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OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

SECOND REGULAR SESSION, 2004



ENROLLED

COMMITTEE SUBSTITUTE
FOR

House Bill No. 4217

(By Delegates Mahan, R. Thompson, Cann,
Kominar, Armstead and Faircloth)



Passed March 12, 2004

In Effect from Passage

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H. B. 4217

(BY DELEGATES MAHAN, R. THOMPSON, CANN,
KOMINAR, ARMSTEAD AND FAIRCLOTH)

[Passed March 12, 2004; in effect from passage.]

AN ACT to amend and reenact article 7, chapter 64 of the code of West Virginia, 1931, as amended, all relating generally to the promulgation of administrative rules by the various executive or administrative agencies and the procedures relating thereto; legislative mandate or authorization for the promulgation of certain legislative rules by various executive or administrative agencies of the state; authorizing certain of the agencies to promulgate certain legislative rules in the form that the rules were filed in the state register; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the legislative rule-making review committee; authorizing certain of the agencies to promulgate certain legislative rules as amended by the Legislature; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recom-

mended by the legislative rule-making review committee and as amended by the Legislature; authorizing the division of banking to promulgate a legislative rule relating to residential mortgage lenders, brokers and loan originators; authorizing the insurance commissioner to promulgate a legislative rule relating to the licensing and conduct of individual insurance producers, agencies and solicitors; authorizing the insurance commissioner to promulgate a legislative rule relating to surplus lines insurance; authorizing the insurance commissioner to promulgate a legislative rule relating to Medicare supplement insurance; authorizing the insurance commissioner to promulgate a legislative rule relating to accident and sickness rate filing; authorizing the insurance commissioner to promulgate a legislative rule relating to credit for reinsurance; authorizing the insurance commissioner to promulgate a legislative rule relating to self-insurance pools for political subdivisions; authorizing the lottery commission to promulgate a legislative rule relating to the state lottery; authorizing the lottery commission to promulgate a legislative rule relating to limited video lottery; authorizing the racing commission to promulgate a legislative rule relating to thoroughbred racing; authorizing the racing commission to promulgate a legislative rule relating to greyhound racing; and authorizing the tax commissioner to promulgate a legislative rule relating the alternative resolution of tax disputes.

Be it enacted by the Legislature of West Virginia:

That article 7, chapter 64 of the code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 7. AUTHORIZATION FOR DEPARTMENT OF TAX AND REVENUE TO PROMULGATE LEGISLATIVE RULES.

§64-7-1. Division of banking.

1 The legislative rule filed in the state register on the fifteenth
2 day of July, two thousand three, authorized under the authority

3 of section three, article seventeen, chapter thirty-one, of this
4 code, modified by the division of banking to meet the objec-
5 tions of the legislative rule-making review committee and
6 refiled in the state register on the twentieth day of January, two
7 thousand four, relating to the division of banking (residential
8 mortgage lenders, brokers and loan originators, 106 CSR 5), is
9 authorized, with the following amendment:

10 On page three, after section 3.1, by adding a new section to
11 read “3.2 All records required to be maintained by section 3.1
12 shall be kept in the specific loan file relating to the individual
13 borrower or loan applicant except for those records listed in
14 subsections 3.1.z, 3.1.aa, 3.1.bb and 3.1.cc.”;

15 On page four, after section 4.1, by adding a new section to
16 read “4.2 All records required to be maintained by section 4.1
17 shall be kept in the specific loan file relating to the individual
18 borrower or loan applicant except for those records listed in
19 subsections 4.1.g, 4.1.h, 4.1.i, 4.1.j and 4.1.k.”;

20 On page five, after section 5.1, by adding a new section to
21 read “5.2 All records required to be maintained by section 5.1
22 shall be kept in the specific loan file relating to the individual
23 borrower or loan applicant except for those records listed in
24 subsections 5.1.j, 5.1.k, 5.1.l, 5.1.m and 5.1.n.”;

25 And,

26 On page seven, after section 6.1, by adding a new section
27 to read “6.2 All records required to be maintained by section
28 6.1 shall be kept in the specific loan file relating to the individ-
29 ual borrower or loan applicant except for those records listed in
30 subsections 6.1.t, 6.1.u, 6.1.v, 6.1.w and 6.1.y.”

§64-7-2. Insurance commissioner.

1 (a) The legislative rule filed in the state register on the
2 twenty-ninth day of July, two thousand three, authorized under
3 the authority of section ten, article two, chapter thirty-three, of
4 this code, modified by the insurance commissioner to meet the
5 objections of the legislative rule-making review committee and
6 refiled in the state register on the fourth day of December, two
7 thousand three, relating to the insurance commissioner (licens-
8 ing and conduct of individual insurance producers, agencies and
9 solicitors, 114 CSR 2), is authorized.

10 (b) The legislative rule filed in the state register on the
11 twenty-ninth day of July, two thousand three, authorized under
12 the authority of section ten, article two, chapter thirty-three, of
13 this code, modified by the insurance commissioner to meet the
14 objections of the legislative rule-making review committee and
15 refiled in the state register on the fourth day of December, two
16 thousandthree, relating to the insurance commissioner (surplus
17 lines insurance, 114 CSR 20), is authorized with the following
18 amendments:

19 On page three, by striking out all of subdivision 4.1 and
20 inserting in lieu thereof the following:

21 “4.1 Diligent Search – In accordance with the provisions of
22 West Virginia code §33-12C-5(a)(3), insurance coverage
23 written by a surplus lines insurer and placed by a surplus lines
24 licensee may not be procured until a diligent search has been
25 made by the individual insurance producer to place the risk with
26 an admitted insurer. The surplus lines licensee shall submit to
27 the commissioner a sworn notarized affidavit, as provided in
28 subsection 4.5 of this rule, that a diligent search has been made
29 by the individual insurance producer to place the risk with
30 licensed insurers authorized to write and actually writing the
31 particular risk sought to be placed in the excess lines market.
32 This affidavit shall be maintained, as required by West Virginia
33 code §33-12C-16, as part of the full and true record of each
34 surplus lines contract procured.”;

35 On page three, section 4 (subdivision 4.2.a.) following the
36 word “rule” and the period by inserting the following:

37 “The affidavit shall affirm that the insured was expressly
38 advised prior to the placement of the insurance that:

39 (1) the surplus lines insurer with which the insurance is to
40 be placed is not an admitted authorized insurer in this
41 state and is not subject to the commissioner’s supervi-
42 sion; and,

43 (2) in the event the surplus lines insurance becomes
44 insolvent, claims will not be paid nor will unearned
45 premiums be returned by any West Virginia insurance
46 guaranty fund.”;

47 On pages three and four by striking out all of subdivision
48 4.2.b. and inserting in lieu thereof the following:

49 “b. No individual insurance producer may solicit, procure,
50 place, or renew any insurance with a nonadmitted insurer unless
51 the producer has been unable to procure the requested insurance
52 from an authorized insurer after conducting a diligent search. A
53 diligent search requires the individual insurance producer to
54 contact as many insurers as the individual insurance producer
55 represents, that customarily write the kind of insurance re-
56 quested by the insured. A diligent search is presumed if
57 declinations are received from each authorized insured con-
58 tacted.”;

59 AND,

60 On pages eleven and twelve, by striking out all of subdivi-
61 sion 7.2.b. and inserting in lieu thereof the following:

62 “b. Insurance coverages and classes not included on the
63 export list may only be placed with surplus lines insurers once
64 a diligent search has been made.”

65 (c) The legislative rule filed in the state register on the
66 twenty-first day of March, two thousand three, authorized under
67 the authority of section ten, article two, chapter thirty-three, of
68 this code, relating to the insurance commissioner (Medicare
69 supplement insurance, 114 CSR 24), is authorized.

70 (d) The legislative rule filed in the state register on the
71 twenty-ninth day of July, two thousand three, authorized under
72 the authority of section ten, article two, chapter thirty-three, of
73 this code, modified by the insurance commissioner to meet the
74 objections of the legislative rule-making review committee and
75 refiled in the state register on the fourth day of December, two
76 thousand three, relating to the insurance commissioner (acci-
77 dent and sickness rate filing, 114 CSR 26), is authorized.

78 (e) The legislative rule filed in the state register on the
79 twenty-ninth day of July, two thousand three, authorized under
80 the authority of section ten, article two, chapter thirty-three, of
81 this code, modified by the insurance commissioner to meet the
82 objections of the legislative rule-making review committee and
83 refiled in the state register on the twenty-third day of January,
84 two thousand four, relating to the insurance commissioner
85 (credit for reinsurance, 114 CSR 40), is authorized, with the
86 following amendment:

87 On page one, subsection 2.2, line one, after the words “alien
88 ceding insurer”, by inserting the words “which is”;

89 On page one, subsection 2.2, line two, by striking out the
90 word “that” and inserting in lieu thereof the word “and”;

91 On page two, subdivision 4.1.d, line four, after the words
92 “The accredited reinsurer”, by striking out the word “shall” and
93 inserting in lieu thereof the word “may”;

94 On page three, subsection 5.1, line two, after the words
95 “insurer which”, by inserting a comma:

96 On page three, subsection 5.1, line three, after the words
97 “on which”, by striking out the remainder of the subsection and
98 inserting in lieu thereof the words “credit for reinsurance is
99 claimed on the domestic insurer’s statutory financial state-
100 ment”;

101 On page four, subdivision 6.2.b, line two, after the word
102 “underwriters”, by inserting a comma;

103 On page four, subdivision 6.2.b, line three, after the words
104 “United States”, by inserting a period, striking out the words
105 “and in” and inserting in lieu thereof the word “In”;

106 On page seven, subsection 6.6, line three, after the word
107 “dollars”, by changing the comma to a semi-colon;

108 On page seven, subsection 6.6, line four, after the terms “(f)
109 and (g)”, by changing the comma to a semi-colon;

110 On page seven, subsection 6.6, line five, after the terms “(f)
111 and (g)”, by changing the comma to a semi-colon;

112 On page ten, subparagraph 6.6.f.1.B, line five, by striking
113 out the word “shall” and inserting in lieu thereof the word
114 “may”;

115 On page eleven, subdivision 6.6.i, line three, by striking out
116 the words “shall be” and inserting in lieu thereof the word “is”;

117 On page fifteen, subdivision 9.1 i, line three, by striking out
118 the words “shall have” and inserting in lieu thereof the word “has”;

119 And,

120 On page fifteen, subdivision 9.1 j, line three, by striking out
121 the words “shall be” and inserting in lieu thereof the word “is”.

122 (f) The legislative rule filed in the state register on the
123 twenty-ninth day of July, two thousand three, authorized under
124 the authority of section sixteen, article twelve-a, chapter
125 twenty-nine, of this code, relating to the insurance commis-
126 sioner (self-insurance pools for political subdivisions, 114 CSR
127 65), is authorized.

§64-7-3. Lottery commission.

1 (a) The legislative rule filed in the state register on the tenth
2 day of July, two thousand three, authorized under the authority
3 of section five, article twenty-two, chapter twenty-nine, of this
4 code, modified by the lottery commission to meet the objec-
5 tions of the legislative rule-making review committee and
6 refiled in the state register on the twenty-second day of Decem-
7 ber, two thousand three, relating to the lottery commission
8 (state lottery rules, 179 CSR 1), is authorized.

9 (b) The legislative rule filed in the state register on the
10 twenty-fourth day of July, two thousand three, authorized under
11 the authority of section four hundred two, article twenty-two-b,
12 chapter twenty-nine, of this code, modified by the lottery
13 commission to meet the objections of the legislative rule-
14 making review committee and refiled in the state register on the
15 twelfth day of January, two thousand four, relating to the lottery
16 commission (limited video lottery, 179 CSR 5), is authorized
17 with the following amendment:

18 On page three, section two, subsection 2.13, line four,
19 following the words “operating on”, by inserting the word
20 “that”;

21 On page four, section two, subsection 2.15, line two,
22 following the word “Code”, by striking out the citation “§11-
23 14-2”, and inserting in lieu thereof the citation “§11-14C-2”;

24 On page seven, section five, subsection 5.2, line one,
25 following the word “subdivision”, by striking out the citation
26 “5.1.a”, and inserting in lieu thereof the citation “5.1.b”;

27 On page twenty-one, beginning on line four, by striking out
28 section 30 in its entirety and redesignating the remaining
29 sections and parts thereof accordingly;

30 And,

31 On page twenty-four, section 34.2, by changing the period
32 at the end of the sentence to a colon and inserting the words:
33 “*Provided*, That a limited video lottery retailer may display a
34 sign on the exterior of the establishment that states ‘West
35 Virginia Lottery Products available here,’ which sign is of
36 uniform size and design, no greater than twelve inches by
37 twelve inches, produced and distributed to retailers by the
38 lottery commission.”

§64-7-4. Racing commission.

1 (a) The legislative rule filed in the state register on the
2 thirty-first day of July, two thousand three, authorized under the
3 authority of section six, article twenty-three, chapter nineteen,
4 of this code, modified by the racing commission to meet the
5 objections of the legislative rule-making review committee and
6 refiled in the state register on the fifth day of December, two
7 thousand three, relating to the racing commission (thoroughbred
8 racing, 178 CSR 1), is authorized.

9 (b) The legislative rule filed in the state register on the
10 thirty-first day of July, two thousand three, authorized under the
11 authority of section six, article twenty-three, chapter nineteen,
12 of this code, relating to the racing commission (greyhound
13 racing, 178 CSR 2), is authorized.

§64-7-5. Tax commissioner.

1 The legislative rule filed in the state register on the eigh-
2 teenth day of February, two thousand three, authorized under
3 the authority of section twenty-three, article ten, chapter eleven,
4 of this code, modified by the tax commissioner to meet the
5 objections of the legislative rule-making review committee and
6 refiled in the state register on the twenty-first day of April, two
7 thousand three, relating to the tax commissioner (alternative
8 resolution of tax disputes, 110 CSR 10g), is authorized, with the
9 following amendment:

10 On page two, subdivision 3.1.1, line two, after the word
11 “and”, by inserting a comma;

12 On page two, subsection 3.5, line three, by striking the
13 word “shall” and inserting in lieu thereof the word “must”;

14 One page two, subsection 3.5, line six, after the word
15 “assessment” by inserting a comma;

16 One page two, subsection 3.5, line six, by striking the word
17 “commence” and inserting in lieu thereof the work “begin”;

18 On page two, subdivision 3.5.1, line two, by striking the
19 word “that” and inserting in lieu thereof the word “as”;

20 On page three, subsection 4.1, line two, after the word
21 “coordinator” by inserting a comma;

22 On page three, subdivision 4.2.1, line three, after the word
23 “approved” by striking the comma and inserting in lieu thereof
24 a period;

25 On page three, subdivision 4.2.1, line three, by striking the
26 word “and” and inserting in lieu thereof “The conciliation
27 coordinator or assistant conciliation coordinator”;

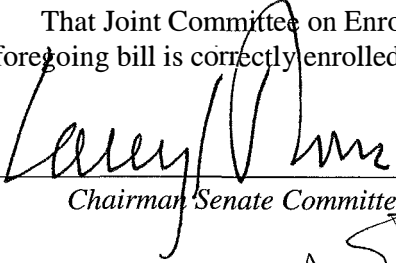
28 On page three, subdivision 4.2.1, line four, following the
29 word “date” by striking the comma and inserting in lieu thereof
30 a period;

31 On page three, subdivision 4.2.1, line five, by striking the
32 word “which” and inserting in lieu thereof the words “The
33 conference date”;

34 On page three, subsection 4.4, line one by striking out the
35 words “without regard to the rules of evidence”;

36 On page three, subsection 4.4, line three after the word
37 “dispute” by striking the period and inserting the words “and
38 without regard to the rules of evidence”.

That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.



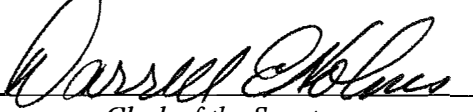
Chairman Senate Committee



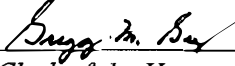
Chairman House Committee

Originating in the House.

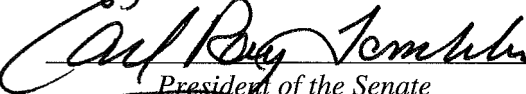
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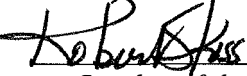
Clerk of the Senate



Clerk of the House of Delegates

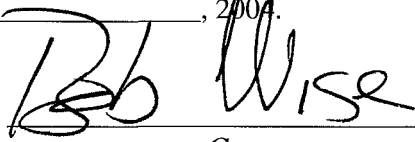


President of the Senate



Speaker of the House of Delegates

The within is approved this the 1st
day of April, 2001.



Governor

PRESENTED TO THE

GOVERNOR

DATE 3/22/04

TIME 10:00 am