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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 by the Legislative Rule-Making Review Committee; authorizing

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

1 agencies; authorizing the Division of Banking to promulgate a
2 legislative rule relating to residential mortgage lenders,
3 brokers and loan originators; authorizing the Alcohol Beverage
4 Control Commission to promulgate a legislative rule relating
5 to licensed retailer operations; authorizing the Alcohol
6 Beverage Control Commission to promulgate a legislative rule
7 relating to the licensing of retail outlets; authorizing the
8 Racing Commission to promulgate a legislative rule relating to
9 simulcast pari-mutuel wagering at an authorized gaming
10 facility in a historic hotel; and authorizing the Athletic
11 Commission to promulgate a legislative rule relating to mixed
12 martial arts.

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

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

16 **ARTICLE 7. AUTHORIZATION FOR DEPARTMENT OF REVENUE TO PROMULGATE**
17 **LEGISLATIVE RULES.**

18 **§64-7-1. State Tax Department.**

19 (a) The legislative rule filed in the State Register on April
20 21, 2011, authorized under the authority of section five-z, article
21 ten, chapter eleven of this code, modified by the State Tax
22 Department to meet the objections of the Legislative Rule-Making
23 Review Committee and refiled in the State Register on August 5,
24 2011, relating to the State Tax Department (payment of taxes by
25 electronic funds transfer, 110 CSR 10F), is authorized with the

1 following amendments:

2 On page four, subsection 3.2., by striking out all of
3 subsection 3.2. and inserting in lieu thereof a new subsection
4 3.2., to read as follows:

5 3.2. The threshold amount is \$100,000.00 in tax liability per
6 tax type per taxable year or reporting period beginning on or after
7 January 1, 2004, subject to subdivisions 3.2.1., 3.2.2., 3.2.3. and
8 3.2.4. of this subsection.;

9 And,

10 On page four, after subsection 3.2., by inserting four new
11 subdivisions, designated subdivisions 3.2.1., 3.2.2., 3.2.3. and
12 3.2.4., to read as follows:

13 3.2.1. For tax years beginning on or after January 1, 2013,
14 the threshold amount for determining whether a taxpayer shall pay
15 electronically is \$50,000 in tax liability paid for a single tax
16 type in the immediately preceding tax year: *Provided*, That for tax
17 years beginning on or after January 1, 2013, any taxpayer that pays
18 more than \$50,000 for any tax type in the immediately preceding tax
19 year shall electronically pay the taxes for all tax returns filed;

20 3.2.2. For tax years beginning on or after January 1, 2014,
21 the threshold amount for determining whether a taxpayer shall pay
22 electronically is \$25,000 in tax liability paid for a single tax
23 type in the immediately preceding tax year: *Provided*, That for tax
24 years beginning on or after January 1, 2014, any taxpayer that pays
25 more than \$25,000 for any tax type in the immediately preceding tax

1 year shall electronically pay the taxes for all tax returns filed;

2 3.2.3. For tax years beginning on or after January 1, 2015,
3 the threshold amount for determining whether a taxpayer shall pay
4 electronically is \$10,000 in tax liability paid for a single tax
5 type in the immediately preceding tax year: *Provided*, That for tax
6 years beginning on or after January 1, 2015, any taxpayer that pays
7 more than \$10,000 for any tax type in the immediately preceding tax
8 year shall electronically pay the taxes for all tax returns filed;

9 3.2.4. Tax Commissioner may determine the tax types for which
10 electronic payment of taxes is not required.

11 (b) The legislative rule filed in the State Register on July
12 18, 2011, authorized under the authority of section ten, article
13 thirteen-aa, chapter eleven of this code, modified by the State Tax
14 Department to meet the objections of the Legislative Rule-Making
15 Review Committee and refiled in the State Register on November 22,
16 2011, relating to the State Tax Department (commercial patent
17 incentives tax credit, 110 CSR 13Q), is authorized.

18 (c) The legislative rule filed in the State Register on July
19 29, 2011, authorized under the authority of section five-s, article
20 ten, chapter eleven of this code, modified by the State Tax
21 Department to meet the objections of the Legislative Rule-Making
22 Review Committee and refiled in the State Register on November 22,
23 2011, relating to the State Tax Department (exchange of information
24 agreement between the State Tax Department and the Department of
25 Commerce, the Department of Transportation and the Department of

1 Environmental Protection, 110 CSR 50G), is authorized.

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

3 (a) The legislative rule filed in the State Register on July
4 28, 2011, authorized under the authority of section ten, article
5 two, chapter thirty-three of this code, relating to the Insurance
6 Commissioner (licensing and conduct of insurance producers and
7 agencies, 114 CSR 2), is authorized.

8 (b) The legislative rule filed in the State Register on July
9 28, 2011, authorized under the authority of section ten, article
10 two, chapter thirty-three of this code, relating to the Insurance
11 Commissioner (surplus lines insurance, 114 CSR 20), is authorized.

12 (c) The legislative rule filed in the State Register on July
13 28, 2011, authorized under the authority of section ten, article
14 two, chapter thirty-three of this code, modified by the Insurance
15 Commissioner to meet the objections of the Legislative Rule-Making
16 Review Committee and refiled in the State Register on October 21,
17 2011, relating to the Insurance Commissioner (insurance holding
18 company systems, 114 CSR 35), is authorized.

19 (d) The legislative rule filed in the State Register on July
20 28, 2011, authorized under the authority of section ten, article
21 two, chapter thirty-three of this code, modified by the Insurance
22 Commissioner to meet the objections of the Legislative Rule-Making
23 Review Committee and refiled in the State Register on October 21,
24 2011, relating to the Insurance Commissioner (continuing education
25 for individual insurance producers, 114 CSR 42), is authorized with

1 the following amendment:

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

5 4.2. The commissioner shall, in consultation with the board,
6 develop a program regarding continuing education requirements
7 during the transition to the new biennium period established
8 pursuant to the 2012 amendments to this rule; such program shall be
9 posted on the agency website.

10 (e) The legislative rule filed in the State Register on July
11 28, 2011, authorized under the authority of section ten, article
12 two, chapter thirty-three of this code, relating to the Insurance
13 Commissioner (mini COBRA, 114 CSR 93), is authorized with the
14 following amendments:

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

17 And,

18 On page four, subsection 3.7., by striking out all of
19 subsection 3.7. and inserting in lieu thereof a new subsection
20 3.7., to read as follows:

21 3.7. *Remedies in the event of carrier noncompliance.* If a
22 carrier fails to comply with the requirements of this rule,
23 including the notice requirements of subsection 3.5. of this
24 section, and such noncompliance results in the failure of an
25 eligible adult qualified beneficiary of a covered employee to

1 timely elect continuation coverage, every qualified beneficiary of
2 the covered employee covered on the day of the qualifying event
3 shall remain covered under the health benefit plan until the
4 qualified beneficiaries are afforded the opportunity to elect such
5 coverage.

6 (f) 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 (Workers' Compensation Insurance for state agencies,
10 114 CSR 94), is authorized with the following amendments:

11 On page one, subsection 2.2., by striking out all of
12 subsection 2.2. and inserting in lieu thereof a new subsection
13 2.2., to read as follows:

14 2.2. "Discretionary participant" means any discretionary
15 participant as defined in W. Va. Code §33-2-21a(a)(1).;

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

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

23 On page two, subdivision 3.1.a., by striking out the words
24 "Such notice shall inform: (I) Executive state entities that they
25 will be required to execute the Agreement and" and inserting in

1 lieu thereof the words "The Commissioner shall inform: (I)
2 Executive state entities that they will be required";

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

10 On page two, subsection 3.2., by striking out all of
11 subsection 3.2. and inserting in lieu thereof a new subsection
12 3.2., to read as follows:

13 3.2. The Commissioner may make participation in SAWC by a
14 discretionary participant contingent on the execution of the
15 Agreement.;

16 On page three, subdivision 3.3.a., after the word "Agreement"
17 by inserting the words "or other noncompliance with program
18 requirements";

19 On page three, subdivision 3.3.c., by striking out the words
20 "the latter of one year from removal or the next open enrollment
21 period" and inserting in lieu thereof the words "a period of not
22 more than one year to be determined by the commissioner based on
23 the seriousness of the non-compliance and the efforts of the
24 participant to come into compliance";

25 On page three, subdivision 3.3.d., by striking out the words

1 "upon application and re-execution of the Agreement" and inserting
2 in lieu thereof the words "upon written request and expiration of
3 the exclusion period determined in accordance with subdivision
4 3.3.c. of this subsection";

5 On page three, subdivision 3.4.a., by striking out the words
6 "any fee" and inserting in lieu thereof the words "any assessment";

7 On page three, subdivision 3.4.a., by striking out the words
8 "assessed fee" and inserting in lieu thereof the word "assessment";

9 On page three, subdivision 3.4.a., by striking out the words
10 "such fee" and inserting in lieu thereof the words "such
11 assessment";

12 And,

13 On page three, subdivision 3.4.b., by striking out the word
14 "fees" and inserting in lieu thereof the word "assessment".

15 **§64-7-3. Division of Banking.**

16 The legislative rule filed in the State Register on July 21,
17 2011, authorized under the authority of section three, article
18 seventeen, chapter thirty-one of this code, relating to the
19 Division of Banking (residential mortgage lenders, brokers and loan
20 originators, 106 CSR 5), is authorized.

21 **§64-7-4. Alcohol Beverage Control Commission.**

22 (a) The legislative rule filed in the State Register on July
23 13, 2011, authorized under the authority of section six, article
24 three-a, chapter sixty of this code, modified by the Alcohol
25 Beverage Control Commission to meet the objections of the

1 Legislative Rule-Making Review Committee and refiled in the State
2 Register on November 21, 2011, relating to the Alcohol Beverage
3 Commission (licensed retailer operations, 175 CSR 1), is
4 authorized.

5 (b) The legislative rule filed in the State Register on July
6 13, 2011, authorized under the authority of section six, article
7 three-a, chapter sixty of this code, relating to the Alcohol
8 Beverage Control Commission (licensing of retail outlets, 175 CSR
9 5), is authorized.

10 **§64-7-5. Racing Commission.**

11 The legislative rule filed in the State Register on September
12 13, 2011, authorized under the authority of section twelve-d,
13 article twenty-three, chapter nineteen of this code, relating to
14 the Racing Commission (simulcast pari-mutual wagering at an
15 authorized gaming facility in a historic hotel, 178 CSR 7), is
16 authorized.

17 **§64-7-6. Athletic Commission.**

18 The legislative rule filed in the State Register on July 28,
19 2011, authorized under the authority of section three-a, article
20 five-a, chapter twenty-nine of this code, modified by the Athletic
21 Commission to meet the objections of the Legislative Rule-Making
22 Review Committee and refiled in the State Register on January 6,
23 2012, relating to the Athletic Commission (mixed martial arts, 177
24 CSR 2), is authorized with the following amendments:

25 On pages three and four, §177-2.5., by striking out all of

1 §177-2.5. and inserting in lieu thereof a new §177-2.5., to read as
2 follows:

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

14 On page twelve, subsection 29.5., by striking out all of
15 subsection 29.5. and inserting in lieu thereof a new subsection
16 29.5., to read as follows:

17 29.5. Prohibition of certain dressings. - No second shall be
18 permitted to use grease or any other substances on the body of a
19 contestant. The use of petroleum jelly in corners is not allowed
20 except in the use of stopping blood and on cuts. Petroleum jelly,
21 or other substances approved by the commission, may be used in
22 between rounds in the use of stopping blood and on cuts and only in
23 the presence of a representative of the commission. The use of
24 drugs, alcohols or stimulants during a match by any contestant is
25 adequate cause for revoking license.;

1 On page twenty, subsection 41.1., by striking out all of
2 subsection 41.1. and inserting in lieu thereof a new subsection
3 41.1., to read as follows:

4 41.1. Matches shall take place in a cage or ring that has been
5 approved by the commission. The cage or ring shall meet the
6 requirements set forth by the commission and is subject to
7 inspection prior to each match by a commission representative such
8 as a referee.;

9 On page twenty-one, subsection 41.3., by striking out all of
10 subsection 41.3. and inserting in lieu thereof a new subsection
11 41.3., to read as follows:

12 41.3. The commission shall determine all seating arrangements
13 at cage side necessary to effectuate the match. A promoter may
14 submit a proposed seating arrangement to the commission one week
15 before the event.;

16 And,

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

19 41.4. Ring - The ring specifications shall meet the following
20 requirements:

21 41.4.a. The ring shall be no smaller than twenty feet square
22 and larger than thirty-two feet square within the ropes. One
23 corner shall have a red designation and the corner directly
24 opposite shall have a blue designation.

25 41.4.b. The floor must extend at least eighteen inches beyond

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

7 41.4.c. Ring posts must be made of metal, not more than three
8 inches in diameter, extending from the floor of the building to a
9 minimum height of fifty-eight inches above the ring floor, and must
10 be properly padded in a manner approved by the commission. Ring
11 posts must be at least eighteen inches away from the ring ropes.

12 41.4.d. There must be five ring ropes, not less than one inch
13 in diameter and wrapped in soft material. The lowest ring rope
14 must be twelve inches above the ring floor.

15 41.4.e. There must not be any obstruction or object,
16 including, without limitation, a triangular border, on any part of
17 the ring floor.