

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 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 State Tax Department to promulgate a legislative rule relating to the payment of taxes by electronic funds transfer; authorizing the State Tax Department to promulgate a legislative rule relating to the commercial patent incentives tax credit; authorizing the State Tax Department to promulgate a legislative rule relating to an exchange of information agreement between the State Tax Department and the Department of Commerce, the Department of Transportation and the Department of Environmental Protection; authorizing the Insurance Commissioner to promulgate a legislative rule relating to the licensing and conduct of insurance producers and agencies; 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 insurance holding company systems; authorizing the Insurance

Commissioner to promulgate a legislative rule relating to continuing education for individual insurance producers; authorizing the Insurance Commissioner to promulgate a legislative rule relating to mini COBRA; authorizing the Insurance Commissioner to promulgate a legislative rule relating to workers' compensation insurance for state agencies; authorizing the Division of Banking to promulgate a legislative rule relating to residential mortgage lenders, brokers and loan originators; authorizing the Alcohol Beverage Control Commission to promulgate a legislative rule relating to licensed retailer operations; authorizing the Alcohol Beverage Control Commission to promulgate a legislative rule relating to the licensing of retail outlets; authorizing the Racing Commission to promulgate a legislative rule relating to simulcast pari-mutuel wagering at an authorized gaming facility in a historic hotel; and authorizing the Athletic Commission to promulgate a legislative rule relating to mixed martial arts.

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 REVENUE TO
PROMULGATE LEGISLATIVE RULES.**

§64-7-1. State Tax Department.

1 (a) The legislative rule filed in the State Register on April
2 21, 2011, authorized under the authority of section five-z,
3 article ten, chapter eleven of this code, modified by the State
4 Tax Department to meet the objections of the Legislative
5 Rule-Making Review Committee and refiled in the State
6 Register on August 5, 2011, relating to the State Tax Depart-
7 ment (payment of taxes by electronic funds transfer, 110 CSR
8 10F), is authorized with the following amendments:

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

12 3.2. The threshold amount is \$100,000.00 in tax liability
13 per tax type per taxable year or reporting period beginning
14 on or after January 1, 2004, subject to subdivisions 3.2.1.,
15 3.2.2., 3.2.3. and 3.2.4. of this subsection.;

16 And,

17 On page four, after subsection 3.2., by inserting four new
18 subdivisions, designated subdivisions 3.2.1., 3.2.2., 3.2.3. and
19 3.2.4., to read as follows:

20 3.2.1. For tax years beginning on or after January 1,
21 2013, the threshold amount for determining whether a

22 taxpayer shall pay electronically is \$50,000 in tax liability
23 paid for a single tax type in the immediately preceding tax
24 year: *Provided*, That for tax years beginning on or after
25 January 1, 2013, any taxpayer that pays more than \$50,000
26 for any tax type in the immediately preceding tax year shall
27 electronically pay the taxes for all tax returns filed;

28 3.2.2. For tax years beginning on or after January 1,
29 2014, the threshold amount for determining whether a
30 taxpayer shall pay electronically is \$25,000 in tax liability
31 paid for a single tax type in the immediately preceding tax
32 year: *Provided*, That for tax years beginning on or after
33 January 1, 2014, any taxpayer that pays more than \$25,000
34 for any tax type in the immediately preceding tax year shall
35 electronically pay the taxes for all tax returns filed;

36 3.2.3. For tax years beginning on or after January 1,
37 2015, the threshold amount for determining whether a
38 taxpayer shall pay electronically is \$10,000 in tax liability
39 paid for a single tax type in the immediately preceding tax
40 year: *Provided*, That for tax years beginning on or after
41 January 1, 2015, any taxpayer that pays more than \$10,000
42 for any tax type in the immediately preceding tax year shall
43 electronically pay the taxes for all tax returns filed;

44 3.2.4. Tax Commissioner may determine the tax types for
45 which electronic payment of taxes is not required.

46 (b) The legislative rule filed in the State Register on July
47 18, 2011, authorized under the authority of section ten,
48 article thirteen-aa, chapter eleven of this code, modified by
49 the State Tax Department to meet the objections of the
50 Legislative Rule-Making Review Committee and refiled in
51 the State Register on November 22, 2011, relating to the
52 State Tax Department (commercial patent incentives tax
53 credit, 110 CSR 13Q), is authorized.

54 (c) The legislative rule filed in the State Register on July
55 29, 2011, authorized under the authority of section five-s,
56 article ten, chapter eleven of this code, modified by the State
57 Tax Department to meet the objections of the Legislative
58 Rule-Making Review Committee and refiled in the State
59 Register on November 22, 2011, relating to the State Tax
60 Department (exchange of information agreement between
61 the State Tax Department and the Department of Commerce,
62 the Department of Transportation and the Department of
63 Environmental Protection, 110 CSR 50G), is authorized.

§64-7-2. Insurance Commissioner.

1 (a) The legislative rule filed in the State Register on July
2 28, 2011, authorized under the authority of section ten,

3 article two, chapter thirty-three of this code, relating to the
4 Insurance Commissioner (licensing and conduct of insurance
5 producers and agencies, 114 CSR 2), is authorized.

6 (b) The legislative rule filed in the State Register on July
7 28, 2011, authorized under the authority of section ten,
8 article two, chapter thirty-three of this code, relating to the
9 Insurance Commissioner (surplus lines insurance, 114 CSR
10 20), is authorized.

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

25 Insurance Commissioner (continuing education for individ-
26 ual insurance producers, 114 CSR 42), is authorized with the
27 following amendment:

28 On page three, subsection 4.2., by striking out all of
29 subsection 4.2. and inserting in lieu thereof a new subsection
30 4.2. to read as follows:

31 4.2. The commissioner shall, in consultation with the
32 board, develop a program regarding continuing education
33 requirements during the transition to the new biennium
34 period established pursuant to the 2012 amendments to this
35 rule; such program shall be posted on the agency website.

36 (e) The legislative rule filed in the State Register on July
37 28, 2011, authorized under the authority of section ten,
38 article two, chapter thirty-three of this code, relating to the
39 Insurance Commissioner (mini COBRA, 114 CSR 93), is
40 authorized with the following amendments:

41 On page three, subsection 3.5., after the word “subsec-
42 tion” by striking out “3.5.” and inserting in lieu thereof
43 “3.4.”;

44 And,

45 On page four, subsection 3.7., by striking out all of
46 subsection 3.7. and inserting in lieu thereof a new subsection
47 3.7., to read as follows:

48 3.7. *Remedies in the event of carrier noncompliance.* If a
49 carrier fails to comply with the requirements of this rule,
50 including the notice requirements of subsection 3.5. of this
51 section, and such noncompliance results in the failure of an
52 eligible adult qualified beneficiary of a covered employee to
53 timely elect continuation coverage, every qualified benefi-
54 ciary of the covered employee covered on the day of the
55 qualifying event shall remain covered under the health
56 benefit plan until the qualified beneficiaries are afforded the
57 opportunity to elect such coverage.

58 (f) The legislative rule filed in the State Register on July
59 28, 2011, authorized under the authority of section ten,
60 article two, chapter thirty-three of this code, relating to the
61 Insurance Commissioner (Workers' Compensation Insurance
62 for state agencies, 114 CSR 94), is authorized with the
63 following amendments:

64 On page one, subsection 2.2., by striking out all of
65 subsection 2.2. and inserting in lieu thereof a new subsection
66 2.2., to read as follows:

67 2.2. "Discretionary participant" means any discretionary
68 participant as defined in W. Va. Code §33-2-21a(a)(1).;

69 On page two, subsection 2.8., by striking out the words
70 "and those discretionary participants that have agreed to

71 participate in SAWC under an agreement with the Commis-
72 sioner” and inserting in lieu thereof the words “and for those
73 discretionary participants that participate in SAWC”;

74 On page two, subsection 3.1., by striking out the words
75 “and shall send to each a notice of such determination”;

76 On page two, subdivision 3.1.a., by striking out the words
77 “Such notice shall inform: (i) Executive state entities that
78 they will be required to execute the Agreement and” and
79 inserting in lieu thereof the words “The Commissioner shall
80 inform: (i) Executive state entities that they will be re-
81 quired”;

82 On page two, subdivision 3.1.b., by striking out the words
83 “Any recipient of a notice sent pursuant to subdivision a of
84 this subsection that believes it should have been classified
85 differently, or any entity that did not receive a notice” and
86 inserting in lieu thereof the words “Any entity that believes
87 it should have been classified differently, or any entity that
88 did not receive a notice of eligibility”;

89 On page two, subsection 3.2., by striking out all of
90 subsection 3.2. and inserting in lieu thereof a new subsection
91 3.2., to read as follows:

92 3.2. The Commissioner may make participation in SAWC

93 by a discretionary participant contingent on the execution of
94 the Agreement.;

95 On page three, subdivision 3.3.a., after the word
96 “Agreement” by inserting the words “or other noncompli-
97 ance with program requirements”;

98 On page three, subdivision 3.3.c., by striking out the
99 words “the latter of one year from removal or the next open
100 enrollment period” and inserting in lieu thereof the words “a
101 period of not more than one year to be determined by the
102 commissioner based on the seriousness of the non-compli-
103 ance and the efforts of the participant to come into compli-
104 ance”;

105 On page three, subdivision 3.3.d., by striking out the
106 words “upon application and re-execution of the Agreement”
107 and inserting in lieu thereof the words “upon written request
108 and expiration of the exclusion period determined in
109 accordance with subdivision 3.3.c. of this subsection”;

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

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

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

119 And,

120 On page three, subdivision 3.4.b., by striking out the
121 word “fees” and inserting in lieu thereof the word “assess-
122 ment”.

§64-7-3. Division of Banking.

1 The legislative rule filed in the State Register on July 21,
2 2011, authorized under the authority of section three, article
3 seventeen, chapter thirty-one of this code, relating to the
4 Division of Banking (residential mortgage lenders, brokers
5 and loan originators, 106 CSR 5), is authorized.

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

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

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

§64-7-5. Racing Commission.

1 The legislative rule filed in the State Register on Septem-
2 ber 13, 2011, authorized under the authority of section
3 twelve-d, article twenty-three, chapter nineteen of this code,
4 relating to the Racing Commission (simulcast pari-mutual
5 wagering at an authorized gaming facility in a historic hotel,
6 178 CSR 7), is authorized.

§64-7-6. Athletic Commission.

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

9 On pages three and four, §177-2.5., by striking out all of
10 §177-2.5. and inserting in lieu thereof a new §177-2.5., to
11 read as follows:

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

24 On page twelve, subsection 29.5., by striking out all of
25 subsection 29.5. and inserting in lieu thereof a new subsec-
26 tion 29.5., to read as follows:

27 29.5. Prohibition of certain dressings. – No second shall
28 be permitted to use grease or any other substances on the
29 body of a contestant. The use of petroleum jelly in corners is
30 not allowed except in the use of stopping blood and on cuts.

31 Petroleum jelly, or other substances approved by the com-
32 mission, may be used in between rounds in the use of
33 stopping blood and on cuts and only in the presence of a
34 representative of the commission. The use of drugs, alcohols
35 or stimulants during a match by any contestant is adequate
36 cause for revoking license.;

37 On page twenty, subsection 41.1., by striking out all of
38 subsection 41.1. and inserting in lieu thereof a new subsec-
39 tion 41.1., to read as follows:

40 41.1. Matches shall take place in a cage or ring that has
41 been approved by the commission. The cage or ring shall
42 meet the requirements set forth by the commission and is
43 subject to inspection prior to each match by a commission
44 representative such as a referee.;

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

48 41.3. The commission shall determine all seating ar-
49 rangements at cage side necessary to effectuate the match. A
50 promoter may submit a proposed seating arrangement to the
51 commission one week before the event.;

52 And,

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

56 41.4. Ring - The ring specifications shall meet the
57 following requirements:

58 41.4.a. The ring shall be no smaller than twenty feet
59 square and larger than thirty-two feet square within the
60 ropes. One corner shall have a red designation and the corner
61 directly opposite shall have a blue designation.

62 41.4.b. The floor must extend at least eighteen inches
63 beyond the ropes. The ring floor must be padded in a manner
64 as approved by the commission, with at least one inch layer
65 of foam padding. No vinyl or other plastic rubberized cover
66 shall be permitted. The fighting area canvas shall not be
67 more than four feet above the floor of the building and shall
68 have suitable steps or ramp for use by the participants.

69 41.4.c. Ring posts must be made of metal, not more than
70 three inches in diameter, extending from the floor of the
71 building to a minimum height of fifty-eight inches above the
72 ring floor, and must be properly padded in a manner ap-
73 proved by the commission. Ring posts must be at least
74 eighteen inches away from the ring ropes.

75 41.4.d. There must be five ring ropes, not less than one
76 inch in diameter and wrapped in soft material. The lowest
77 ring rope must be twelve inches above the ring floor.

78 41.4.e. There must not be any obstruction or object,
79 including, without limitation, a triangular border, on any
80 part of the ring floor.