

March 29, 2019

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**Bills Completed Legislative Action**

**Senate Bill 1**

*Increasing access to career education and workforce training*

- SB 1 authorizes the formation of partnerships between public secondary schools and community and technical colleges to establish advanced career education programs which would prepare secondary students for success in post-secondary education and the workforce and to provide more opportunities for secondary students to earn post-secondary college credits, certifications, and associate degrees. The bill also encourages community and technical colleges that offer associate degrees to enter into collaborative agreements with federally registered apprenticeship programs that are registered with the United State Department of Labor. Finally, the bill establishes the West Virginia Invests Grant Program. Grants will be awarded to applicants for use at any eligible institution to seek an associate degree or certificate in an eligible post-secondary program.
- **Status** – Signed by Governor on 3/25/2019. Effective 90 days from passage (June 5, 2019).

**Senate Bill 119**

*Specifying documents not subject to discovery in certain proceedings*

- SB 119 provides that any document prepared by or on behalf of a health care provider for the purpose of peer review is confidential and privileged and shall not be subject to discovery in a civil action or administrative proceeding. The bill shields a person who testifies before a review organization, or who is a member of a review organization, from having to testify regarding his or her testimony before the review organization, the deliberations of the review organization, or opinions formed as a result of the review organization's proceedings. Peer review proceedings, communications, and documents of a review organization are confidential and privileged and are not subject to discovery. However, an individual may be given access to documents used as the basis for an adverse professional review action, subject to a protective order, as may be appropriate.
- **Status** – Signed by Governor on 2/8/2019. Effective 90 days from passage (April 29, 2019).

**Senate Bill 340**

*Repealing obsolete provisions of code relating to WV Physicians' Mutual Insurance Company*

- SB 340 repeals West Virginia Code §§33-20F-1 through 33-20F-12 regarding the Board of Risk and Insurance Management's (BRIM) governance, organization, and operation of the Physicians' Mutual Insurance Company.
- **Status** – Signed by Governor on 3/22/2019. Effective 90 days from passage (June 6, 2019).

**Senate Bill 360**

*Relating to third-party litigation financing*

- SB 360 creates requirements and prohibitions for persons, entities, or partnerships engaged in the business of litigation financing in West Virginia. The bill requires litigation financiers to make certain disclosures in litigation financing contracts and, without awaiting a discovery request, to provide to the other parties any agreement under which any litigation financier has a right to receive compensation that is contingent on and sourced from any proceeds of the civil action. Litigation financiers are not allowed to charge a consumer an annual fee of more than 18 percent of the original amount of money provided to the consumer for the litigation financing transaction.
- **Status** - Signed by Governor on 3/25/2019. Effective 90 days from passage (June 5, 2019).

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**Senate Bill 487**

*Relating to admissibility of health care staffing requirements in litigation*

- In actions brought alleging inappropriate staffing or inadequate supervision, if a health care facility or health provider demonstrates compliance with minimum staffing requirements under state law, SB 487 creates a conclusive presumption that appropriate staffing was provided, a rebuttable presumption that adequate supervision of patients to prevent accidents was provided, and provides that a jury shall be instructed accordingly. If staffing is less than the requirements under state law, the bill creates a rebuttable presumption that there was inadequate supervision of patients and that inadequate staffing or inadequate supervision was a contributing cause of the patient's fall and injuries or death arising therefrom, and provides that a jury shall be instructed accordingly.
- **Status** – Vetoed by Governor on 3/27/2019.

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**Senate Bill 499**

*Amending WV tax laws to conform to changes in partnerships for federal income tax purposes*

- SB 499 amends West Virginia tax laws to conform to changes in how partnerships and their partners and other passthrough entities and their equity owners are treated for federal income tax purposes for tax years beginning after December 31, 2017. The bill also amends the West Virginia Tax Procedures and Administration Act, the Personal Income Tax Act, and the Corporation Net Income Tax Act to provide for administration, collection, and enforcement of income tax on certain partnerships and other passthrough entities treated as partnerships for federal income tax purposes and their partners and equity owners in conformity with changes made by the United States Congress in how these entities and their equity owners are treated for federal income tax purposes for taxable years beginning after December 31, 2017.
- **Status** – Signed by Governor on 3/25/2019. Effective July 1, 2019.

### Senate Bill 510

*Relating to medical professional liability*

- SB 510 updates the requirements for a screening certificate of merit, which must be included with a notice of claim and sent to a health care provider at least 30 days prior to filing a medical professional liability action against a health care provider. The certificate of merit must now be executed under oath by a health care provider who (1) is qualified as an expert under the WV Rules of Evidence; (2) meets the requirements of §55-7B-7(a)(5) and §55-7B-7(a)(6) of the West Virginia Code; and (3) devoted, at the time of the medical injury 60 percent of his or her professional time annually to the active clinical practice in his or her medical field or specialty, or to teaching in his or her medical field or specialty in an accredited university. If the health care provider executing the certificate of merit meets these requirements, he or she is presumed qualified as an expert for the purpose of executing a certificate of merit. The bill also adds the requirement that a certificate of merit state with particularity and include a list of all medical records and other information reviewed by the expert executing the certificate of merit. A health care provider may not raise a challenge to the notice of claim prior to the receipt of the notice of claim and the executed screening certificate of merit.
- **Status** – Signed by Governor on 3/25/2019. Effective 90 days from passage (May 29, 2019).

### Senate Bill 511

*Creating alternating wine proprietorships*

- SB 511 revises certain wine code sections to permit alternating wine proprietorships for wineries and farm wineries as permitted under federal law. An alternating wine proprietorship agreement means an agreement between a licensed winery or farm winery and a farm entity which allows the farm entity to use the premises of the licensed farm winery to produce wine. The bill clarifies wine sampling procedures for wineries and farm wineries up to two fluid ounces and no more than three such samples may be given to a patron in any one day at certain fairs and festivals along with wine bottle sales for off-premises consumption only. The bill authorizes wine specialty shops that operate a grocery store meeting certain requirements to sell wine through mobile applications and web-based internet sales with at-store pickup and allows licensed wine specialty shops to deliver wine with gift baskets. The bill also establishes a wine club license for festivals and fairs and sets forth requirements for such, permits certain charitable events to auction wine bottles for off-premises consumption, and permits the sale of wine in Division II and III college stadiums.
- **Status** – Signed by Governor on 3/25/2019. Effective 90 days from passage (June 5, 2019).

### Senate Bill 529

*Clarifying provisions of Nonintoxicating Beer Act*

- SB 529 creates a temporary license for nonintoxicating beer floorplan extensions of existing licensee floorplans and implements a \$100 fee for the license. The bill increases the maximum allowable alcohol content of nonintoxicating craft beer from 12 percent to 15 percent by volume and from nine and six-tenths percent to 11.9 percent by weight.

**Senate Bill 529 continued**

*Clarifying provisions of Nonintoxicating Beer Act*

nonintoxicating beer and nonintoxicating craft beer for one-day charitable events which the commissioner may issue to non-profit corporations, limited liability entities, or associations when raising money for artistic, athletic, charitable, educational, or religious purposes.

- **Status** – Signed by Governor on 3/25/2019. Effective 90 days from Passage (June 6, 2019).

**Senate Bill 531**

*Relating generally to workers' compensation claims*

- SB 531 excludes claims for occupational hearing loss or hearing impairment from the requirement that workers' compensation claimants must be represented by counsel to enter into a settlement agreement when settling medical benefits for non-orthopedic occupational disease claims.
- **Status** – Signed by Governor on 3/25/2019. Effective 90 days from passage (June 4, 2019).

**Senate Bill 603**

*Exempting certain activities from licensing requirements for engaging in business of currency exchange*

- SB 603 exempts persons from operating a payment system that provides processing, clearing, or settlement services in connection with wire transfers, credit or debit card transactions, prepaid access transactions, automated clearinghouse transfers, or similar fund transfers from the licensing requirements for engaging in the business of currency exchange, transportation, or transmission. The bill also exempts contracted service providers of banks, trust companies, foreign bank agencies, credit unions, savings banks, and savings and loan associations authorized to do business in West Virginia or which qualify as federally insured depository institutions that provide processing, clearing, or settlement services in connection with wire transfers, credit or debit card transactions, prepaid access transactions, automated clearinghouse transfers, or similar funds transfers and persons facilitating payment for goods and services pursuant to a contract with the payee and either payment to the person or persons facilitating the payment processing satisfies the payor's obligation to the payee or that obligation is extinguished.
- **Status** – Signed by Governor on 3/25/2019. Effective 90 days from passage (June 7, 2019).

**House Bill 2010**

*Relating to foster care*

- HB 2010 reforms the State's foster care system by placing foster care children into a managed care organization (MCO) run by a yet to be determined private, for-profit corporation. Foster care children overseen by the MCO will not be placed outside the borders of West Virginia, except for medical reasons or if the child will be closer to family members. The bill integrates Medicaid-reimbursed services and it requires the state

**House Bill 2010 (continued)**

Office of the Inspector General to employ an independent ombudsman to monitor the well-being of the foster care children.

- **Status** – Signed by Governor on 3/26/2019. Effective from passage (March 8, 2019).

**House Bill 2049**

*Relating to a prime contractor’s responsibility for wages and benefits*

- HB 2049 amends a section of the Wage Payment and Collection Act by requiring any individual or entity seeking redress for the failure to pay wages and fringe benefits to notify the prime contractor by certified mail within 100 days of the date the wages or fringe benefits become payable to the employee and to commence the action against the employer within one year of the date the employee delivers notice to the prime contractor. The bill also requires employers of employees to whom wages and fringe benefits are owed and unions or other plan administrators representing employees to whom wages and fringe benefits are owed to whenever feasible provide immediately upon request by the employee or the prime contractor complete payroll records. Finally, the bill requires prime contractors to notify the owner and architect of a project prior to the completion of the contract if the subcontractor has not been paid in full.
- **Status** – Signed by Governor on 3/26/2019. Effective 90 days from passage (June 7, 2019).

**House Bill 2079**

*Removing certain limitations on medical cannabis grower, processor and dispensary licenses*

- HB 2079 allows for practitioners to issue a certification to use medical cannabis to a patient if the patient meets certain statutory requirements. The bill limits the number permits the bureau for Public Health within the West Virginia Department of Health and Human Resources may issue. The bureau may not issue permits to more than 10 growers. However, each grower may have up to two locations per permit. The bureau may not issue permits to more than 10 processors or to more than 100 dispensaries. The bureau may not issue more than 10 individual dispensary permits to one person, nor may it issue more than one individual grower permit or individual processor permit to one person. Dispensaries must obtain its medical cannabis only from a grower or processor holding a valid permit, and a grower processor may only provide medical cannabis to a dispensary holding a valid permit. The bill also provides for testing of medical cannabis for THC levels, purity, and contaminants. Finally, the bill modifies tax rates and tax procedures regarding medical cannabis organizations.
- **Status** – Vetoed by Governor on 3/27/2019.

**House Bill 2481**

*Permitting retail sale of alcoholic beverages on Sundays after 1 p.m.*

- HB 2481 permits the retail sale of alcoholic beverages on Sunday after 1 p.m. The bill disallows the retail sale of alcoholic beverages on Easter Sunday, Christmas day, and a Sunday on which Christmas day falls.
- **Status** – Signed by the Governor on 2/28/2019. Effective from passage (2/19/2019).

**House Bill 2538**

*Providing banking services for medical cannabis*

- HB 2538 provides banking services for services provided under the West Virginia Medical Cannabis Act. The bill allows the State Treasurer to competitively bid one or more financial institutions to provide banking services for the fees, penalties, and taxes collected under the Medical Cannabis Act. The bill creates the Treasurer’s Medical Cannabis Fund to receive all fees charged by the Treasurer. The bill also requires the Enterprise Resource Planning Board to configure wvOASIS to allow deposits in, investing moneys in, and making payments from the accounts established by the Treasurer at a selected financial institution.
- **Status** – Signed by Governor on 3/26/2019. Effective from passage (March 5, 2019).

**House Bill 2673**

*Creating the Oil and Gas Abandoned Well Plugging Fund*

- HB 2673 exempts low volume oil and gas wells from severance tax and provides for a special use fee of five percent on sales from all natural gas produced from any well which produced an average in excess of 60,000 cubic feet of natural gas per day and for oil produced from any well which produced an average in excess of 10 barrels per day. The bill also provides for a special use fee of two and a half percent for all natural gas produced from any well which produced an average between 5,000 cubic feet of natural gas per day and 60,000 cubic feet of natural gas per day and for oil produced from any well which produced an average between one-half barrel per day and 10 barrels per day. The special use fee will be deposited into the Oil and Gas Abandoned Well Plugging Fund within the Treasury and used by the Secretary of the Department of Environmental Protection to plug abandoned oil and gas wells.
- **Status** – Vetoed by Governor on 3/27/2019.

**House Bill 2703**

*Relating to refunds of excise taxes collected from dealers of petroleum products*

- HB 2703 increases the cap on refunds of gasoline tax due to evaporation from one-half percent to one percent.
- **Status** – Vetoed by Governor on 3/27/2019.

**House Bill 2734**

*Relating to reduced rates for low-income residential customers of privately owned sewer and combined water and sewer utilities*

- HB 2734 provides reduced rates for low-income residential customers of privately owned sewer utilities for sewer or combined water and sewer utilities.
- **Status** – Vetoed by Governor on 3/27/2019.



**House Bill 2807**

*Creating an additional modification to the West Virginia adjusted gross income of shareholders of S corporations engaged in banking*

- HB 2807 provides a reducing modification to the West Virginia adjusted gross income of a shareholder of an S corporation or member of a limited liability company engaged in banking business in the State of West Virginia and makes the modification retroactive with respect to tax years beginning on or after January 1, 2019. The reducing modification is similar to the modification that presently exists in the West Virginia Code for financial organizations organized as C corporations.
- **Status** – Vetoed by Governor on 3/27/2019.

**House Bill 2813**

*Relating generally to collection of use tax*

- HB 2813 requires out-of-state retailers that do not have a physical presence in the State of West Virginia and who have not voluntarily agreed to collect West Virginia use tax but have an economic nexus with the State, as defined in the bill, to begin collecting West Virginia state and municipal sales and use tax on sales to consumers in the State. Marketplace facilitators, referrers, and remote sellers are treated as out-of-state retailers and are subjected to the tax collection and remittance requirements of the provision. A marketplace facilitator contracts with third-party sellers to promote their sale of physical property, digital goods, and services through the marketplace. A referrer is a person, other than a person in the newspaper business, who contracts and agrees with a seller to list or advertise for sale items in any medium and receives a commission, fee, or other consideration from the seller for the listing or advertisement. Remote seller means any seller, other than a marketplace facilitator or referrer, who has no physical presence in the State but through a platform sells tangible personal property or services to persons in the State.
- **Status** – Signed by Governor on 3/27/2019. Effective 90 days from passage (June 6, 2019).

**House Bill 2828**

*Relating to Qualified Opportunity Zones*

- HB 2828 exempts income derived from investments in Qualified Opportunity Zones from personal and corporate net income taxes. The bill also provides a new article the West Virginia New Markets Jobs Act which provides a tax credit for qualified equity investments in qualified low-income community investments in qualified active low-income community businesses located in West Virginia. There is a maximum qualified low-income community investment amount of \$5 million in a business.
- **Status** – Vetoed by Governor on 3/27/2019.

**House Bill 2829**

*Relating to the termination of severance taxes on limestone and sandstone*

- HB 2829 terminates and expires termination of severance taxes on limestone and sandstone effective July 1, 2019. The bill does not relieve any person of any liability to pay taxes imposed under the article with respect to privileges exercised before July 1, 2019.

### House Bill 2829 (continued)

- **Status** – Signed by Governor on 3/27/2019. Effective 90 days from passage (May 30, 2019).

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### House Bill 2934

#### *West Virginia Lottery Interactive Wagering Act*

- HB 2934 authorizes the operation of West Virginia Lottery interactive wagering (iGaming) at existing racetrack casinos and in the casino at the Greenbrier historic resort hotel. iGaming means wagering on any authorized interactive game. Authorized interactive games are computerized or virtual versions of any game of chance or digital simulation thereof, including, but not limited to, casino themed slot simulations, table games, and other games approved by the commission. There is a 15 percent privilege tax on iGaming licensee's adjusted gross interactive wagering receipts payable to the State of West Virginia on a weekly basis.
- **Status** – Became law without Governor's signature. Effective 90 days from passage (June 7, 2019).

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### House Bill 3142

#### *Relating to reducing the severance tax on thermal or steam coal*

- HB 3142 reduces the severance tax on thermal or steam coal incrementally over the next three tax years for a total reduction of two percent by July 21, 2021. The bill also eliminates the restrictions on counties and municipalities expending and reporting the expenditure of the county and municipality portion of the severance tax.
- **Status** – Signed by Governor on 3/27/2019. Effective 90 days from passage (June 7, 2019).

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### House Bill 3144

#### *North Central Appalachian Coal Severance Tax Rebate Act*

- HB 3144 establishes a coal severance tax rebate, which allows for investment in new machinery, equipment, or improvements to real property used in severing coal for sale, profit, or commercial use and coal preparation and processing facilities placed in service or use on after the effective date of this article. The rebate amount is 35 percent of the cost of the new machinery, equipment, or improvements to real property, and the rebate amount is limited to 80 percent of the State portion of the severance taxes attributable to the additional coal produced as a result of the new machinery, equipment, or improvements to real property at the mine or coal processing and preparation plant. The bill also provides rules to protect the existing severance tax base attributable to the production of coal.
- **Status** – Signed by Governor on 3/27/2019. Effective 90 days from passage (June 7, 2019).



## Bills of Interest that Failed to Complete Legislative Action

### Senate Bill 258

*Establishing common law “veil piercing” claims not be used to impose personal liability*

- SB 258 provides that common law corporate “veil piercing” claims may not be used to impose personal liability on a member or manager of a limited liability company and nullifies the Supreme Court of Appeals of West Virginia’s decision in *Joseph Kubican v. The Tavern, LLC*, 232 W. Va. 268, 752 S.E.2d 299 (2013) (holding that W. Va. Code § 31B-3-303 permits the equitable remedy of piercing the veil to be asserted against a West Virginia limited liability company).
- **Status** – Died in House Judiciary.

### Senate Bill 266

*Creating Intermediate Court of Appeals and WV Appellate Review Organization Act of 2019*

- SB 266 creates an Intermediate Court of Appeals. The three-judge court would begin operating July 1, 2020 with a start-up cost of \$7.3 million. The Intermediate Court would handle appeals of civil cases, guardianship and conservatorship cases, administrative agency decisions, and Workers’ Compensation Review Board decisions. Judges on the Intermediate Court would serve 10-year terms and earn \$130,000 per year.
- **Status** – Died in House Judiciary.

### Senate Bill 348

*Relating to tobacco usage restrictions*

- SB 348 raises the age on tobacco purchases to 21 years of age.
- **Status** – Died in House Health and Human Resources.

### Senate Bill 451

*Comprehensive education reform*

- SB 451 provides for a five percent salary increase for teachers and school service personnel, provides for a number of school funding improvements, creates a public charter school system, and creates a 2,500 first-come, first-served education savings accounts (ESAs) for parents making a combined household income of less than \$150,000 a year which may be used for educational expenses ranging from tutoring and after-school programs to private schools and their associated costs. The bill requires unions to obtain annual permission before taking dues from teachers’ paychecks and potentially docks teachers’ pay during any work stoppage. The bill also contains a severability clause, rendering all aspects of the bill invalid if any portion of the bill is successfully challenged in court.
- **Status** – House adopted a motion to postpone indefinitely on 2/19/2019.

**Senate Bill 580**

*Relating generally to Local Control and Accountability Act*

- SB 580 permits counties to implement a one percent consumer sales tax in areas where there was no municipal sales tax.
- **Status** – Died in Senate Finance.

**Senate Bill 650**

*Protecting consumer from price gouging after state of emergency.*

- SB 650 protects consumers from price gouging and unfair pricing practices during and shortly after a state of emergency.
- **Status** – Passed Senate Judiciary but referred to Rules on 2nd reading in the Senate, turned into a study resolution.

**House Bill 2365**

*Clarifying the definition of an employee for the purposes of unemployment compensation and workers' compensation*

- HB 2365 clarifies whether an employee is in fact an employee or an independent contractor for the purposes of unemployment compensation and workers' compensation by codifying the 20-factor test used by the IRS.
- **Status** – Died in Senate Judiciary but was turned into a study resolution.

**House Bill 2478**

*Modifying the Fair Trade Practices Act*

- HB 2478 modifies the Unfair Trade Practices Act regarding cost and damages. §47-11A-6 is amended by including applicable taxes to the invoice cost of a product or item of merchandise to a retailer in determining the meaning of the term "cost." The bill also amends §47-11A-9 by providing that upon a finding by the court of bad faith on the part of the person violating the Unfair Trade Practices Act, the court may award the plaintiff treble damages, court costs, litigation costs, and attorneys' fees.
- **Status** – Died in Senate Judiciary.

**House Bill 2519**

*The Campus Self Defense Act*

- HB 2519 permits the carrying of concealed deadly weapons on college campuses in West Virginia. The bill includes an enumerated list of 12 specific areas of state institutions of higher education where the schools are still allowed to regulate possession of concealed pistols or revolvers by persons holding a current and valid license to carry a concealed deadly weapon.
- **Status** – Died in Senate Judiciary.