

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

COMMITTEE SUBSTITUTE

FOR

**Senate Bill No. 177**

(By Senators Minard, Snyder, Prezioso, Unger, Boley and K.  
Facemyer)

\_\_\_\_\_  
[Originating in the Committee on the Judiciary;  
reported February 22, 2011.]  
\_\_\_\_\_

A BILL to amend and reenact article 7, chapter 64 of the Code of West Virginia, 1931, as amended, relating generally to the promulgation of administrative rules by the Department of Revenue; 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 with various modifications presented to and

1 recommended by the Legislative Rule-Making Review Committee  
2 and as amended by the Legislature; authorizing the State Tax  
3 Department to promulgate a legislative rule relating to the  
4 commercial patent incentives tax credit; authorizing the State  
5 Tax Department to promulgate a legislative rule relating to  
6 the exchange of information agreement between the State Tax  
7 Department and the West Virginia Lottery; authorizing the  
8 State Tax Department to promulgate a legislative rule relating  
9 to the exchange of information agreement between the State Tax  
10 Department and the Office of the State Fire Marshal;  
11 authorizing the Insurance Commissioner to promulgate a  
12 legislative rule relating to credit life insurance, credit  
13 accident and sickness insurance and credit unemployment  
14 insurance; authorizing the Insurance Commissioner to  
15 promulgate a legislative rule relating to suitability in  
16 annuity transactions; authorizing the Insurance Commissioner  
17 to promulgate a legislative rule relating to insurance  
18 adjusters; authorizing the Insurance Commissioner to  
19 promulgate a legislative rule relating to long-term care  
20 insurance; authorizing the Insurance Commissioner to  
21 promulgate a legislative rule relating to actuarial opinion  
22 and memorandum; authorizing the Insurance Commissioner to  
23 promulgate a legislative rule relating to property and  
24 casualty actuarial opinions; authorizing the Insurance  
25 Commissioner to promulgate a legislative rule relating to

1 credit personal property; authorizing the Insurance  
2 Commissioner to promulgate a legislative rule relating to  
3 self-insurance pools for political subdivisions; authorizing  
4 the Insurance Commissioner to promulgate a legislative rule  
5 relating to valuation of life insurance companies; authorizing  
6 the Insurance Commissioner to promulgate a legislative rule  
7 relating to recognition of preferred mortality tables for use  
8 in determining minimum reserve liabilities; authorizing the  
9 Insurance Commissioner to promulgate a legislative rule  
10 relating to professional employer organizations; authorizing  
11 the Insurance Commissioner to promulgate a legislative rule  
12 relating to health maintenance organization point of service  
13 option; authorizing the Racing Commission to promulgate a  
14 legislative rule relating to thoroughbred racing; authorizing  
15 the Racing Commission to promulgate a legislative rule  
16 relating to greyhound racing; authorizing the Racing  
17 Commission to promulgate a legislative rule relating to pari-  
18 mutuel wagering; authorizing the Alcohol Beverage Control  
19 Commission to promulgate a legislative rule relating to  
20 licensed retailer operations; and authorizing the Alcohol  
21 Beverage Control Commission to promulgate a legislative rule  
22 relating to licensing of retail outlets.

23 *Be it enacted by the Legislature of West Virginia:*

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

1 **ARTICLE 7. AUTHORIZATION FOR DEPARTMENT OF REVENUE TO PROMULGATE**  
2 **LEGISLATIVE RULES.**

3 **§64-7-1. State Tax Department.**

4 (a) The legislative rule filed in the state register on the  
5 twenty-eighth day of July, two thousand ten, authorized under the  
6 authority of section ten, article thirteen-aa, chapter eleven of  
7 this code, modified by the State Tax Department to meet the  
8 objections of the Legislative Rule-Making Review Committee and  
9 refiled in the state register on the fifth day of November, two  
10 thousand ten, relating to the State Tax Department (commercial  
11 patent incentives tax credit, 110 CSR 13Q), is authorized.

12 (b) The legislative rule filed in the state register on the  
13 twenty-sixth day of July, two thousand ten, authorized under the  
14 authority of section five-s, article ten, chapter eleven of this  
15 code, relating to the State Tax Department (exchange of information  
16 agreement between the State Tax Department and the West Virginia  
17 Lottery, 110 CSR 50E), is authorized.

18 (c) The legislative rule filed in the state register on the  
19 twenty-sixth day of July, two thousand ten, authorized under the  
20 authority of section five-s, article ten, chapter eleven of this  
21 code, modified by the State Tax Department to meet the objections  
22 of the Legislative Rule-Making Review Committee and refiled in the  
23 state register on the fifth day of November, two thousand ten,  
24 relating to the State Tax Department (exchange of information  
25 agreement between the State Tax Department and the Office of the

1 State Fire Marshal, 110 CSR 50F), is authorized.

2 **§64-7-2. Insurance Commissioner.**

3 (a) The legislative rule filed in the state register on the  
4 twenty-seventh day of July, two thousand ten, authorized under the  
5 authority of section three, article two, chapter thirty-three of  
6 this code, modified by the Insurance Commissioner to meet the  
7 objections of the Legislative Rule-Making Review Committee and  
8 refiled in the state register on the twenty-eighth day of  
9 September, two thousand ten, relating to the Insurance Commissioner  
10 (credit life insurance, credit accident and sickness insurance and  
11 credit unemployment insurance, 114 CSR 6), is authorized with the  
12 following amendment:

13 On pages one and two, section 2, by striking out all of  
14 section 2. and inserting in lieu thereof a new section 2. to read  
15 as follows:

16 **"§114-6-2. Definitions.**

17 (1) "Commissioner" means the West Virginia Insurance  
18 Commissioner.

19 (2) "Credit Accident and Sickness Insurance" means insurance  
20 on a debtor to provide indemnity for payments becoming due on a  
21 specific loan or other credit transaction while the debtor is  
22 disabled as defined in the policy.

23 (3) "Credit Life Insurance" means insurance on the life of a  
24 debtor pursuant to or in connection with a specific loan or other  
25 credit transaction.

1           (4) "Credit unemployment insurance" means insurance on a  
2 debtor to provide indemnity for payments becoming due on a specific  
3 loan or other credit transaction while the debtor is unemployed as  
4 defined in the policy.

5           (5) "Creditor" means the lender of money or vendor or lesser  
6 goods, services, or property, rights or privileges, for which  
7 payment is arranged through a credit transaction, or any successor  
8 to the right, title or interest of any such lender, vendor, or  
9 lessor, and an affiliate, associate or subsidiary of them or any  
10 director, officer, or employee of any of them or any other person  
11 in any way associated with any of them.

12           (6) "Debtor" means a borrower of money or purchaser or lessee  
13 of goods, services, property, rights or privileges for which  
14 payment is arranged through a credit transaction.

15 "Indebtedness" means the total amount payable by a debtor to a  
16 creditor in connection with a loan or other credit transaction.

17           (7) "Indebtedness" means the total amount payable by a debtor  
18 to a creditor in connection with a loan or other credit  
19 transaction."

20           (b) The legislative rule filed in the state register on the  
21 twenty-ninth day of July, two thousand ten, authorized under the  
22 authority of section ten, article two, chapter thirty-three of this  
23 code, relating to the Insurance Commissioner (suitability in  
24 annuity transactions, 114 CSR 11B), is authorized.

25           (c) The legislative rule filed in the state register on the

1 twenty-seventh day of July, two thousand ten, authorized under the  
2 authority of section three, article two, chapter thirty-three of  
3 this code, modified by the Insurance Commissioner to meet the  
4 objections of the Legislative Rule-Making Review Committee and  
5 refiled in the state register on the twentieth day of October, two  
6 thousand ten, relating to the Insurance Commissioner (insurance  
7 adjusters, 114 CSR 25), is authorized with the following  
8 amendments:

9 On page two, subsection 3.1., by striking out all of  
10 subsection 3.1. and inserting in lieu thereof a new subsection 3.1.  
11 to read as follows:

12 "3.1. No person shall in West Virginia act as or hold himself  
13 to be an adjuster unless licensed by the Commissioner. As used in  
14 the rule, the term "person" shall not include those persons located  
15 in an office of an insurer outside the State of West Virginia who  
16 adjust claims solely by telephone, fax, United States Mail and  
17 electronic mail and who do not physically enter the State of West  
18 Virginia in the course of adjusting such claims.";

19 And,

20 On page four, subdivision 3.2.j., by striking out all of  
21 subdivision 3.2.j. and renumbering the remaining subdivisions.

22 (d) The legislative rule filed in the state register on the  
23 twenty-ninth day of July, two thousand ten, authorized under the  
24 authority of section three, article two, chapter thirty-three of  
25 this code, modified by the Insurance Commissioner to meet the

1 objections of the Legislative Rule-Making Review Committee and  
2 refiled in the state register on the twenty-eighth day of  
3 September, two thousand ten, relating to the Insurance Commissioner  
4 (long-term care insurance, 114 CSR 32), is authorized with the  
5 following amendments:

6 On page 51, paragraph 29.4.c.1., by striking out all of  
7 paragraph 29.4.c.1. and inserting in lieu thereof a new paragraph  
8 29.4.c.1. to read as follows:

9 "29.4.c.1. Within five (5) business days of receiving a  
10 written request for independent review, the insurer shall choose an  
11 independent review organization approved or certified by the state.  
12 The insurer shall vary its selection of authorized independent  
13 review organizations on a rotating basis.";

14 On page fifty-two, paragraph 29.4.c.6., by striking out the  
15 word "8," and inserting in lieu thereof the word "3,";

16 And,

17 On page fifty-six, subsection 30.6., by striking out all of  
18 subsection 30.6.

19 (e) The legislative rule filed in the state register on the  
20 twenty-seventh day of July, two thousand ten, authorized under the  
21 authority of section three, article two, chapter thirty-three of  
22 this code, relating to the Insurance Commissioner (actuarial  
23 opinion and memorandum, 114 CSR 41), is authorized.

24 (f) The legislative rule filed in the state register on the  
25 twenty-seventh day of July, two thousand ten, authorized under the



1 authority of section three, article two, chapter thirty-three of  
2 this code, modified by the Insurance Commissioner to meet the  
3 objections of the Legislative Rule-Making Review Committee and  
4 refiled in the state register on the first day of December, two  
5 thousand ten, relating to the Insurance Commissioner (property and  
6 casualty actuarial opinions, 114 CSR 41A), is authorized.

7 (g) The legislative rule filed in the state register on the  
8 twenty-seventh day of July, two thousand ten, authorized under the  
9 authority of section three, article two, chapter thirty-three of  
10 this code, relating to the Insurance Commissioner (credit personal  
11 property, 114 CSR 61), is authorized.

12 (h) The legislative rule filed in the state register on the  
13 twenty-seventh day of July, two thousand ten, authorized under the  
14 authority of section three, article two, chapter thirty-three of  
15 this code, modified by the Insurance Commissioner to meet the  
16 objections of the Legislative Rule-Making Review Committee and  
17 refiled in the state register on the first day of December, two  
18 thousand ten, relating to the Insurance Commissioner (self-  
19 insurance pools for political subdivisions, 114 CSR 65), is  
20 authorized with the following amendment:

21 On pages ten and eleven, subsection 8.1., by striking out all  
22 of subsection 8.1. and inserting in lieu thereof a new subsection  
23 8.1. to read as follows:

24 "8.1. To the extent not inconsistent with this rule, each  
25 workers' compensation pool is subject to the requirements of *West*

1 *Virginia Code §§33-2-21 and 33-2-22 and West Virginia Code Chapter*  
2 *Twenty-Three and the rules promulgated thereunder, including but*  
3 *not limited to the payment of surcharges pursuant to West Virginia*  
4 *Code §§23-2C-3(f) (2) and 23-2C-3(f) (3) (B) and West Virginia Code*  
5 *St. R. Section 85-6-1 et seq.; the record retention requirements of*  
6 *West Virginia Code St. R. Section 85-18-13; and the data*  
7 *requirements of West Virginia Code St. R. Section 85-1-2: Provided,*  
8 *That such a pool is subject to West Virginia Code St. R. Section*  
9 *85-18-1 et seq.; as if the pool was a single self-insured employer:*  
10 *Provided, however, That no provision of Chapter Twenty-Three of*  
11 *this code or any rule promulgated thereunder requiring*  
12 *participation in the self-insured guarantee risk pool and the self-*  
13 *insured security risk pool, or providing for industrial council*  
14 *approval of self-insured status, termination of self-insured status*  
15 *or approval of security, shall apply."*

16 (i) The legislative rule filed in the state register on the  
17 twenty-seventh day of July, two thousand ten, authorized under the  
18 authority of section three, article two, chapter thirty-three of  
19 this code, relating to the Insurance Commissioner (valuation of  
20 life insurance companies, 114 CSR 68), is authorized.

21 (j) The legislative rule filed in the state register on the  
22 twenty-seventh day of July, two thousand ten, authorized under the  
23 authority of section three, article two, chapter thirty-three of  
24 this code, relating to the Insurance Commissioner (recognition of  
25 preferred mortality tables for use in determining minimum reserve

1 liabilities, 114 CSR 69A), is authorized.

2 (k) The legislative rule filed in the state register on the  
3 twenty-seventh day of July, two thousand ten, authorized under the  
4 authority of section three, article two, chapter thirty-three of  
5 this code, relating to the Insurance Commissioner (professional  
6 employer organizations, 114 CSR 85), is authorized.

7 (l) The legislative rule filed in the state register on the  
8 twenty-seventh day of July, two thousand ten, authorized under the  
9 authority of section three, article two, chapter thirty-three of  
10 this code, relating to the Insurance Commissioner (health  
11 maintenance organization point of service option, 114 CSR 91), is  
12 authorized.

13 **§64-7-3. Racing Commission.**

14 (a) The legislative rule filed in the state register on the  
15 twenty-seventh day of July, two thousand ten, authorized under the  
16 authority of section six, article twenty-three, chapter nineteen of  
17 this code, modified by the Racing Commission to meet the objections  
18 of the Legislative Rule-Making Review Committee and refiled in the  
19 state register on the twentieth day of January, two thousand  
20 eleven, relating to the Racing Commission (thoroughbred racing, 178  
21 CSR 1), is authorized with the following amendments:

22 On page forty-two, subdivision 26.4.q., by striking out all of  
23 subdivision 26.4.q. and inserting in lieu thereof a new subdivision  
24 26.4.q. to read as follows:

25 "26.4.q. No trainer shall move or permit to be moved any horse

1 or horses under his or her custody, care or control into the  
2 association's grounds without permission from the association's  
3 racing secretary or his or her designee. No trainer shall move or  
4 permit to be moved any horse or horses under his or her custody,  
5 care or control out of the association's grounds without first  
6 signing out the horse on a form prescribed by the association and  
7 made available at the stable gate. Provided however, for all  
8 horses stabled on the association grounds permission is required  
9 from the associations's racing secretary or his or her designee at  
10 the time of removal if the horse is to race at another racetrack  
11 within a period of thirty (30) days following the day of its  
12 removal from the association's grounds. No trainer shall move or  
13 permit to be moved any horse or horses under his or her custody,  
14 care or control into the association's grounds without presenting  
15 a current negative Coggins test for equine infectious anemia  
16 (EIA).";

17 And,

18 On page fifty-six, subdivision 42.3.a., by striking out the  
19 words "eighteen (118)" and inserting in lieu thereof the words  
20 "sixteen (116)".

21 (b) The legislative rule filed in the state register on the  
22 thirtieth day of July, two thousand ten, authorized under the  
23 authority of section six, article twenty-three, chapter nineteen of  
24 this code, modified by the Racing Commission to meet the objections  
25 of the Legislative Rule-Making Review Committee and refiled in the

1 state register on the twentieth day of January, two thousand  
2 eleven, relating to the Racing Commission (greyhound racing, 178  
3 CSR 2), is authorized.

4 (c) The legislative rule filed in the state register on the  
5 sixteenth day of July, two thousand ten, authorized under the  
6 authority of section six, article twenty-three, chapter nineteen of  
7 this code, modified by the Racing Commission to meet the objections  
8 of the Legislative Rule-Making Review Committee and refiled in the  
9 state register on the twentieth day of January, two thousand  
10 eleven, relating to the Racing Commission (pari-mutuel wagering,  
11 178 CSR 5), is authorized.

12 **§64-7-4. Alcohol Beverage Control Commission.**

13 (a) The legislative rule filed in the state register on the  
14 twentieth day of November, two thousand nine, authorized under the  
15 authority of section six, article three-a, chapter sixty of this  
16 code, modified by the Alcohol Beverage Control Commission to meet  
17 the objections of the Legislative Rule-making Review Committee and  
18 refiled in the state register on the nineteenth day of January, two  
19 thousand eleven, relating to the Alcohol Beverage Commission  
20 (licensed retailer operations, 175 CSR 1), is authorized with the  
21 following amendment:

22 On pages seven and eight, paragraph 4.1.a.3., by striking out  
23 all of paragraph 4.1.a.3. and inserting in lieu thereof a new  
24 paragraph 4.1.a.3. to read as follows:

25 "4.1.a.3. Column 2 - "Unit Size." The product bottle size is

1 listed in metric measurement.

2 Metric Conversion Table

3	Metric Size	Converted to Ounces
4	50 ml.	1.7 oz.
5	200 ml.	6.8 oz.
6	375 ml.	12.7 oz.
7	500 ml.	16.9 oz.
8	750 ml.	25.4 oz.
9	1. Liter	33.8 oz.
10	1.75 Liter	59.2 oz."

11

12 (b) The legislative rule filed in the state register on the  
13 twenty-second day of February, two thousand ten, authorized under  
14 the authority of section six, article three-a, chapter sixty of  
15 this code, modified by the Alcohol Beverage Control Commission to  
16 meet the objections of the Legislative Rule-making Review Committee  
17 and refiled in the state register on the twentieth day of January,  
18 two thousand eleven, relating to the Alcohol Beverage Commission  
19 (licensing of retail outlets, 175 CSR 5), is authorized.