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OFFICE OF THE GOVERNOR

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1983

ENROLLED

SENATE BILL NO. 356

(By Mr. Nelson & Mr. Jones)

PASSED March 9, 1983

In Effect from Passage



No: 356

# **ENROLLED**

## **Senate Bill No. 356**

**(BY MR. NELSON AND MR. JONES)**

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[Passed March 9, 1983; in effect from passage.]

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AN ACT to amend the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new chapter, designated chapter sixty-four, relating generally to legislative authorization for the promulgation of certain legislative rules by various executive agencies; authorizing certain agencies to promulgate certain legislative rules in the form that such rules were filed in the state register; authorizing certain agencies to promulgate legislative rules as amended; providing the effective dates for such rules and waiving any technical deficiencies which may have occurred when such rules proceeded through the rule-making process; providing for authorization to the employee suggestion award board to promulgate legislative rules for the purpose of governing the operation of the public employee suggestion program; providing for authorization to the state board of health to promulgate legislative rules for the purpose of regulating waste water treatment works operators, for the purpose of requiring laboratories to report positive or reactive serologic and other tests for syphilis and positive laboratory examinations for neisseria gonorrhoea to the state department of health, for the purpose of regulating public water supply operators, for the purpose of regulating sewage systems, for the purpose of setting forth the requirements for licensure of nonprofit corporations for guardianship service, for the purpose of governing methods and standards relating to implied consent for chemical test for intoxication, for the purpose of regulating the approval of laboratories for syphilis serology, for the purpose of regulating nursing home licensure, for the purpose of regulating fees for permits, for the purpose of regulating the

certificate of need program, for the purpose of regulating instillation of medication in the eyes of the newborn and the dissemination of advice and information concerning the dangers of inflammation of the eyes of the newborn, and for the purpose of establishing a controlled substance therapeutic research program and certification of patients, practitioners and hospital pharmacies; providing for authorization to the air pollution control commission to promulgate legislative rules for the purpose of preventing and controlling particulate air pollution from manufacturing process operations, and for the purpose of setting requirements for preconstruction review, determination of emissions offsets for proposed new or modified stationary sources of air pollutions and bubble concept for intrasource pollutants; providing for authorization to the commissioner of motor vehicles to promulgate legislative rules for the purpose of regulating the denial of driving privileges for medical reasons; providing for authorization to the teachers retirement board to promulgate legislative rules for the purpose of governing the state teachers retirement system; providing for authorization to the West Virginia racing commission to promulgate legislative rules for the purpose of regulating the use of medication in racehorses, regulating minimum purses for greyhound races, for the purpose of regulating tip sheet vendors at horse racing tracks, for the purpose of regulating tip sheet vendors at greyhound racing tracks, and for the purpose of regulating simulcast races; providing for authorization to the state water resources board to promulgate legislative rules for the purpose of regulating underground injection control; providing for authorization to the department of labor to promulgate legislative rules for the purpose of regulating the operation of steam boilers, permit fees, annual reports and inspectors; providing for authorization to the department of mines to promulgate legislative rules for the purpose of governing the submission and approval of a comprehensive mine safety program for coal mining operations; providing for authorization to the West Virginia housing development fund to promulgate legislative rules for the purpose of administration of single-family mortgage loans for the West Virginia state board of investments under the state mortgage and industrial development investment pool; providing for authorization

to the commissioner of banking to promulgate legislative rules pertaining to the installation, operation and sharing of customer bank communication terminals and the utilization of nonexclusive access interchange systems; providing for authorization to the alcohol beverage control commissioner to promulgate legislative rules for the purpose of regulating the transportation of alcoholic beverages, for the purpose of regulating the suitability of kitchen and dining facilities for the purpose of stating grounds for refusal to license private clubs, and for the purpose of regulating lighting of licensed premises.

*Be it enacted by the Legislature of West Virginia:*

That the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new chapter, designated chapter sixty-four, to read as follows:

#### **CHAPTER 64. LEGISLATIVE RULES.**

##### **ARTICLE 1. GENERAL LEGISLATIVE AUTHORIZATION.**

###### **§64-1-1. Legislative authorization.**

1 Under the provisions of article three, chapter twenty-  
2 nine-a of the code of West Virginia, the Legislature  
3 expressly authorizes the promulgation of the rules  
4 described in article two of this chapter, subject only to the  
5 limitations set forth with respect to each such rule in the  
6 section or sections of this chapter authorizing its  
7 promulgation.

###### **§64-1-2. Effective date of rules.**

1 The effective date of the legislative rules authorized in  
2 article two of this chapter shall be governed by the  
3 provisions of section thirteen, article three, chapter twenty-  
4 nine-a, unless the agency promulgating the rules  
5 establishes an effective date which is earlier than that  
6 provided by section thirteen, article three, chapter twenty-  
7 nine-a in which case the effective date established by the  
8 agency shall control unless the Legislature in the bill  
9 authorizing the rules establishes an effective date for such  
10 rules in which case the effective date established by the  
11 Legislature shall control.

###### **§64-1-3. Technical deficiencies waived.**

1 The Legislature further declares each legislative rule now  
2 or hereafter authorized under article two of this chapter to

3 have been validly promulgated notwithstanding any failure  
4 to comply with any requirement of chapter twenty-nine-a  
5 for the promulgation of rules at any stage of the  
6 promulgation process prior to authorization by the  
7 Legislature in article two of this chapter.

**ARTICLE 2. EXECUTIVE AGENCY AUTHORIZATION TO PROMULGATE  
LEGISLATIVE RULES.**

**§64-2-5a(1a)(3). Employee suggestion award board.**

1 The legislative rules filed in the state register on the  
2 twenty-third day of July, one thousand nine hundred  
3 eighty-two, relating to the employee suggestion award  
4 board (public employee suggestion program) are  
5 authorized.

**§64-2-16(1)(7). State board of health.**

1 (a) The legislative rules filed in the state register on the  
2 second day of June, one thousand nine hundred eighty-two,  
3 relating to the state board of health (waste water treatment  
4 works operations) are authorized.

5 (b) The legislative rules filed in the state register on the  
6 second day of June, one thousand nine hundred eighty-two,  
7 relating to the state board of health (laboratory reporting of  
8 syphilis and gonorrhoea) are authorized.

9 (c) The legislative rules filed in the state register on the  
10 second day of June, one thousand nine hundred eighty-two,  
11 relating to the state board of health (public water supply  
12 operators) with the modification of §11.02 as presented to  
13 the legislative rule-making review committee on the ninth  
14 day of November, one thousand nine hundred eighty-two,  
15 are authorized.

16 (d) The legislative rules filed in the state register on the  
17 twenty-second day of October, one thousand nine hundred  
18 eighty-two, relating to the state board of health (sewage  
19 systems) with the modifications presented to the legislative  
20 rule-making review committee on the sixth day of  
21 December, one thousand nine hundred eighty-two, are  
22 authorized except lines ten through seventeen, page eight of  
23 the rules shall be stricken in their entirety and the  
24 remaining paragraphs renumbered. These rules were  
25 proposed by the state board of health pursuant to sections  
26 seven and nine, article one, chapter sixteen of this code.

27 (e) The legislative rules filed in the state register on the  
28 second day of June, one thousand nine hundred eighty-two,  
29 relating to the state board of health (approval of  
30 laboratories) are authorized. These rules were proposed by  
31 the state board of health pursuant to section one, article  
32 seven, chapter sixteen and section six-a, article one,  
33 chapter forty-eight of this code.

34 (f) The legislative rules filed in the state register on the  
35 thirteenth day of August, one thousand nine hundred  
36 eighty-two, and filed with amendments on the eleventh day  
37 of January, one thousand nine hundred eighty-three,  
38 relating to the state board of health (nursing home  
39 licensure) are authorized with the amendment of §5.15.02 of  
40 those rules as set forth below:

41 By striking the word "and" at the end of subdivision (f),  
42 by changing the period at the end of subdivision (g) to a  
43 semicolon, and by adding the following after subdivision  
44 (g): "(h) one (1) member who represents social work  
45 services."

46 These rules were proposed by the state board of health  
47 pursuant to section seven, article one, chapter sixteen and  
48 section three, article five-c, chapter sixteen of this code.

**§64-2-16(1)(9). State board of health.**

1 The rules authorized by the Legislature in section sixteen  
2 (1)(7)(d) of this article were also proposed by the state board  
3 of health pursuant to section nine, article one, chapter  
4 sixteen of this code.

**§64-2-16(2a)(6). State board of health.**

1 The legislative rules filed in the state register on the  
2 twenty-fourth day of November, one thousand nine  
3 hundred eighty-two, relating to the state board of health  
4 (permit fees) are authorized.

**§64-2-16(2d)(5). State board of health.**

1 The legislative rules filed in the state register on the third  
2 day of June, one thousand nine hundred eighty-two,  
3 relating to the state board of health (certificate of need) are  
4 authorized. These rules were proposed by the state board of  
5 health pursuant to sections five and eight, article two-d,  
6 chapter sixteen of this code.

**§64-2-16(2d)(8). State board of health.**

1 The rules authorized by the Legislature in section sixteen  
2 (2d)(5) of this article were also proposed by the state board  
3 of health pursuant to section eight, article two-d, chapter  
4 sixteen of this code.

**§64-2-16(3)(10). State board of health.**

1 The legislative rules filed in the state register on the  
2 sixteenth day of August, one thousand nine hundred eighty-  
3 two, relating to the state board of health (eyes of newborn  
4 children) are authorized. These rules were proposed by the  
5 state board of health pursuant to sections ten and twelve,  
6 article three, chapter sixteen of this code.

**§64-2-16(3)(12). State board of health.**

1 The rules authorized by the Legislature in section sixteen  
2 (3)(10) of this article were also proposed by the state board  
3 of health pursuant to section twelve, article three, chapter  
4 sixteen of this code.

**§64-2-16(5a)(7). State board of health.**

1 The legislative rules filed in the state register on the third  
2 day of June, one thousand nine hundred eighty-two,  
3 relating to the state board of health (controlled substances  
4 research program and certification) are authorized.

**§64-2-16(5c)(3). State board of health.**

1 The rules authorized by the Legislature in section sixteen  
2 (1)(7)(f) of this article were also proposed by the state board  
3 of health pursuant to section three, article five-c, chapter  
4 sixteen of this code.

**§64-2-16(20)(5). Air pollution control commission.**

1 (a) The legislative rules filed in the state register on the  
2 thirteenth day of August, one thousand nine hundred  
3 eighty-two, relating to the air pollution control commission  
4 (series VII) are authorized.

5 (b) The legislative rules filed in the state register on the  
6 thirteenth day of August, one thousand nine hundred  
7 eighty-two, relating to air pollution control commission  
8 (series XIX) are authorized.

**§64-2-17a(2)(9). Commissioner of motor vehicles.**

1 The legislative rules filed in the state register on the  
2 second day of December, one thousand nine hundred  
3 eighty-two, relating to the commission of motor vehicles

4 (denial of driving privileges) are authorized with the  
5 amendments set forth below:

6 By inserting the words "licensed in the United States"  
7 after the phrase "physician of the applicant's choice", on  
8 page five, line two, and page seven, line one; and by striking  
9 out the words "licensed vision specialist" and inserting in  
10 lieu thereof the words "an optometrist or ophthalmologist  
11 licensed in the United States", on page five, line three, and  
12 on page seven, line two.

13 These rules were proposed by the commissioner pursuant  
14 to section nine, article two, chapter seventeen-a and section  
15 six, article three-c, chapter seventeen-b of this code.

**§64-2-17b(3c)(6). Commissioner of motor vehicles.**

1 The rules authorized by the Legislature in section  
2 seventeen-a (2)(9) of this article were also proposed by the  
3 commissioner of motor vehicles pursuant to section six,  
4 article three-c, chapter seventeen-b of this code.

**§64-2-17c(5)(8). State board of health.**

1 The legislative rules filed in the state register on the fifth  
2 day of November, one thousand nine hundred eighty-two,  
3 relating to the state board of health (chemical test for  
4 intoxication) are authorized.

**§64-2-18(7a)(4). Teachers retirement board.**

1 The legislative rules filed in the state register on the  
2 eleventh day of August, one thousand nine hundred eighty-  
3 two, relating to the teachers retirement board are  
4 authorized with the following amendments:

5 Section VI, subsection 6, D, (a) (ii), of the rules, is to be  
6 amended on line two by striking out the words "(3) thru (7)"  
7 and inserting in lieu thereof the words "(3) thru (13)";  
8 Section VII, subsection 7, B, (c) of the rules is to be amended  
9 on line three after the word "100", by striking out the word  
10 "consecutive", and by redesignating the subsection as  
11 subsection "(a)"; and Section X, subsection 10, A, (c), of the  
12 rules is to be amended on line one, after the word  
13 "physicians," by striking out the words "of member's  
14 choice," and inserting in lieu thereof the words "one  
15 selected by the Board and one selected by the member,".

**§64-2-19(23)(6). West Virginia racing commission.**

1 (a) The legislative rules filed in the state register on the

2 twenty-third day of April, one thousand nine hundred  
3 eighty-two, relating to the West Virginia racing commission  
4 (Rule 795) are authorized.

5 (b) The legislative rules filed in the state register on the  
6 twenty-third day of April, one thousand nine hundred  
7 eighty-two, relating to the West Virginia racing commission  
8 (Rule 107) are authorized.

9 (c) The legislative rules filed with the legislative rule-  
10 making review committee on the tenth day of January, one  
11 thousand nine hundred eighty-three, relating to the West  
12 Virginia racing commission (Rule 471) are authorized.

13 (d) The legislative rules filed in the state register on the  
14 tenth day of January, one thousand nine hundred eighty-  
15 three, relating to the West Virginia racing commission (Rule  
16 526) are authorized.

17 (e) The legislative rules filed in the state register on the  
18 twenty-third day of April, one thousand nine hundred  
19 eighty-two, relating to the West Virginia racing commission  
20 (Rule 819) are authorized.

**§64-2-20(5a)(3). Water resources board.**

1 The legislative rules filed in the state register on the sixth  
2 day of January, one thousand nine hundred eighty-three,  
3 relating to the state water resources board (underground  
4 injection control program) are authorized.

**§64-2-21(3)(7). Department of labor.**

1 The legislative rules filed in the state register on the tenth  
2 day of May, one thousand nine hundred eighty-two,  
3 relating to the department of labor (steam boiler rules) as  
4 modified by the legislative rule-making review committee  
5 are authorized.

**§64-2-22(1)(34a). Department of mines.**

1 The legislative rules filed in the state register on the  
2 thirty-first day of March, one thousand nine hundred  
3 eighty-two, relating to the department of mines (mine  
4 safety program) are authorized.

**§64-2-31(18b)(7). West Virginia housing development fund.**

1 The legislative rules filed in the state register on the  
2 twenty-seventh day of December, one thousand nine  
3 hundred eighty-two, relating to the West Virginia housing  
4 development fund (single-family mortgage loans) are  
5 authorized.

**§64-2-31a(8)(12b). Commissioner of banking.**

1 The legislative rules filed in the state register on the  
2 eleventh day of June, one thousand nine hundred eighty-  
3 two, relating to the commissioner of banking  
4 (communication terminals and interchange systems) are  
5 authorized.

**§64-2-44(10a)(6). State board of health.**

1 The legislative rules filed in the state register on the  
2 twenty-fourth day of November, one thousand nine  
3 hundred eighty-two, relating to the state board of health  
4 (guardianship service) are authorized with the exception of  
5 section 9.3 of those rules which may not be promulgated.

**§64-2-48(1)(6a). State board of health.**

1 The rules authorized by the Legislature in section sixteen  
2 (1)(7)(e) of this article were proposed by the state board of  
3 health pursuant to section six-a, article one, chapter forty-  
4 eight of this code.

**§64-2-60(6)(12). Alcohol beverage control commission.**

1 The legislative rules filed in the state register on the  
2 thirtieth day of December, one thousand nine hundred  
3 eighty-two, relating to the alcohol beverage control  
4 commission (transportation of alcoholic beverages) are  
5 authorized.

**§64-2-60(7)(2). Alcohol beverage control commission.**

1 The legislative rules filed in the state register on the  
2 thirteenth day of August, one thousand nine hundred  
3 eighty-two, relating to the alcohol beverage control  
4 commission (kitchen and dining facilities) are authorized.  
5 These rules were proposed by the alcohol beverage control  
6 commission pursuant to sections two and ten, article seven,  
7 chapter sixty of this code.

**§64-2-60(7)(5). Alcohol beverage control commission.**

1 The legislative rules filed in the state register on the  
2 twenty-fourth day of August, one thousand nine hundred  
3 eighty-two, relating to the alcohol beverage control  
4 commission (refusal to license private clubs) are authorized  
5 with the exception of subsection (a) of the rules which shall  
6 be promulgated as set forth below in this section as follows:  
7 (a) For purposes of this regulation, the commissioner  
8 may refuse to grant any license if he has reasonable cause to

9 believe, as indicated by documented evidence, that the  
10 applicant, or any officer, director or manager thereof, or  
11 shareholder owning twenty percent or more of its capital  
12 stock, beneficial or otherwise, or other person conducting  
13 or managing the affairs of the applicant or of the proposed  
14 licensed premises, in whole or part:

15 (1) Is not a person of good moral character or repute;

16 (2) Has maintained a noisy, loud, disorderly or  
17 unsanitary establishment;

18 (3) Has demonstrated, either by his police record or by  
19 his record as former licensee under chapter sixty or chapter  
20 eleven, article sixteen of the West Virginia code, a lack of  
21 respect for law and order, generally, or for the laws and  
22 rules governing the sale and distribution of alcoholic  
23 beverages or nonintoxicating beer;

24 (4) Has the general reputation of drinking alcoholic  
25 beverages to excess, or is addicted to the use of narcotics;

26 (5) Has misrepresented a material fact in applying to the  
27 commissioner for a license.

28 For purposes of this regulation, the commissioner shall  
29 refuse to grant any license if he has reasonable cause to  
30 believe, as indicated by documented evidence that the  
31 applicant, or any officer, director or manager thereof, or  
32 shareholder owning twenty percent or more of its capital  
33 stock, beneficial or otherwise, or other person conducting  
34 or managing the affairs ~~to~~ the applicant or of the proposed  
35 licensed premises, in whole or part:

36 (1) Is not eighteen years of age or older;

37 (2) Has been convicted of a felony or other crime  
38 involving moral turpitude, and upon such conviction the  
39 applicant shall not be eligible for licensure within five years  
40 next preceding successful completion of all conditions of  
41 probation, discharge from parole supervision or expiration  
42 of sentence;

43 (3) Has been convicted of violating <sup>the</sup> liquor laws of any  
44 state or the United States, and upon such conviction the  
45 applicant shall not be eligible for licensure within five years  
46 next preceding successful completion of all conditions of  
47 probation, discharge from parole supervision or expiration  
48 of sentence;

49 (4) Has had any license revoked under the liquor laws of

*OK*  
*See*  
of

*OK*  
*See*

50 any state or the United States within five years next  
51 preceding the filing date of the application;

52' (5) Is not the legitimate owner of the business proposed  
53 to be licensed, or other persons have ownership interests in  
54 the business which have not been disclosed;

55 (6) Is a person to whom alcoholic beverages may not be  
56 sold under the provisions of chapter sixty of the West  
57 Virginia code;

58 (7) Has been adjudicated an incompetent;

59 (8) Is an officer or employee of the alcohol beverage  
60 control commissioner of West Virginia; or

61 (9) Is violating or allowing the violation of any provision  
62 of chapter sixty, chapter sixty-one or chapter eleven, article  
63 sixteen of the code in its establishment at the time its  
64 application for a license is pending.

65 These rules were proposed by the alcohol beverage  
66 control commission pursuant to sections five and ten,  
67 article seven, chapter sixty of this code.

**§64-1-60(7)(10). Alcohol beverage control commission.**

1 (a) The legislative rules filed in the state register on the  
2 thirteenth day of August, one thousand nine hundred  
3 eighty-two, relating to the alcohol beverage control  
4 commissioner (lighting of licensed premises) are  
5 authorized.

6 (b) The rules authorized by the Legislature in section  
7 sixty (7) (2) of this article were also proposed by the alcohol  
8 beverage control commission pursuant to section ten,  
9 article seven, chapter sixty of this code.

10 (c) The rules authorized by the Legislature in section  
11 sixty (7)(5) of this article were also proposed by the alcohol  
12 beverage commission pursuant to section five, article seven,  
13 chapter sixty of this code.

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

*Harrell E. Holmes*  
.....  
Chairman Senate Committee

*Donald Anello*  
.....  
Chairman House Committee

Originated in the Senate.

In effect from passage.

*Todd C. Nichols*  
.....  
Clerk of the Senate

*Donald L. Hopp*  
.....  
Clerk of the House of Delegates

*Warren P. McRae*  
.....  
President of the Senate

*Walter M. Lee, Jr.*  
.....  
Speaker House of Delegates

The within *is approved* ..... this the *29* .....  
day of *March* ....., 1988.

*John H. Poyner*  
.....  
Governor



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