

**ENROLLED**

COMMITTEE SUBSTITUTE

FOR

**Senate Bill No. 287**

(SENATOR MINARD, *original sponsor*)

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

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AN ACT 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 parimutuel wagering at an authorized gaming facility in a historic hotel; authorizing the Athletic Commission to promulgate a legislative rule relating to mixed martial arts; and authorizing the Board of Directors of the West Virginia Health Insurance Plan to promulgate a legislative rule relating to a premium subsidy.

*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, with the following  
54 amendment:

55 On page three, subsection 2.18, line twenty-one, follow-  
56 ing the words “June 19” and the comma, by striking out the  
57 number “2970” and inserting in lieu thereof the number  
58 “1970”;

59 On page five, subsection 3.1.7, line six, following the  
60 words “allowed under”, by striking out the words “Subsec-  
61 tion 3.1 or 3.2 of”;

62 And,

63 On page five, subsection 3.1.8, line ten, following the  
64 words “allowed under”, by striking out the words “Subsec-  
65 tion 3.1 or 3.2 of”.

66 (c) The legislative rule filed in the State Register on July  
67 29, 2011, authorized under the authority of section five-s,

68 article ten, chapter eleven of this code, modified by the State  
69 Tax Department to meet the objections of the Legislative  
70 Rule-Making Review Committee and refiled in the State  
71 Register on November 22, 2011, relating to the State Tax  
72 Department (exchange of information agreement between  
73 the State Tax Department and the Department of Commerce,  
74 the Department of Transportation and the Department of  
75 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 On page three, subsection 3.6, by striking out the subsec-  
45 tion in its entirety and inserting in lieu thereof, the follow-  
46 ing:

47 “3.6. *Election of coverage by beneficiary.* A covered  
48 employee or other qualified beneficiary who wants to elect  
49 continuation coverage must do so in writing to the carrier  
50 within 30 days after receiving a notice under subsection 3.5  
51 of this section and must include payment of the initial  
52 premium set forth in such notice. The premium payment due  
53 shall be for the period beginning on the date coverage would  
54 have otherwise terminated due to the qualifying event. The  
55 premium charged for continuation of coverage may not  
56 exceed 100% percent of the applicable premium.”;

57 On page four, subdivision 3.6.a., by striking out the  
58 subdivision in its entirety and inserting in lieu thereof, the  
59 following:

60 “3.6.a. The carrier or its designee shall process all  
61 elections promptly and provide coverage retroactively to the  
62 date coverage would otherwise have terminated on the basis

63 of the qualifying event. Employers are required to promptly  
64 provide to the carrier or its designee any information and  
65 paperwork necessary to facilitate the processing of a request  
66 for continuation of coverage. After an election and initial  
67 premium remittance, the carrier must bill the beneficiary for  
68 premiums no more often than monthly and with an allow-  
69 ance for a 30-day grace period for payment.”;

70 And,

71 On page four, subsection 3.7., by striking out all of  
72 subsection 3.7. and inserting in lieu thereof a new subsection  
73 3.7., to read as follows:

74 “3.7. *Remedies in the event of carrier noncompliance.* If  
75 a carrier fails to comply with the requirements of this rule,  
76 including the notice requirements of subsection 3.5. of this  
77 section, and such noncompliance results in the failure of an  
78 eligible adult qualified beneficiary of a covered employee to  
79 timely elect continuation coverage, every qualified benefi-  
80 ciary of the covered employee covered on the day of the  
81 qualifying event shall remain covered under the health  
82 benefit plan until the qualified beneficiaries are afforded the  
83 opportunity to elect such coverage.”

84 (f) The legislative rule filed in the State Register on July  
85 28, 2011, authorized under the authority of section ten,  
86 article two, chapter thirty-three of this code, relating to the  
87 Insurance Commissioner (Workers’ Compensation Insurance  
88 for state agencies, 114 CSR 94), is authorized with the  
89 following amendments:

90 On page one, subsection 2.2., by striking out all of  
91 subsection 2.2. and inserting in lieu thereof a new subsection  
92 2.2., to read as follows:

93 “2.2. ‘Discretionary participant’ means any discretionary  
94 participant as defined in W. Va. Code §33-2-21a(a)(1).”;

95 On page two, subsection 2.8., by striking out the words  
96 “and those discretionary participants that have agreed to  
97 participate in SAWC under an agreement with the Commis-

98 sioner” and inserting in lieu thereof the words “and for those  
99 discretionary participants that participate in SAWC”;

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

102 On page two, subdivision 3.1.a., by striking out the words  
103 “Such notice shall inform: (i) Executive state entities that  
104 they will be required to execute the Agreement and” and  
105 inserting in lieu thereof the words “The Commissioner shall  
106 inform: (i) Executive state entities that they will be re-  
107 quired”;

108 On page two, subdivision 3.1.b., by striking out the words  
109 “Any recipient of a notice sent pursuant to subdivision a of  
110 this subsection that believes it should have been classified  
111 differently, or any entity that did not receive a notice” and  
112 inserting in lieu thereof the words “Any entity that believes  
113 it should have been classified differently, or any entity that  
114 did not receive a notice of eligibility”;

115 On page two, subsection 3.2., by striking out all of  
116 subsection 3.2. and inserting in lieu thereof a new subsection  
117 3.2., to read as follows:

118 “3.2. The Commissioner may make participation in  
119 SAWC by a discretionary participant contingent on the  
120 execution of the Agreement.”;

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

124 On page three, subdivision 3.3.c., by striking out the  
125 words “the latter of one year from removal or the next open  
126 enrollment period” and inserting in lieu thereof the words “a  
127 period of not more than one year to be determined by the  
128 commissioner based on the seriousness of the non-compli-  
129 ance and the efforts of the participant to come into compli-  
130 ance”;



131 On page three, subdivision 3.3.d., by striking out the  
132 words “upon application and re-execution of the Agreement”  
133 and inserting in lieu thereof the words “upon written request  
134 and expiration of the exclusion period determined in  
135 accordance with subdivision 3.3.c. of this subsection”;

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

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

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

145 And,

146 On page three, subdivision 3.4.b., by striking out the  
147 word “fees” and inserting in lieu thereof the word “assess-  
148 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 may 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  
49 arrangements at cage side necessary to effectuate the match.  
50 A promoter may submit a proposed seating arrangement to  
51 the 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.”.

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

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 seven-b, article forty-eight,  
4 chapter thirty-three, of this code, relating to the Board of  
5 Directors of the West Virginia Health Insurance Plan  
6 (premium subsidy, 113 CSR 1), is authorized.