

WEST VIRGINIA LEGISLATURE

SECOND REGULAR SESSION, 2012



ENROLLED

**COMMITTEE SUBSTITUTE
FOR**

House Bill No. 4139

(By Delegates Brown, D. Poling, Fleischauer, and Overington)



Passed March 10, 2012

To Take Effect From Passage

E N R O L L E D

COMMITTEE SUBSTITUTE

FOR

H. B. 4139

(BY DELEGATES BROWN, D. POLING, FLEISCHAUER, AND
OVERINGTON)

[Passed March 10, 2012; to take effect from passage.]

AN ACT to amend and reenact article 9, chapter 64 of the Code of West Virginia, 1931, as amended, 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; 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 recommended by the Legislative Rule-Making Review Committee and as amended by the Legislature; authorizing the Board of Dental Examiners to promulgate a legislative rule relating to fees established by the Board; authorizing the Board of Accountancy to promulgate a legislative rule relating to the Board and rules of professional conduct; authorizing the Massage Therapy Licensure Board to promulgate a legislative rule relating to general provisions; authorizing the Massage Therapy Licensure Board to promulgate a legislative rule relating to a schedule of fees; authorizing the Board of Medicine to promulgate a legislative

rule relating to the formation and approval of professional limited liability companies; authorizing the Human Rights Commission to promulgate a legislative rule relating to housing discrimination against persons with disabilities who utilize assistance animals; authorizing the State Auditor to promulgate a legislative rule relating to the transaction fee and rate structure; authorizing the Commissioner of Agriculture to promulgate a legislative rule relating to the inspection of meat and poultry; authorizing the Commissioner of Agriculture to promulgate a legislative rule relating to the labeling of imported honey, honey products or honey bee by-products and adulterated honey, honey products or honey bee by-products; authorizing the Commissioner of Agriculture to promulgate a legislative rule relating to nutrient management certification; authorizing the Board of Barbers and Cosmetologists to promulgate a legislative rule relating to the procedures, criteria and curricula for examinations and licensure of barbers, cosmetologists, manicurists and aestheticians; authorizing the Board of Barbers and Cosmetologists to promulgate a legislative rule relating to licensing schools of barbering and beauty culture; authorizing the Board of Barbers and Cosmetologists to promulgate a legislative rule relating to shampoo assistants; authorizing the Courthouse Facilities Improvement Authority to promulgate a legislative rule relating to the Courthouse Facilities Improvement Fund; authorizing the Secretary of State to promulgate a legislative rule relating to the Vote-by-Mail Pilot Project Phase 2: Voting by Mail; authorizing the Secretary of State to promulgate a legislative rule relating to the general management and preservation of state records; authorizing the Board of Professional Surveyors to promulgate a legislative rule relating to the examination and licensing of professional surveyors in West Virginia; authorizing the Nursing Home Administrators Licensing Board to promulgate a legislative rule relating to nursing home administrators; authorizing the Board of Occupational Therapy to promulgate a legislative rule relating to fees for services rendered by the Board; authorizing the Board of Osteopathy to promulgate a legislative rule relating to licensing procedures for osteopathic physicians; authorizing the Board of Pharmacy to promulgate a legislative rule relating to the Uniform Controlled Substances Act; authorizing the Board of Pharmacy to promulgate a legislative rule relating to continuing education

for the licensure of pharmacists; authorizing the Board of Pharmacy to promulgate a legislative rule relating to the licensure of wholesale drug distributors; and authorizing the Board of Pharmacy to promulgate a legislative rule relating to immunizations administered by pharmacists.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 9. AUTHORIZATION FOR MISCELLANEOUS AGENCIES AND BOARDS TO PROMULGATE LEGISLATIVE RULES.

§64-9-1. Board of Dental Examiners.

1 The legislative rule filed in the State Register on the
2 twenty-ninth day of July, two thousand eleven, authorized
3 under the authority of section eighteen, article four-a, chapter
4 thirty, of this code, modified by the Board of Dental
5 Examiners to meet the objections of the Legislative Rule-
6 Making Review Committee and refiled in the State Register
7 on the twenty-first day of October, two thousand eleven,
8 relating to the Board of Dental Examiners (fees established
9 by the Board, 5 CSR 3), is authorized, with the following
10 amendments:

11 On page one, subsection 2.1., by striking out all of
12 subsection 2.1. and inserting in lieu thereof a new subsection
13 2.1. to read as follows:

14 2.1. Dental Licensure Application \$185.00;

15 On page one, subsection 2.8., by striking out all of
16 subsection 2.8. and inserting in lieu thereof a new subsection
17 2.8. to read as follows:

18 2.8. Annual Information & Renewal
19 fee for a Dentist \$185.00;

20 On page one, subsection 4.1., by striking out all of
21 subsection 4.1. and inserting in lieu thereof a new subsection
22 4.1. to read as follows:

23 4.1. Dental Hygiene Licensure Application \$75.00;

24 On page two, subsection 4.7., by striking out all of
25 subsection 4.7. and inserting in lieu thereof a new subsection
26 4.7. to read as follows:

27 4.7. Annual Information & Renewal fee
28 for a Dental Hygienist \$75.00;

29 On page two, subsections 4.8. through 4.15., by striking
30 out all of subsections 4.8. through 4.15. and inserting in lieu
31 thereof new subsections, designated subsections 4.8. through
32 subsection 4.16. to read as follows:

33 4.8 Annual Information & Renewal fee
34 for a Dental Hygienist employed
35 by a public health agency \$65.00

36 4.9. Local Anesthesia Certificate Application fee \$50.00

37 4.10. Nitrous Oxide Monitoring
38 Certificate Application fee \$50.00

39 4.11. Bleaching Certificate Application fee \$25.00

40 4.12. General Supervision Application fee \$100.00

41 4.13. Public Health Practice Application fee \$25.00

42 4.14. Annual Renewal fee of Local
43 Anesthesia Certificate \$25.00

44 4.15. Annual Renewal fee of
45 General Supervision Certificate \$50.00

46 4.16. Annual Renewal fee of Public
47 Health Practice Certificate \$25.00;

48 On page two, subsection 7.2., by striking out all of
49 subsection 7.2. and inserting in lieu thereof a new subsection
50 7.2. to read as follows:

51 7.2. Class Two Certification Renewal Fee \$15.00;

52 And,

53 On page two, subsection 7.6., by striking out all of
54 subsection 7.6. and inserting in lieu thereof a new subsection
55 7.6. to read as follows:

56 7.6. Qualified Monitor Annual Renewal Fee \$25.00;

§64-9-2. Board of Accountancy.

1 The legislative rule filed in the State Register on the
2 twenty-eighth day of July, two thousand eleven, authorized
3 under the authority of section five, article nine, chapter thirty
4 of this code, relating to the Board of Accountancy (the Board
5 and rules of professional conduct, 1 CSR 1), is authorized.

§64-9-3. Massage Therapy Licensure Board.

1 (a) The legislative rule filed in the State Register on the
2 twenty-ninth day of July, two thousand eleven, authorized
3 under the authority of section six, article thirty-seven, chapter
4 thirty, of this code, relating to the Massage Therapy
5 Licensure Board (general provisions, 194 CSR 1), is
6 authorized.

7 (b) The legislative rule filed in the State Register on the
8 twenty-ninth day of July, two thousand eleven, authorized
9 under the authority of section six, article thirty-seven, chapter
10 thirty, of this code, relating to the Massage Therapy
11 Licensure Board (schedule of fees, 194 CSR 4), is authorized,
12 with the following amendment:

13 On page 1, at the end of the rule, by adding thereto a new
14 section, designated section 3, to read as follows:

“§194-4-3. Expiration of fee increases.

1 The fee increases enacted by emergency rule in 2011 and
2 by legislative rule in 2012 will expire as of July 1, 2014”.

§64-9-4. Board of Medicine.

1 The legislative rule filed in the State Register on the
2 twelfth day of July, two thousand eleven, authorized under
3 the authority of section fifteen, article three, chapter thirty, of
4 this code, relating to the Board of Medicine (formation and
5 approval of professional limited liability companies, 11 CSR
6 7), is authorized.

§64-9-5. Human Rights Commission.

1 The legislative rule filed in the State Register on the
2 twenty-ninth day of July, two thousand eleven, authorized
3 under the authority of section eight, article eleven, chapter
4 five of this code, relating to the Human Rights Commission
5 (housing discrimination against persons with disabilities who
6 utilize assistance animals, 77 CSR 9), is authorized.

§64-9-6. Auditor.

1 The legislative rule filed in the State Register on the
2 twenty-ninth day of July, two thousand eleven, authorized
3 under the authority of section ten-c, article three, chapter
4 twelve, of this code, relating to the State Auditor (transaction
5 fee and rate structure, 155 CSR 4), is authorized, with the
6 following amendment:

7 On page one, section three, by striking out all of
8 subsection 3.1 and inserting in lieu thereof the following:

9 “3.1. The transaction fee structure and rate shall be in
10 compliance with the following federal Office of Management
11 and Budget Circulars and provisions of the Code of Federal
12 Regulations: Circular No. A-21, “Cost Principles for
13 Educational Institutions” as amended May 10, 2004; 2CFR
14 Part 225: Circular No. A-87, “Cost Principles for State,
15 Local, and Indian Tribal Governments” as amended August

16 31, 2005; and Circular A-110, “Uniform Administrative
17 Requirements for Grants and Agreements with Institutions of
18 Higher Education, Hospitals, and other Non-Profit
19 Organizations” as amended September 30, 1999.”.

§64-9-7. Department of Agriculture.

1 (a) The legislative rule filed in the State Register on the
2 twenty-seventh day of July, two thousand eleven, authorized
3 under the authority of section three, article two-b, chapter
4 nineteen, of this code, relating to the Commissioner of
5 Agriculture (inspection of meat and poultry, 61 CSR 16), is
6 authorized.

7 (b) The legislative rule filed in the State Register on the
8 twenty-ninth day of July, two thousand eleven, authorized
9 under the authority of section four, article one, chapter
10 nineteen, of this code, modified by the Commissioner of
11 Agriculture to meet the objections of the Legislative Rule-
12 Making Review Committee and refiled in the State Register
13 on the nineteenth day of October, two thousand eleven,
14 relating to the Commissioner of Agriculture (labeling of
15 imported honey, honey products or honey bee by-products
16 and adulterated honey, honey products or honey bee by-
17 products, 61 CSR 2A), is authorized.

18 (c) The legislative rule filed in the State Register on the
19 twenty-ninth day of July, two thousand eleven, authorized
20 under the authority of section twelve, article fifteen, chapter
21 nineteen, of this code, modified by the Department of
22 Agriculture to meet the objections of the Legislative Rule-
23 Making Review Committee and refiled in the State Register
24 on the nineteenth day of October, two thousand eleven,
25 relating to the Commissioner of Agriculture (nutrient
26 management certification, 61 CSR 6D), is authorized.

§64-9-8. Board of Barbers & Cosmetologists.

1 (a) The legislative rule filed in the State Register on the
2 twenty-ninth day of July, two thousand eleven, authorized
3 under the authority of section six, article twenty-seven,
4 chapter thirty, of this code, relating to the Board of Barbers

5 and Cosmetologists (procedures, criteria and curricula for
6 examinations and licensure of barbers, cosmetologists,
7 manicurists and aestheticians, 3 CSR 1), is authorized.

8 (b) The legislative rule filed in the State Register on the
9 twenty-ninth day of July, two thousand eleven, authorized
10 under the authority of section six, article twenty-seven,
11 chapter thirty, of this code, modified by the Board of Barbers
12 and Cosmetologists to meet the objections of the Legislative
13 Rule-Making Review Committee and refiled in the State
14 Register on the twentieth day of September, two thousand
15 eleven, relating to the Board of Barbers and Cosmetologists
16 (licensing schools of barbering and beauty culture, 3 CSR 3),
17 is authorized.

18 (c) The legislative rule filed in the State Register on the
19 twenty-ninth day of July, two thousand eleven, authorized
20 under the authority of section eleven-a, article twenty-seven,
21 chapter thirty, of this code, relating to the Board of Barbers
22 and Cosmetologists (shampoo assistants, 3 CSR 8), is
23 authorized.

§64-9-9. Courthouse Facilities Improvement Authority.

1 The legislative rule filed in the State Register on the first
2 day of September, two thousand eleven, authorized under the
3 authority of section three, article twenty-six, chapter twenty-
4 nine, of this code, modified by the Courthouse Facilities
5 Improvement Authority to meet the objections of the
6 Legislative Rule-Making Review Committee and refiled in
7 the State Register on the eleventh day of January, two
8 thousand twelve, relating to the Courthouse Facilities
9 Improvement Authority (Courthouse Facilities Improvement
10 Fund, 203 CSR 1), is authorized.

§64-9-10. Secretary of State.

1 (a) The legislative rule filed in the State Register on the
2 twenty-ninth day of July, two thousand eleven, authorized
3 under the authority of section three, article three-a, chapter
4 three, of this code, modified by the Secretary of State to meet
5 the objections of the Legislative Rule-Making Review

6 Committee and refiled in the State Register on the twenty-
7 third day of December, two thousand eleven, relating to the
8 Secretary of State (Vote-by-Mail Pilot Project Phase 2:
9 Voting by Mail, 153 CSR 39), is authorized.

10 (b) The legislative rule filed in the State Register on the
11 twenty-ninth day of July, two thousand eleven, authorized
12 under the authority of three, article three-a, chapter three, of
13 this code, modified by the Secretary of State to meet the
14 objections of the Legislative Rule-Making Review
15 Committee and refiled in the State Register on the twelfth day
16 of January, two thousand twelve, relating to the Secretary of
17 State (general management and preservation of state records,
18 153 CSR 42), is authorized, with the following amendment:

19 On page one, subsection 1.5, line ten, following the
20 words “record-keeping systems”, by inserting the words “for
21 essential public records created or filed with the West
22 Virginia Secretary of State”;

23 On page four, subsection 3.1, line twelve, following the
24 words “Archives and History”, by striking out the word
25 “division” and inserting in lieu thereof the word “section”;

26 On page four, subsection 3.2a, line fourteen, following
27 the words “Culture and History”, by inserting a comma and
28 the words “Archives and History section”;

29 And

30 On page four, subsection 3.2d, line twenty-five, following
31 the words “Director of Archives”, by inserting the words
32 “and History”.

§64-9-11. Board of Professional Surveyors.

1 The legislative rule filed in the State Register on the
2 twelfth day of July, two thousand eleven, authorized under
3 the authority of section six, article thirteen-a, chapter thirty,
4 of this code, modified by the Board of Professional Surveyors
5 to meet the objections of the Legislative Rule-Making
6 Review Committee and refiled in the State Register on the

7 twenty-first day of November, two thousand eleven, relating
8 to the Board of Professional Surveyors (examination and
9 licensing of professional surveyors in West Virginia, 23 CSR
10 1), is authorized.

§64-9-12. Nursing Home Administrators Licensing Board.

1 The legislative rule filed in the State Register on the
2 twenty-eighth day of March, two thousand eleven, authorized
3 under the authority of section six, article twenty-five, chapter
4 thirty, of this code, modified by the Nursing Home
5 Administrators Licensing Board to meet the objections of the
6 Legislative Rule-Making Review Committee and refiled in
7 the State Register on the eighteenth day of October, two
8 thousand eleven, relating to the Nursing Home
9 Administrators Licensing Board (nursing home
10 administrators, 21 CSR 1), is authorized.

§64-9-13. Board of Occupational Therapy.

1 The legislative rule filed in the State Register on the
2 fourteenth day of July, two thousand eleven, authorized under
3 the authority of section seven, article twenty-eight, chapter
4 thirty, of this code, relating to the Board of Occupational
5 Therapy (fees for services rendered by the Board, 13 CSR 3),
6 is authorized.

§64-9-14. Board of Osteopathy.

1 The legislative rule filed in the State Register on the
2 twenty-eighth day of July, two thousand eleven, authorized
3 under the authority of section four, article one, chapter thirty,
4 of this code, relating to the Board of Osteopathy (licensing
5 procedures for osteopathic physicians, 24 CSR 1), is
6 authorized.

§64-9-15. Board of Pharmacy.

1 (a) The legislative rule filed in the State Register on the
2 twenty-ninth day of July, two thousand eleven, authorized
3 under the authority of section three hundred one, article three,
4 chapter sixty-a, of this code, relating to the Board of

5 Pharmacy (Uniform Controlled Substances Act, 15 CSR 2),
6 is authorized with the following amendment:

7 On page twenty three, subdivision 7.10.1., by striking out
8 the word “full” and inserting in lieu thereof the word “fill”.

9 (b) The legislative rule filed in the State Register on the
10 twenty-ninth day of July, two thousand eleven, authorized
11 under the authority of section three-a, article five, chapter
12 thirty, of this code, relating to the Board of Pharmacy
13 (continuing education for licensure of pharmacists, 15 CSR
14 3), is authorized.

15 (c) The legislative rule filed in the State Register on the
16 twenty-ninth day of July, two thousand eleven, authorized
17 under the authority of section nine, article eight, chapter
18 sixty-a, of this code, relating to the Board of Pharmacy
19 (licensure of wholesale drug distributors, 15 CSR 5), is
20 authorized with the following amendment:

21 On page three, subsection 3.1, after the words
22 “prescription drugs.” by adding the following:
23 Notwithstanding the provisions of W. Va. Code §60A-8-7,
24 the fee for a license for the wholesale distribution of drugs is
25 \$750.00.

26 (d) The legislative rule filed in the State Register on the
27 ninth day of December, two thousand eleven, authorized
28 under the authority of section thirty, article five, chapter
29 thirty, of this code, relating to the Board of Pharmacy
30 (immunizations administered by pharmacists, 15 CSR 12), is
31 authorized.

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

Chairman, House Committee

Chairman, Senate Committee

Originating in the House.

To take effect from passage.

Clerk of the House of Delegates

Clerk of the Senate

Speaker of the House of Delegates

President of the Senate

The within _____ this the _____
day of _____, 2012.

Governor