after submission of an application, with review and approval by WVDEP

(9) procedure for administrative resolution of violations including assessment of civil penalties

● For entities that are already subject to provisions of Chapter 22 that necessitate individual, site-specific permits or plans that require appropriate containment measures and diversionary structures or equipment to prevent releases from reaching waters of the State, WVDEP may amend those permits/plans at the request of the permittee to include conditions pertaining to management and control of regulated ASTs that the secretary deems sufficient to protect waters of the State, in combination with those practices and protections already in place. Application for permits/plans shall provide how and to what extent the permittee adheres to other standards or plans regarding tank and secondary containment integrity, inspection and spill prevention response, including API 653 standards for Tank Inspection, Repair, Alteration and Reconstruction, STI SP001 Standards for AST or requirements of 40 CFR 112. AST’s included in amended permits or plans does not relieve the owner of fees.

● The secretary may amend plans or permits including:

(1) SCMRA permits issued under W. Va. Code § 22-3,

(2) permits issued by the Office of Oil and Gas under W. Va. Code §§ 22-6 or 22-6A, or plans required under 35 C.S.R. 1,

(3) individual NPDES permits issued under W. Va. Code § 22-11,

(4) permits issued pursuant to the Solid Waste Management Act, W. Va. Code § 22-15, and

(5) groundwater protection plans (“GPPs”) developed pursuant to W. Va. Code § 22-12.

● Any tank owner or operator whose permit/plan has been amended by WVDEP to address ASTs and secondary containment shall be deemed compliant with the requirements of the AST Act, so long as the registration requirements of Section 4 are met.

● The secretary shall set manner and time frames for implementation of the regulatory program by emergency or legislative rule.

➤ §22-30-6. Evaluation and certification.

● Each regulated AST and its associated secondary containment must be evaluated by

(1) a qualified registered professional engineer or qualified person working under the direct supervision of a registered professional engineer, regulated and licensed by the State Board of Registration for Professional Engineers,

(2) an individual certified to perform tank inspections by API or Steel Tank Institute, or

(3) a person holding certification under another program approved by WVDEP.

- The owner or operator must submit a certification that each regulated AST and its secondary containment structure ( no longer requires associated equipment or leak detection system) has been evaluated by a qualified person as set forth above and meets the standards established under Section 5.

- The initial certification is due within 180 days of the effective date of rules establishing standards under Section 5 , with subsequent certifications due at regular established intervals, not more frequently than once per calendar year.

- The certification may be signed by (1) any person qualified to perform a tank evaluation, (2) a responsible person designated by the owner or operator, or (3) any other person designated by the secretary by legislative rule.

➤ §22-30-7. Financial responsibility.

- This section is largely unchanged except for (1) its limitation to regulated ASTs based on such factors as location, size and contents of the tanks; and (2) the addition of language expressly authorizing WVDEP to determine which bonds and other guarantees of performance under other environmental programs will satisfy the requirements of this section.

➤ §22-30-8. Corrective action.

- This section is also generally unchanged from the current statute except for

- (1) The deletion of the requirement to develop a “preliminary corrective action plan” considering the types of fluids and tanks.

- (2) The secretary may utilize money from the Protect Our Water Fund (POWF) to undertake corrective action for an actual release (no longer a threatened release).

- (3) Tank owner’s failure to comply with a court order for appropriate corrective measures may trigger secretary’s action with funds from the POWF.

➤ §22-30-9. Spill prevention and response plan.

- The requirement to prepare and submit a spill prevention and response plan (SPRP) is limited to regulated ASTs at a location or facility.

- SPRPs must be submitted no less frequently than every five years (versus three years in the current law), unless an event occurs that requires an update sooner.

- Specific contents for SPRPs have been revised; plans no longer shall be site-specific or developed in consultation with the Bureau for Public Health.

- SPRPs must describe site activities, an inventory of the types and amounts of fluids, provide a location reference for safety data sheets (formerly known as MSDS);( requirement for MSDS to include health hazard number deleted; plans no longer required to include drawings of tank facility or locations of all drainage pipes and water outlets; stress points, potential spill sources and leak locations no longer required).

- In lieu of an SPRP meeting the requirements of Section 9, the owner or operator of a regulated AST may certify that it is subject to (1) an approved groundwater protection plan or (2) a spill prevention control and countermeasures plan. Plans must be made available for review or submitted to the secretary upon request.

➤ §22-30-10. Notice to local governments and water companies.

- The owner or operator of a regulated AST must provide, as required by WVDEP, notice to the public water system and to state, county and municipal emergency response organizations of the type and quantity of fluid stored in regulated ASTs at a facility, as well as provide the location of Safety Data Sheets associated with the fluids in storage.

- All notifications and disclosures under this section are expressly made subject to the protections for confidential business information set forth under Section 14.

- Provision of a spill prevention plan and updates as approved by the secretary no longer specifically required.

- In lieu of this notification, the tank owner or operator may provide inventory forms and other applicable documents required under Sections 311 and 312 of Emergency planning and Right-to Know Act.

➤ §22-30-11. Signage.

- This section is not expressly limited to regulated ASTs. ASTs must display, or have displayed nearby, a sign containing (1) the AST registration number, (2) emergency contact number for the AST owner or operator, and (3) the number for WVDEP's Spill Reporting Hotline. Language in the current law relating to OSHA information has been deleted, as has language regarding signage requirements to be promulgated by the secretary.

➤ §22-30-12. AST Administrative Fund.

No significant changes have been made to this section, with the exception that an annual registration fee has been removed and "a fee" been substituted; an annual operating fee in accordance with section 4 is inserted.

➤ §22-30-13. Protect Our Water Fund.

- All regulated AST owners/operators pay annual fee to assure adequate response to AST releases. Only regulated ASTs are subject to these annual operating fee and response fund fees.

- Amount of the fees no longer mandated to cover regulatory and oversight services by designated agencies, including technical and administrative personnel.

- POWF expenditures solely for response to releases from AST. Legislative appropriations, and restriction on transfer of POWF to General Revenue Fund deleted.

- Includes a cap on the Protect Our Water Fund of \$1,000,000 after 3 years and maintain an aggregate fund of \$1M at the beginning of each calendar year thereafter.

- Secretary may fund cooperative agency only for expenses incurred for corrective actions.

➤ §22-30-14. Public access to information.

- This section provides that the public shall have access to all documents and information submitted to WVDEP pursuant to the AST Act, subject to limitations contained in the Freedom of Information Act and excepting any information designated by the Division of Homeland Security and Emergency Management (“DSHEM”) restricted from public release.

- Trade secrets, proprietary business information and other information designated by DHSEM as restricted from public release must be secured and safeguarded by WVDEP and may not be disclosed except to officials or authorized employees or representatives of a state or federal agency implementing the provisions of the AST Act or any other applicable law relating to releases of fluids from ASTs that impact the state’s water resources.

- Unauthorized disclosure of confidential information would constitute a misdemeanor offense (1 year confinement, \$5,000 fine or both).

- The Bureau for Public Health, working in conjunction with WVDEP and DSHEM may disclose to public water systems potential sources of significant contamination within the ZCC and ZPC, subject to confidentiality protections.

- The exact location of contaminants within the ZCC and ZPC is not subject to public disclosure in response to a FOIA request, although the location, size and quantities of potential sources of significant contamination shall be made known to one or more designees of the public water supply, and maintained in a confidential manner.

- In the event of a release to waters of the state that could affect a public water supply, information about the release must be made available to emergency responders promptly, and

- DHSEM shall promptly notify the general public. DSHEM is authorized to promulgate emergency and legislative rules to implement this section.

➤ §22-30-15. Inspection, monitoring and testing.

- No substantive changes have been made to WVDEP’s broad powers to inspect all aboveground storage tanks (not limited to regulated ASTs), collect data, and take other meaningful investigative action. WVDEP is required to inspect Level 1 regulated ASTs at least once every five years, and is directed to develop an inspection protocol for Level 2 regulated ASTs.

➤ §22-30-16. Administrative orders; injunctive relief.

- No changes have been made to this section, except to authorize the Environmental Quality Board to issue stays of orders issued by the secretary until that order is reviewed by the Board.

- §22-30-17. Civil and criminal penalties.
  - Current references to “permits” have been replaced with references to “certificates to operate.”
  - Misdemeanor offense for knowing and intentional violation of the AST Act has been expanded to include knowing and intentional violation of any rule or order issued under or subject to the provisions of the AST Act.
  - Where carrying out a corrective action plan approved by the secretary not subject to prosecution for pollution recognized and authorized by the approved corrective action plan.
  - Civil penalties deposited in either the AST Administrative Fund or POWF, to be used solely for purposes under sections 12 and 13.
- §22-30-18. Appeal to Environmental Quality Board.
  - This section authorizes an appeal to the EQB of any action, decision or order of the secretary under the AST Act (current language is limited only to orders).
- §22-30-19. Duplicative enforcement; and
- 22-30-20. Reporting and Accountability.
  - No changes are made to these sections of the current law.
- ▶ §22-30-21. Interagency cooperation.
  - Division of Homeland Security and Emergency Management to coordinate with state and local emergency response teams (not the secretary).
  - Requirement for the secretary to coordinate with the State Fire Marshall to address inspection of local fire departments to examine national Incident management System training no longer in code.
- §22-30-22. Imminent and substantial danger.
  - Establishes circuit court where imminent and substantial danger exists as a venue where the secretary may bring suit (in addition to Kanawha County).
- §22-30-23. Promulgation of rules,
  - No change made to this section of the current law.
- §22-30-24. Powers and duties of the secretary.
  - No substantial change from current law (changes “authorization or permit” to “ certificate to operate”)
- §22-30-25. Waiving certain requirement s of this article . . . .

- This section provides an extensive re-write of the waiver procedure and enumerated identification of categories for tanks and additional categories, not requiring a permit under section 5. The new section authorizes WVDEP to designate by legislative rule additional categories of ASTs for which one or more requirements of the AST Act may be waived upon a determination that such ASTs either do not represent a substantial threat of contamination or they are currently regulated under standards that are consistent with the protective standards and requirements of the AST Act and rules promulgated thereunder. General reference in the current section to NPDES permits are addressed in the following section.

- §22-30-26. Secretary's authority to require individual NPDES permits in a zone of critical concern.

- This provision, originally taken from 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 (mandatory under the current law). Any general NPDES permit in effect on the effective date of the AST Act shall remain in effect until the secretary either issues or denies the individual NPDES permit.

**Public Water Supply Protection Act (Repealed W. Va. Code §§ 22-31-3 through 12 ).**

- §22-31-2. Public Water System Supply Study Commission. (Amended and reenacted- formerly §23-31-12)

- This section is retained in Article 31, and the remaining sections have been deleted. The following changes have been made to the membership of the Study Commission:

- (1) Three members (from four) to be appointed by the Governor (although corresponding change is made to the specific appointees);
- (2) appointment of the Commissioner of the Bureau for Public Health as chair;
- (3) deletion of one nonvoting member each appointed by the President of the Senate and the Speaker of the House of Delegates; and,
- (4) addition of two representatives designate by the Business Industry Council and one representative designated by the West Virginia Rivers Coalition.

- The Study Commission shall terminate on June 30, 2019.

**DATE OF PASSAGE:** March 14, 2015

**EFFECTIVE DATE:** Regular (90 days from passage)- June 12, 2015

**ACTION BY GOVERNOR:** Signed by Governor on March 27, 2015

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**S.B. 430**

**BILL NO.:** Committee Substitute for Senate Bill 430

**SHORT TITLE:** Authorizing Family Court judges to enter protective orders in the form of a standing order

**SPONSORS:** Senator Trump

**CODE:** W.Va. Code §48-27-507, §51-2A-2a(new)

**ATTORNEY:** Brian Casto

**SUMMARY:**

The purpose of this bill is to authorize Family Court judges to enter protective orders prohibiting certain kinds of bothersome or annoying conduct against each other by parties to domestic relations actions. The Supreme Court of Appeals, in the matter of *Riffle v. Miller*, ruled that the family courts lacked the authority to issue mutual orders. The Senate committee substitute, drafted in response to concerns expressed by the Administrative Office of the Courts, toned down the language in the original bill describing the kind of behavior which is to be enjoined under the section, as well as removing the requirement that the family courts issue findings in support of their order. These changes were made so as not to trigger the provisions of the Federal Violence Against Women Act regarding gun ownership against any parties to whom an order of this type would be directed. The House Judiciary Committee extensively reworked the bill to ensure Federal provisions did not apply; reframing the no-contact orders as standing orders and refusing to allow for their issuance if domestic violence had ever taken place.

**DATE OF PASSAGE:** March 13, 2015

**EFFECTIVE DATE:** Regular (90 days from passage)- June 11, 2015

**ACTION BY GOVERNOR:** Signed by Governor on March 24, 2015



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**S.B. 453**

**BILL NO.:** Committee Substitute for Senate Bill 453

**SHORT TITLE:** Motor vehicle dealers, distributors, wholesalers and manufacturers.

**SPONSORS:** Senators Woelfel, Blair, Ferns, Gaunch, M. Hall, Leonhardt, Mullins, Nohe, Plymale, Prezioso, Snyder, Takubo, Trump, Walters and Karnes

**CODE:** Article 17A-6A

**ATTORNEY:** Brian Casto

**SUMMARY:**

This article deals with the relationships between motor vehicle manufacturers and new car dealers. The article covers and the bill modifies certain aspects of those relationships.

Neither the article nor the bill address dealer-consumer issues which are handled elsewhere in the code. The bill redefines manufacturer and motor vehicle. It requires the burden of proof be on the manufacturer to prove good cause by a preponderance of the evidence that a dealer agreement should be terminated. It notes that a change in ownership of the new motor vehicle dealer's dealership does not constitute good cause for the termination of a dealer agreement and notes the manufacturer's or distributor's prior written consent to accomplish the same may not be unreasonably or untimely withheld

The bill alters the conditions for which a new motor vehicle dealer shall be allowed fair and reasonable compensation by the manufacturer upon termination of any dealer agreement. It also provides that a dealer can claim any costs the dealer incurred for facility upgrades or alternations required by the manufacturer, distributor or factory branch within the previous five years.

The bill sets forth the mechanism by which parts and labor rates can be calculated. This includes markups for warranty work.

Manufacturers are forbidden to change the capital structure or financial requirements of the new motor vehicle dealership without reasonable business justification. They are forbidden to require any dealer to construct improvements to its facilities or to install new signs or other franchisor image elements that replace or substantially alter those completed within the proceeding ten years that were required and approved by the manufacturer. Manufacturers are forbidden to use a captive finance source or any subsidiary corporation to accomplish what would otherwise be illegal conduct under this section. Manufacturers are barred from owning an interest in a dealer or dealership; and/or operating a dealership.

**DATE OF PASSAGE:** March 14, 2015

**EFFECTIVE DATE:** Regular (90 days from passage)- June 12, 2015

**ACTION BY GOVERNOR:** Signed by Governor on April 3, 2015

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**S.B. 454**

**BILL NO.:** Senate Bill 454

**SHORT TITLE:** Criminalizing trademark counterfeiting.

**SPONSORS:** Senators Prezioso, Beach, D. Hall, Kessler, Leonhardt, Plymale, Walters, Woelfel, Facemire and Stollings

**CODE:** W.Va. Code §47-2-1, §47-2-14a (*new section*), §47-2-14b (*new section*), §47-2-14c (*new section*), §47-2-14d (*new section*)

**ATTORNEY:** Devon Lopez (Intern)

**SUMMARY:**

SB 454 proposes to amend the code by creating 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 provides necessary definitions, and 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, 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.

The Senate Judiciary Committee amended the bill by striking out the title and substituting a new title to read as follows:

A bill to amend and reenact §47-2-1 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto four new sections, designated §47-2-14a, §47-2-14b, §47-2-14c and §47-2-14d, all relating to trademark counterfeiting and forfeiture; defining terms; creating crime of misdemeanor trademark counterfeiting; creating crime of felony trademark counterfeiting; providing penalties; and providing for seizure, forfeiture and disposal of property used or obtained in furtherance of violations.

**DATE OF PASSAGE:** March 10, 2015

**EFFECTIVE DATE:** Regular (90 days from passage)- June 8, 2015

**ACTION BY GOVERNOR:** Signed by Governor on March 18, 2015

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**S.B. 479**

**BILL NO:** Committee Substitute for Senate Bill 479

**SHORT TITLE:** Adding additional family court judges

**SPONSORS:** Senators Trump, Carmichael, Maynard, Miller, Woelfel, Snyder, Ferns, Palumbo, Nohe, Beach, Gaunch, Karnes, D. Hall, Kirkendoll, Romano, Williams and Leonhardt

**CODE:** W.Va. Code §51-2A-3 (amend)

**ATTORNEY:** Brian Casto

**SUMMARY:**

The bill would add a position for one additional family court judge to each of the two following family court circuits, effective January 1, 2017:

The 6<sup>th</sup> Family Court Circuit (Cabell County)

The 23<sup>rd</sup> Family Court Circuit (consisting of Mineral, Hampshire and Morgan Counties)

The bill also provides that :

“Family court judges taking office January 1, 2017, shall be elected at the regularly scheduled election(s) occurring in the year 2016 and shall serve for a term of eight years..”

**Note:**

1. The West Virginia Supreme Court of Appeals contracted with the National Center for State Courts to measure the workload of the 45 family court judges in 27 family court circuits throughout the state. The report found a need for 5.29 additional family court judge positions in order to reduce the workload of those family court judges who are carrying greater than the recommended workloads for family court judges throughout the state. This bill creates one additional family court judge position in each of the two family court circuits with the highest need.

2. On 1<sup>st</sup> reference, the Committee on the Judiciary recommended an amendment to the bill that would add language to the preceding sentence requiring that the family court judges be elected in the “nonpartisan judicial election” of 2016, and that they be elected “by division.”

**DATE OF PASSAGE:** March 13, 2015

**EFFECTIVE DATE:** Regular (90 days from passage)- June 11, 2015

**ACTION BY GOVERNOR:** Signed March 24, 2015

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**S. B. 489**

**BILL NO.:** Senate Bill 489

**SHORT TITLE:** Imposing statute of limitations on civil actions derived from surveying of real property

**SPONSORS:** Senator Carmichael

**CODE:** W.Va. Code § 55-2-6a (*amend and reenact*)

**ATTORNEY:** Mark Adkins

**SUMMARY:**

Senate Bill 489 amend existing code regarding the 10-year statute of repose on actions for damages arising from activities related to improvements of real property. Specifically, Senate Bill 489 clarifies that the surveying of real property should be covered by the 10-year statute of repose for these claims; meaning that claims against a surveyor would be precluded Ten Years following the acceptance of the surveyors services. Existing law currently covers architects and builders as well as others involved in the improvement to real property. This bill is merely a clarification to specifically include surveyors.

**DATE OF PASSAGE:** March 10, 2015

**EFFECTIVE DATE:** Regular (90 days from passage)- June 8, 2015

**ACTION BY GOVERNOR:** Signed by Governor on March 24, 2015

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## S. B. 507

**BILL NO.:** Senate Bill 507

**SHORT TITLE:** Relating to monitoring inmates' electronic communications

**SPONSORS:** Senators Trump and Plymale

**CODE:** W.Va. Code § 31-20-5e (*amend and reenact*)

**ATTORNEY:** Marty Wright

**SUMMARY:**

Senate Bill 507 authorizes the Regional Jail Authority to monitor electronic communications by inmates. Until recently, the Regional Jail Authority did not authorize inmates housed at regional jails to send/receive electronic mail or communications. Instead, inmates could only communicate via written correspondence or telephone. Both forms of communications (written & telephone) are monitored by the Regional Jail authority. Recently, two regional jails set-up kiosks and now allow inmates to send emails. These are currently unmonitored.

Senate Bill 507 amends W.Va. Code §31-20-5e to expressly add “electronic communications” and allow the Regional Jail Authority “to monitor, intercept, record and disclose” electronic communications along with phone and written communications. The bill additionally directs the Executive Director to establish a system to allow confidential, unmonitored communication between an inmate and his or her attorney.

Overall, Senate Bill 507 allows the Regional Jail Authority to keep up with technological advances and to authorize it to monitor a new form of inmate communication, if the jail authority continues to allow email communication by inmates.

**DATE OF PASSAGE:** March 6, 2015

**EFFECTIVE DATE:** Passage- March 6, 2015

**ACTION BY GOVERNOR:** Signed by Governor on March 13, 2015

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## S. B. 510

**BILL NO.:** Senate Bill 510

**SHORT TITLE:** Amending Uniform Interstate Family Support Act

**SPONSORS:** Senator Ferns

**CODE:** Chapter 48, Article 16 (*amend and reenact*)

**ATTORNEY:** Marty Wright

**SUMMARY:**

Senate Bill 510 amends the Uniform Interstate Family Support Act to adopt changes in the law that were part of the 2007 changes by the Hague Convention on the International Recovery of Child Support and Other Form of Family Maintenance. In 2001, the West Virginia Legislature adopted the Uniform Interstate Family Support Act, and codified it in Article 16 of Chapter 48. The intent of the Act was to provide uniformity among all states to provide for the enforcement of family support issues. Currently, the Act sets forth the procedures and provisions relating to the following:

1. Establish a support order
2. Determine the parentage of a child
3. Register or Modify a support order

In 2008, the United States signed onto the 2007 Hague Convention changes, but no requirement was made on the states to similarly adopt. Last year, however, the federal government expressly mandated the adoption of these changes by the close of each states' 2015 legislative session. According to WV DHHR, the failure to pass these changes may result in the defunding of the State's Bureau of Child Support in DHHR. According to DHHR, this would be an estimated loss of \$23 million in federal funding.

Senate Bill 510 gives full faith and credit to child support orders from other countries that are signatories to the Hague Convention amendments. The other countries would be treated like the other states in the United States, and thus, their orders would be adopted and upheld, absent an exception. The bill and Convention amendments expressly provide an exception for orders that are manifestly against the public policy of the state. Hence, if the Country's procedures and/or underlying order are against the public policy of this state, our state court's do not have to abide by them.

Overall, the intent of the bill is to allow the enforcement of orders, both in the United States and in certain foreign countries that have signed onto the agreement. This would equally apply to West Virginia orders being given full enforcement in other countries.

**DATE OF PASSAGE:** March 13, 2015

**EFFECTIVE DATE:** Regular (90 days from passage)- June 11, 2015

**ACTION BY GOVERNOR:** Signed by Governor on March 31, 2015

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**S.B. 523**

**BILL NO.:** Committee Substitute for Senate Bill 523

**SHORT TITLE:** Alcohol and Drug Overdose Prevention and Clemency Act

**SPONSORS:** Senators Cole (Mr. President), Kessler, by request of the Executive

**CODE:** W. Va. Code §16-47-1 through §16-47-6 (*new code*)

**ATTORNEY:** Devon Lopez (Intern)

**SUMMARY:**

SB 523 creates a new article known as the Alcohol and Drug Overdose Prevention and Clemency Act. It provides legislative findings, including that WV has the highest drug overdose mortality rate in the U.S., and it provides definitions for “overdose” and “emergency medical assistance”.

This bill creates immunity from citation, arrest or prosecution for certain offenses for persons who seek appropriate medical treatment either for themselves or others in instances of drug or alcohol overdose. Defines “overdose” and “emergency medical assistance.”

A person who, in good faith and in a timely manner, seeks emergency medical assistance for a person who reasonably appears to be experiencing an overdose shall have criminal immunity for the following offenses

- Purchasing, consuming or possessing wine, nonintoxicating beer, liquor or alcohol by someone under 21;
- Purchasing wine, nonintoxicating beer, liquor or alcohol from a licensee through misrepresentation of age;
- Ordering, paying for, sharing the cost of, purchasing, consuming or possessing nonintoxicating beer, wine or alcohol;
- Purchasing nonintoxicating beer, wine or alcohol from a licensee through misrepresentation of age;
- Knowingly or intentionally possessing a controlled substance or imitation controlled substance without a prescription;
- Appearing in a public place or in a public place in an intoxicated condition.

The immunity provided by this bill does not apply to the following crimes:

2. Selling or serving wine, alcoholic liquor or nonintoxicating beer by someone under the age of 21 as prohibited by §60-8-20a(a), §60-3A-24(a)(1) and §11-16-19(a)(1); and
3. Possessing alcoholic liquor in the amount in excess of 10 gallons, without having written authority from the WV Alcohol and Beverage Control Commissioner as prohibited by §60-6-9(a)(5).

A person is not eligible for immunity unless he or she:

1. Remains with the person who reasonably appears to be in need of emergency medical assistance due to an overdose until such assistance is provided;
2. Identifies himself or herself, if requested by emergency medical assistance personnel or law-enforcement officers; and

3. Cooperates with and provides any relevant information requested by emergency medical assistance personnel or law-enforcement officers needed to treat the person reasonably believed to be experiencing an overdose.

Evidence of seeking emergency medical assistance for a person who reasonably appears to be experiencing an overdose may be considered by a court or jury as a mitigating factor in the sentencing phase of a criminal proceeding which immunity is not granted; provided that the proceeding was instituted based on conduct or evidence obtained as the result of the defendant seeking assistance.

The immunity provisions in section four of the article extend to the person for whom emergency medical assistance was sought, if subsequent to receiving emergency medical assistance, the person participates in, complies with and completes an approved substance abuse treatment or recovery program. Alternatively, the following alternative sentencing and clemency options may be considered:

- Deferred prosecution under §60-6-26 or §60A-4-407;
- Pre-trial diversion under §61-11-15;
- Adjudication in drug court under §62-15-1 et seq. or §49-5-2b; or
- Any other appropriate form of alternative sentencing or rehabilitation permitted by this code, including but not limited to probation, conditional discharge or the weekend jail program.

A person who satisfies certain requirements of this article, but is charged with an offense not exempted, may nevertheless enter a plea of guilty to an offense exempted if the person so desires. The limited immunity provided by the bill does not preclude claims asserted in a civil action based on violations of the statutes exempted. Law-enforcement personnel are immune from civil liability for citing or arresting a person who is later determined to qualify for immunity under this article, except in cases of willful, wanton or reckless misconduct.

**DATE OF PASSAGE:** March 14, 2015

**EFFECTIVE DATE:** Regular (90 days from passage)- June 12, 2015

**ACTION BY GOVERNOR:** Signed by Governor on April 2, 2015



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**S.B. 532**

**BILL NO.:** Committee Substitute for Senate Bill 532

**SHORT TITLE:** Civil liability immunity for clinical practice plans and medical and dental school personnel.

**SPONSORS:** Senators Trump, Woelfel, Plymale, Stolling, Takubo, Prezioso, Carmichael, Ferns and Beach

**DATE:** March 17, 2015

**CODE:** *W. Va. Code* §§ 55-7E-1 through 6. (New)

**ATTORNEY:** Kip Reese 3258

**SUMMARY:**

SB 532 brings the clinical practice plans and personnel associated with the state's medical and dental schools under liability insurance coverage from BRIM, including the practice plans developed at our state universities, as well as their directors, officers, employees and agents.

SB 532 provides liability protection for our medical and dental schools and their professional faculty members through insurance provided by the Board of Risk and Insurance Management, at levels of coverage which have been increased to address recognized concerns for the protection of injured parties.

After lengthy discussion and work with committee members and stakeholders, including WVU, Marshall and BRIM the bill reached compromise, with the following additional provisions:

1. Clinical practice plan is an agent of the state;
2. Contractor must be a member of the state schools' faculty;
3. Limits schools' liability to BRIM coverage;
4. BRIM coverage no less than \$1.5 M (up from \$1M), to increase for inflation up to \$2M - to be paid for by clinical practice plans.

**DATE OF PASSAGE:** March 12, 2015

**EFFECTIVE DATE:** Regular (90 days from passage)- June 10, 2015

**ACTION BY GOVERNOR:** Signed by Governor on March 24, 2015

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## S. B. 542

**BILL NO.:** Committee Substitute for Senate Bill 542

**SHORT TITLE:** Clarifying provisions of Consumer Credit and Protection Act relating to debt collection

**SPONSORS:** Senators D. Hall, Carmichael, M. Hall, Gaunch, Trump, Blair and Nohe

**CODE:** Various provisions in Chapter 46A (the WV Consumer Credit and Protection Act)

**ATTORNEY:** Marty Wright

### **SUMMARY:**

Senate Bill 542 revises and clarifies various provisions in the Consumer Credit Protection Act relating to debt collection practices. Under existing law, the CCPA states that a debt collector may not:

- Collect or Attempt to collect any money alleged to be due and owing by means of any threat, coercion or attempt to coerce (§46A-2-124)
- Oppress or abuse any person ( §46A-2-125)
- Unreasonably publicize information relating to any alleged indebtedness or consumer (§46A-2-126)
- Use fraudulent, deceptive, or misleading representations. (§46A-2-127)
- Unfair or Unconscionable means (§46A-2-128)
- Deceptive or oppressive telephone calls (§46A-2-129a)

Senate Bill 542 clarifies some of these to provisions and makes clear the types of practices that may be taken by a debt collector. In particular, the bill states that a:

- Debt collector may not call any person more than 30 times in a week or actually speak with a person more than 10 times in a week. This clarifies the existing statutory language that merely prohibits calling “repeatedly or continuously” with no quantification. The bill now defines repeated or continuous calling.
- Debt collector may only call between 8:00 am and 9:00 pm. This clarifies the existing statutory language prohibiting calls “at unusual times or at times known to be inconvenient”. Anything outside of this time period would be deemed unusual and inconvenient.
- Debt collector does not unreasonably publicize information relating to any alleged indebtedness if leave a message or identify himself/herself when making a call. This clarifies the existing statutory language prohibiting unreasonable disclosure of indebtedness of a consumer. There have been prior suits alleging that this provisions means leaving a voicemail or call notification on caller i.d.

- Debt collector may only call a third party to extent it is in conformity with federal law.
- Debt collector may not contact a consumer more than 72 hours after the debt collector is made aware of representation by counsel. However, the consumer may still receive monthly statements.

Senate Bill 542 additionally provides for a penalty of \$1,000 per violation. It further establishes a threshold for recovery to \$175,000 or the total amount of indebtedness, whichever is greater. With respect to class actions, the bill further clarifies that the penalties (and caps) are to the treated per plaintiff..

**DATE OF PASSAGE:** March 14, 2015

**EFFECTIVE DATE:** Regular (90 days from passage)- June 12, 2015

**ACTION BY GOVERNOR:** Signed by Governor on March 31, 2015

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## S. B. 574

**BILL NO.:** Senate Bill 574

**SHORT TITLE:** Relating to liquor sales by distilleries and mini-distilleries

**SPONSORS:** Senators Trump, Miller, Woelfel, Snyder, Beach, Gaunch, Karnes, Hall, D., Kirkendoll, and Williams

**CODE:** W.Va. Code § 60-3A-17 (*amend and reenact*)  
W.Va. Code § 60-4-3 (*amend and reenact*)  
W.Va. Code § 60-4-3a (*amend and reenact*)

**ATTORNEY:** Marty Wright

**SUMMARY:**

Senate Bill 574 provides lower fees and mark-ups for liquor sales by distillers and mini-distillers. Under the State's existing three tier system for the sale and distribution of alcohol in West Virginia, manufacturers must first sell their product at wholesale to the State. The State then stores the liquor in its warehouses followed by distributors who distribute the liquor from the State warehouses to retailers who sell liquor to the public. Manufacturers pay a handling fee, a bailment fee, and a 28% markup to the State in connection with the system by which they sell their product to the State and the State then warehouses and handles it.

Senate Bill 574 exempts distillers and mini-distillers from the usual wholesale markup percentage and handling fee, and imposes a separate wholesale markup fee and bailment fee on distillers and mini-distillers. In particular, the bill reduces (from 10% to 2%) the market zone payment percentage due from distillers and mini-distillers, and caps the market zone payment that may be paid by a distiller or mini-distiller at \$15,000 per year. The bill also increases (from 20,000 to 50,000) the number of gallons that a mini-distiller may produce in one year.

Senate Bill 574 additionally reduces service charges imposed on craft distillers from 28% to 5% and eliminates \$ 2.30 /case bailment fee for which no service is provided. However, warehousing, order processing, and delivery fees for distribution services for product through the WVABCA sold to liquor stores remains unchanged.

**DATE OF PASSAGE:** March 14, 2015

**EFFECTIVE DATE:** Regular (90 days from passage)- June 12, 2015

**ACTION BY GOVERNOR:** Signed by Governor on March 31, 2015

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**S.B. 578**

**BILL NO.:** Senate Bill 578

**SHORT TITLE:** Workers' compensation generally

**SPONSORS:** Senators Trump, Carmichael, Ferns, Gaunch, D. Hall, Karnes, Leonhardt, Maynard, Nohe and Williams.

**DATE:** March 17, 2015

**CODE:** *W. Va. Code* §§ 23-4-8d and 23-5-7.

**ATTORNEY:** Kip Reese 3258

**SUMMARY:**

SB578 authorizes compromise and settlement of occupational disease claims—defined as any claims which do not involve the musculoskeletal system. The bill permits final settlement of medical benefits for nonorthopedic occupational disease claims, but for the first time, requires that a claimant must be represented by legal counsel in these claims. Also contrary to current law, when nonorthopedic occupational disease claims are settled, they may be closed for medical benefits. In many nonorthopedic occupational disease claims, medical benefits the medical services, therapies and supplies that are necessary for a life time, such as oxygen, medications, and therapy.

**A. EXISTING LAW:**

§23-4-8d request for medical services, durable goods or other supplies in an occupational pneumoconiosis claim may be made anytime.

§23-5-7 final settlement of any and all issues in WCC claim may be negotiated at anytime in the claim process except for medical benefits for nonorthopedic occupational disease claims;

- ▶ if claim no longer active, WCC may negotiate a final settlement, (lump sum or structured payment) and except in cases of fraud the claim may not be reopened.;
- ▶ settlement agreement to provide
  - phone number of the WV State bar Association
  - 5 days to revoke the settlement agreement;
- ▶ Insurance Commissioner may void unconscionable settlement when injured worker not represented;
- ▶ this has been the procedure since the 1999 effective date.

**B. THIS BILL:**

§23-4-8d request for medical services, durable goods or other supplies in an occupational pneumoconiosis claim may be made anytime except when OP claims are settled under §23-5-7 (discussed below);

§23-5-7 ▶ removes exception for medical benefits for nonorthopedic occupational disease claims when settled;

▶ requires that claimant have counsel for settlement of medical benefits for nonorthopedic occupational disease;

▶ removes exception for final settlement of medical benefits for nonorthopedic occupational disease;

► amendments apply to settlements after 2015 effective date.

**DATE OF PASSAGE:** March 10, 2015

**EFFECTIVE DATE:** Regular (90 days from passage)- June 8, 2015

**ACTION BY GOVERNOR:** Signed by Governor on March 24, 2015

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**S. B. 582**

**BILL NO.:** Senate Bill 582

**SHORT TITLE:** Relating to Herbert Henderson Office of Minority Affairs

**SPONSORS:** Senators Trump, Beach, Carmichael, Ferns, Gaunch, D. Hall, Karnes, Kirkendoll, Leonhardt, Maynard, Miller, Nohe, Palumbo, Romano, Snyder, Williams and Woelfel

**CODE:** W.Va. Code § 5-26-1 & -2 (*amend and reenact*)  
W.Va. Code § 5-26-3 & -4 (*new sections*)

**ATTORNEY:** Marty Wright

**SUMMARY:**

Senate Bill 582 related to the Herbert Henderson Office of Minority Affairs and the establishment of a local community-based pilot demonstration project. In particular, Senate Bill 582 establishes a pilot project to be operated in Charleston, West Virginia and to be overseen by the West Side Revive Comprehensive Community Development Initiative.

As contained in the bill, the objective of the pilot project is to improve public health by addressing child and family poverty and other social detriments of health through a comprehensive community development plan. In operating the pilot project, the initiative shall collaborate with other organizations and agencies to address a litany of issues that are listed in the bill.

Senate Bill 582 further provides that the Executive Director of the Office of Minority Affairs shall request the Commissioner of the Bureau of Public Health to take the lead in coordinating the activities of the state agencies.

Finally, the bill provides that the shall be for a duration of 4 years, and provides for funding from the Minority Affairs Fund.

**DATE OF PASSAGE:** March 14, 2015

**EFFECTIVE DATE:** (VETOED)

**ACTION BY GOVERNOR:** Vetoed by Governor on March 31, 2015 on policy grounds. Governor's veto message states: "HHOMA lacks sufficient financial resources, human resources, and time to devote itself to the considerable local undertaking outlined in this bill. Further, its focus on minority issues should not be local; it should be general and statewide."