

# Bowles Rice

## **WEST VIRGINIA MUNICIPAL LEAGUE**

### **ANNUAL MUNICIPAL JUDGE TRAINING**

Floyd M. Sayre, III, Esq.  
November 19, 2024  
Charleston, WV

# Agenda

- 8:00 a.m. - 9:00 a.m.      **Registration**
- 9:00 am. - 9:15 a.m.      **Welcome - Overview of Training Session**
- 9:15 a.m. - 10:00 a.m.      **Session I – Update of Law**
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- 10:00 a.m. – 11:00 a.m.      **Session II WV Ethics Commission**
- 11:00 am – 11:15 am      **Break**
- 11:15 a.m. – Noon.      **Session III Granting and Revocation of Bond**
- Noon. – 1:00 p.m.      **Lunch**

# Agenda

- 1: 00 p.m. – 2:15 p.m.      **Session IV – Evidence**
- 2:15 p.m. – 2:45 p.m.      **Session V – Traffic School and other services  
provided by WVML and WV  
Association of Municipal Judges**
- 2:45 p.m. - 3:00 p.m.      **Break**
- 3:00: p.m. - 3:45 p.m.      **Session VI – Review of West Virginia Traffic  
Law**
- 3:45 p.m. – 4:00 p.m.      **Session VII – Roundtable Discussion and Wrap  
up**

# A WORD OF CAUTION

These materials are presented with the understanding that the information provided is not legal advice. Due to the rapidly changing nature of the law, information contained in this presentation may become outdated. Anyone using information contained in this presentation should always research original sources of authority and update this information to ensure accuracy when dealing with a specific matter. No person should act or rely upon the information contained in this presentation without seeking the advice of an attorney.



# Bowles Rice

## **WEST VIRGINIA MUNICIPAL LEAGUE**

### **Update of Law**

Floyd M. Sayre, III, Esq.  
2024

# HB 4845

- Increasing the penalties for certain instances of false reporting of an emergency incident, clarifying the applicability of this section; and establishing a protocol for restitution.

# HB 4845

- **§61-6-20. Falsely reporting an emergency incident.**
- A person is guilty of reporting a false emergency incident when knowing the information reported, conveyed, or circulated is false or baseless, he or she:
  - Initiates or circulates a false report or warning of or impending occurrence of a fire, explosion, crime, catastrophe, accident, illness, or other emergency under circumstances in which it is likely that public alarm or inconvenience will result or that firefighting apparatus, ambulance apparatus, one or more rescue vehicles or other emergency apparatus might be summoned; or
  - Reports, by word or action, to any official or quasi-official agency or organization having the function of dealing with emergencies involving danger to life or property, an alleged occurrence or impending occurrence of a fire, explosion, crime, catastrophe, accident, illness, or other emergency in which it is likely that public alarm or inconvenience will result or that firefighting apparatus, ambulance apparatus, one or more rescue vehicles or other emergency apparatus might be summoned, which did not occur, does not in fact exist; or

# HB 4845

- Reports to a law-enforcement officer or agency the alleged occurrence of any offense or incident which did not in fact occur, or an allegedly impending occurrence of an offense or incident which is not in fact about to occur, or false information relating to an actual offense or incident or to the alleged implication of some person; or
- Without just cause, calls or summons by telephone, fire alarm system, or otherwise, any firefighting apparatus, ambulance apparatus, rescue vehicles, or other emergency vehicles.

# HB 4845

- Any person who violates guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than \$500 or confined in jail not more than six months, or both fined and confined.
- Second or subsequent violation of the provisions of this section or, of a violation of this section which results in bodily injury to another person is guilty of a felony and, upon conviction thereof, shall be fined not less than \$5,000 nor more than \$10,000, or imprisoned in a state correctional facility for a term of not less than one year nor more than five years, or both fined and imprisoned.

# HB 4845

- Prior to the sentencing of a person who has been convicted of a violation of this section, the court may enter an order directing any law enforcement agency or emergency service provider involved in the emergency response that wishes to be reimbursed for the costs incurred by the agency or provider during the emergency response, to file with the court within a specified time an itemized statement of those costs. The court may then order the offender to reimburse the agency for all or a portion of those costs.
- This section does not apply to any person conducting an authorized emergency drill.

# HB 4339

- Expungement of criminal records;
- When a civil action may be filed to expunge criminal records for cases where charges have been dismissed following a full and successful completion of a pretrial diversion or deferred adjudication;
- Exceptions to the allowance to file a civil action for expungement.

# HB 4339

- Any person who has been charged with a criminal offense and who has been found not guilty of the offense, or against whom charges have been dismissed, and not in exchange for a guilty plea to another offense resulting in a conviction, may file a civil petition in circuit court to expunge all records relating to the arrest, charge, or other matters arising out of the arrest or charge.
- That no record in the Division of Motor Vehicles may be expunged by virtue of any order of expungement entered pursuant to §17C-5-2b
- That any person who has previously been convicted of a felony may not file a petition for expungement pursuant to this section.



# HB 4339

- That any person who has previously been convicted of a felony may not file a petition for expungement pursuant to this section.
- The term records as used in this section includes, but is not limited to, arrest records, fingerprints, photographs, index references, or other data whether in documentary or electronic form, relating to the arrest, charge, or other matters arising out of the arrest or charge.
- Criminal investigation reports and all records relating to offenses subject to the provisions of §15-12-1 *et seq.* of this code because the person was found not guilty by reason of mental illness, intellectual disability, or addiction are exempt from the provisions of this section.

# HB 4339

- The expungement petition shall be filed not sooner than 60 days following the order of acquittal or dismissal by the court. Any court entering an order of acquittal or dismissal shall inform the person who has been found not guilty or against whom charges have been dismissed of his or her rights to file a petition for expungement pursuant to this section.
- Following the filing of the petition, the court may set a date for a hearing. If the court does so, it shall notify the prosecuting attorney and the arresting agency of the petition and provide an opportunity for a response to the expungement petition.
- If the court finds that there are no current charges or proceedings pending relating to the matter for which the expungement is sought, the court may grant the petition and order the sealing of all records in the custody of the court and expungement of any records in the custody of any other agency or official including law enforcement records.

# HB 4339

- Every agency with records relating to the arrest, charge, or other matters arising out of the arrest or charge, that is ordered to expunge records, shall certify to the court within 60 days of the entry of the expungement order, that the required expungement has been completed. All orders enforcing the expungement procedure shall also be sealed.
- Upon expungement, the proceedings in the matter shall be considered never to have occurred.
- The court and other agencies shall reply to any inquiry that no record exists on the matter.
- The person whose record is expunged shall not have to disclose the fact of the record or any matter relating thereto on an application for employment, credit, or other type of application.

# HB 4998

- Modifying the penalties for third offense conviction of shoplifting;
- Eliminating requirement for third offense conviction that the person actually serve one year of confinement or in the alternative home confinement;
- Directing courts to order substance abuse evaluation upon a finding that the defendant is a substance abuser; authorizing directed treatment;
- Specifying method to determine the number of convictions a defendant has.

# HB 4998

- A person convicted of shoplifting shall be punished as follows:
- *First offense conviction.* — Upon a first shoplifting conviction:
  - When the value of the merchandise is less than or equal to \$500, the person is guilty of a misdemeanor and, shall be fined not more than \$250.
  - When the value of the merchandise exceeds \$500, the person is guilty of a misdemeanor and, shall be fined not less than \$100 nor more than \$500, and such fine shall not be suspended, or the person shall be confined in jail not more than 60 days, or both.

# HB 4998

- A person convicted of shoplifting shall be punished as follows:
- *Second offense conviction.* — Upon a second shoplifting conviction:
  - When the value of the merchandise is less than or equal to \$500, the person is guilty of a misdemeanor and, shall be fined not less than \$100 nor more than \$500, and such fine shall not be suspended, or the person shall be confined in jail not more than six months or both.
  - When the value of the merchandise exceeds \$500, the person is guilty of a misdemeanor and, shall be fined not less than \$500 and shall be confined in jail for not less than six months nor more than one year.

# HB 4998

- A person convicted of shoplifting shall be punished as follows:
- *Third offense conviction.* — Upon a third or subsequent shoplifting conviction, regardless of the value of the merchandise,
  - The person is guilty of a felony and, shall be fined not less than \$500 nor more than \$5000, and shall be imprisoned in a state correctional facility for not less than one year nor more than 10 years.
  - If the court finds that probable cause exists that a person convicted of third or subsequent offense was abusing drugs or alcohol at the time of his or her arrest, it shall order an evaluation of the defendant to determine whether he or she has a substance use disorder.
  - Upon a finding by the Court that the person convicted of a third or subsequent offense suffers from a substance use disorder, the Court may order that the defendant undergo treatment for the substance use disorder as part of his or her sentence.

# HB 4998

- A person convicted of shoplifting shall be punished as follows:
- *Mandatory penalty.* — In addition to the fines and imprisonment imposed by this section, in all cases of conviction for the offense of shoplifting, the court shall order the defendant to pay a penalty to the mercantile establishment involved in the amount of \$50, or double the value of the merchandise involved, whichever is higher. The mercantile establishment shall be entitled to collect such mandatory penalty as in the case of a civil judgment. This penalty shall be in addition to the mercantile establishment's rights to recover the stolen merchandise.



# HB 4998

- In determining the number of prior shoplifting convictions a defendant has, the court shall count convictions in other jurisdictions if that jurisdiction's offense has the same essential elements of this section, disregarding the value of the property shoplifted:
- *Provided*, That regardless of the jurisdiction, the court shall not count prior convictions that occurred more than seven years prior to the date of the third or subsequent offense.

# HB 5238

- Mandating that all courts provide adjudication records for traffic violations and certain other offenses of juvenile offenders to the Division of Motor Vehicles.

# HB 5238

- **Graduated driver's license.**

- A person under the age of 18 may not operate a motor vehicle unless he or she has obtained a graduated driver's license in accordance with the three-level graduated driver's license system described in the following provisions.
- Any person under the age of 21, regardless of class or level of licensure, who operates a motor vehicle with any measurable alcohol in his or her system is subject to §17C-5-2 and §17C-5A-2 of this code. Any person under the age of 17, regardless of class or licensure level, is subject to the mandatory school attendance and satisfactory academic progress provisions of §18-8-11 of this code:
  - *Provided*, That a person may otherwise be eligible for a restricted license or instruction permit pursuant to §18-8-11.

# HB 5238

- *Level one instruction permit.* — An applicant who is 15 years or older meeting all other requirements prescribed in this code may be issued a level one instruction permit.
  - *Eligibility.* — The division may not issue a level one instruction permit unless the applicant:
  - Presents a completed application, which is accompanied by writing, consenting to the issuance of the graduated driver's license, and executed by a parent or guardian entitled to custody of the applicant;
  - Presents a certified copy of a birth certificate a valid passport;
  - Passes the vision and written knowledge examination and completes the driving under the influence awareness program, as prescribed in §17B-2-7 of this code; and
  - Pays a fee of \$7.50,

# HB 5238

- *Terms and conditions of instruction permit. —*
  - A level one instruction permit issued under this section is valid until 30 days after the date the applicant attains the age of 18 and is not renewable:
  - *Provided*, That for an applicant who is an active member of any branch of the United States military, a level one instruction permit issued under the provisions of this section is valid until 180 days after the date the applicant attains the age of 18.
  - However, any permit holder who allows his or her permit to expire prior to successfully passing the road skills portion of the driver examination, and who has not committed any offense which requires the suspension, revocation, or cancellation of the instruction permit, may reapply for a new instruction permit.

# HB 5238

- *Terms and conditions of instruction permit. —*
  - The division shall immediately revoke the permit upon receipt of a second conviction for a moving violation of traffic regulations and laws of the road or violation of the terms and conditions of a level one instruction permit, which convictions have become final unless a greater penalty is required.
  - Any person whose instruction permit has been revoked is disqualified from retesting for a period of 90 days.
  - However, after the expiration of 90 days, the person may retest if otherwise eligible.
  - A holder of a level one instruction permit who is under the age of 18 years may not use a wireless communication device while operating a motor vehicle unless the use of the wireless communication device is for contacting a 9-1-1 system.

# HB 5238

- *Terms and conditions of instruction permit. —*
  - The permit holder is under the direct supervision of a licensed driver, 21 years of age or older, or a driver's education or driving school instructor
  - The vehicle may be operated with no more than two additional passengers, unless the passengers are family members;
  - The permit holder is operating the vehicle between the hours of 5 a.m. and 10 p.m.;
  - All occupants use safety belts;
  - The permit holder is operating the vehicle without any measurable blood alcohol content,
  - The permit holder maintains current school enrollment and is making satisfactory academic progress.

# HB 5238

- *Level two intermediate driver's license.* — An applicant 16 years of age or older.
  - Presents a completed application;
  - Has held the level one instruction permit conviction-free for the 180 days immediately preceding the date of application for a level two intermediate license;
  - Has completed either a driver's education course approved by the State Department of Education or 50 hours of behind-the-wheel driving experience, including a minimum of 10 hours of night time driving,



# HB 5238

- *Level two intermediate driver's license.* — An applicant 16 years of age or older, meeting all other requirements of this code, may be issued a level two intermediate driver's license.
  - Passes the road skills examination as prescribed by §17B-2-7 of this code; and
  - Pays a fee of \$7.50 for one attempt.

# HB 5238

- *Terms and conditions of a level two intermediate driver's license. —*
  - Expires 30 days after the applicant attains the age of 18, or until the licensee qualifies for a level three full Class E license, whichever comes first.
  - A holder of a level two intermediate driver's license who is under the age of 18 years shall not use a wireless communication device while operating a motor vehicle unless the use of the wireless communication device is for contacting a 9-1-1 system.
  - The licensee operates a vehicle unsupervised between the hours of 5 a.m. and 10 p.m.;

# HB 5238

- *Terms and conditions of a level two intermediate driver's license. —*
  - The licensee operates a vehicle only under the direct supervision of a licensed driver, age 21 years or older, between the hours of 10 p.m. and 5 a.m. except :
    - Lawful employment;
    - A school-sanctioned activity;
    - A religious event; or
    - An emergency situation that requires the licensee to operate a motor vehicle to prevent bodily injury or death of another;
  - All occupants of the vehicle use safety belts;

# HB 5238

- *Terms and conditions of a level two intermediate driver's license. —*
  - For the first six months after issuance of a level two intermediate driver's license, the licensee may not operate a motor vehicle carrying any passengers less than 20 years old, unless these passengers are family members of the licensee;
  - for the second six months after issuance of a level two intermediate driver's license, the licensee may not operate a motor vehicle carrying more than one passenger less than 20 years old, unless these passengers are family members of the licensee;
  - The licensee operates a vehicle without any measurable blood alcohol content in accordance with §17C-5-2(h) of this code;
  - The licensee maintains current school enrollment and is making satisfactory academic progress or otherwise shows compliance with §18-8-11 of this code:

# HB 5238

- *Terms and conditions of a level two intermediate driver's license. —*
  - Upon the first conviction for a moving traffic violation the licensee shall enroll in an approved driver improvement program unless a greater penalty is required by this section or by any other provision of this code; and
  - At the discretion of the commissioner, completion of an approved driver improvement program may be used to negate the effect of a minor traffic violation as defined by the commissioner against the one year conviction-free driving criteria for early eligibility for a level three driver's license

# HB 5238

- *Terms and conditions of a level two intermediate driver's license. —*
  - Upon the second conviction for a moving traffic violation or a violation of the terms and conditions of the level two intermediate driver's license, the Division of Motor Vehicles shall revoke or suspend the licensee's privilege to operate a motor vehicle for the applicable statutory period or until the licensee's 18th birthday, whichever is longer,

# HB 5238

- *Level three, full Class E license.* — The level three license is valid until 30 days after the date the licensee attains his or her 21st birthday.
- A holder of a level three driver's license who is under the age of 18 years shall not use a wireless communication device while operating a motor vehicle unless the use of the wireless communication device is for contacting a 9-1-1 system.
- Holder of a level three full Class E license is subject to the same terms and conditions as the holder of a regular Class E driver's license.

# HB 5238

- A level two intermediate licensee whose privilege to operate a motor vehicle has not been suspended, revoked, or otherwise canceled and who meets all other requirements of the code may be issued a level three full Class E license without further examination or road skills testing if the licensee:
  - Has reached the age of 17 years;
  - Presents a completed application;
  - Has held the level two intermediate license conviction free for the 12-month period immediately preceding the date of the application;
  - Has completed any driver improvement program required
  - Pays a fee of \$2.50 for each year the license is valid. An additional fee of 50 cents shall be collected to be deposited in the Combined Voter Registration and Driver's Licensing Fund



# HB 5238

- A person violating the provisions of the terms and conditions of a level one instruction permit, level two intermediate driver's license, or level three license is guilty of a misdemeanor and, upon conviction thereof, shall for the first offense be fined \$25; for a second offense, be fined \$50; and for a third or subsequent offense be fined \$75.
- All adjudications of delinquency or convictions of any type in a juvenile proceeding which involve a traffic offense, a violation of any provision of this section shall be forwarded to the Commissioner of the Division of Motor Vehicles

# SB 164

- Relating generally to trespass; clarifying protected activities relating to trespass on property other than a structure or conveyance; making double damages applicable to all violations of the article including cleanup costs; authorizing courts presiding in cases for misdemeanor violations of the article to defer entry of judgment and dismiss the charges if payment of ordered damages is made within six months after conviction; and creating criminal penalties.

# SB 164

- Any person who knowingly enters in, upon, or under a structure or conveyance without being authorized, licensed, or invited, or having been authorized, licensed, or invited is requested to depart by the owner, tenant, or the agent of the owner or tenant, and refuses to do so, is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than \$100.

# SB 164

- Any person who, without permission, knowingly and willfully enters a structure which has a clear posting that the structure has been condemned by any municipal or county government as unfit for human habitation or use, is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$100, or confined in jail not more than six months, or both fined and confined:
- *Provided*, That for any first violation of this subsection offense of trespass on condemned property, a court may substitute community service or pretrial diversion in lieu of a fine or confinement for trespassing on condemned property.

# SB 164

- If the offender is armed with a firearm or other dangerous weapon while in the structure or conveyance, with the intent to do bodily injury to a human being in the structure or conveyance at the time the offender knowingly trespasses, the offender, is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than \$100 nor more than \$1,000, or be confined in jail for not more than one year, or both fined and confined.

# SB 164

- It is an unlawful trespass for any person to knowingly, and without being authorized, licensed, or invited, to enter or remain on any property, other than a structure or conveyance, as to which notice against entering or remaining is either given by actual communication to such person or by posting, fencing, or cultivation.

# SB 164

- *First offense conviction.* — Upon a first trespassing conviction the person is guilty of a misdemeanor and shall be fined not less than \$100 nor more than \$500.
- *Second offense conviction.* — Upon a second trespassing conviction the person is guilty of a misdemeanor and shall be fined not less than \$500 nor more than \$1,000.
- *Third offense conviction.* — Upon a third and subsequent trespassing conviction the person is guilty of a misdemeanor and shall be fined not less than \$1,000 nor more than \$1,500.

# SB 164

- If the offender defies an order to leave, personally communicated to him or her by the owner, tenant, or agent of the owner or tenant, or if the offender opens any door, fence, or gate, and thereby exposes animals, crops, or other property to waste, destruction, or freedom, or causes any damage to property by such trespassing on property other than a structure or conveyance,
- He or she is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$100 nor more than \$500, confined in jail for not more than six months, or both fined and confined.



# SB 164

- If the offender is armed with a firearm or other dangerous weapon with the unlawful and felonious intent to do bodily injury to a human being during his or her commission of the offense of trespass on property other than a structure or conveyance, the offender, is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for not more than six months, fined not less than \$100 nor more than \$1,000, or both confined and fined.

# SB 164

- Nothing in this section shall be construed to prevent lawful assembly and petition for the lawful redress of grievances, during any dispute, including, but not limited to, activities protected by the West Virginia Constitution, or the United States Constitution, or any statute of this state or the United States.

# SB 164

- A person who willfully enters an underground coal mine, whether active workings, inactive workings, or abandoned workings, without permission, is guilty of a felony and, upon conviction thereof, shall be imprisoned in a correctional facility not less than one year and nor more than 10 years and shall be fined not less than \$5,000 nor more than \$10,000:
- *Provided*, That for any conviction, any inactive or abandoned underground workings must be either: (1) Sealed; or (2) clearly identified by signage at some conspicuous place near the entrance of the mine that includes a notice that the unauthorized entry into the mine is a felony criminal offense.

# SB 164

- A person who willfully enters a surface coal mine, without permission, and with the intent to commit a felony or any larceny, is guilty of a misdemeanor and shall be confined in jail not less than one week and not more than one month and shall be fined not less than \$1,000 nor more than \$5,000.
- For a second conviction, the person shall be guilty of a felony and shall be imprisoned not less than one year and not more than five years and shall be fined not less than \$5,000 nor more than \$10,000.
- For a third or subsequent conviction, pursuant to this subsection, the person shall be guilty of a felony and shall be imprisoned in a correctional facility not less than five years and not more than 10 years and shall be fined not less than \$10,000 nor more than \$25,000.

# SB 164

- If during any rescue efforts for that person there occurs an injury that causes substantial physical pain, illness, or any impairment of physical condition to any person other than himself or herself, then that person is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for not less than one week and not more than one year and shall be fined not less than \$1,000 nor more than \$5,000: *Provided*, That the jail term shall include actual confinement of not less than seven days.

# SB 164

- If during any rescue efforts for that person there occurs an injury that creates a substantial risk of death, causes serious or prolonged disfigurement, prolonged impairment of health, or prolonged loss or impairment of the function of any bodily organ to any person other than himself or herself, then that person is guilty of a felony and, upon conviction thereof, shall be imprisoned in a correctional facility for not less than two nor more than 10 years and shall be fined not less than \$5,000 nor more than \$10,000.

# SB 164

- If during any rescue efforts of such person, the death of any other person occurs, then that person is guilty of a felony and, upon conviction thereof, shall be imprisoned in a correctional facility for not less than three nor more than 15 years and shall be fined not less than \$10,000 nor more than \$25,000.

# SB 164

- **Animal or crop facilities trespass; penalties; injunctive relief.**
- As used in this section:
- "Animal" means poultry, livestock, domestic animals, and captive cervids owned and possessed by persons licensed pursuant to §19-2H-1 *et seq.* of this code. The term does not include an animal used for illegal gaming.



# SB 164

- "Animal or crop facility" means a facility that is used in the production, management, sale, or processing of animals or crops. The term includes, but is not limited to:
  - A building, greenhouse, structure, laboratory, pasture, field, paddock, pond, impoundment, or premises where animals or crops are located;
  - A managed bee colony;
  - A livestock market;
  - A facility used for the preparation of, or processing of, animals, crops, or value-added foods for sale; and
  - A facility used to carry out any agritourism activity, as that term is defined and used in §19-36-1 *et seq.* of this code.

# SB 164

- "Crop" means a shrub, vine, tree, seedling, shoot, slip, or other plant capable of producing food, fiber, medicine, nursery stock, floral products, or aesthetic beauty.

# SB 164

- Any person who willfully trespasses on the property of another which constitutes an animal or crop facility with the intent to commit larceny, destroy property, or disrupt the operation of the facility is guilty of willful trespass upon an animal or crop facility.
- Any person who conspires with one or more persons to commit an overt act in furtherance thereof is guilty of conspiracy to willfully trespass upon an animal or crop facility.

# SB 164

- Is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$500 nor more than \$1,000 or confined in jail not more than 30 days, or both fined and confined.
- Person convicted of a second or subsequent is guilty of a felony and, upon conviction thereof, shall be fined not less than \$5,000 nor more than \$10,000 or imprisoned in a state correctional facility for not less than one nor more than five years, or both fined and imprisoned.

# SB 164

- The owner or operator of an animal or crop facility may bring an action for injunctive relief against a person who engages in, or threatens to engage in, conduct that constitutes a violation of this section:
  - The action may be brought in the circuit court of any county in which any part of the conduct or threatened conduct occurs or is threatened to occur.
  - The circuit court may grant any appropriate injunctive relief to prevent or abate the conduct or threatened conduct, including a temporary restraining order, preliminary injunction, or permanent injunction.
  - The circuit court may issue injunctive relief without the owner or operator of an animal or crop facility giving security for its issuance.

# SB 164

- As applicable to this article, notwithstanding and in addition to any other penalties provided by law, any person who performs or causes damage to property in the course of a willful trespass shall be liable to the property owner in the amount of twice the amount of such damage, including the cost of cleanup.
- Notwithstanding any provision of this code to the contrary, a court presiding over a misdemeanor violation of this article may defer entry of the judgment of conviction for a period not to exceed six months and if the damages authorized by subsection (a) of this section are paid within that time period, dismiss the charge.

# SB 679

- Relating to regulation of select plant-based derivatives, including hemp-derived cannabinoid products and regulation of kratom; clarifying findings; defining terms;
- Requiring permits to manufacture, process, distribute, offer to sell, and sell regulated products; prohibiting retailer from adding imposed tax as separate new charge;

■

# SB 679

- Any person who manufactures, processes, distributes, sells, or offers for sale any hemp-derived cannabinoid product in this state without a permit to do so is guilty of a crime.
  - A first violation of this subsection is a misdemeanor and, upon conviction thereof, a person shall be fined not more than \$1,000, confined in jail for not more than one year, or both fined and confined.
  - A second or subsequent violation of this subsection is a felony and, upon conviction thereof, a person shall be fined not more than \$5,000, or imprisoned in a state correctional facility for not less than one nor more than five years, or both fined and imprisoned.



# SB 679

- Any person who processes, distributes, manufactures, sells, or offers to sell any hemp-derived product knowing or having reason to know that the product has been contaminated with a toxic or illegal substance is guilty of a felony and, upon conviction thereof, shall be fined not more than \$10,000, or imprisoned in a state correctional facility for not less than two nor more than 10 years, or both fined and imprisoned. conviction thereof, shall be fined not less than \$10,000 nor more than \$25,000, or imprisoned for not less than one nor more than five years, or both fined and imprisoned.

# SB 679

- Any person who knowingly manufactures, processes, distributes, sells, or offers for sale any hemp-derived cannabinoid product which has not been approved by the commissioner is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$1,000 nor more than \$5,000, or confined in jail for not more than one year, or both fined and confined.
- A second or subsequent violation of subdivision (1) of this subsection constitutes a felony and any person convicted thereof shall be fined not more than \$5,000, or imprisoned in a state correctional facility for not less than one nor more than five years, or both fined and imprisoned.

# SB 679

- Any person who knowingly distributes, offers for sale, or sells a contaminated hemp-derived cannabinoid product is guilty of a felony and, upon conviction thereof, shall be fined not less than \$10,000 nor more than \$25,000, or imprisoned in a state correctional facility for not less than one nor more than five years, or both fined and imprisoned.

# SB 679

- Any person who knowingly distributes or sells hemp-derived cannabinoid product to a person under the age of 21 is guilty of a felony and, upon conviction thereof, shall be fined not more than \$5,000, or imprisoned in a state correctional facility for not less than one nor more than five years, or both fined and imprisoned.

# SB 679

- Any person under the age of 21 who possesses hemp-derived cannabinoid product is guilty of a misdemeanor shall be fined not more than \$1,000, or confined in jail for not more than one year, or both fined and confined.
- A second and subsequent violations of subdivision (1) of this subsection constitute a felony shall be fined not more than \$5,000, and imprisoned in a state correctional facility for not less than one nor more than three years, or both fined and imprisoned.

# SB 679

- Any person who knowingly manufactures, distributes, offers for sale, or sells contaminated kratom or kratom product is guilty of a felony and, upon conviction thereof, shall be fined not less than \$10,000 nor more than \$25,000, or imprisoned for not less than one nor more than five years, or both fined and imprisoned.

# SB 679

- Any person who knowingly distributes or sells kratom or a kratom product to a person under the age of 21 is guilty of a felony and, upon conviction thereof, shall be fined not more than \$5,000, or imprisoned in a state correctional facility for not less than one nor more than five years, or both fined and imprisoned.

# SB 679

- Any person under the age of 21 who possesses kratom or a kratom product is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$1,000, or confined in jail for not more than one year, or both fined and confined.
- A, second and subsequent violations of subdivision (1) of this subsection constitute a felony and any person convicted thereof shall be fined not more than \$5,000, imprisoned in a state correctional facility for not less than one nor more than three years, or both fined and imprisoned.



# Bowles Rice

## **WEST VIRGINIA MUNICIPAL LEAGUE**

### **Granting and Revocation of Bond**

Floyd M. Sayre, III, Esq.  
2020

# **§62-1C-1. Right To Bail; Exceptions; Review**

- (a) A person arrested for an offense not punishable by life imprisonment shall be admitted to bail
- (b) Bail may be allowed pending appeal from a conviction,

# Right To Bail; Exceptions; Review

- (c) The amount of bail or the discretionary denial of bail at any stage of the proceedings may be reviewed by summary petition first to the lower appellate court, if any, and thereafter by summary petition to the supreme court of appeals or any judge thereof.

# **Release Upon Own Recognizance Authorized**

- Any other provision of this article to the contrary notwithstanding, when from all the circumstances, the court or magistrate is of the opinion that the defendant or person arrested will appear as may be required of him, either before or after conviction, such defendant or person arrested may be released upon his own recognizance

# Bail Defined; Form; Receipts

- Bail is security for the appearance of a defendant to answer to a specific criminal charge
  - (a) The deposit by the defendant or by some other person for him of cash.
  - (b) The written undertaking by one or more persons to forfeit a sum of money equal to the amount of the bail if the defendant is in default for appearance, which shall be known as a recognizance.



# Bail Defined; Form; Receipts

- (c) Such other form as the judge of the court that will have jurisdiction to try the offense may determine.
- All bail shall be received by the clerk of the court, or by the magistrate and, except in case of recognizance, receipts shall be given therefor by him.

# Fixing Of Amount

- The amount of bail shall be fixed by the court with consideration given:
  - to the seriousness of the offense charged
  - the previous criminal record of the defendant
  - his financial ability, and
  - the probability of his appearance.

# Fixing Of Amount

- When two or more charges are filed or are pending against the same person at or about the same time, the bail given may be made to include all offenses charged against the defendant.



# **§62-1C-4**

## **Personal Recognizance**

- The recognizance shall be signed by the defendant.

## **§62-1C-4**

### **Property**

- It shall also be signed by one or more adult persons owning real property in the state.
- The court or justice may require that justification of surety be furnished.
- The assessed value above all liens and encumbrances shall not be less than one half the amount of the bail.

# **§62-1C-4**

## **Commercial**

- the recognizance may be signed by the defendant and a surety company authorized to do business in this state.

# **§62-1C-4**

## **Indigent**

- An indigent person who the court is satisfied will appear as required shall not be denied bail because of his inability to furnish recognizance.

# Recognizance And Deposits.

- The recognizance shall be returnable to and all deposits shall be held by the court before whom the defendant is to appear or does appear, and upon the transfer of the case to any other court the recognizance shall be returnable to and transmitted together with any deposits to such other court.

# Continuing Bail.

- The bail as initially given may continue in effect pending indictment, arraignment, continuance, trial and appeal after conviction, as the court may direct.

# Forfeiture Of Bail; Basis Therefore

- Whenever a person under bail serves as his or her own surety and he or she willfully and without just cause fails to appear as and when required or violates any other term or condition of bail, the circuit court or magistrate shall declare the bail forfeited.

# Forfeiture Of Bail; Basis Therefore

- Whenever a person or entity other than the person under bail serves as surety, forfeiture of bail shall be declared only when the person under bail willfully and without just cause fails to appear as and when required.



# Forfeiture Of Bail -- Setting Aside

- The court or justice may direct that a forfeiture be set aside, upon such conditions as may be imposed, if it appears that justice does not require the enforcement of the forfeiture.

# **Forfeiture Of Bail -- Enforcement.**

- When a forfeiture has not been set aside, the court or justice, upon motion of the state, shall enter a judgment of default and execution may issue thereon:

# Forfeiture Of Bail -- Enforcement.

- If the deposit for bail be by a person other than the defendant, or if the bail be in the form of recognizance, such person making the deposit or the surety on the recognizance shall be given ten days' notice by certified mail at his last-known address to appear and show cause why a judgment of default should not be entered.

# Forfeiture Of Bail -- Enforcement.

- Execution shall issue in the name of the state and shall proceed in the manner provided by law in civil actions. If the bail be in the form of bonds or stocks, the judgment order may direct that all or part thereof be sold through a state or national bank or through a brokers exchange registered with the federal securities and exchange commission.

# Bail In Excess Of Jurisdictional

- Where the forfeiture has been declared by a justice or by a court of limited jurisdiction of bail in excess of the jurisdictional limit of justice or of the particular court, such forfeiture shall be certified to a court of the county having sufficient jurisdiction, which court shall thereupon proceed as if the forfeiture were originally declared in such court.

# **Forfeiture Of Bail -- Remission.**

- After entry of such judgment, the court or justice may remit the penalty in whole or in part under the conditions applying to the setting aside of forfeiture in section eight of this article.

# **Forfeiture Of Bail -- Exoneration**

- When the condition of the bond has been satisfied or the forfeiture thereof has been set aside or remitted, the court or magistrate shall exonerate the surety and release any bail

# Forfeiture Of Bail -- Exoneration

- if the bail be in a form other than a recognizance, the deposit shall be returned to the person who made the same. The surety may be exonerated by a deposit of cash in the amount of the bail or by a timely surrender of the defendant into custody.



# Forfeiture Of Bail -- Exoneration

- when a bail bondsman has a surety bond forfeited because of the failure of a defendant to appear, that bail bondsman shall be reimbursed the full amount of the bond forfeiture, if the bail bondsman returns the defendant to the custody of the court or magistrate, within two years of the forfeiture of the bond.

# Forfeiture Of Bail -- Defects In Form Of Bail

- No action or judgment for forfeiture of bail shall be defeated or arrested by the neglect or omission to record the declaration of forfeiture or by reason of any defect in the form of the bail, if it appear to have been taken by a court or justice authorized to take it, and be substantially sufficient.

# Bailpiece

- A bailpiece is a certificate stating that the bail became such for the accused in a particular case and the amount thereof.
- Upon demand therefor, the court, magistrate or clerk shall issue to the bail bondsperson a bailpiece.

# Bailpiece

- Any officer shall assist the bail bondsperson holding such bailpiece to take the accused into custody and produce him before the court or magistrate.
- The bail bondsperson may take the accused into custody and surrender him or her to the court without such bailpiece.

# Bailpiece

- If bailpiece is inaccessible due to unavailability of the court's circuit clerk or magistrate, the bail bondsperson, or his or her designee, can take an offender to a regional or county jail without bailpiece, and the jail must accept the offender;

# Bailpiece

- provided:
  - The bail bondsperson, or his or her designee, appears on the registered list maintained at the jails and approved by the court of original jurisdiction;
  - The bail bondsperson signs an agreement provided by the jail indicating that the offender has been booked in lieu of bailpiece.

# Bailpiece

- Provided:
  - (3) Bailpiece must be applied for by the bail bondsperson or his or her designee from the court's circuit clerk or magistrate and hand-delivered by the bail bondsperson or his or her designee to the jail housing such offender on the next judicial day following the initial intake.

# Bailpiece

- Any bail bondsperson who willfully fails to attempt to obtain the appropriate bailpiece within the allotted time period provided in subsection (b) of this section is guilty of a misdemeanor and, upon conviction thereof, shall be prohibited from continuing to conduct business in this state



# Guaranteed Arrest Bond Certificate

- For a misdemeanor violation of any motor vehicle law of the state or any municipality, except reckless driving or driving while intoxicated, the guaranteed arrest bond certificate of any surety company licensed to do business by the insurance commissioner, when presented by the person whose signature appears thereon shall be accepted as bail in lieu of cash or recognizance in an amount not to exceed five hundred dollars.

# Guaranteed Arrest Bond Certificate

- A "guaranteed arrest bond certificate" shall mean any printed card or certificate issued by an automobile club or association to its members in good standing bearing the signature of the member and containing a printed statement that such club or association and a surety company will guarantee the payment of any fine or forfeiture imposed on the member in an amount not to exceed five hundred dollars if the member fails to appear in court as required.

# Offenses Against Municipalities

- Bail for a person accused of an offense against a municipality shall be governed by the provisions of this article applicable to a justice, except that the bail may be deposited with the mayor or with such other officer of the municipality as may be designated by the mayor

# Failure To Appear; Penalties

- Any person, who, having been released and who shall willfully and without just cause fail to appear as and when it may be required of him, shall be guilty of the offense as hereinafter prescribed, and, upon conviction thereof, shall be punished in the manner hereinafter provided.

# Failure To Appear; Penalties

- If any such person was admitted to bail or released after being arrested for, charged or convicted of a misdemeanor and shall thereafter be convicted such persons shall be guilty of a misdemeanor and shall be fined not more the one thousand dollars or confined in the county jail for not more **thirty days**, or both

# Failure To Appear; Penalties

- Any penalty authorized by this section shall be in addition to any forfeiture authorized or mandated by this article or by any other provision of law.

# Bowles Rice

## **WEST VIRGINIA MUNICIPAL LEAGUE**

### **Evidence**

Floyd M. Sayre, III, Esq.  
2024

# APPLICATION OF THE RULES OF EVIDENCE

- **Courts**

- The rules of evidence apply to all courts in the state, including municipal, magistrate, metropolitan, probate, district and appellate courts, and to commissioners, masters, referees and child support hearing officers appointed by the court. **Rule 101**



# APPLICATION OF THE RULES OF EVIDENCE

- **Types of Evidence**

- The evidence rules apply to all types of evidence: testimony of witnesses, real evidence (an object which has a direct or indirect part in the incident), and demonstrative evidence (visual aids such as models, maps, charts and demonstrations).

# CONSTRUCTION OF THE RULES OF EVIDENCE

- Judges have a great deal of discretion in ruling on the admissibility of evidence. In doing so, judges are guided by the overall philosophy expressed in rules **Rule 102**

# CONSTRUCTION OF THE RULES OF EVIDENCE

- **Evidence in Municipal Court**

These rules shall be construed to secure fairness in administration, elimination of unjustifiable expense and delay and promotion of growth and development of the law of evidence to the end that the truth may be ascertained and proceedings justly determined.

**Rule 102**

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## **GENERAL PRINCIPLES OF EVIDENCE**

# OVERALL

The goal of the rules of evidence is the introduction of relevant, reliable and material information for use in determining issues. The fact finder must evaluate the evidence to determine its credibility. Evidence that is relevant, reliable and material may be excluded if it will create unfair prejudice, confusion or a waste of time, or if public policy (as expressed in the rules of evidence) mandates exclusion.

# PRELIMINARY QUESTIONS

- The court determines preliminary issues, such as the qualification of a person to be a witness, the existence of a privilege or the admissibility of evidence. **Rule 104**

# PRELIMINARY QUESTIONS

- For example, a defendant who testifies on a preliminary matter, such as the admissibility of certain evidence, does not become subject to cross-examination on other issues in the case. The defendant retains the Fifth Amendment protection against self-incrimination.

# ORIGINAL WRITING RULES

- Photocopies or duplicates are admissible unless the authenticity of the original is questioned or under the circumstances it would be unfair to admit the duplicate in lieu of the original. **Rule 1003**



# JUDICIAL NOTICE

- The court may take judicial notice of a fact (i.e. accept as established) which commonly is known to be true without the need for evidence. The fact must be either generally known within the community or capable of determination by reference to sources with known accuracy. **Rule 201**

# JUDICIAL NOTICE

- The purpose of this rule is to save the time and expense of proving self-evident or well-established facts. For example, the court may take judicial notice of a statutory provision.

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## **RELEVANCY**

# ADMISSION IN GENERAL

- Relevant evidence means evidence that has "any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." **Rule 401**

# ADMISSION IN GENERAL

- Relevancy is the fundamental basis for admission for any evidence. Evidence that is not relevant is not admissible, for it would have no use in proving anything at issue. Evidence that is relevant is admissible unless otherwise provided by law. **Rule 402**

# ADMISSION IN GENERAL

- Generally, whatever naturally and logically tends to establish a fact at issue is relevant. The logical relevance of the evidence need be only minimal to be admissible. Since the evidence must have "any tendency" to establish the fact, the evidence in itself need not be sufficient to persuade the judge or jury that the fact is more probably true than not. **Rule 402**

# EXCLUSION IN GENERAL

- Relevant evidence is admissible unless excluded by constitution, statute, the West Virginia Rules of Evidence, or other rules adopted by the Supreme Court.

## **Rule 402**

# EXCLUSION IN GENERAL

- The rules favor admission of relevant evidence except when certain public policies or practical considerations dictate. **Rule 403**



# AUTHENTICATION AND IDENTIFICATION

- Authentication and identification are aspects of relevancy. Evidence must be authenticated or identified in some way to be relevant and admissible. Generally this requirement is met if there is evidence to support a finding that the matter in question is what its proponent claims.

**Rule 901**

# AUTHENTICATION AND IDENTIFICATION

- For example, a non-expert witness can testify on the genuineness of a person's handwriting based upon familiarity with the handwriting.
- A witness can identify a voice on the phone based upon familiarity with the voice.
- Public records may be authenticated by testimony that they are from the public office where items of that nature are kept.
- In the case of a document, authenticity and identification usually are not an issue unless the document is challenged, which may then require identification by the author or custodian. **Rule 901**

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## **EVIDENCE ON SPECIFIC TOPICS**

# CHARACTER EVIDENCE

- Character is a person's nature, general disposition, or specific disposition on traits such as honesty, peacefulness and truthfulness.
- Evidence of a person's character is not admissible to prove that the person acted consistently with that character on a particular occasion. **Rule 404**

# CHARACTER EVIDENCE

- This is because character evidence often has little probative value and may distract the judge or jury from the main question of what actually occurred in the case in question. This can be a particularly difficult area of evidence for judges and trial lawyers. **Rule 404**

# CHARACTER EVIDENCE

- Exceptions to the general rule are:
  - Character evidence used for impeachment of the truthfulness of witnesses is admissible.
  - In a criminal case, evidence of the defendant's character is admissible when offered by the defendant. The prosecution then may introduce evidence of the defendant's character to rebut the defendant's evidence. The prosecution may not use evidence of the defendant's character unless initially offered by the defendant.
  - In a criminal case, the character of the victim is admissible when offered by the defendant. Once admitted, the prosecution may introduce evidence of the victim's character to rebut this evidence. **Rule 404**

# CHARACTER EVIDENCE

- Similarly, evidence of other crimes or wrong acts is not admissible to show that a person acted in conformity with this history. This evidence may be admissible for other purposes, however, such as to prove motive, opportunity, intent, preparation, plan, knowledge, identity or absence of mistake or accident.
- Specific instances of a persons' conduct may be admitted in cases where character is an essential element of a charge, claim or defense. **Rule 404**

# CHARACTER EVIDENCE

- **Habit Evidence**

- Habit evidence is admissible. Habit is a person's regular response to a particular situation. Habit is a response that is repeated to the point of becoming semi-automatic, such as always signaling turns in a car. The predictability of the habit bolsters its reliability as evidence that the same response occurred in the current case. Evidence of a person's habit, or an organization's routine practice, is relevant and admissible to prove that the conduct of the person or organization was in conformity with the habit or practice. **Rule 406**



# REMEDIAL MEASURES

- Evidence of remedial measures is not admissible to prove negligence or culpable conduct in connection with an event.
- Remedial measures are those actions taken after an event which would have made the event less likely to occur if taken earlier. This evidence can be admitted for other purposes, however, such as to prove ownership or control. **Rule 407**

# GUILTY PLEAS

- Evidence of a defendant's offer to plead guilty or no contest to a crime, or any statement made during the plea negotiations, is not admissible against the defendant in any civil or criminal proceeding.

**Rule 410**

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## **WITNESS TESTIMONY**

# BASIC REQUIREMENTS

- Every person is competent to be a witness unless the rules provide otherwise. The two qualifications on this rule are:
  - The witness must have personal knowledge of the matter. **Rule 602**
  - The witness must declare by oath or affirmation that the testimony will be truthful. **Rule 603**

# BASIC REQUIREMENTS

- The competency of a witness to testify means that the witness must have some capacity to observe, record, recollect and recount, as well as understand the duty to tell the truth. In determining witness competency, courts generally view the evidence in the light most favorable to the witness and permit the jury to assess the witness's credibility. The judge may not testify in the case. **Rule 601**

# QUESTIONING OF WITNESSES

- The court must exercise reasonable control over the manner and order of questioning witnesses and presenting evidence in order to promote discovery of the truth, avoid needless time in trial, and protect witnesses from harassment and undue embarrassment.

# QUESTIONING OF WITNESSES

- The court may control the following:
  - Cross-examination should be limited to the subject matter of the direct examination and questions affecting the credibility and bias of the witness. The court may permit examination into additional matters.
  - Leading questions (i.e., questions that suggest the answer) should not be used in direct examination unless necessary to develop the witness's testimony or if the witness is hostile, such as identified with the opposing side. Leading questions are permitted on cross-examination.

# QUESTIONING OF WITNESSES

- The court may call and interrogate witnesses. However, this should be a rare occurrence in criminal cases. In criminal matters, the court should be especially guarded in its questioning of a witness in order to maintain an appearance of impartiality, to avoid the appearance of commenting on the evidence or guilt or innocence of the defendant, and to preserve the prosecution's burden of proving its case.



# QUESTIONING OF WITNESSES

- Before introduction of evidence and upon motion of either party or the court, the court shall exclude witnesses so they cannot hear the testimony of other witnesses. Witnesses that may not be excluded include parties to the case, an officer or employee designated as the representative of a party, or a person whose presence is essential to the presentation of a party's case (e.g., an expert witness). **Rule 615**

# QUESTIONING OF WITNESSES

- If a witness cannot recall an event while testifying, the witness may use a writing, such as a police report, to refresh his or her memory. The writing is not introduced into evidence just because it has been used in this way. **Rule 612**

# QUESTIONING OF WITNESSES

- However, if a witness uses a writing to refresh memory for the purposes of testifying, the court may order that the adverse party be allowed to inspect the writing, introduce it, and cross-examine the witness on it. **Rule 612**

# QUESTIONING OF WITNESSES

Using a writing to refresh a witness's memory is different from using a recorded recollection. Once a witness "jogs" his or her memory by reviewing some kind of writing, the witness then testifies in court from his or her refreshed memory - not by reading the writing aloud. By contrast, a recorded recollection is used in lieu of live testimony when a witness is no longer able to recall past events, but was able to record those events at an earlier date. When a recorded recollection is used, the writing is read aloud into evidence.

# IMPEACHMENT

- Impeachment is the process of questioning or attacking the credibility (“believability”) of a witness. The credibility of a witness may be attacked by any party, including the party calling the witness. **Rule 607**

# IMPEACHMENT

- A witness can be impeached, for example, by showing that the witness made prior inconsistent statements, is biased, has a disreputable character, or was unable to observe the events. These questions of a witness's credibility are aimed at assessing the reliability of the testimony. **Rule 608**

# IMPEACHMENT

Specific ways in which a witness's credibility may be questioned include:

- **Character.** If the witness's truthful character has been attacked, the witness's credibility may be questioned by another witness's opinion on the witness's general character or reputation within the community for truthfulness or untruthfulness. Another witness may not be called to testify, however, on specific instances of conduct by a testifying witness. Such instances may only be inquired about during cross-examination of the testifying witness. **Rule 608**

# IMPEACHMENT

- **Conviction of a Crime.** Evidence of conviction within the last ten years of a crime involving dishonesty or a false statement may be admitted against any witness. Evidence of a felony conviction within the last ten years is admissible on the issue of credibility against any witness. However, a felony conviction is admissible against a defendant only if its probative value outweighs its prejudicial effect.  
**Rule 609**



# IMPEACHMENT

- **Prior Inconsistent Statements under Oath.** A witness may be impeached by a showing that the witness's out-of-court statement under oath is inconsistent with the in-court testimony. When questioning a witness concerning a prior statement, the statement need not be shown to the witness but on request it must be shown to opposing counsel. Extrinsic evidence (i.e., evidence other than the witness's testimony) of a prior inconsistent statement by a witness is not admissible unless the witness has an opportunity to explain or deny the statement, and the opposite party has an opportunity to examine the witness. **Rule 613**

# **OPINIONS AND EXPERT TESTIMONY**

Opinions that are helpful to the judge in determining the facts are admissible. As the line between fact and opinion is often difficult to draw, the rules allow witnesses to express opinions as long as they are based on a certain degree of reliability.

# OPINIONS AND EXPERT TESTIMONY

- **Lay Witnesses.** When a witness is not testifying as an expert, any opinions the witness testifies to must be rationally based on the witness's perception, and must be helpful to a clear understanding of the testimony or a fact in issue.

**Rule 701**

# OPINIONS AND EXPERT TESTIMONY

- This means that prior to offering an opinion the witness must lay a foundation establishing personal knowledge of the facts that form the basis of the opinion. The foundation for a lay opinion must establish that the witness was able to observe an event, that the witness actually observed the event, and that the witness observed enough information to form a reliable opinion. **Rule 702**

# OPINIONS AND EXPERT TESTIMONY

- **Expert Witnesses.** Expert witness testimony is admissible if it is helpful to the judge and if the witness is properly qualified to give the testimony. The rule states that if scientific, technical or other specialized knowledge will assist the trier of fact in understanding the evidence or determining a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training or education may testify in the form of an opinion or otherwise.

**Rule 702**

# OPINIONS AND EXPERT TESTIMONY

- The court has wide discretion in determining whether an expert witness is qualified. The trier of fact determines what weight to give the testimony if it is admitted.
- An expert may base his or her opinion on facts or data he or she observed, perceived, or became aware of either at or before a hearing. These facts need not be admissible into evidence if they are reasonably relied upon by experts in the field. **Rule 702**

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## **HEARSAY**

# GENERAL RULE

- Hearsay is defined as an oral or written statement, other than one made by a person testifying at a trial or hearing, that is offered in evidence to prove the truth of the matter asserted. **Rule 801**



# GENERAL RULE

- The person who made the out-of-court statement is called the “declarant.”
- Hearsay is considered to be unreliable because it is a statement made out of the courtroom, where the declarant could not be observed by the judge to assess demeanor and credibility.

**Rule 801**

# GENERAL RULE

- Because of its inherent unreliability, the general rule is that hearsay is not admissible unless it falls into one of the exceptions created by the West Virginia Rules of Evidence, other rules adopted by the Supreme Court, or statute.
- Although the general rule is simple (hearsay is inadmissible), there are numerous exceptions to the hearsay rule that allow the introduction of hearsay under circumstances deemed to be minimally reliable. **Rule 801**

# STATEMENTS THAT ARE NOT HEARSAY

- By definition, out-of-court statements that are not offered to prove the truth of the matter asserted, but are offered for other purposes, are not hearsay and are not subject to the hearsay rules. **Rule 801**

# STATEMENTS THAT ARE NOT HEARSAY

- Additionally, the rule defining hearsay includes a list of statements that are not considered to be hearsay. Hence the hearsay rules do not apply to these statements, although other rules of evidence may apply. Statements that are not hearsay are: **Rule 801**

# STATEMENTS THAT ARE NOT HEARSAY

- **Prior Statement by a Witness.** If the witness testifies and is subject to cross-examination and the statement (a) was made under oath subject to the penalty of perjury (at a trial, hearing, other proceeding, or deposition) and was inconsistent with the witness's testimony; (b) is consistent with the testimony and offered to rebut a charge against the witness of recent fabrication or improper influence or motive; or (c) is an identification of a person made after perceiving the person, then the statement is not hearsay.

**Rule 801**

# STATEMENTS THAT ARE NOT HEARSAY

- **Admission by Party-Opponent.** If the statement is offered against a party and is (a) the party's own statement; (b) a statement which the party has indicated is truthful; (c) a statement by a person authorized by the party to make the statement; (d) a statement by the party's agent on a matter within the scope of agency or employment, made during that relationship; or (e) a statement by a co-conspirator of the party during the course of the conspiracy, then the statement is not hearsay.

**Rule 801**

# **EXCEPTIONS TO THE HEARSAY RULE**

## **(WHEN HEARSAY CAN BE ADMITTED)**

There are so many exceptions to the hearsay rule that the study of hearsay is really the study of the exceptions.

# EXCEPTIONS TO THE HEARSAY RULE (WHEN HEARSAY CAN BE ADMITTED)

- **Present Sense Impression.** A statement describing or explaining an event made while the person was perceiving the event or immediately thereafter is admissible. **Rule 803**



# EXCEPTIONS TO THE HEARSAY RULE (WHEN HEARSAY CAN BE ADMITTED)

- **Excited Utterance.** A statement relating to a startling event made while under the stress and excitement of the event is admissible. Note, however, that admission of an excited utterance will violate the Confrontation Clause of the state constitution unless the prosecution shows that the declarant is unavailable to testify. **Rule 803**

# EXCEPTIONS TO THE HEARSAY RULE (WHEN HEARSAY CAN BE ADMITTED)

- **Mental and Physical Condition.** A statement of the person's state of mind, emotion, sensation or physical condition at the time is admissible (for example, statements of intent, plan, motive, design, mental feeling, pain, or bodily health). **Rule 803**

# **EXCEPTIONS TO THE HEARSAY RULE**

## **(WHEN HEARSAY CAN BE ADMITTED)**

- **Medical Diagnosis and Treatment.**  
Statements made for medical diagnosis or treatment are admissible if they describe: medical history; past or present symptoms, pain, or sensations; or the inception or general character of the cause or external source of the symptoms, pain, or sensations, insofar as reasonably pertinent to diagnosis or treatment.  
**Rule 803**

# **EXCEPTIONS TO THE HEARSAY RULE**

## **(WHEN HEARSAY CAN BE ADMITTED)**

- **Recorded Recollection.** A statement or record made when a witness had knowledge but no longer has sufficient recollection is admissible.

**Rule 803**

# EXCEPTIONS TO THE HEARSAY RULE (WHEN HEARSAY CAN BE ADMITTED)

- The rules contain a catchall exception allowing admission of other hearsay that has equivalent guarantees of trustworthiness. For cases filed on or after November 1, 2007, the catchall, or residual, exception to the prohibitions against hearsay is located in the newly-adopted. **Rule 803**

# EXCEPTIONS TO THE HEARSAY RULE (WHEN HEARSAY CAN BE ADMITTED)

- The rules allow admission of the following hearsay statements only when the declarant is unavailable to testify: **Rule 804**

# EXCEPTIONS TO THE HEARSAY RULE (WHEN HEARSAY CAN BE ADMITTED)

- **Former Testimony.** Testimony given as a witness in another hearing is admissible under certain circumstances. **Rule 804**

# EXCEPTIONS TO THE HEARSAY RULE

## (WHEN HEARSAY CAN BE ADMITTED)

- **Statement Under Belief of Impending Death.** A statement made while believing one's death is imminent, concerning the cause or circumstances of that death, is admissible. **Rule 804**



# EXCEPTIONS TO THE HEARSAY RULE (WHEN HEARSAY CAN BE ADMITTED)

- **Statement Against Interest.** A statement that at the time it was made was so contrary to the person's interests, or so tended to expose the person to civil or criminal liability, or makes a claim by the person against another invalid, that a reasonable person would not have made the statement unless true, is admissible. **Rule 804**

# **EXCEPTIONS TO THE HEARSAY RULE**

## **(WHEN HEARSAY CAN BE ADMITTED)**

- **Statement of Personal or Family History.** A statement of the person's birth, adoption, marriage, divorce or other fact of personal or family history is admissible. **Rule 804**

# EXCEPTIONS TO THE HEARSAY RULE

## (WHEN HEARSAY CAN BE ADMITTED)

- **Forfeiture by Wrongdoing.** A statement offered against a party that has engaged or acquiesced in wrongdoing that was intended to, and did, procure the unavailability of the declarant as a witness.

# EXCEPTIONS TO THE HEARSAY RULE (WHEN HEARSAY CAN BE ADMITTED)

- **Other Exceptions.** As noted earlier, statements not specifically covered by either *Rules* but having equivalent guarantees of trustworthiness may be admissible under the residual exception to the prohibitions against hearsay.

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## **PRIVILEGES**

# GENERAL RULE

- A "privilege" is an exemption from giving testimony. Privileges are intended to protect a relationship of social importance. Since privileges can result in the exclusion of relevant evidence and suppression of the truth, they are limited to relationships of special value that could be irrevocably harmed if breached. **Rule 501**

# GENERAL RULE

- The rules on privilege begin with a presumption of non-privilege. No person has a privilege to refuse to be a witness, refuse to disclose any matter, refuse to produce any object or writing, or prevent another person from being a witness or disclosing information, except as required by the constitution, the West Virginia rules of Evidence or other rules adopted by the Supreme Court. **Rule 501**

# EXCEPTIONS TO THE RULE

The rules recognize the following privileges:

- **Reports Privileged by Statute.** A party may refuse to disclose reports required by law if the statute requiring the report so allows. **Rule 501**



# EXCEPTIONS TO THE RULE

- **Lawyer-Client Privilege.** A client has a privilege to refuse to disclose and to prevent other persons from disclosing confidential communications made in the course of professional legal services.

# EXCEPTIONS TO THE RULE

- **Physician-Patient and Psychotherapist-Patient Privilege.** A patient has a privilege to refuse to disclose and to prevent other persons from disclosing confidential communications made for the purposes of diagnosis or treatment of the patient's physical, mental or emotional condition, including drug addiction, between the patient and the patient's physician or psychotherapist.

# EXCEPTIONS TO THE RULE

- **Husband-Wife Privilege.** A person has a privilege to refuse to disclose and to prevent others from disclosing a confidential communication made by the person to his or her spouse while they were married. There is, however, no husband-wife privilege in proceedings charging one spouse with a crime against the person or property of the other, or against the child of either.

# EXCEPTIONS TO THE RULE

- **Communications to Clergy Privilege.** A person has a privilege to refuse to disclose and prevent others from disclosing a confidential communication made by the person to a clergy member as spiritual advisor..

# EXCEPTIONS TO THE RULE

- **Political Vote Privilege.** Every person has a privilege to refuse to disclose the person's vote at a political election conducted by secret ballot unless the vote was cast illegally.

# EXCEPTIONS TO THE RULE

- **News Media-Confidential Source Privilege.**  
A person employed in the news media for the purposes of gathering news for the general public has a privilege to refuse to disclose the confidential source from whom any information was obtained and any confidential information obtained in the course of professional activities.

# VOLUNTARY DISCLOSURE

- A person who is granted a privilege may waive it by voluntarily disclosing or consenting to the disclosing of a significant part of the matter or communication. Disclosure of privileged matter is not admissible against the person if the disclosure was compelled erroneously or was made without opportunity to claim the privilege.

# COMMENTARY ON CLAIM OF PRIVILEGE

- The court and counsel must not comment on a claim of privilege, and no inferences may be drawn from the claim.



# Bowles Rice

## **Traffic Regulations and Laws of the Road**

# **Failure To Obey Police Officer Or Special Officers**

- No person shall willfully fail or refuse to comply with a lawful order or direction of any police officer or designated special officer invested by law with authority to direct, control or regulate traffic.
- No person shall willfully fail or refuse to comply with a lawful order or direction of any designated special officer.

# **Traffic Laws Apply To Persons Riding Animals Or Driving Animal-drawn Vehicles**

- Every person riding an animal or driving any animal-drawn vehicle upon a roadway shall be granted all of the rights and shall be subject to all of the duties applicable to the driver of a vehicle by this chapter, except those provisions of this chapter which by their very nature can have no application.

# Powers of Local Authorities

- The provisions of this chapter shall not be deemed to prevent local authorities with respect to streets and highways under their jurisdiction and within the reasonable exercise of the police powers:

# Powers of Local Authorities

- Regulating the standing or parking of vehicles;
- Regulating traffic by means of police officers or traffic-control devices;
- Regulating or prohibiting processions or assemblages on the highways;
- Designating particular highways as one-way highways and requiring that all vehicles thereon be moved in one specific direction;

# Powers of Local Authorities

- Regulating the speed of vehicles in public parks;
- Designating any highway as a through highway and requiring that all vehicles stop before entering or crossing the same or designating any intersection as a stop intersection and requiring all vehicles to stop at one or more entrances at such intersection;

# Powers of Local Authorities

- Restricting the use of highways as authorized in section twelve, article seventeen of this chapter;
- Regulating the operation of bicycles and requiring the registration and licensing of same, including the requirement of a registration fee;
- Regulating or prohibiting the turning of vehicles or specified types of vehicles at intersections;

# **Powers of Local Authorities**

- Altering the speed limits as authorized herein;
- Adopting such other traffic regulations as are specifically authorized by this chapter.



# Powers of Local Authorities

- No local authority shall permit any parking on any state highway, or erect or maintain any stop sign or traffic-control device at any location so as to require the traffic on any state highway to stop before entering or crossing any intersecting highway unless approval in writing has first been obtained from the state road commissioner.

# Obedience To Traffic-control Devices

- The driver of any vehicle shall obey the instructions of any official traffic-control device applicable.
- Any person violating the provisions of this section shall be fined not more than one hundred dollars; upon a second conviction within one year thereafter, shall be fined not more than two hundred dollars; and upon a third or subsequent conviction, shall be fined not more than five hundred dollars.

# Obedience To Traffic-control Devices

- No provision of this chapter for which signs are required shall be enforced against an alleged violator if at the time and place of the alleged violation an official sign is not in proper position and sufficiently legible to be seen by an ordinarily observant person.
- Whenever a particular section does not state that signs are required, such section shall be effective even though no signs are erected or in place.

# Obedience to Traffic-control Instructions

- The driver of any vehicle shall obey the traffic-control instructions of any law-enforcement officer or persons authorized by the commissioner of highways.

# Obedience to Traffic-control Instructions

- Shall be fined not more than one hundred dollars; upon a second conviction within one year thereafter, shall be fined not more than two hundred dollars; and upon a third or subsequent conviction, shall be fined not more than five hundred dollars.

# Traffic Violations In Construction Zones

- Where street or highway construction work is being conducted, signs and other traffic control devices shall be posted giving the location of the work and notifying all motorists as to the speed limit and any other traffic restrictions.

# Traffic Violations In Construction Zones

- Any person who exceeds any posted speed restriction or traffic restriction at a construction site shall be fined not more than \$200.
- Any person who exceeds any posted speed restriction or traffic restriction at a construction site by fifteen miles per hour or more is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$200 or confined in a regional jail not more than twenty days, or both.

# Display of Unauthorized Devices

- No local authority or person shall place, maintain, or display upon or in view of any highway any unauthorized traffic-control device or traffic-control signal, or any unauthorized sign, signal, marking, or device which purports to be or is an imitation of or resembles an official traffic-control device.



# Display of Unauthorized Devices

- No person shall place or maintain nor shall any public authority permit upon any highway any traffic-control device bearing thereon any commercial advertising.
- This shall not be deemed to prohibit the erection upon private property adjacent to highway of signs giving useful directional information and of a type that cannot be mistaken for official signs.

# Display of Unauthorized Devices

- Every such prohibited device, signal, sign or marking is hereby declared to be a public nuisance and the state road commissioner or other authority having jurisdiction over the highway is hereby empowered to remove the same or cause it to be removed without notice.

# Bowles Rice

## **Vehicle Crashes**

# **Crashes Involving Death Or Personal Injuries; Erin's Law**

- **The driver of any vehicle involved in a crash resulting in the injury to or death of any person shall immediately stop the vehicle at the scene of the crash or as close to the scene as possible and return to and remain at the scene of the crash**

# **Crashes Involving Death Or Personal Injuries; Erin's Law**

- **That the driver may leave the scene of the crash as may reasonably be necessary for the purpose of rendering assistance to any person injured in the crash.**

# **Crashes Involving Death Or Personal Injuries; Erin's Law**

- **Any driver who is involved in a crash in which another person suffers bodily injury and who intentionally violates this code when he or she knows or has reason to believe that another person has suffered physical injury in said crash is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$1,000, confined in jail for not more than one year, or both fined and confined.**

# Crashes Involving Damage To Vehicle

- The driver of any vehicle involved in a crash resulting only in damage to a vehicle which is driven or attended by any person shall immediately stop such vehicle at the scene of such crash or as close thereto as possible but shall forthwith return to and in every event shall remain at the scene of such crash until he has fulfilled the requirements this article.

# Crashes Involving Damage To Vehicle

- Every such stop shall be made without obstructing traffic more than is necessary. Any person failing to stop or comply with said requirements under such circumstances is guilty of a misdemeanor.



# **Duty To Give Information And Render Aid**

- **The driver of any vehicle involved in a crash resulting in injury to or death of any person or damage to any vehicle which is driven or attended by any person shall, if physically able to do so, provide to the person struck or the driver or occupant of or person attending any vehicle collided with, the following:**

-

# **Duty To Give Information And Render Aid**

- **His or her name, a valid telephone number where he or she may be contacted and the year, make, model and last four digits of the vehicle identification number of the vehicle he or she is driving; and**
- **Proof of security and financial responsibility or the certificate of insurance, including the name of the insured, the name and contact information of the insurer and insurance policy number.**

# **Duty To Give Information And Render Aid**

- **A driver may meet the requirements of this subsection by providing the information required herein to a law-enforcement officer.**
- **The driver of any vehicle involved in a crash resulting in injury to or death of any person, if physically able to do so, shall render to any person injured in such crash reasonable assistance.**

# **Duty Upon Striking Unattended Vehicle**

- **The driver of any vehicle which collides with any vehicle which is unattended shall immediately stop and shall then and there either locate and notify the operator or owner of such vehicle of the name and address of the driver and owner of the vehicle striking the unattended vehicle, or**

# **Duty Upon Striking Unattended Vehicle**

- **shall leave in a conspicuous place in the vehicle struck a written notice giving the name and address of the driver and of the owner of the vehicle doing the striking and a statement of the circumstances thereof.**

# **Incorporated City, Town, Etc., May Require Crash Reports**

- **May by ordinance require that the driver of a vehicle involved in a crash shall file with a designated city department a report of such crash. All such reports shall be for the confidential use of the city department.**

# Bowles Rice

## **Serious Traffic Offenses**

# Reckless Driving

- Any person who drives any vehicle upon any street or highway, or upon any residential street, or in any parking area in a willful or wanton disregard for the safety of persons or property is guilty of reckless driving.



# Reckless Driving

- Shall be confined in jail for a period of not less than five days nor more than ninety days, or fined not less than twenty-five dollars nor more than five hundred dollars, or both, and
- Upon conviction of a second or subsequent conviction thereof, shall be confined in jail not less than ten days nor more than six months, or fined not less than fifty dollars nor more than one thousand dollars, or both.

# Bowles Rice

## **Traffic Regulations**

# Open Alcoholic Beverage Container

- It is unlawful for the operator or a passenger of a motor vehicle to consume any alcoholic beverage in the passenger area of a motor vehicle located on a public highway or right-of-way of a public highway in this state.
- It is unlawful for the operator or a passenger of a motor vehicle to knowingly possess any open alcoholic beverage container in the passenger area of any motor vehicle.

# Open Alcoholic Beverage Container

- The provisions of this section are not applicable to a passenger:
  - In the passenger area of a motor vehicle designed, maintained or used primarily for the transportation of persons for compensation including, but not limited to, a bus, taxicab or limousine; or
  - In the living quarters of a motorized or nonmotorized house coach, house trailer, motor home or self-contained camper.

# Open Alcoholic Beverage Container

- A person who violates the provisions of subsection (a) or (b) of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$50 nor more than \$100.

# **When Local Authorities May Alter Speed Limits**

- **At intersection.- Whenever local authorities within their respective jurisdictions determine upon the basis of an engineering and traffic investigation that the speed permitted under this chapter at any intersection is greater than is reasonable or safe under the conditions found.**

# **When Local Authorities May Alter Speed Limits**

- **Authority to increase twenty-five mile limit.- Local authorities in their respective jurisdictions by where there are no intersections or between widely spaced intersections.**

# **When Local Authorities May Alter Speed Limits**

- **Authority to decrease fifty-five mile limit.-  
Whenever local authorities within their respective jurisdictions determine upon the basis of an engineering and traffic investigation that the speed is greater than is reasonable or safe under the conditions found to exist**



# **When Local Authorities May Alter Speed Limits**

- **Authority to decrease twenty-five mile limit.-  
A municipality may in its discretion upon  
local dedicated rights-of-way in a residential  
district.**

# Racing

- **The Legislature hereby determines and finds that the racing of motor vehicles on the public streets and highways of this state, whether within or in excess of the lawful speed limit is extremely dangerous to life, limb, and property, and that such racing is an ever-increasing problem.**
- **It is, therefore, hereby declared to be the public policy of this state to prohibit all forms of such racing.**

# Racing

- It is unlawful for any person to engage in, or aid or abet by serving as lookout or timer or in any other capacity whatever, any speed race, as defined herein, on any public street or highway in this state. For the purposes of this subdivision, “speed race” means:

# Racing

- It is unlawful for any person to engage in, or aid or abet by serving as lookout or timer or in any other capacity whatever, any speed race, as defined herein, on any public street or highway in this state.

# Racing

- The operation of a motor vehicle in speed acceleration competition with another motor vehicle or motor vehicles; or
- The operation of a motor vehicle in speed acceleration competition against time; or
- The operation of a motor vehicle in speed competition with another motor vehicle, or motor vehicles where speed exceeds the lawful speed limit.

# Racing

- **Any person who violates the provisions of subdivision**
  - first offense by a fine of not less than \$50 nor more than \$100;
  - second offense by a fine of not less than \$50 nor more than \$500, or by imprisonment for not less than six days nor more than 60 days, or by both such fine and imprisonment;
  - third and each subsequent offense by a fine of not less than \$100 nor more than \$1000, or by imprisonment for not less than 60 days nor more than four months, or by both such fine and imprisonment.

# Racing

- **The Division of Motor Vehicles shall in addition to the penalties hereinbefore provided, forthwith:**
  - **For a first offense, revoke for a period of six months;**
  - **For a second offense occurring within a two-year period,, for a period of two years; or**
  - **For a third or any subsequent offense occurring within a five-year period, revoke for a period of five years.**

# Bowles Rice

## **Operation of Vehicle**



# Driving On Right Side Of Roadway

- Upon all roadways of sufficient width a vehicle shall be driven upon the right half of the roadway, **except**
  - When overtaking and passing another vehicle proceeding in the same direction under the rules governing such movement;
  - When the right half of a roadway is closed to traffic while under construction or repair;

# Driving On Right Side Of Roadway

- Upon all roadways of sufficient width a vehicle shall be driven upon the right half of the roadway, **except**
  - Upon a roadway divided into three marked lanes for traffic under the rules applicable thereon; or
  - Upon a roadway designated and signposted for one-way traffic.

# Driving On Right Side Of Roadway

- Upon all roadways any vehicle proceeding at less than the normal speed of traffic at the time and place and under the conditions then existing shall be driven in the right-hand lane then available for traffic, or as close as practicable to the right-hand curb.
- Except when overtaking and passing another vehicle proceeding in the same direction or when preparing for a left turn at an intersection.

# Driving On Right Side Of Roadway

- Any person violating the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one hundred dollars; upon a second conviction within one year thereafter, shall be fined not more than two hundred dollars; and upon a third or subsequent conviction, shall be fined not more than five hundred dollars.

# Passing Vehicles Proceeding In Opposite Directions

- Drivers of vehicles proceeding in opposite directions shall pass each other to the right, and upon roadways having width for not more than one line of traffic in each direction each driver shall give to the other at least one half of the main-traveled portion of the roadway as nearly as possible.

# Passing Vehicles Proceeding In Opposite Directions

- Any person violating the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one hundred dollars; upon a second conviction within one year thereafter, shall be fined not more than two hundred dollars; and upon a third or subsequent conviction, shall be fined not more than five hundred dollars.

# **Overtaking And Passing Vehicle Or Bicycle Proceeding In Same Direction**

- The driver of a vehicle overtaking another vehicle proceeding in the same direction shall give an audible signal and pass to the left of the overtaken vehicle at a safe distance and may not again drive to the right side of the roadway until safely clear of the overtaken vehicle.

# **Overtaking And Passing Vehicle Or Bicycle Proceeding In Same Direction**

- The driver of a vehicle overtaking a bicycle traveling in the same direction shall pass to the left of the bicycle at a distance of not less than three feet at a careful and reduced speed, and may not again drive to the right side of the roadway until safely clear of the overtaken bicycle.



# **Overtaking And Passing Vehicle Or Bicycle Proceeding In Same Direction**

- Except when overtaking and passing on the right is permitted, the driver of an overtaken vehicle shall give way to the right in favor of the overtaking vehicle on audible signal and may not increase the speed of his or her vehicle until completely passed by the overtaking vehicle.

# **Overtaking And Passing Vehicle Or Bicycle Proceeding In Same Direction**

- Any person violating the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$100; upon a second conviction within one year thereafter, shall be fined not more than \$200; and upon a third or subsequent conviction, shall be fined not more than \$500.

# When Overtaking On The Right Is Permitted

- The driver of a vehicle may overtake and pass upon the right of another vehicle only under the following conditions:
  - When the vehicle overtaken is making or about to make a left turn;
  - Upon a street or highway with unobstructed pavement not occupied by parked vehicles of sufficient width for two or more lines of moving vehicles in each direction;

# When Overtaking On The Right Is Permitted

- The driver of a vehicle may overtake and pass upon the right of another vehicle only under the following conditions:
  - Upon a one-way street, or upon any roadway on which traffic is restricted to one direction of movement, where the roadway is free from obstructions and of sufficient width for two or more lines of moving vehicles.

# When Overtaking On The Right Is Permitted

- The driver of a vehicle may overtake and pass another vehicle upon the right only under conditions permitting such movement in safety. In no event shall such movement be made by driving off the pavement or main-traveled portion of the roadway.

# Limitations On Overtaking On The Left

- No vehicle shall be driven to the left side of the center of the roadway in overtaking and passing another vehicle proceeding in the same direction unless such left side is clearly visible and is free of oncoming traffic for a sufficient distance ahead to permit such overtaking and passing to be completely made without interfering with the safe operation of any vehicle.

# Limitations On Overtaking On The Left

- In every event the overtaking vehicle must return to the right-hand side of the roadway before coming within one hundred feet of any vehicle approaching from the opposite direction.

# Limitations On Overtaking On The Left

- Any person violating the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one hundred dollars; upon a second conviction within one year thereafter, shall be fined not more than two hundred dollars; and upon a third or subsequent conviction, shall be fined not more than five hundred dollars.



# Further Limitations On Driving To Left Of Center Of Roadway

- No vehicle shall at any time be driven to the left side of the roadway under the following conditions:
  - When approaching the crest of a grade or upon a curve in the highway where the driver's view is obstructed
  - When approaching within one hundred feet of or traversing any intersection or railroad grade crossing;
  - When the view is obstructed upon approaching within one hundred feet of any bridge, viaduct, or tunnel.

# **Further Limitations On Driving To Left Of Center Of Roadway**

- Any person violating the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one hundred dollars; upon a second conviction within one year thereafter, shall be fined not more than two hundred dollars; and upon a third or subsequent conviction, shall be fined not more than five hundred dollars.

# No-Passing Zones

- The commissioner of highways is hereby authorized to determine those portions of any highway where overtaking and passing or driving to the left of the roadway would be especially hazardous and may by appropriate signs or markings on the roadway indicate the beginning and end of such zones.

# No-Passing Zones

- Any person violating the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one hundred dollars; upon a second conviction within one year thereafter, shall be fined not more than two hundred dollars; and upon a third or subsequent conviction, shall be fined not more than five hundred dollars.

# **One-Way Roadways And Rotary Traffic Islands**

- The commissioner of highways may designate any highway or any separate roadway under its jurisdiction for one-way traffic and shall erect appropriate signs giving notice thereof.

# **One-Way Roadways And Rotary Traffic Islands**

- Upon a roadway designated and signposted for one-way traffic a vehicle shall be driven only in the direction designated.
- A vehicle passing around a rotary traffic island shall be driven only to the right of such island.

# **One-Way Roadways And Rotary Traffic Islands**

- Any person violating the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one hundred dollars; upon a second conviction within one year thereafter, shall be fined not more than two hundred dollars; and upon a third or subsequent conviction, shall be fined not more than five hundred dollars.

# Driving On Roadways Laned For Traffic

- Whenever any roadway has been divided into two or more clearly marked lanes for traffic the following rules in addition to all others consistent herewith shall apply:
  - A vehicle shall be driven as nearly as practicable entirely within a single lane and shall not be moved from such lane until the driver has first ascertained that such movement can be made with safety.



# Driving On Roadways Laned For Traffic

- Upon a roadway which is divided into three lanes a vehicle shall not be driven in the center lane which is clearly marked as a left turn lane except in preparation for a left turn or
- where such center lane is at the time allocated exclusively to traffic moving in the direction the vehicle is proceeding and is signposted to give notice of such allocation.

# Driving On Roadways Laned For Traffic

- Official signs may be erected directing slow-moving traffic to use a designated lane or designating those lanes to be used by traffic moving in a particular direction regardless of the center of the roadway and drivers of vehicles shall obey the directions of every such sign.

# Driving On Roadways Laned For Traffic

- Any person violating the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one hundred dollars; upon a second conviction within one year thereafter, shall be fined not more than two hundred dollars; and upon a third or subsequent conviction, shall be fined not more than five hundred dollars.

# Following Too Closely

- The driver of a motor vehicle shall not follow another vehicle more closely than is reasonable and prudent having due regard for the speed of such vehicles and the traffic upon and the condition of the highway.

# Following Too Closely

- It shall be unlawful for the operator of any motor truck, registered for a gross weight of more than eight thousand pounds, bus, special mobile equipment or any motor vehicle drawing another vehicle operating upon any roadway outside of a business or residence district, to follow within two hundred feet

# Following Too Closely

- Provided, That this provision shall not be construed to
  - prevent overtaking and passing,
  - apply upon any lane specially designated for the use of motor trucks or combinations of vehicles, or within any section of a roadway posted or marked as a “no-passing zone,”
  - apply to any convoy of vehicles of the military service of the United States or of this State and
  - apply to funeral processions.

# Following Too Closely

- Motor vehicles being driven upon any roadway outside of a business or residence district in a caravan or motorcade whether or not towing other vehicles shall be so operated as to allow sufficient space between each such vehicle or combination of vehicles so as to enable any other vehicle to enter and occupy such space without danger.

# Following Too Closely

- This provision shall not apply to
  - funeral processions; or
  - any convoy of vehicles of the military service of the United States or of this State.



# Controlled-Access Roadway

- No person shall drive a vehicle onto or from any controlled-access roadway except at such entrances and exits as are established by public authority.

# Controlled-Access Roadway

- Any person violating the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one hundred dollars; upon a second conviction within one year thereafter, shall be fined not more than two hundred dollars; and upon a third or subsequent conviction, shall be fined not more than five hundred dollars.

# Right Turns

- Both the approach for a right turn and a right turn shall be made as close as practicable to the right-hand curb or edge of the roadway.

# Right Turns

- Any person violating the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one hundred dollars; upon a second conviction within one year thereafter, shall be fined not more than two hundred dollars; and upon a third or subsequent conviction, shall be fined not more than five hundred dollars.

# Left Turns On Two-way Roadways

- At any intersection where traffic is permitted to move in both directions on each roadway entering the intersection, an approach for a left turn shall be made in that portion of the right half of the roadway nearest the center line thereof and by passing to the right of such center line where it enters the intersection
- After entering the intersection the left turn shall be made so as to leave the intersection to the right of the center line of the roadway being entered.
- Whenever practicable the left turn shall be made in that portion of the intersection to the left of the center of the intersection.

# Left Turns On Two-way Roadways

- Any person violating the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one hundred dollars; upon a second conviction within one year thereafter, shall be fined not more than two hundred dollars; and upon a third or subsequent conviction, shall be fined not more than five hundred dollars.

# Left Turns On Other Than Two-way Roadways

- At any intersection where traffic is restricted to one direction on one or more of the roadways, the driver of a vehicle intending to turn left at any such intersection shall approach the intersection in the extreme left-hand lane lawfully available to traffic moving in the direction of travel of such vehicle
- After entering the intersection the left turn shall be made so as to leave the intersection, as nearly as practicable, in the left-hand lane lawfully available to traffic moving in such direction upon the roadway being entered.

# Left Turns On Other Than Two-way Roadways

- Any person violating the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one hundred dollars; upon a second conviction within one year thereafter, shall be fined not more than two hundred dollars; and upon a third or subsequent conviction, shall be fined not more than five hundred dollars.



# **Local Authorities May Specify Different Course For Turns**

- Local authorities in their respective jurisdictions may cause markers, buttons, or signs to be placed within or adjacent to intersections and thereby require and direct that a different course from that specified in this article be traveled by vehicles turning at an intersection, and when markers, buttons or signs are so placed no driver of a vehicle shall turn a vehicle at an intersection other than as directed and required by such markers, buttons, or signs.

# Turning On Curve Or Crest Of Grade

- No vehicle shall be turned so as to proceed in the opposite direction upon any curve, or upon the approach to, or near the crest of a grade, where such vehicle cannot be seen by the driver of any other vehicle approaching from either direction within five hundred feet.

# Turning On Curve Or Crest Of Grade

- Any person violating the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one hundred dollars; upon a second conviction within one year thereafter, shall be fined not more than two hundred dollars; and upon a third or subsequent conviction, shall be fined not more than five hundred dollars.

# Turning Movements And Required Signals

- No person shall turn a vehicle at an intersection unless the vehicle is in proper position upon the roadway or turn a vehicle to enter a private road or driveway or otherwise turn a vehicle from a direct course or move right or left upon a roadway unless and until such movement can be made with reasonable safety.

# Turning Movements And Required Signals

- No person shall so turn any vehicle without giving an appropriate signal in the manner hereinafter provided in the event any other traffic may be affected by such movement.

# Turning Movements And Required Signals

- A signal of intention to turn right or left when required shall be given continuously during not less than the last one hundred feet traveled by the vehicle before turning.

# Turning Movements And Required Signals

- No person shall stop or suddenly decrease the speed of a vehicle without first giving an appropriate signal in the manner provided herein to the driver of any vehicle immediately to the rear when there is opportunity to give such signal.

# Turning Movements And Required Signals

- Any person violating the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one hundred dollars; upon a second conviction within one year thereafter, shall be fined not more than two hundred dollars; and upon a third or subsequent conviction, shall be fined not more than five hundred dollars.



# Signals To Be Given By Hand And Arm Or Signal Device

- Any stop or turn signal when required herein shall be given either by means of the hand and arm or by a signal lamp or lamps or mechanical signal device, but when a vehicle is so constructed or loaded that hand-and-arm signal would not be visible both to the front and rear of such vehicle then said signals must be given by such a lamp or lamps or signal device.

# Method Of Giving Hand-and-arm Signals

- All signals herein required given by hand and arm shall be given from the left side of the vehicle in the following manner and such signals shall indicate as follows:
  - Left turn.--Hand and arm extended horizontally.
  - Right turn.--Hand and arm extended upward.
  - Stop or decrease speed.--Hand and arm extended downward.

# Vehicle Approaching Or Entering Intersection

- The driver of a vehicle approaching an intersection shall yield the right-of-way to a vehicle which has entered the intersection from a different highway.
- When two vehicles enter an intersection from a different highway at approximately the same time the driver of the vehicle on the left shall yield the right-of-way to the vehicle on the right

# Vehicle Turning Left At Intersection

- The driver of a vehicle within an intersection intending to turn to the left shall yield the right-of-way to any vehicle approaching from the opposite direction which is within the intersection or so close

# Vehicle Turning Left At Intersection

- Said driver, having so yielded and having given a signal may make such left turn and the drivers of all other vehicles approaching the intersection from said opposite direction shall yield the right-of-way to the vehicles making the left turn.

# **Vehicle Entering Through Highway Or Stop Intersections**

- The driver of a vehicle shall stop at the entrance to a through highway and shall yield the right-of-way to other vehicles which have entered the intersection from said through highways or which are approaching so closely on said through highway as to constitute an immediate hazard but said driver having so yielded may proceed.

# **Vehicle Entering Through Highway Or Stop Intersections**

- The driver of a vehicle shall likewise stop in obedience to a stop sign as required herein at an intersection where a stop sign is erected at one or more entrances thereto although not a part of a through highway and shall proceed cautiously, yielding to vehicles not so obliged to stop which are within the intersection or approaching so closely as to constitute an immediate hazard, but may then proceed.

# Operation Of Vehicles On Approach Of Authorized Emergency Vehicles

- Upon the immediate approach of an authorized emergency vehicle equipped with at least one flashing lighted lamp which is visible under normal atmospheric conditions from a distance of five hundred feet to the front of such vehicle other than a police vehicle when operated as an authorized emergency vehicle, and when the driver is giving audible signal by siren, exhaust whistle, or bell:



# Operation Of Vehicles On Approach Of Authorized Emergency Vehicles

- The driver of every other vehicle shall yield the right-of-way and shall immediately drive to a position parallel to, and as close as possible to, the right-hand edge or curb of the roadway clear of any intersection and shall stop and remain in such position until the authorized emergency vehicle has passed, except when otherwise directed by a police officer.

# **Operation Of Vehicles On Approach Of Authorized Emergency Vehicles**

- This section shall not operate to relieve the driver of an authorized emergency vehicle from the duty to drive with due regard for the safety of all persons using the highway.

# Bowles Rice

**Bicycles**

# Obedience

- It is a misdemeanor for any person to do any act forbidden or fail to perform any act required in this article.

# Obedience

- The parent of any child and the guardian of any ward shall not authorize or knowingly permit any such child or ward to violate any of the provisions of this chapter.
- These regulations applicable to bicycles shall apply whenever a bicycle is operated upon any highway or upon any path set aside for the exclusive use of bicycles subject to those exceptions stated herein.

# **Traffic Laws Apply To Persons Riding Bicycles**

- Every person riding a bicycle upon a roadway shall be granted all of the rights and shall be subject to all of the duties applicable to the driver of a vehicle by this chapter.

# **Riding On Bicycle Seats; Carrying More Than One Person On Bicycle**

- A person propelling a bicycle shall not ride other than upon or astride a permanent and regular seat attached thereto.
- No bicycle shall be used to carry more persons at one time than the number for which it is designed and equipped.

# Clinging To Vehicles

- No person riding upon any bicycle, coaster, roller skates, sled, or toy vehicle shall attach the same or himself to any streetcar or vehicle upon a roadway.



# Riding On Roadways And Bicycle Paths

- Any person operating a bicycle upon a roadway at less than the normal speed of traffic at the time and place and under the conditions then existing shall ride in the lane marked for bicycle use or,
- if no lane is marked for bicycle use, as close as practicable to the right-hand curb or edge of the roadway **except:**

# Riding On Roadways And Bicycle Paths

- When overtaking and passing another bicycle or vehicle proceeding in the same direction;
- When preparing for a left turn at an intersection or into a private road or driveway; or
- When reasonably necessary to avoid any condition or potential conflict. (b) Any person operating a bicycle upon a one-way roadway with two or more marked traffic lanes may ride as near the left-hand curb or edge of such roadway as practicable.

# **Riding On Roadways And Bicycle Paths**

- Persons riding bicycles upon a roadway may not ride more than two abreast except on paths or parts of roadways set aside for the exclusive use of bicycles.

# Lamps And Other Equipment On Bicycles

- Every bicycle when in use at nighttime shall be equipped with:
  - Lamp on the front which emits a white light visible from a distance of at least five hundred feet to the front
  - Red reflector on the rear of a type approved by the department which shall be visible from all distances from fifty feet to three hundred feet to the rear

# **Lamps And Other Equipment On Bicycles**

- Every bicycle shall be equipped with a brake that enables the operator to make the braked wheels skid on dry, level and clean pavement.

# Electric Bicycles

- The operator of an electric bicycle has all of the rights and privileges and is subject to all of the duties applicable to the driver of a vehicle
- A person owning or operating an electric bicycle is not subject to code, relating to registration, title, driver's license, and financial responsibility requirements.

# Electric Bicycles

- A person may not tamper with or modify an electric bicycle so as to change the motor-powered speed capability or motor engagement between pedal-assist and throttle-assist types of engagement.
- If a motor on an electric bicycle is modified so that a limit is exceeded, that vehicle is no longer an electric bicycle.

# Electric Bicycles

- The provisions of this subsection are not applicable to a modified electric bicycle operated solely and exclusively on a person's own property.
- An electric bicycle must comply with the equipment and manufacturing requirements for bicycles adopted by the United States Consumer Product Safety Commission (16 C.F.R. Part 1512).



# Electric Bicycles

- The motor on an electric bicycle must disengage or cease to propel the electric bicycle when the operator stops pedaling, or when the operator applies the brakes and stops pedaling.
- A Class 3 electric bicycle must be equipped with a speedometer that displays the speed the electric bicycle is traveling in miles per hour.

# Electric Bicycles

- Electric bicycles operated on public roadways, public bicycle paths, public multiuse paths, and other public rights-of-way where bicycles are permitted to travel are subject to the following restrictions:
  - (1) A Class 1 electric bicycle may be used in places where bicycles are permitted to travel, including, but not limited to, public roadways, public bicycle paths, public multiuse trails, and public single-use trails.

# Electric Bicycles

- A Class 3 electric bicycle may not be operated on a bicycle path, multiuse trail, or single-use trail unless it is within a highway or roadway:
- Provided, That the provisions of this subdivision are not applicable to a bicycle path, multiuse trail, or single-use trail if the municipality, local authority, or governing body of a state agency that has jurisdiction over the bicycle path, multiuse trail, or single-use trail expressly permits that operation.

# Electric Bicycles

- This subsection may not be construed to limit the authority of the owner of a private way or the owner of private property to restrict or allow the operation of electric bicycles on the way or property.

# Electric Bicycles

- Age restrictions related to the operation of electric bicycles are as follows:
  - (1) A person under 16 years of age may not operate a Class 3 electric bicycle;
  - (2) A person under 15 years of age may only be a passenger on a Class 3 electric bicycle, including as a passenger within any attachment to the vehicle designed to transport an additional person, including a child, provided the operator of the electric bicycle is 18 years of age or older; and

# Electric Bicycles

- Age restrictions related to the operation of electric bicycles are as follows:
  - A person under 15 years of age who is an operator or passenger on an electric bicycle shall wear a properly fitted and fastened bicycle helmet, pursuant to the Child Bicycle Safety Act, § 17C-11A-1 et seq. of this code.

# Electric Bicycles

- A person under the influence of alcohol or controlled substances shall not operate a Class 1 or Class 3 electric bicycle.

# Helmet

- It is unlawful for any person under fifteen years of age to operate or be a passenger on a bicycle or any attachment to a bicycle used on a public roadway, public bicycle path or other public right-of-way unless at all times when the person is so engaged he or she wears a protective bicycle helmet of good fit, fastened securely upon the head with the straps of the helmet.



# Helmet

- It is unlawful for any parent or legal guardian of a person under fifteen years of age to knowingly permit such person to operate or be a passenger on a bicycle or on any attachment to a bicycle used on a public roadway, public bicycle path or other public right-of-way unless at all times when the person is so engaged he or she wears a protective bicycle helmet of good fit, fastened securely upon the head with the straps of the helmet.

# Penalties

- Notwithstanding the provisions of section one, article eighteen of this chapter, any parent or legal guardian violating any requirement set forth in section four of this article shall be fined ten dollars or
- be required to perform two hours in community service related to a child injury prevention program

# Penalties

- No court costs may be assessed to any person violating the requirements of section four of this article.

# Penalties

- In the case of a first violation of section four of this article, the court may waive the fine upon receipt of satisfactory proof that the person has a helmet or purchased or otherwise obtained, a protective bicycle helmet.
- It is an absolute defense to a charge for a violation of this article that a parent or legal guardian is unable to pay for the protective bicycle helmet.

# Bowles Rice

**Stopping**

# **Obedience To Signal Indicating Approach Of Train**

- Whenever any person driving a vehicle approaches a railroad grade crossing under any of the circumstances stated in this section, the driver of such vehicle shall stop within fifty feet but not less than fifteen feet from the nearest rail of such railroad and shall not proceed until he can do so safely.

# Obedience To Signal Indicating Approach Of Train

- The foregoing requirements shall apply when:
  - A clearly visible electric or mechanical signal device gives warning of the immediate approach of a railroad train;
  - A crossing gate is lowered or when a human flagman gives or continues to give a signal of the approach
  - A railroad train approaching within approximately one thousand five hundred feet of the highway crossing emits a signal audible from such distance

# **Obedience To Signal Indicating Approach Of Train**

- Any approaching railroad train is plainly visible and is in hazardous proximity to such crossing.



# **Obedience To Signal Indicating Approach Of Train**

- No person shall drive any vehicle through, around or under any crossing gate or barrier at a railroad crossing while such gate or barrier is closed or is being opened or closed.

# Obedience To Signal Indicating Approach Of Train

- Any person failing to comply with the requirements is guilty of a misdemeanor, and, upon conviction thereof,
  - shall be fined one hundred dollars or imprisoned for not more than ten days.
  - The commissioner shall promulgate rules to further penalize those convicted of violating this section by levying three points against the violator's driver's license record

# **All Vehicles Must Stop At Certain Railroad Grade**

- The state road commission and local authorities with the approval of the state road commission are hereby authorized to designate particularly dangerous highway grade crossings of railroads and to erect stop signs thereat.
- When such stop signs are erected the driver of any vehicle shall stop within fifty feet but not less than fifteen feet from the nearest rail of such railroad and shall proceed only upon exercising due care.

# **Certain Vehicles Must Stop At All Railroad Grade**

- The driver of a commercial motor vehicle specified in subsection shall not cross a railroad track or tracks at grade unless he or she first:  
Stops the commercial motor vehicle within fifty feet of, and not closer than fifteen feet to, the tracks;

# **Certain Vehicles Must Stop At All Railroad Grade**

- Thereafter, listens and looks in each direction along the tracks for an approaching train;
- Ascertains that no train is approaching.
- The driver shall not shift gears while crossing the tracks.

# Certain Vehicles Must Stop At All Railroad Grade

- The following commercial vehicles are required to stop at railroad tracks or tracks at grade:
  - Every bus transporting passengers;
  - Every commercial motor vehicle transporting any quantity of a United States department of transportation defined division 2.3 chlorine;
  - Every commercial motor vehicle which, in accordance with United States department of transportation regulations, is marked or placarded and is required to stop in accordance with 49 C.F.R. part § 392.10(a)(3)(2001).

# Certain Vehicles Must Stop At All Railroad Grade

- The following commercial vehicles are required to stop at railroad tracks or tracks at grade:
  - Every cargo tank motor vehicle loaded or empty, used for the transportation of any hazardous material
  - Every cargo tank motor vehicle transporting a commodity which, at the time of loading, has a temperature above its flashpoint as determined by 49 C.F.R. § 173.120 (2001); and
  - Every cargo tank motor vehicle, whether loaded or empty transporting any commodity exemption in accordance with 49 C.F.R. part § 107 subpart B (2001).

# Certain Vehicles Must Stop At All Railroad Grade

- The following commercial vehicles are required to stop at railroad tracks or tracks at grade:
  - Any vehicle owned by an employer which, in carrying on the employer's business or in carrying employees to and from work, carries more than six employees



# **Certain Vehicles Must Stop At All Railroad Grade**

- All drivers of commercial motor vehicles not required to stop at railroad tracks may not cross a railroad track or tracks at grade unless he or she first slows the commercial motor vehicle to a speed which will permit the commercial motor vehicle to be stopped before reaching the nearest rail of the railroad crossing and permit exercise of due caution to ascertain that the tracks are clear of an approaching train.

# **Certain Vehicles Must Stop At All Railroad Grade**

- All drivers of commercial motor vehicles may not proceed to cross a railroad crossing unless there is sufficient space to drive completely through the crossing without stopping and the vehicle has sufficient undercarriage clearance to drive completely through the crossing without stopping.

# Certain Vehicles Must Stop At All Railroad Grade

- No stop need be made at:
  - Any crossing where a police officer, crossing flagger or a traffic-control signal directs traffic to proceed;
  - A streetcar crossing, or railroad tracks used exclusively for industrial switching purposes
  - A railroad grade crossing controlled by a functioning highway traffic signal transmitting a green indication which, or
  - A railroad grade crossing which is marked with a sign indicating that the rail line is out of service.

# Certain Vehicles Must Stop At All Railroad Grade

- Any person driving a vehicle specified in this section or a vehicle that requires a commercial driver's license who fails to comply with the requirements of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined one hundred dollars or imprisoned for not more than ten days: Provided, That if the electric or mechanical signal device is malfunctioning, this subsection shall not apply.

# **Vehicles Must Stop At Through Highways; Erection Of Signs**

- The state road commission with reference to state highways and local authorities with reference to other highways under their jurisdiction may designate through highways and erect stop signs at specified entrances thereto or may designate any intersection as a stop intersection and erect like signs at one or more entrances to such intersection.

# **Vehicles Must Stop At Through Highways; Erection Of Signs**

- Every said sign shall bear the word “Stop” in letters not less than six inches in height and such sign shall at nighttime be rendered luminous by steady or flashing internal illumination, or by a fixed floodlight projected on the face of the sign, or by efficient reflecting elements on the face of the sign.

# **Vehicles Must Stop At Through Highways; Erection Of Signs**

- Every stop sign shall be erected as near as practicable to the nearest line of the crosswalk on the near side of the roadway.

# **Vehicles Must Stop At Through Highways; Erection Of Signs**

- Every driver approaching a stop sign shall stop before entering the crosswalk on the near side of the intersection or in the event there is no crosswalk shall stop at a clearly marked stop line, but if none, then at the point nearest the intersecting highway where the driver has a view of approaching traffic on the intersecting highway



# **Stopping Before Emerging From Alley Or Private Driveway**

- The driver of a vehicle within a business or residence district emerging from any alley, driveway, or building shall stop such vehicle immediately prior to driving onto a sidewalk or onto the sidewalk area extending across any alleyway or private driveway, and shall yield the right-of-way to any pedestrian as may be necessary to avoid collision, and upon entering the roadway shall yield the right-of-way to all vehicles approaching on said roadway.

# **Stopping Before Emerging From Alley Or Private Driveway**

- Any person violating the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one hundred dollars; upon a second conviction within one year thereafter, shall be fined not more than two hundred dollars; and upon a third or subsequent conviction, shall be fined not more than five hundred dollars.

# School Bus

- The driver of a vehicle, upon meeting or overtaking from either direction any school bus which has stopped for the purpose of receiving or discharging any school children, shall stop the vehicle before reaching the school bus when there is in operation on the school bus flashing warning signal lights,

# School Bus

- The driver may not proceed until the school bus resumes motion, or is signaled by the school bus driver to proceed or the visual signals are no longer actuated.
- This section applies wherever the school bus is receiving or discharging children including, but not limited to, any street, highway, parking lot, private road, or driveway:

# School Bus

- Provided, That the driver of a vehicle upon a controlled access highway need not stop upon meeting or passing a school bus which is on a different roadway or adjacent to the highway and where pedestrians are not permitted to cross the roadway.

# School Bus

- Any driver acting in violation of subsection
  - first offense, shall be fined not less than \$500 or more than \$1,000, or confined in jail not more than six months,
  - second violation of subsection (a) of this section, the driver shall be fined not less than \$1,000 nor more than \$1,500, or confined in jail not more than six months, or both fined and confined.
  - third or subsequent violation of subsection (a) of this section, the driver shall be fined \$2,000 and confined not less than 48 hours in jail but not more than six months.

# School Bus

- Where the actual identity of the operator of a motor vehicle is unknown but the license plate number of the motor vehicle is known,
- it may be inferred that the operator was an owner or lessee of the motor vehicle for purposes of the probable cause determination.
- Where there is more than one registered owner or lessee, the inference created by this subsection shall apply to the first listed owner or lessee as found on the motor vehicle registration:

# School Bus

- Provided, That a person charged with a violation, where the sole evidence against the owner or lessee is the presence of the vehicle at the scene at the time of the offense shall only be subject to the applicable fine



# Bowles Rice

**Miscellaneous**

# Limitations On Backing

- The driver of a vehicle shall not back the same unless such movement can be made with reasonable safety and without interfering with other traffic.

# Limitations On Backing

- Any person violating the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one hundred dollars; upon a second conviction within one year thereafter, shall be fined not more than two hundred dollars; and upon a third or subsequent conviction, shall be fined not more than five hundred dollars.

# Obstruction To Driver's View

- No person shall drive a vehicle when it is so loaded as to obstruct the view of the driver to the front or sides of the vehicle or as to interfere with the driver's control over the driving mechanism of the vehicle.

# Obstruction To Driver's View

- No passenger in a vehicle shall ride in such position as to interfere with the driver's or operator's view ahead or to the sides, or to interfere with his or her control
- Any person violating the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one hundred dollars; upon a second conviction within one year thereafter, shall be fined not more than two hundred dollars; and upon a third or subsequent conviction, shall be fined not more than five hundred dollars.

# Passengers In Seat With Operator

- No more than three persons including the operator shall ride or be permitted by such operator to ride in the seat with the operator of any motor vehicle while said motor vehicle is being operated.

# Passengers In Seat With Operator

- That the limitation of this section shall not apply to a truck cab or truck crew compartment properly designed for the occupancy of four persons including the operator, and so designated on the registration card by the division of motor vehicles.

# Passengers In Seat With Operator

- Any person violating the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one hundred dollars; upon a second conviction within one year thereafter, shall be fined not more than two hundred dollars; and upon a third or subsequent conviction, shall be fined not more than five hundred dollars.



# Passengers On Running Board

- No passenger shall ride, nor shall the operator permit any passenger to ride on the running boards of any motor vehicle while such vehicle is being operated on the streets or highways of this state.

# Passengers On Running Board

- Any person violating the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one hundred dollars; upon a second conviction within one year thereafter, shall be fined not more than two hundred dollars; and upon a third or subsequent conviction, shall be fined not more than five hundred dollars.

# Coasting Prohibited

- The driver of any motor vehicle when traveling upon a down grade shall not coast with the gears of such vehicle in neutral.
- The driver of a commercial motor vehicle when traveling upon a down grade shall not coast with the clutch disengaged.

# Coasting Prohibited

- Any person violating the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one hundred dollars; upon a second conviction within one year thereafter, shall be fined not more than two hundred dollars; and upon a third or subsequent conviction, shall be fined not more than five hundred dollars.

# Following Authorized Emergency

- The driver of any vehicle other than one on official business may not follow any authorized emergency vehicle or closer than five hundred feet or drive into or park such vehicle within the block where such authorized emergency vehicle has stopped in answer to a fire alarm or other emergency.

# Following Authorized Emergency

- Any person violating the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one hundred dollars; upon a second conviction within one year thereafter, shall be fined not more than two hundred dollars; and upon a third or subsequent conviction, shall be fined not more than five hundred dollars.

# Approaching Authorized Emergency Vehicles

- The driver of any vehicle approaching a stationary authorized emergency vehicle, when the authorized emergency vehicle is giving a signal by displaying alternately flashing red, red and white, blue, or red and blue lights or amber or yellow warning lights, **shall:**

# **Approaching Authorized Emergency Vehicles**

- Any person who violates any subsection of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than five hundred dollars or confined in the county or regional jail not more than sixty days, or both fined and imprisoned.



# Approaching Authorized Emergency Vehicles

- Proceed with due caution, yield the right-of-way by making a lane change not adjacent to that of the authorized emergency vehicle, if possible with regard to safety and traffic conditions, if on a highway having at least four lanes with not less than two lanes proceeding in the same direction as the approaching vehicle and reduce speed to a safe level for road conditions; or
- Proceed with due caution, reduce the speed of the vehicle, maintaining a safe speed not to exceed fifteen miles per hour on any nondivided highway or street and twenty-five miles per hour on any divided highway depending on road conditions, if changing lanes would be impossible or unsafe.

# Approaching Authorized Emergency Vehicles

- Any person who violates any subsection of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than five hundred dollars or confined in the county or regional jail not more than sixty days, or both fined and imprisoned.
- If violation of this section results in property damage in addition to any other penalty imposed, driving privileges of the persons causing the property damage shall be suspended for ninety days.

# **Approaching Authorized Emergency Vehicles**

- If violation of this section results in injury to another person in addition to any other penalty imposed, the driving privileges of the person causing the injury shall be suspended for six months.
- If violation of this section results in the death of another person in addition to any other penalty imposed, the driving privileges of the person causing the death shall be suspended for two years.

# **Approaching Authorized Emergency Vehicles**

- Any person who violates any provision of this section and while doing so also violates section two, article five of this chapter is guilty of a misdemeanor and, upon conviction thereof, shall, in addition to the penalties set out in section two of said article and this section, be fined not less than one thousand dollars nor more than five thousand dollars, or confined in the county or regional jail for a period not more than six months, or both fined and imprisoned.

# Crossing Fire Hose

- No vehicle shall be driven over any unprotected hose of a fire department when laid down on any street, private driveway, or streetcar track, to be used at any fire or alarm of fire, without the consent of the fire department official in command.

# Crossing Fire Hose

- Any person violating the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one hundred dollars; upon a second conviction within one year thereafter, shall be fined not more than two hundred dollars; and upon a third or subsequent conviction, shall be fined not more than five hundred dollars.

# Putting Glass

- No person shall throw or deposit upon any highway any glass bottle, glass, nails, tacks, wire, cans, or any other substance likely to injure any person, animal, or vehicle upon such highway.

# Putting Glass

- Any person who drops, or permits to be dropped or thrown, upon any highway any destructive or injurious material shall immediately remove the same or cause it to be removed.
- Any person removing a wrecked or damaged vehicle from a highway shall remove any glass or other injurious substance dropped upon the highway from such vehicle.



# Unlawful To Litter From Motor Vehicle

- It is unlawful for any driver or passenger of a motor vehicle or other conveyance to place, deposit, dump, throw or cause to be placed, deposited, dumped or thrown, any litter from a motor vehicle or other conveyance in or upon any public or private highway, road, street or alley; any private property; any public property; or the waters of the state or within one hundred feet of the waters of this state.

# Unlawful To Litter From Motor Vehicle

- In addition to any penalty imposed for littering under the provisions of article fifteen-a, chapter twenty-two of this code, any driver of a motor vehicle or other conveyance convicted of violating this section shall have three points assessed against his or her driver's license.

# Unlawful To Litter From Motor Vehicle

- When there is more than one occupant in a motor vehicle or other conveyance and it cannot be determined which occupant is responsible for violating this section, the driver shall be presumed to be responsible for the violation.

# Sun-Screening

- No person may operate a motor vehicle that is registered or required to be registered in the state on any public highway, road or street that has a sun-screening device on the windshield, the front side wings and side windows adjacent to the right and left of the driver and windows adjacent to the rear of the driver that do not meet the requirements of this section.

# Sun-Screening

- That law-enforcement K-9 and other emergency vehicles that are designed to haul animals, unmarked law-enforcement vehicles primarily used for covert or undercover enforcement and automobiles that have sun-screening devices installed at the factory by the manufacturer are exempt from this requirement.
- No unmarked law-enforcement vehicle, herein exempted, may engage in routine traffic stops.

# Sun-Screening

- A sun-screening device when used in conjunction with the windshield must be nonreflective and may not be red, yellow or amber in color.
- A sun-screening device may be used only along the top of the windshield and may not extend downward beyond the ASI line or more than five inches from the top of the windshield whichever is closer to the top of the windshield.

# Sun-Screening

- A sun-screening device shall be a nonreflective type with reflectivity of not more than twenty percent and have a light transmission of not less than thirty-five percent.
- The side windows behind the driver and the rear most windows that has a light transmission of not less than thirty-five percent and a reflectivity of not more than twenty percent.
- If a sun-screening device is used on glazing behind the driver, one right and one left outside rear view mirror is required

# Sun-Screening

- Each manufacturer shall:
  - (1) Certify to the West Virginia State Police and Division of Motor Vehicles that a sun-screening device used by it is in compliance with the reflectivity and transmittance requirements of this section;
  - Provide a label not to exceed one and one-half square inches in size, and
  - The labeling or marking must be placed in the left lower corner of each glazing surface when facing the vehicle from the outside.



# Sun-Screening

- No person may:
  - Offer for sale or for use any sun-screening product or material for motor vehicle use not in compliance with this section; or
  - Install any sun-screening product or material on vehicles intended for use on public roads without permanently affixing the label specified in this section

# Sun-Screening

- The provisions of this section do not apply, who has an affidavit signed by a physician or an optometrist licensed to practice in this state that states that the person has a physical condition that makes it necessary to equip the motor vehicle with sun-screening material.
- The affidavit must be in the possession of the person so afflicted, or the person's legal guardian, at all times while being transported in the motor vehicle.

# Sun-Screening

- The light transmittance requirement of this section does not apply to windows behind the driver on trucks, buses, trailers, mobile homes and multipurpose passenger vehicles.

# Sun-Screening

- Any person violating the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$200.

# **Video Screens, Video Monitors And Television Receivers In View Of Driver**

- No motor vehicle may be operated on a street or highway in this state when equipped with a television receiver, video monitor, television or video screen unless the receiver, screen or monitor is configured so that the moving images are not in view of the operator while the vehicle is in motion.

# **Video Screens, Video Monitors And Television Receivers In View Of Driver**

- This prohibition does not apply to the following equipment installed in a vehicle:
  - A visual display if it does not show video or television broadcast images in view of the operator while the motor vehicle is in motion;
  - A global positioning device;
  - A mapping display;
  - A visual display used to enhance or supplement the driver's view forward, behind or to the sides of a motor vehicle for the purpose of maneuvering the vehicle;

# **Video Screens, Video Monitors And Television Receivers In View Of Driver**

- This prohibition does not apply to the following equipment installed in a vehicle:
  - A visual display used to enhance or supplement a driver's view of vehicle occupants; or
  - Television-type receiving equipment used exclusively for safety or traffic engineering information.

# **Video Screens, Video Monitors And Television Receivers In View Of Driver**

- A television receiver, video monitor, television or video screen or other similar means of visually displaying a television broadcast or video signal is not prohibited if the equipment has an interlock device that, when the motor vehicle is driven, disables the equipment



# Child Passenger Safety Devices

- Every driver who transports a child under the age of eight years in a passenger automobile, van or pickup truck other than one operated for hire shall, provide for the protection of the child by properly placing, maintaining and securing the child in a child passenger safety

# Child Passenger Safety Devices

- That if a child is under the age of eight years and at least four feet nine inches tall, a safety belt shall be sufficient to meet the requirements of this section.
- Any person who violates any provision of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than ten dollars nor more than twenty dollars.

# Child Passenger Safety Devices

- If all seat belts in a vehicle are being used at the time of examination by a law officer and the vehicle contains more passengers than the total number of seat belts or other safety devices as installed in compliance with federal motor vehicle safety standards, the driver may not be considered in violation of this section.

# Bowles Rice

**Insurance**

# Insurance

- At the time of investigation of a motor vehicle offense the officer shall inquire of the operator of any motor vehicle involved the existence upon the vehicle or vehicles of the evidence of insurance.

# Insurance

- A defendant who is charged with a traffic offense that requires an appearance in court shall present the court at the time of his or her appearance or subsequent appearance with proof that the defendant had security at the time of the traffic offenses

# Insurance

- If, as a result of the defendant's failure to show proof, the court determines that the defendant has violated this article, the court shall notify the Division of Motor Vehicles within five days.

# Suspension Or Revocation Of License

- Any owner of a motor vehicle, subject to this article, who fails to have the required security in effect at the time such vehicle is registered or being operated upon the roads or highways shall have his or her driver's license



# Suspension Or Revocation Of License

- Pays a penalty fee of \$200 before the effective date, the driver's license suspension of thirty days may not be imposed and the vehicle registration revocation may not be imposed
- If the motor vehicle is titled and registered in more than one name, the commissioner shall suspend the driver's license of only one of the owners.

# **Suspension Or Revocation Of License**

- Any person who is not the vehicle owner and is convicted of operating a motor vehicle upon the roads or highways of this state which does not have the security required by this article shall have the conviction placed on his or her driver's license record.

# **Suspension Or Revocation Of License**

- The division may not suspend or revoke a driver's license under this article for any citation of driving without insurance that is received by the division from a court that is more than one year from the date of the offense.

# Penalty

- Shall be fined not less than two hundred dollars nor more than five thousand dollars, or confined in the county or regional jail not less than fifteen days nor more than one year, or both.

# Bowles Rice

## **WEST VIRGINIA MUNICIPAL LEAGUE**

### **Roundtable Discussion and Wrap up**

Floyd M. Sayre, III, Esq.  
2024