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ENGROSSED
COMMITTEE SUBSTITUTE
FOR
Senate Bill No. 287
(By Senator Minard)

[Originating in the Committee on Judiciary;
reported February 10, 2012.]

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 in the form that the rules were filed in the State Register and as amended by the Legislature; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended

1 by the Legislative Rule-Making Review Committee; authorizing
2 certain of the agencies to promulgate certain legislative
3 rules with various modifications presented to and recommended
4 by the Legislative Rule-Making Review Committee and as amended
5 by the Legislature; authorizing the State Tax Department to
6 promulgate a legislative rule relating to the payment of taxes
7 by electronic funds transfer; authorizing the State Tax
8 Department to promulgate a legislative rule relating to the
9 commercial patent incentives tax credit; authorizing the State
10 Tax Department to promulgate a legislative rule relating to an
11 exchange of information agreement between the State Tax
12 Department and the Department of Commerce, the Department of
13 Transportation and the Department of Environmental Protection;
14 authorizing the Insurance Commissioner to promulgate a
15 legislative rule relating to the licensing and conduct of
16 insurance producers and agencies; authorizing the Insurance
17 Commissioner to promulgate a legislative rule relating to
18 surplus lines insurance; authorizing the Insurance
19 Commissioner to promulgate a legislative rule relating to
20 insurance holding company systems; authorizing the Insurance
21 Commissioner to promulgate a legislative rule relating to
22 continuing education for individual insurance producers;
23 authorizing the Insurance Commissioner to promulgate a
24 legislative rule relating to mini COBRA; authorizing the
25 Insurance Commissioner to promulgate a legislative rule

1 relating to workers' compensation insurance for state
2 agencies; authorizing the Division of Banking to promulgate a
3 legislative rule relating to residential mortgage lenders,
4 brokers and loan originators; authorizing the Alcohol Beverage
5 Control Commission to promulgate a legislative rule relating
6 to licensed retailer operations; authorizing the Alcohol
7 Beverage Control Commission to promulgate a legislative rule
8 relating to the licensing of retail outlets; authorizing the
9 Racing Commission to promulgate a legislative rule relating to
10 simulcast pari-mutuel wagering at an authorized gaming
11 facility in a historic hotel; authorizing the Athletic
12 Commission to promulgate a legislative rule relating to mixed
13 martial arts; and authorizing the Board of Directors of the
14 West Virginia Health Insurance Plan to promulgate a
15 legislative rule relating to a premium subsidy.

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

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

19 **ARTICLE 7. AUTHORIZATION FOR DEPARTMENT OF REVENUE TO PROMULGATE**
20 **LEGISLATIVE RULES.**

21 **§64-7-1. State Tax Department.**

22 (a) The legislative rule filed in the State Register on April
23 21, 2011, authorized under the authority of section five-z, article
24 ten, chapter eleven of this code, modified by the State Tax
25 Department to meet the objections of the Legislative Rule-Making

1 Review Committee and refiled in the State Register on August 5,
2 2011, relating to the State Tax Department (payment of taxes by
3 electronic funds transfer, 110 CSR 10F), is authorized with the
4 following amendments:

5 On page four, subsection 3.2., by striking out all of
6 subsection 3.2. and inserting in lieu thereof a new subsection
7 3.2., to read as follows:

8 3.2. The threshold amount is \$100,000.00 in tax liability per
9 tax type per taxable year or reporting period beginning on or after
10 January 1, 2004, subject to subdivisions 3.2.1., 3.2.2., 3.2.3. and
11 3.2.4. of this subsection.;

12 And,

13 On page four, after subsection 3.2., by inserting four new
14 subdivisions, designated subdivisions 3.2.1., 3.2.2., 3.2.3. and
15 3.2.4., to read as follows:

16 3.2.1. For tax years beginning on or after January 1, 2013,
17 the threshold amount for determining whether a taxpayer shall pay
18 electronically is \$50,000 in tax liability paid for a single tax
19 type in the immediately preceding tax year: *Provided*, That for tax
20 years beginning on or after January 1, 2013, any taxpayer that pays
21 more than \$50,000 for any tax type in the immediately preceding tax
22 year shall electronically pay the taxes for all tax returns filed;

23 3.2.2. For tax years beginning on or after January 1, 2014,
24 the threshold amount for determining whether a taxpayer shall pay
25 electronically is \$25,000 in tax liability paid for a single tax

1 type in the immediately preceding tax year: *Provided*, That for tax
2 years beginning on or after January 1, 2014, any taxpayer that pays
3 more than \$25,000 for any tax type in the immediately preceding tax
4 year shall electronically pay the taxes for all tax returns filed;

5 3.2.3. For tax years beginning on or after January 1, 2015,
6 the threshold amount for determining whether a taxpayer shall pay
7 electronically is \$10,000 in tax liability paid for a single tax
8 type in the immediately preceding tax year: *Provided*, That for tax
9 years beginning on or after January 1, 2015, any taxpayer that pays
10 more than \$10,000 for any tax type in the immediately preceding tax
11 year shall electronically pay the taxes for all tax returns filed;

12 3.2.4. Tax Commissioner may determine the tax types for which
13 electronic payment of taxes is not required.

14 (b) The legislative rule filed in the State Register on July
15 18, 2011, authorized under the authority of section ten, article
16 thirteen-aa, chapter eleven of this code, modified by the State Tax
17 Department to meet the objections of the Legislative Rule-Making
18 Review Committee and refiled in the State Register on November 22,
19 2011, relating to the State Tax Department (commercial patent
20 incentives tax credit, 110 CSR 13Q), is authorized.

21 (c) The legislative rule filed in the State Register on July
22 29, 2011, authorized under the authority of section five-s, article
23 ten, chapter eleven of this code, modified by the State Tax
24 Department to meet the objections of the Legislative Rule-Making
25 Review Committee and refiled in the State Register on November 22,

1 2011, relating to the State Tax Department (exchange of information
2 agreement between the State Tax Department and the Department of
3 Commerce, the Department of Transportation and the Department of
4 Environmental Protection, 110 CSR 50G), is authorized.

5 **§64-7-2. Insurance Commissioner.**

6 (a) The legislative rule filed in the State Register on July
7 28, 2011, authorized under the authority of section ten, article
8 two, chapter thirty-three of this code, relating to the Insurance
9 Commissioner (licensing and conduct of insurance producers and
10 agencies, 114 CSR 2), is authorized.

11 (b) The legislative rule filed in the State Register on July
12 28, 2011, authorized under the authority of section ten, article
13 two, chapter thirty-three of this code, relating to the Insurance
14 Commissioner (surplus lines insurance, 114 CSR 20), is authorized.

15 (c) The legislative rule filed in the State Register on July
16 28, 2011, authorized under the authority of section ten, article
17 two, chapter thirty-three of this code, modified by the Insurance
18 Commissioner to meet the objections of the Legislative Rule-Making
19 Review Committee and refiled in the State Register on October 21,
20 2011, relating to the Insurance Commissioner (insurance holding
21 company systems, 114 CSR 35), is authorized.

22 (d) The legislative rule filed in the State Register on July
23 28, 2011, authorized under the authority of section ten, article
24 two, chapter thirty-three of this code, modified by the Insurance
25 Commissioner to meet the objections of the Legislative Rule-Making

1 Review Committee and refiled in the State Register on October 21,
2 2011, relating to the Insurance Commissioner (continuing education
3 for individual insurance producers, 114 CSR 42), is authorized with
4 the following amendment:

5 On page three, subsection 4.2., by striking out all of
6 subsection 4.2. and inserting in lieu thereof a new subsection 4.2.
7 to read as follows:

8 4.2. The commissioner shall, in consultation with the board,
9 develop a program regarding continuing education requirements
10 during the transition to the new biennium period established
11 pursuant to the 2012 amendments to this rule; such program shall be
12 posted on the agency website.

13 (e) The legislative rule filed in the State Register on July
14 28, 2011, authorized under the authority of section ten, article
15 two, chapter thirty-three of this code, relating to the Insurance
16 Commissioner (mini COBRA, 114 CSR 93), is authorized with the
17 following amendments:

18 On page three, subsection 3.5., after the word "subsection" by
19 striking out "3.5." and inserting in lieu thereof "3.4.";

20 And,

21 On page four, subsection 3.7., by striking out all of
22 subsection 3.7. and inserting in lieu thereof a new subsection
23 3.7., to read as follows:

24 3.7. *Remedies in the event of carrier noncompliance.* If a
25 carrier fails to comply with the requirements of this rule,

1 including the notice requirements of subsection 3.5. of this
2 section, and such noncompliance results in the failure of an
3 eligible adult qualified beneficiary of a covered employee to
4 timely elect continuation coverage, every qualified beneficiary of
5 the covered employee covered on the day of the qualifying event
6 shall remain covered under the health benefit plan until the
7 qualified beneficiaries are afforded the opportunity to elect such
8 coverage.

9 (f) The legislative rule filed in the State Register on July
10 28, 2011, authorized under the authority of section ten, article
11 two, chapter thirty-three of this code, relating to the Insurance
12 Commissioner (Workers' Compensation Insurance for state agencies,
13 114 CSR 94), is authorized with the following amendments:

14 On page one, subsection 2.2., by striking out all of
15 subsection 2.2. and inserting in lieu thereof a new subsection
16 2.2., to read as follows:

17 2.2. "Discretionary participant" means any discretionary
18 participant as defined in W. Va. Code §33-2-21a(a)(1).;

19 On page two, subsection 2.8., by striking out the words "and
20 those discretionary participants that have agreed to participate in
21 SAWC under an agreement with the Commissioner" and inserting in
22 lieu thereof the words "and for those discretionary participants
23 that participate in SAWC";

24 On page two, subsection 3.1., by striking out the words "and
25 shall send to each a notice of such determination";

1 On page two, subdivision 3.1.a., by striking out the words
2 "Such notice shall inform: (I) Executive state entities that they
3 will be required to execute the Agreement and" and inserting in
4 lieu thereof the words "The Commissioner shall inform: (I)
5 Executive state entities that they will be required";

6 On page two, subdivision 3.1.b., by striking out the words
7 "Any recipient of a notice sent pursuant to subdivision a of this
8 subsection that believes it should have been classified
9 differently, or any entity that did not receive a notice" and
10 inserting in lieu thereof the words "Any entity that believes it
11 should have been classified differently, or any entity that did not
12 receive a notice of eligibility";

13 On page two, subsection 3.2., by striking out all of
14 subsection 3.2. and inserting in lieu thereof a new subsection
15 3.2., to read as follows:

16 3.2. The Commissioner may make participation in SAWC by a
17 discretionary participant contingent on the execution of the
18 Agreement.;

19 On page three, subdivision 3.3.a., after the word "Agreement"
20 by inserting the words "or other noncompliance with program
21 requirements";

22 On page three, subdivision 3.3.c., by striking out the words
23 "the latter of one year from removal or the next open enrollment
24 period" and inserting in lieu thereof the words "a period of not
25 more than one year to be determined by the commissioner based on

1 the seriousness of the non-compliance and the efforts of the
2 participant to come into compliance”;

3 On page three, subdivision 3.3.d., by striking out the words
4 “upon application and re-execution of the Agreement” and inserting
5 in lieu thereof the words “upon written request and expiration of
6 the exclusion period determined in accordance with subdivision
7 3.3.c. of this subsection”;

8 On page three, subdivision 3.4.a., by striking out the words
9 “any fee” and inserting in lieu thereof the words “any assessment”;

10 On page three, subdivision 3.4.a., by striking out the words
11 “assessed fee” and inserting in lieu thereof the word “assessment”;

12 On page three, subdivision 3.4.a., by striking out the words
13 “such fee” and inserting in lieu thereof the words “such
14 assessment”;

15 And,

16 On page three, subdivision 3.4.b., by striking out the word
17 “fees” and inserting in lieu thereof the word “assessment”.

18 **§64-7-3. Division of Banking.**

19 The legislative rule filed in the State Register on July 21,
20 2011, authorized under the authority of section three, article
21 seventeen, chapter thirty-one of this code, relating to the
22 Division of Banking (residential mortgage lenders, brokers and loan
23 originators, 106 CSR 5), is authorized.

24 **§64-7-4. Alcohol Beverage Control Commission.**

25 (a) The legislative rule filed in the State Register on July

1 13, 2011, authorized under the authority of section six, article
2 three-a, chapter sixty of this code, modified by the Alcohol
3 Beverage Control Commission to meet the objections of the
4 Legislative Rule-Making Review Committee and refiled in the State
5 Register on November 21, 2011, relating to the Alcohol Beverage
6 Commission (licensed retailer operations, 175 CSR 1), is
7 authorized.

8 (b) The legislative rule filed in the State Register on July
9 13, 2011, authorized under the authority of section six, article
10 three-a, chapter sixty of this code, relating to the Alcohol
11 Beverage Control Commission (licensing of retail outlets, 175 CSR
12 5), is authorized.

13 **§64-7-5. Racing Commission.**

14 The legislative rule filed in the State Register on September
15 13, 2011, authorized under the authority of section twelve-d,
16 article twenty-three, chapter nineteen of this code, relating to
17 the Racing Commission (simulcast pari-mutual wagering at an
18 authorized gaming facility in a historic hotel, 178 CSR 7), is
19 authorized.

20 **§64-7-6. Athletic Commission.**

21 The legislative rule filed in the State Register on July 28,
22 2011, authorized under the authority of section three-a, article
23 five-a, chapter twenty-nine of this code, modified by the Athletic
24 Commission to meet the objections of the Legislative Rule-Making
25 Review Committee and refiled in the State Register on January 6,

1 2012, relating to the Athletic Commission (mixed martial arts, 177
2 CSR 2), is authorized with the following amendments:

3 On pages three and four, §177-2.5., by striking out all of
4 §177-2.5. and inserting in lieu thereof a new §177-2.5., to read as
5 follows:

6 §177-2.5. Venues must have a minimum seating capacity of 2,500
7 and video replay capabilities in good working order. However, the
8 Commission may waive the minimum seating capacity requirement.
9 Venues with a seating capacity of 3,500 or more must have a minimum
10 of four video monitors displaying a continuous live feed of the
11 match for the spectators; venues with a maximum seating capacity of
12 3,499 or less must have at least two monitors displaying a
13 continuous live feed of the match for the spectators. All such
14 video monitors must be a minimum of six feet by six feet. No event
15 shall take place until the venue has been approved by the
16 commission.;

17 On page twelve, subsection 29.5., by striking out all of
18 subsection 29.5. and inserting in lieu thereof a new subsection
19 29.5., to read as follows:

20 29.5. Prohibition of certain dressings. - No second shall be
21 permitted to use grease or any other substances on the body of a
22 contestant. The use of petroleum jelly in corners is not allowed
23 except in the use of stopping blood and on cuts. Petroleum jelly,
24 or other substances approved by the commission, may be used in
25 between rounds in the use of stopping blood and on cuts and only in

1 the presence of a representative of the commission. The use of
2 drugs, alcohols or stimulants during a match by any contestant is
3 adequate cause for revoking license.;

4 On page twenty, subsection 41.1., by striking out all of
5 subsection 41.1. and inserting in lieu thereof a new subsection
6 41.1., to read as follows:

7 41.1. Matches shall take place in a cage or ring that has been
8 approved by the commission. The cage or ring shall meet the
9 requirements set forth by the commission and is subject to
10 inspection prior to each match by a commission representative such
11 as a referee.;

12 On page twenty-one, subsection 41.3., by striking out all of
13 subsection 41.3. and inserting in lieu thereof a new subsection
14 41.3., to read as follows:

15 41.3. The commission shall determine all seating arrangements
16 at cage side necessary to effectuate the match. A promoter may
17 submit a proposed seating arrangement to the commission one week
18 before the event.;

19 And,

20 On page twenty-one, after subsection 41.3., by inserting a new
21 subsection, designated subsection 41.4., to read as follows:

22 41.4. Ring - The ring specifications shall meet the following
23 requirements:

24 41.4.a. The ring shall be no smaller than twenty feet square
25 and larger than thirty-two feet square within the ropes. One

1 corner shall have a red designation and the corner directly
2 opposite shall have a blue designation.

3 41.4.b. The floor must extend at least eighteen inches beyond
4 the ropes. The ring floor must be padded in a manner as approved
5 by the commission, with at least one inch layer of foam padding.
6 No vinyl or other plastic rubberized cover shall be permitted. The
7 fighting area canvas shall not be more than four feet above the
8 floor of the building and shall have suitable steps or ramp for use
9 by the participants.

10 41.4.c. Ring posts must be made of metal, not more than three
11 inches in diameter, extending from the floor of the building to a
12 minimum height of fifty-eight inches above the ring floor, and must
13 be properly padded in a manner approved by the commission. Ring
14 posts must be at least eighteen inches away from the ring ropes.

15 41.4.d. There must be five ring ropes, not less than one inch
16 in diameter and wrapped in soft material. The lowest ring rope
17 must be twelve inches above the ring floor.

18 41.4.e. There must not be any obstruction or object,
19 including, without limitation, a triangular border, on any part of
20 the ring floor.

21 **§64-7-7. Directors of the West Virginia Health Insurance Plan.**

22 The legislative rule filed in the State Register on July 28,
23 2011, authorized under the authority of section seven-b, article
24 forty-eight, chapter thirty-three of this code, relating to the
25 Board of Directors of the West Virginia Health Insurance Plan

1 (premium subsidy, 113 CSR 1), is authorized.