

WEST VIRGINIA LEGISLATURE

2022 REGULAR SESSION

Enrolled

Committee Substitute

for

Senate Bill 312

BY SENATOR SYPOLT

[Passed March 12, 2022; to take effect July 1, 2022]

1 AN ACT to amend and reenact §64-7-1 *et. seq.* of the Code of West Virginia, 1931, as amended,
2 all relating generally to authorizing certain agencies of the Department of Revenue to
3 promulgate legislative rules; authorizing the rules as filed and as modified by the
4 Legislative Rule-Making Review Committee and as amended by the Legislature; relating
5 to authorizing the Alcohol Beverage Control Commission to promulgate a legislative rule
6 relating to private club licensing; relating to authorizing the Alcohol Beverage Control
7 Commission to promulgate a legislative rule relating to bailment policies and procedures;
8 relating to authorizing the Alcohol Beverage Control Commission to promulgate a
9 legislative rule relating to nonintoxicating beer licensing and operations procedures;
10 relating to authorizing the Insurance Commission to promulgate a legislative rule relating
11 to continuing education for individual insurance producers and individual insurance
12 providers; relating to authorizing the Insurance Commission to promulgate a legislative
13 rule relating to the adoption of the valuation manual; relating to authorizing the Insurance
14 Commission to promulgate a legislative rule relating to pharmacy auditing entities and
15 pharmacy benefit managers; relating to authorizing the Insurance Commission to
16 promulgate a legislative rule relating to term and universal life insurance reserve financing;
17 relating to authorizing the Insurance Commission to promulgate a legislative rule relating
18 to bail bondsmen in criminal cases; relating to authorizing the Lottery Commission to
19 promulgate a legislative rule relating to the West Virginia Lottery State Lottery Rules;
20 relating to authorizing the Lottery Commission to promulgate a legislative rule relating to
21 West Virginia Lottery Limited Video Lottery Rule; relating to authorizing the Racing
22 Commission to promulgate a legislative rule relating to thoroughbred racing; relating to
23 authorizing the Racing Commission to promulgate a legislative rule relating to pari-mutuel
24 wagering; relating to not authorizing the Tax Department to promulgate a legislative rule
25 relating to the valuation of producing and reserve oil, natural gas liquids, and natural gas
26 for ad valorem property tax purposes; relating to authorizing the Tax Department to

27 promulgate a legislative rule relating to the West Virginia tax credit for Federal Excise Tax
28 imposed upon small arms and ammunition manufacturers; relating to authorizing the Tax
29 Department to promulgate a legislative rule relating to the Sales Tax Holiday; relating to
30 authorizing the Tax Department to promulgate a legislative rule relating to the exemption
31 for repair, remodeling, and maintenance of an aircraft; relating to authorizing the Tax
32 Department to promulgate a legislative rule relating to vendor absorption or assumption
33 of Sales and Use tax; and relating to authorizing the Tax Department to promulgate a
34 legislative rule relating to on-line bingo and raffles; and relating to authorizing the Tax
35 Department to promulgate a legislative rule to the corporation net income tax.

Be it enacted by the Legislature of West Virginia:

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

§64-7-1. Alcohol Beverage Control Commission.

1 (a) The legislative rule filed in the State Register on July 27, 2021, authorized under
2 the authority of §60-2-16 of this code, modified by the Alcohol Beverage Control Commission to
3 meet the objections of the Legislative Rule-Making Review Committee and refiled in the State
4 Register on December 20, 2021, relating to the Alcohol Beverage Control Commission (Private
5 Club Licensing, 175 CSR 02), is authorized; with the following amendments:

6 On page six, subsection 2.22.5a after the words “wine that a member purchased” by
7 removing the following new language “from a wine retailer, wine specialty shop, an applicable
8 winery or farm winery when licensed for retail sales, or a licensed wine direct shipper” and,

9 On page 17, subsection 3.1.7 by striking the language “being a suitable person, being of
10 good morals and character” and inserting in lieu thereof the following:

11 “not have been convicted of a felony in the previous five years before the date of
12 application, not have been convicted of a crime involving fraud, dishonesty, or deceit in the

13 previous five years before application, and not have been convicted of a felony crime for violating
14 alcohol-related distribution laws in the previous five years” and,

15 On page 18, subsection 3.2.1.e. by striking the words “suitable persons” and inserting in
16 lieu thereof the following:

17 “persons that have not been convicted of a felony in the previous five years before the
18 date of application, not have been convicted of a crime involving fraud, dishonesty, or deceit in
19 the previous five years before application, and not have been convicted of a felony crime for
20 violating alcohol-related distribution laws in the previous five years” and,

21 On page 18, subsection 3.2.2.a, by striking the language “Is not a person of good moral
22 character or repute” and inserting in lieu thereof the following:

23 “Has not been convicted of a felony in the previous five years before the date of
24 application, has not been convicted of a crime involving fraud, dishonesty, or deceit in the previous
25 five years before application, and has not been convicted of a felony crime for violating alcohol-
26 related distribution laws in the previous five years” and

27 On page 18, subdivision 3.2.2.d, by striking “has the general reputation of drinking
28 alcoholic beverages or nonintoxicating to excess, or is addicted to the use of controlled
29 substances;” in its entirety and renumbering the remaining subdivisions as appropriate, and

30 On page 18, subdivision 3.2.3.b, by striking out the words “moral turpitude” and inserting
31 in lieu thereof the following:

32 “fraud, dishonesty, or deceit” and,

33 On page 20, subsection 3.2.6, by striking the words “or its officers and directors who have
34 been convicted of a felony or a crime involving moral turpitude” and,

35 On page 23, subdivision 3.4.6.c.1, by striking the following: “(which does not include a
36 metal crowler that is canned)” and,

37 On page 23, subdivision 3.4.6.c.2.B, by striking the new language “110%” and inserting in
38 lieu thereof the “the required” and,

39 On page 26, subdivision 3.4.6.e.5, by adding after the word “requirements” the following:

40 “ – The delivery person must permit only the person who placed the delivery order through
41 telephone order, mobile ordering application, or web-based software to accept the prepared food
42 or meal and a craft cocktail growler delivery. The delivery person must verify the person’s age
43 using the person’s legal identification. The delivery must otherwise comply with W. Va. Code §60-
44 7-8f(f).” And,

45 On page 26, by striking out subdivision 3.4.6.e.5.A in its entirety, and,

46 On page 26, by striking out subdivision 3.4.6.e.5.A.i in its entirety, and,

47 On page 26, by striking out subdivision 3.4.6.e.5.A.ii in its entirety, and,

48 On page 26 and continuing through page 27, by striking out subdivision 3.4.6.e.5.A.iii in
49 its entirety, and,

50 On page 27, by striking out subdivision 3.4.6.e.5.B in its entirety, and,

51 On page 27, subdivision 3.4.6.e.6.B, after the words “transportation permit” by striking out
52 “and pay the transportation permit fee, \$10 for the first transporting vehicle and a one dollar for
53 every transporting vehicle thereafter,” and

54 On page 28, subdivision 3.4.11.a, by striking out the word “limited” and striking out the
55 words “(ex. Recorded music or limited live music, such as a solo musician, for ambiance)” and

56 On page 28, subdivision 3.4.11.a, by striking out after the words “outdoor dining area” the
57 comma and “however, in the Commissioner’s determination, any entertainment or alcohol
58 beverage service that has the appearance or function as a festival, event, concert, or in any other
59 manner exceeds what is necessary for private outdoor dining, then such entertainment or
60 alcoholic beverage service shall be denied” and inserting in lieu thereof the following:

61 “The Commissioner may determine not to authorize entertainment but must provide a
62 written statement indicating why such entertainment is not authorized” and,

63 On page 28, subdivision 3.4.11.b, by striking out the word “limited” and striking out the
64 words “(ex. Recorded music or limited live music, such as a solo musician, for ambiance)” and,

65 On page 28, subdivision 3.4.11.b, by striking out after the words “outdoor street dining
66 area” the comma and “however, in the Commissioner’s determination, any entertainment or
67 alcohol beverage service that has the appearance or function as a festival, event, concert, or in
68 any other manner exceeds what is necessary for private outdoor dining, then such entertainment
69 or alcoholic beverage service shall be denied” and inserting in lieu thereof the following:

70 “The Commissioner may determine not to authorize entertainment but must provide a
71 written statement indicating why such entertainment is not authorized.”

72 (b) The Legislature directs the Alcohol Beverage Control Commission to amend the
73 legislative rule filed in the State Register on June 23, 2008, authorized under the authority of §60-
74 2-16 of this code, relating to the Alcohol Beverage Control Commission (Bailment Policies and
75 Procedures, 175 CSR 06) with the amendment set forth below:

76 On page nine, subsection 11.1, by striking “The amount of such charges will be
77 imposed by administrative notices filed in the State Register.”; and inserting in lieu thereof the
78 following:

79 “The amount of such charges will be approved by the Legislature, pursuant to W. Va.
80 Code §29A-3-1 *et seq.*, then filed in the State Register. The Commission is authorized to
81 promulgate an emergency rule in the event of price changes from vendors affecting the routine
82 warehousing charges.”

83 (c) The legislative rule filed in the State Register on July 28, 2021, authorized under
84 the authority of §11-16-22 of this code, modified by the Alcohol Beverage Control Commission to
85 meet the objections of the Legislative Rule-Making Review Committee and refiled in the State
86 Register on December 20, 2021, relating to the Alcohol Beverage Control Commission
87 (Nonintoxicating Beer Licensing and Operations Procedures, 176 CSR 01), is authorized with the
88 following amendments:

89 On page 8, subdivision 3.1.b, by striking out the word “credit” and

90 On page 8, subdivision 3.1.e, by striking out the words “being a suitable person, being of
91 good morals and character” and inserting in lieu thereof:

92 “not have been convicted of a felony in the previous five years before application, not have
93 been convicted of a crime involving fraud, dishonesty, and deceit in the previous five years before
94 application, not have been convicted of a felony crime for violating alcohol-related distribution
95 laws in the previous five years before application” and

96 On page 12, section 3.4, by striking the section heading “3.4.a” and the section headings
97 for “3.4.b” and “3.4.c” and renumbering those section accordingly, and

98 On page 13 and continuing to page 14, subdivision 3.6.b.1, after the word “citizen”, by
99 striking, “and a person of good moral character” and inserting in lieu thereof:

100 “and has not been convicted of a felony in the previous five years before application, has
101 not been convicted of a crime involving fraud, dishonesty, and deceit in the previous five years
102 before application, and has not been convicted of a felony crime for violating alcohol-related
103 distribution laws in the previous five years before application.” And

104 On page 14, subdivision 3.6.3.e.3.B by adding the word “and” at the end of the sentence
105 and entering down to create a new subdivision as follows:

106 “3.6.e.3.C. that this requirement does not apply to a school or church that has notified the
107 Commissioner, in writing, that it has not objection to the location of a proposed business;” and,

108 On page 15, subsection 3.6.j, by striking out the words “are suitable persons of good
109 reputation and morals to be licensed” and inserting in lieu thereof:

110 “have not been convicted of a felony in the previous five years before application, have
111 not been convicted of a crime involving fraud, dishonesty, or deceit in the previous five years
112 before application, and have not been convicted of a felony crime violating alcohol-related
113 distribution laws in the previous five years before application to be licensed;” and,

114 On page 15, subdivision 3.8.c by striking out the words “is an unsuitable person to be
115 licensed” and inserting in lieu thereof the following:

116 “has not been convicted of a felony in the previous five years before application, has not
117 been convicted of a crime involving fraud, dishonesty, or deceit in the previous five years before
118 application, and has not been convicted of a felony crime violating alcohol-related distribution
119 laws in the previous five years before application to be licensed” and

120 On page 19, subdivision 3.11.f.6, by adding after the colon the following:

121 “The delivery person may only permit the person who placed the order through a
122 telephone, mobile ordering application, or web-based software to accept the delivery of food and
123 nonintoxicating beer or nonintoxicating craft beer and the delivery driver must verify the person’s
124 legal identification to ensure the person accepting the delivery is at least 21 years of age. A record
125 of the delivery and of verifying the person’s identification must be created and retained for at least
126 3 years.” And,

127 On page 19 by deleting subdivision 3.11.f.6.A in its entirety, and

128 On page 19 by deleting subdivision 3.11.f.6.A.i in its entirety, and

129 On page 19 by deleting subdivision 3.11.f.6.A.ii in its entirety, and

130 On page 19 by deleting subdivision 3.11.f.6.A.iii in its entirety, and

131 On page 19, by deleting subdivision 3.11.f.6.B in its entirety, and

132 On page 19, by deleting subdivision 3.11.f.6.C in its entirety, and

133 On page 19 and page 20 by renumbering subdivision 3.11.f.6.D and subdivision
134 3.11.f.6.E, to 3.11.f.6.A and 3.11.f.6.B respectively.

135 On page 21, subdivision 3.11.g.6. by adding after the colon the following:

136 “The delivery person may only permit the person who placed the order through a
137 telephone, mobile ordering application, or web-based software to accept the delivery of food and
138 nonintoxicating beer or nonintoxicating craft beer and the delivery driver must verify the person’s
139 legal identification to ensure the person accepting the delivery is at least 21 years of age. A record
140 of the delivery and of verifying the person’s identification must be created and retained for at least
141 3 years.” And,

142 On page 21, by deleting subdivision 3.11.g.6.A in its entirety, and
143 On page 21, by deleting subdivision 3.11.g.6.A.i in its entirety, and
144 On page 21, by deleting subdivision 3.11.g.6.A.ii in its entirety, and
145 On page 21, by deleting subdivision 3.11.g.6.A.iii in its entirety, and
146 On page 21, by renumbering subdivision 3.11.g.6.B and 3.11.g.6.C to 3.11.g.6.A and
147 3.11.g.6.B, respectively, and

148 On page 22, subdivision 3.11.h.3, by striking the word “limited” and striking, after the
149 comma “like recorded music for ambiance” and inserting, after the comma, in lieu thereof the
150 following:

151 “however, if the Commissioner denies entertainment the Commissioner must provide an
152 explanation for denying such entertainment.” And

153 On page 22, subdivision 3.11.i.3, by striking the word “limited” and striking, after the
154 comma, “like recorded music for ambiance” and inserting, after the comma, in lieu thereof the
155 following:

156 “however, if the Commissioner denies entertainment the Commissioner must provide an
157 explanation for denying such entertainment.” And

158 On page 23, subdivision 3.11.k.3.B, by adding after the words “or home brewer’s license”
159 a comma and the following “if applicable” and,

160 On page 24, subdivision 3.11.k.4.C by adding after the word Commissioner a comma and
161 the following: “except that if an unlicensed brewer is licensed in its domicile state and is in good
162 standing, no criminal background checks may be required for the temporary one-day license.”

163 On page 24, subdivision 3.12.d, by striking the word “suitable” and,

164 On page 25, subdivision 3.12.d.6 by striking everything and inserting in lieu thereof:

165 “has not been convicted of a felony in the previous five years before application, has not
166 been convicted of a crime involving fraud, dishonesty, or deceit in the previous five years before

167 application, and has not been convicted of a felony crime violating alcohol-related distribution
168 laws in the previous five years before application;” and,

169 On page 26, subdivision 3.14.b by adding, after the words “bond forfeiture” a comma and
170 the words “if applicable,” and

171 On page 31, subdivision 6.1.b, by striking the words “known to be insane or known to be
172 a habitual drunkard” and inserting in lieu thereof: “known to be mentally incompetent”

§64-7-2. Insurance Commission.

1 (a) The legislative rule filed in the State Register on July 8, 2021, authorized under the
2 authority of §33-12B-12 of this code, relating to the Insurance Commission (Continuing Education
3 for Individual Insurance Producers and Individual Insurance Adjusters, 114 CSR 42), is
4 authorized.

5 (b) The legislative rule filed in the State Register on March 31, 2021, authorized under
6 the authority of §33-7-9 of this code, relating to the Insurance Commission (Adoption of Valuation
7 Manual, 114 CSR 98), is authorized.

8 (c) The legislative rule filed in the State Register on July 27, 2021, authorized under
9 the authority of §33-51-8 of this code, relating to the Insurance Commission (Pharmacy Auditing
10 Entities and Pharmacy Benefit Managers, 114 CSR 99), is authorized.

11 (d) The legislative rule filed in the State Register on July 8, 2021, authorized under the
12 authority of §33-4-15a of this code, relating to the Insurance Commission (Term and Universal
13 Life Insurance Reserve Financing, 114 CSR 102), is authorized.

14 (e) The legislative rule filed in the State Register on July 9, 2021, authorized under the
15 authority of §51-10-8 of this code, modified by the Insurance Commission to meet the objections
16 of the Legislative Rule-Making Review Committee and refiled in the State Register on August 24,

17 2021, relating to the Insurance Commission (Bail Bondsmen in Criminal Cases, 114 CSR 103),
18 is authorized.

§64-7-3. Lottery Commission

1 (a) The legislative rule filed in the State Register on July 7, 2021, authorized under the
2 authority of §29-22-5 of this code, modified by the Lottery Commission to meet the objections of
3 the Legislative Rule-Making Review Committee and refiled in the State Register on September
4 27, 2021, relating to the Lottery Commission (West Virginia Lottery State Lottery Rules, 179 CSR
5 01), is authorized.

6 (b) The legislative rule filed in the State Register on July 8, 2021, authorized under the
7 authority of §29-22B-402 of this code, modified by the Lottery Commission to meet the objections
8 of the Legislative Rule-Making Review Committee and refiled in the State Register on September
9 27, 2021, relating to the Lottery Commission (West Virginia Lottery Limited Video Lottery Rule,
10 179 CSR 05), is authorized.

§64-7-4. Racing Commission.

1 (a) The legislative rule filed in the State Register on July 28, 2021, authorized under
2 the authority of §19-23-6 of this code, modified by the Racing Commission to meet the objections
3 of the Legislative Rule-Making Review Committee and refiled in the State Register on December
4 8, 2021, relating to the Racing Commission (Thoroughbred Racing, 178 CSR 01), is authorized.

5 (b) The legislative rule filed in the State Register on April 30, 2021, authorized under
6 the authority of §19-23-6 of this code, relating to the Racing Commission (Pari-Mutuel Wagering,
7 178 CSR 05), is authorized.

§64-7-5. Tax Department.

1 (a)The legislative rule filed in the State Register on July 30, 2021, authorized under
2 the authority of §11-1C-10 of this code, relating to the Tax Department (Valuation of Producing
3 and Reserve Oil, Natural Gas Liquids, and Natural Gas for Ad Valorem Property Tax Purposes,
4 110 CSR 01J), is not authorized.

5 (b)The legislative rule filed in the State Register on July 8, 2021 authorized under the
6 authority of §11-13KK-13 of this code, modified by the State Tax Department to meet the
7 objections of the Legislative Rule-Making Review Committee and refiled in the State Register on
8 September 7, 2021 relating to the State Tax Department (West Virginia Tax Credit for Federal
9 Excise Tax Imposed Upon Small Arms and Ammunition Manufacturers, 110 CSR 13KK), is
10 authorized.

11 (c)The legislative rule filed in the State Register on June 30, 2021, authorized under
12 the authority of §11-15-9s of this code, modified by the Tax Department to meet the objections
13 of the Legislative Rule-Making Review Committee and refiled in the State Register on September
14 21, 2021, relating to the Tax Department (Sales Tax Holiday, 110 CSR 15F), is authorized.

15 (d)The legislative rule filed in the State Register on July 8, 2021, authorized under the
16 authority of §11-15-9t of this code, modified by the State Tax Department to meet the objections
17 of the Legislative Rule-Making Review Committee and refiled in the State Register on September
18 7, 2021, relating to the State Tax Department (Exemption for Repair, Remodeling, and
19 Maintenance of Aircraft, 110 CSR 15L), is authorized.

20 (e)The legislative rule filed in the State Register on July 8, 2021, authorized under the
21 authority of §11-15A-8 of this code, relating to the Tax Department (Vendor Absorption or
22 Assumption of Sales and Use Tax, 110 CSR 15M), is authorized.

23 (f) The legislative rule filed in the State Register on July 8, 2021, authorized under the
24 authority of §11-15A-8 of this code, relating to the Tax Department (On-line Bingo and Raffles,
25 110 CSR 16A), is authorized with the following amendments:

26 On page four, subsection 8.1, by striking out the words “A licensee may only use bingo
27 equipment or raffle equipment,” and inserting in lieu thereof the words “A bingo licensee may use
28 only bingo equipment,”;

29 On page four, after subsection 8.1, by adding a new subsection 8.2 to read as follows:

30 8.2. A raffle licensee may use only raffle equipment, including software or programming
31 for conducting raffles on-line over the Internet, which the licensee owns or which it borrows without
32 compensation, or leases for a reasonable and customary amount from a wholesaler or distributor
33 of raffle boards and games licensed under W. Va. Code §47-23-3.

34 And,

35 By renumbering the remaining subsections.

36 (g) The legislative rule filed in the State Register on July 27, 2021, authorized under the
37 authority of §11-24-6b of this code, modified by the Tax Department to meet the objections of the
38 Legislative Rule-Making Review Committee and refiled in the State Register on September 21,
39 2021, relating to the Tax Department (Corporation Net Income Tax, 110 CSR 24), is authorized.

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

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Chairman, Senate Committee

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Chairman, House Committee

Originated in the Senate.

To take effect July 1, 2022.

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Clerk of the Senate

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Clerk of the House of Delegates

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President of the Senate

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Speaker of the House of Delegates

The within this the.....
Day of, 2022.

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Governor