

WEST VIRGINIA LEGISLATURE

2018 REGULAR SESSION

ENROLLED

Committee Substitute

for

House Bill 4079

BY DELEGATES SOBONYA AND FRICH

[Passed March 9, 2018; in effect from passage.]

1 AN ACT to amend and reenact §64-9-1, §64-9-2, §64-9-3, §64-9-4, §64-9-5, §64-9-6, §64-9-7,
2 §64-9-8, §64-9-9, §64-9-10, §64-9-11, §64-9-12, §64-9-13, §64-9-14, §64-9-15, and §64-
3 9-16 of the Code of West Virginia, 1931, as amended, all relating generally to the
4 promulgation of administrative rules by various executive or administrative agencies of the
5 state; authorizing certain agencies to promulgate certain legislative rules in the form that
6 the rules were filed in the State Register; authorizing certain agencies to promulgate
7 certain legislative rules with various modifications presented to and recommended by the
8 Legislative Rule-Making Review Committee; authorizing certain agencies to promulgate
9 certain legislative rules with amendments recommended by the Legislative Rule-Making
10 Review Committee; authorizing certain agencies to promulgate certain legislative rules
11 with amendments recommended by the Legislature; directing various agencies to amend
12 and promulgate certain legislative rules; repealing certain legislative rules; authorizing the
13 Board of Accountancy to promulgate a legislative rule relating to board rules and rules of
14 professional conduct; authorizing the Commissioner of Agriculture to promulgate a
15 legislative rule relating to animal disease control; authorizing the Commissioner of
16 Agriculture to promulgate a legislative rule relating to auctioneers; authorizing the
17 Commissioner of Agriculture to promulgate a legislative rule relating to noxious weeds;
18 authorizing the Commissioner of Agriculture to promulgate a legislative rule relating to
19 inspection of meat and poultry; authorizing the Commissioner of Agriculture to promulgate
20 a legislative rule relating to West Virginia apiary law; authorizing the Commissioner of
21 Agriculture to promulgate a legislative rule relating to inspection of nontraditional,
22 domesticated animals; authorizing the Commissioner of Agriculture to promulgate a
23 legislative rule relating to schedule of charges for inspection services; fruit; authorizing the
24 Athletic Commission to promulgate a legislative rule relating to administrative rules of the
25 West Virginia State Athletic Commission; authorizing the Athletic Commission to
26 promulgate a legislative rule relating to regulation of mixed martial arts; authorizing the

27 Board of Licensed Dieticians to promulgate a legislative rule relating to licensure and
28 renewal requirements; authorizing the Board of Hearing Aid Dealers to promulgate a
29 legislative rule relating to rules governing the West Virginia Board of Hearing Aid Dealers;
30 authorizing the Board of Medicine to promulgate a legislative rule relating to licensure,
31 disciplinary and complaint procedures, continuing education and physician assistants;
32 authorizing the Board of Medicine to promulgate a legislative rule relating to continuing
33 education for physicians and podiatric physicians; directing the Board of Medicine to
34 promulgate a legislative rule relating to licensing and disciplinary procedures: physicians;
35 podiatrists; authorizing the Board of Optometry to promulgate a legislative rule relating to
36 rules of the West Virginia Board of Optometry; authorizing the Board of Osteopathic
37 Medicine to promulgate a legislative rule relating to osteopathic physician assistants;
38 authorizing the Board of Pharmacy to promulgate a legislative rule relating to licensure
39 and practice of pharmacy; authorizing the Board of Pharmacy to promulgate a legislative
40 rule relating to pharmacist recovery networks; authorizing the Board of Pharmacy to
41 promulgate a legislative rule relating to immunizations administered by pharmacists and
42 pharmacy interns; authorizing the Board of Pharmacy to promulgate a legislative rule
43 relating to centralized prescription processing; authorizing the Board of Pharmacy to
44 promulgate a legislative rule relating to uniform controlled substances act; authorizing the
45 Board of Pharmacy to promulgate a legislative rule relating to registration of pharmacy
46 technicians; authorizing the Board of Pharmacy to promulgate a legislative rule relating to
47 the controlled substances monitoring program; authorizing the Board of Psychologists to
48 promulgate a legislative rule relating to fees; authorizing the Board of Psychologists to
49 promulgate a legislative rule relating to requirements for licensure as a psychologist and/or
50 a school psychologist; authorizing the Board of Psychologists to promulgate a legislative
51 rule relating to code of conduct; authorizing the Board of Real Estate Appraiser Licensing
52 and Certification to promulgate a legislative rule relating to requirements for licensure and

53 certification; authorizing the Real Estate Commission to promulgate a legislative rule
54 relating to licensing real estate brokers, associate brokers, and salespersons and the
55 conduct of brokerage business; authorizing the Real Estate Commission to promulgate a
56 legislative rule relating to schedule of fees; authorizing the Real Estate Commission to
57 promulgate a legislative rule relating to requirements for real estate courses, course
58 providers and instructors; directing the Board of Examiners for Registered Professional
59 Nurses to promulgate a legislative rule relating to policies, standards and criteria for the
60 evaluation and accreditation of colleges, departments or schools of nursing; repealing a
61 Division of Rehabilitation Services rule relating to case services; repealing a Division of
62 Rehabilitation Services rule relating to a resources manual; authorizing the Secretary of
63 State to promulgate a legislative rule relating to procedures for canvassing elections;
64 authorizing the Secretary of State to promulgate a legislative rule relating to procedures
65 for handling ballots and counting write-in votes in counties using optical scan ballots;
66 authorizing the Secretary of State to promulgate a legislative rule relating to vote by mail
67 pilot project phase 2: Voting by Mail; authorizing the Board of Veterinary Medicine to
68 promulgate a legislative rule relating to organization and operation and licensing of
69 veterinarians; authorizing the Board of Veterinary Medicine to promulgate a legislative rule
70 relating to certified animal euthanasia technicians; and authorizing the Board of Veterinary
71 Medicine to promulgate a legislative rule relating to schedule of fees.

Be it enacted by the Legislature of West Virginia:

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

§64-9-1. Board of Accountancy.

1 The legislative rule filed in the State Register on July 28, 2017, authorized under the
2 authority of §30-9-5 of this code, modified by the Board of Accountancy to meet the objections of

3 the Legislative Rule-Making Review Committee and refiled in the State Register on September
4 29, 2017, relating to the Board of Accountancy (board rules and rules of professional conduct, 1
5 CSR 1), is authorized.

§64-9-2. Commissioner of Agriculture.

1 (a) The legislative rule filed in the State Register on July 28, 2017, authorized under the
2 authority of §19-9-2 of this code, modified by the Commissioner of Agriculture to meet the
3 objections of the Legislative Rule-Making Review Committee and refiled in the State Register on
4 December 19, 2017, relating to the Commissioner of Agriculture (animal disease control, 61 CSR
5 1), is authorized.

6 (b) The legislative rule filed in the State Register on July 28, 2017, authorized under the
7 authority of §19-2C-3(a) of this code, modified by the Commissioner of Agriculture to meet the
8 objections of the Legislative Rule-Making Review Committee and refiled in the State Register on
9 December 19, 2017, relating to the Commissioner of Agriculture (auctioneers, 61 CSR 11B), is
10 authorized with the following amendment:

11 On page one, subsection 4.1, by striking out “ten thousand dollars (\$10,000)” and inserting
12 in lieu thereof “twenty-five thousand dollars (\$25,000)”.

13 (c) The legislative rule filed in the State Register on July 28, 2017, authorized under the
14 authority of §19-12D-4 of this code, modified by the Commissioner of Agriculture to meet the
15 objections of the Legislative Rule-Making Review Committee and refiled in the State Register on
16 December 19, 2017, relating to the Commissioner of Agriculture (noxious weeds, 61 CSR 14A),
17 is authorized.

18 (d) The legislative rule filed in the State Register on July 17, 2017, authorized under the
19 authority of §19-2B-3 of this code, modified by the Commissioner of Agriculture to meet the
20 objections of the Legislative Rule-Making Review Committee and refiled in the State Register on
21 September 18, 2017, relating to the Commissioner of Agriculture (inspection of meat and poultry,
22 61 CSR 16), is authorized.

23 (e) The legislative rule filed in the State Register on July 18, 2017, authorized under the
24 authority of §19-13-3 of this code, modified by the Commissioner of Agriculture to meet the
25 objections of the Legislative Rule-Making Review Committee and refiled in the State Register on
26 September 18, 2017, relating to the Commissioner of Agriculture (West Virginia apiary law, 61
27 CSR 2), is authorized.

28 (f) The legislative rule filed in the State Register on July 17, 2017, authorized under the
29 authority of §19-29-4 of this code, modified by the Commissioner of Agriculture to meet the
30 objections of the Legislative Rule-Making Review Committee and refiled in the State Register on
31 September 29, 2017, relating to the Commissioner of Agriculture (inspection of nontraditional,
32 domesticated animals, 61 CSR 23D), is authorized.

33 (g) The legislative rule filed in the State Register on December 1, 2017, authorized under
34 the authority of §19-2-5 of this code, modified by the Commissioner of Agriculture to meet the
35 objections of the Legislative Rule-Making Review Committee and refiled in the State Register on
36 December 19, 2017, relating to the Commissioner of Agriculture (schedule of charges for
37 inspection services: fruit, 61 CSR 8B), is authorized.

§64-9-3. Athletic Commission.

1 (a) The legislative rule filed in the State Register on July 27, 2017, authorized under the
2 authority of §29-5A-24 of this code, modified by the Athletic Commission to meet the objections
3 of the Legislative Rule-Making Review Committee and refiled in the State Register on October 3,
4 2017, relating to the Athletic Commission (administrative rules of the West Virginia State Athletic
5 Commission, 177 CSR 1), is authorized.

6 (b) The legislative rule filed in the State Register on July 27, 2017, authorized under the
7 authority of §29-5A-24 of this code, modified by the Athletic Commission to meet the objections
8 of the Legislative Rule-Making Review Committee and refiled in the State Register on October 3,
9 2017, relating to the Athletic Commission (regulation of mixed martial arts, 177 CSR 2), is
10 authorized.

§64-9-4. Board of Licensed Dietitians.

1 The legislative rule filed in the State Register on July 24, 2017, authorized under the
2 authority of §30-35-4 of this code, modified by the Board of Licensed Dietitians to meet the
3 objections of the Legislative Rule-Making Review Committee and refiled in the State Register on
4 December 4, 2017, relating to the Board of Licensed Dietitians (licensure and renewal
5 requirements, 31 CSR 1), is authorized with the following amendments:

6 On page two, subsection 6.3, following the words “provisional permit renewal fee” by
7 striking the words “as stated in 4.1.2.3.” and inserting in lieu thereof the words “\$50.”;

8 On page three, subsection 7.5, following the words “professional license reinstatement
9 fee” by striking the words “as stated in 4.1.2.5.” and inserting in lieu thereof the words “as stated
10 in paragraph 4.1.2.3. of this rule”;

11 On page three, paragraph 8.1.1.3, following the words “professional license reinstatement
12 fee” by striking the words “as stated in 4.1.2.5.” and inserting in lieu thereof the words “as stated
13 in paragraph 4.1.2.3. of this rule”;

14 On page three, subdivision 8.1.2, by renumbering the incorrectly numbered subsections
15 of that section to 8.1.2.1, 8.1.2.2, and 8.1.2.3, respectively;

16 And,

17 On page three, in the incorrectly numbered section 8.1.1.3, following the words
18 “reinstatement fee as stated” by striking the words “in 4.1.2.5.” and inserting in lieu thereof the
19 words “in paragraph 4.1.2.3. of this rule.”

§64-9-5. Board of Hearing Aid Dealers.

1 The legislative rule filed in the State Register on July 26, 2017, authorized under the
2 authority of §30-26-3 of this code, relating to the Board of Hearing Aid Dealers (rules governing
3 the West Virginia Board of Hearing Aid Dealers, 8 CSR 1), is authorized.

§64-9-6. Board of Medicine.

1 (a) The legislative rule filed in the State Register on August 29, 2017, authorized under the
2 authority of §30-3E-3 of this code, modified by the Board of Medicine to meet the objections of
3 the Legislative Rule-Making Review Committee and refiled in the State Register on December 6,
4 2017, relating to the Board of Medicine (licensure, disciplinary and complaint procedures,
5 continuing education, physician assistants, 11 CSR 1B), is authorized.

6 (b) The legislative rule filed in the State Register on July 26, 2017, authorized under the
7 authority of §30-3-7 of this code, relating to the Board of Medicine (continuing education for
8 physicians and podiatric physicians, 11 CSR 6), is authorized with the amendment set forth below:

9 On page one, subsection 1.2 by striking out the words, “§30-3-12 and §30-1-7a” and inserting
10 in lieu thereof “§30-3-7”.

11 (c) The Legislature directs the Board of Medicine, pursuant to the authority given to the
12 board in §30-3-7 of this code, to promulgate the legislative rule filed in the State Register by the
13 Board on June 5, 2017, relating to the Board (licensing and disciplinary procedures: physicians;
14 podiatrists, 11 CSR 1A) with the following amendment:

15 On page 18, by striking out all of paragraph 12.1.ii.B. and re-lettering the remaining
16 paragraphs.

§64-9-7. Board of Optometry.

1 The legislative rule filed in the State Register on July 28, 2017, authorized under the
2 authority of §30-8-6 of this code, relating to the Board of Optometry (rules of the West Virginia
3 Board of Optometry, 14 CSR 1), is authorized.

§64-9-8. Board of Osteopathic Medicine.

1 The legislative rule filed in the State Register on October 17, 2017, authorized under the
2 authority of §30-3E-3 of this code, modified by the Board of Osteopathic Medicine to meet the
3 objections of the Legislative Rule-Making Review Committee and refiled in the State Register on

4 December 6, 2017, relating to the Board of Osteopathic Medicine (osteopathic physician
5 assistants, 24 CSR 2), is authorized.

§64-9-9. Board of Pharmacy.

1 (a) The legislative rule filed in the State Register on July 28, 2017, authorized under the
2 authority of §30-5-7 of this code, relating to the Board of Pharmacy (licensure and practice of
3 pharmacy, 15 CSR 1), is authorized with the following amendments:

4 On page fifteen, subdivision 6.5.1 after the words, “submit a fee of” by striking out “\$125)”
5 and inserting in lieu thereof “\$250”.

6 (b) The legislative rule filed in the State Register on July 28, 2017, authorized under the
7 authority of §30-5-7 of this code, modified by the Board of Pharmacy to meet the objections of the
8 Legislative Rule-Making Review Committee and refiled in the State Register on November 7,
9 2017, relating to the Board of Pharmacy (pharmacist recovery networks, 15 CSR 10), is
10 authorized.

11 (c) The legislative rule filed in the State Register on July 28, 2017, authorized under the
12 authority of §30-5-7 of this code, modified by the Board of Pharmacy to meet the objections of the
13 Legislative Rule-Making Review Committee and refiled in the State Register on November 6,
14 2017, relating to the Board of Pharmacy (immunizations administered by pharmacists and
15 pharmacy interns, 15 CSR 12), is authorized.

16 (d) The legislative rule filed in the State Register on July 28, 2017, authorized under the
17 authority of §30-5-7 of this code, modified by the Board of Pharmacy to meet the objections of the
18 Legislative Rule-Making Review Committee and refiled in the State Register on December 18,
19 2017, relating to the Board of Pharmacy (centralized prescription processing, 15 CSR 14), is
20 authorized.

21 (e) The legislative rule filed in the State Register on July 28, 2017, authorized under the
22 authority of §60A-3-301 of this code, modified by the Board of Pharmacy to meet the objections
23 of the Legislative Rule-Making Review Committee and refiled in the State Register on November

24 6, 2017, relating to the Board of Pharmacy (uniform controlled substances act, 15 CSR 2), is
25 authorized.

26 (f) The legislative rule filed in the State Register on July 28, 2017, authorized under the
27 authority of §30-5-7 of this code, modified by the Board of Pharmacy to meet the objections of
28 the Legislative Rule-Making Review Committee and refiled in the State Register on December
29 18, 2017, relating to the Board of Pharmacy (registration of pharmacy technicians, 15 CSR 7), is
30 authorized.

31 (g) The legislative rule filed in the State Register on September 19, 2017, authorized under
32 the authority of §60A-9-6 of this code, modified by the Board of Pharmacy to meet the objections
33 of the Legislative Rule-Making Review Committee and refiled in the State Register on November
34 7, 2017, relating to the Board of Pharmacy (controlled substances monitoring program, 15 CSR
35 8), is authorized.

§64-9-10. Board of Examiners of Psychologists.

1 (a) The legislative rule filed in the State Register on July 28, 2017, authorized under the
2 authority of §30-21-6 of this code, modified by the Board of Examiners of Psychologists to meet
3 the objections of the Legislative Rule-Making Review Committee and refiled in the State Register
4 on December 13, 2017, relating to the Board of Psychologists (fees, 17 CSR 1), is authorized.

5 (b) The legislative rule filed in the State Register on July 28, 2017, authorized under the
6 authority of §30-21-6 of this code, modified by the Board of Examiners of Psychologists to meet
7 the objections of the Legislative Rule-Making Review Committee and refiled in the State Register
8 on December 15, 2017, relating to the Board of Examiners of Psychologists (requirements for
9 licensure as a psychologist and/or a school psychologist, 17 CSR 3), is authorized.

10 (c) The legislative rule filed in the State Register on July 28, 2017, authorized under the
11 authority of §30-21-6 of this code, relating to the Board of Examiners of Psychologists (code of
12 conduct, 17 CSR 6), is authorized.

§64-9-11. Real Estate Appraiser Licensing and Certification Board.

1 The legislative rule filed in the State Register on July 28, 2017, authorized under the
2 authority of §30-38-9 of this code, relating to the Real Estate Appraiser Licensing and Certification
3 Board (requirements for licensure and certification, 190 CSR 2), is authorized.

§64-9-12. Real Estate Commission.

1 (a) The legislative rule filed in the State Register on July 27, 2017, authorized under the
2 authority of §30-40-8 of this code, modified by the Real Estate Commission to meet the objections
3 of the Legislative Rule-Making Review Committee and refiled in the State Register on December
4 6, 2017, relating to the Real Estate Commission (licensing real estate brokers, associate brokers
5 and salespersons and the conduct of brokerage business, 174 CSR 1), is authorized.

6 (b) The legislative rule filed in the State Register on July 27, 2017, authorized under the
7 authority of §30-40-8 of this code, relating to the Real Estate Commission (schedule of fees, 174
8 CSR 2), is authorized.

9 (c) The legislative rule filed in the State Register on July 27, 2017, authorized under the
10 authority of §30-40-8 of this code, modified by the Real Estate Commission to meet the objections
11 of the Legislative Rule-Making Review Committee and refiled in the State Register on December
12 6, 2017, relating to the Real Estate Commission (requirements for real estate courses, course
13 providers and instructors, 174 CSR 3), is authorized with the amendment set forth below:

14 On page six, by striking out all of subsection 3.9. and inserting in lieu thereof a new
15 subsection 3.9. to read as follows:

16 3.9. All approved pre-license and continuing education instructors shall complete annual
17 instructor development workshops when offered by the Commission, unless the attendance is
18 waived by the Commission or the individual is an out-of-state instructor who a) is approved by the
19 National Association of Realtors (NAR) or b) holds a Distinguished Real Estate Instructor (DREI)
20 designation.

§64-9-13 Board of Examiners for Registered Professional Nurses.

1 The Legislature directs the Board of Examiners of Registered Professional Nurses,
2 pursuant to the authority given to the Board in §30-7-4 of this code, to promulgate the legislative
3 rule filed in the State Register by the Board on July 9, 2009, relating to the Board (policies,
4 standards and criteria for the evaluation and accreditation of colleges, departments or schools of
5 nursing, 19 CSR 1), with the following amendments:

6 On page three, by striking out all of subdivision 4.1.b. and renumbering the remaining
7 subdivisions;

8 On page six, by striking out all of subsection 8.3. and renumbering the remaining
9 subsections;

10 And,

11 On page nine, by striking out all of subsection 13.3 and renumbering the remaining
12 subsections.

§64-9-14. Division of Rehabilitation Services.

1 (a) The legislative rule effective on May 1, 2007, authorized under the authority of §18-
2 10A-1 of this code, relating to the Division of Rehabilitation Services (case services, 130 CSR
3 1), is repealed.

4 (b) The legislative rule effective on May 1, 2007, authorized under the authority of §18-
5 10A-1 of this code, relating to the Division of Rehabilitation Services (resources manual, 130
6 CSR 2), is repealed.

§64-9-15. Secretary of State.

1 (a) The legislative rule filed in the State Register on July 28, 2017, authorized under the
2 authority of §3-1A-6 of this code, modified by the Secretary of State to meet the objections of the
3 Legislative Rule-Making Review Committee and refiled in the State Register on December 12,
4 2017, relating to the Secretary of State (procedures for canvassing elections, 153 CSR 18), is
5 authorized.

6 (b) The legislative rule filed in the State Register on July 28, 2017, authorized under the
7 authority of §3-1A-6 of this code, modified by the Secretary of State to meet the objections of the
8 Legislative Rule-Making Review Committee and refiled in the State Register on December 12,
9 2017, relating to the Secretary of State (procedures for handling ballots and counting write-in
10 votes in counties using optical scan ballots, 153 CSR 27), is authorized.

11 (c) The legislative rule filed in the State Register on July 28, 2017, authorized under the
12 authority of §3-3A-3 of this code, relating to the Secretary of State (vote by mail pilot project phase
13 2: voting by mail, 153 CSR 39), is authorized.

§64-9-16. Board of Veterinary Medicine.

1 (a) The legislative rule filed in the State Register on July 18, 2017, authorized under the
2 authority of §30-10-6 of this code, modified by the Board of Veterinary Medicine to meet the
3 objections of the Legislative Rule-Making Review Committee and refiled in the State Register on
4 August 29, 2017, relating to the Board of Veterinary Medicine (organization and operation and
5 licensing of veterinarians, 26 CSR 1), is authorized.

6 (b) The legislative rule filed in the State Register on July 18, 2017, authorized under the
7 authority of §30-10-6 of this code, modified by the Board of Veterinary Medicine to meet the
8 objections of the Legislative Rule-Making Review Committee and refiled in the State Register on
9 September 20, 2017, relating to the Board of Veterinary Medicine (certified animal euthanasia
10 technicians, 26 CSR 5), is authorized with the following amendments:

11 On page two, after subdivision 2.1.e., by adding the following new subdivisions:

12 “2.1.f. Verification of the status of the applicant’s certification in each state or jurisdiction
13 where he or she currently holds or ever held a certificate;

14 2.1.g. Verification that the applicant has never been denied a certification in another state
15 or jurisdiction, had his or her certification restricted, suspended or revoked or been disciplined in
16 any manner;”

17 And,

18 By renumbering the remaining subdivisions.

19 (c) The legislative rule filed in the State Register on July 18, 2017, authorized under the
20 authority of §30-10-6 of this code, modified by the Board of Veterinary Medicine to meet
21 the objections of the Legislative Rule-Making Review Committee and refiled in the State
22 Register on August 29, 2017, relating to the Board of Veterinary Medicine (schedule of
23 fees, 26 CSR 6), is authorized.

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

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Chairman, House Committee

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Chairman, Senate Committee

Originating in the House.

In effect from passage.

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Clerk of the House of Delegates

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Clerk of the Senate

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Speaker of the House of Delegates

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President of the Senate

The within this the.....
day of, 2018.

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Governor