WEST VIRGINIA LEGISLATURE
2nd Extraordinary Session, 2002

ENROLLED

SENATE BILL NO. 2001

(By Senators Tomblin, Mr. President, and Sprouse, by Request of the Executive)

PASSED June 10, 2002

In Effect from Passage
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Senate Bill No. 2001

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[Passed June 10, 2002; in effect from passage.]

AN ACT to amend and reenact article nine, chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating generally to the promulgation of administrative rules by the various executive or administrative agencies and the procedures relating thereto; continuing rules previously promulgated by state agencies and boards; legislative mandate or authorization for the promulgation of certain legislative rules; 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 with various modifications presented to and recommended by the legislative rule-making review committee; authorizing certain of the agencies to promulgate certain legislative rules 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 and as amended by the
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Legislature; authorizing board of accountancy to promulgate legislative rule relating to board and rules of professional conduct; authorizing commissioner of agriculture to promulgate legislative rule relating to animal disease control; authorizing commissioner of agriculture to promulgate legislative rule relating to state aid for fairs and festivals; authorizing commissioner of agriculture to promulgate legislative rule relating to schedule of charges for inspection services—fruit; authorizing commissioner of agriculture to promulgate legislative rule relating to controlled atmosphere for storage of apples; authorizing athletic commission to promulgate legislative rule relating to commission; authorizing auditor to promulgate legislative rule relating to transaction fee and rate structure; authorizing contractor licensing board to promulgate legislative rule relating to complaints; authorizing board of licensed dietitians to promulgate legislative rule relating to licensure and renewal requirements; authorizing board of licensed dietitians to promulgate legislative rule relating to code of professional ethics; authorizing governor’s committee on crime, delinquency and correction to promulgate legislative rule relating to protocol for law-enforcement response to domestic violence; authorizing human rights commission to promulgate legislative rule relating to waiver of rights under West Virginia human rights act; authorizing human rights commission to promulgate legislative rule relating to definition of employee under West Virginia human rights act; authorizing board of examiners of land surveyors to promulgate legislative rule relating to rules and minimum standards for practice of land surveying in West Virginia; authorizing board of examiners of land surveyors to promulgate legislative rule relating to mandatory continuing education for land surveyors; authorizing board of optometry to promulgate legislative rule relating to board; authorizing board of optometry to promulgate legislative rule relating to expanded prescriptive authority; authorizing board of optometry to promulgate legislative rule relating to schedule of fees; authorizing board of pharmacy to promulgate legislative rule relating to board;
authorizing board of pharmacy to promulgate legislative rule relating to continuing education for licensure of pharmacists; authorizing radiologic technology board of examiners to promulgate legislative rule relating to board; authorizing real estate appraiser licensing and certification board to promulgate legislative rule relating to requirements for licensure and certification; authorizing real estate appraiser licensing and certification board to promulgate legislative rule relating to renewal of licensure or certification; authorizing board of examiners for registered professional nurses to promulgate legislative rule relating to requirements for registration and licensure; authorizing board of examiners for registered professional nurses to promulgate legislative rule relating to fees; authorizing secretary of state to promulgate legislative rule relating to use of electronic signatures by state agencies; authorizing secretary of state to promulgate legislative rule relating to registry requirements; authorizing secretary of state to promulgate legislative rule relating to uniform commercial code, revised article nine; repealing a secretary of state legislative rule relating to use of digital signatures, state certification authority and state repository; authorizing board of social work examiners to promulgate legislative rule relating to qualifications for licensure as social worker; authorizing board of social work examiners to promulgate legislative rule relating to fee schedule; authorizing board of examiners for speech-language pathology and audiology to promulgate legislative rule relating to licensure of speech-language pathology and audiology; and authorizing board of veterinary medicine to promulgate legislative rule relating to registration of veterinary technicians.

Be it enacted by the Legislature of West Virginia:

That article nine, chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

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 the
twenty-seventh day of July, two thousand one, under the
authority of section five, article nine, chapter thirty of this
code, modified by the board of accountancy to meet the
objections of the legislative rule-making review committee
and refiled in the state register on the twenty-eighth day
of November, two thousand one, relating to the board of
accountancy (board rules and rules of professional con-
duct, 1 CSR 1), is authorized.


1 (a) The legislative rule filed in the state register on the
twenty-fifth day of July, two thousand one, authorized
under the authority of section four, article one, chapter
nineteen of this code, modified by the commissioner of
agriculture to meet the objections of the legislative rule-
making review committee and refiled in the state register
on the sixteenth day of August, two thousand one, relating
to the commissioner of agriculture (animal disease control,
61 CSR 1), is authorized.

(b) The legislative rule filed in the state register on the
twenty-sixth day of July, two thousand one, authorized
under the authority of section eleven, article seven,
chapter nineteen of this code, modified by the commis-
sioner of agriculture to meet the objections of the legisla-
tive rule-making review committee and refiled in the state
register on the twenty-seventh day of September, two
thousand one, relating to the commissioner of agriculture
(state aid for fairs and festivals, 51 CSR 3), is authorized.

(c) The legislative rule filed in the state register on the
twenty-fourth day of July, two thousand one, authorized
under the authority of section ten, article two, chapter
nineteen of this code, modified by the commissioner of
agriculture to meet the objections of the legislative rule-
making review committee and refiled in the state register

The legislative rule filed in the state register on the twenty-seventh day of July, two thousand one, under the authority of section twenty-four, article five-a, chapter twenty-nine of this code, modified by the athletic commission to meet the objections of the legislative rule-making review committee and refiled in the state register on the fourteenth day of January, two thousand two, relating to the athletic commission (administrative rule of the commission, 177 CSR 1), is authorized.


The legislative rule filed in the state register on the twenty-fourth day of July, two thousand one, authorized under the authority of section ten-c, article three, chapter twelve of this code, modified by the auditor to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-sixth day of September, two thousand one, relating to the auditor (transaction fee and rate structure, 155 CSR 4), is authorized.

§64-9-5. Contractor licensing board.

The legislative rule filed in the state register on the sixth day of June, two thousand one, under the authority of
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3 section fourteen, article eleven, chapter twenty-one of this
4 code, modified by the contractor licensing board to meet
5 the objections of the legislative rule-making review
6 committee and refiled in the state register on the ninth day
7 of August, two thousand one, relating to the contractor
8 licensing board (West Virginia contractor licensing board-
9 complaints, 28 CSR 3), is authorized with the amendments
10 set forth below:

11 On page 5, after subsection 6.7 by adding a new section
12 7, to read as follows:

“§28-3-7. Alternate dispute resolution.

1 7.1 The board may on its own motion or by stipulation of
2 the parties refer any complaint to mediation: Provided,
3 That complaints demonstrating probable cause of the
4 existence of imminent safety and/or health hazards may
5 not be referred to mediation.

6 7.2 The board may maintain a list of mediators with
7 expertise in professional and occupational licensing
8 matters or may obtain a list of qualified mediators from
9 the West Virginia center for dispute resolution or the West
10 Virginia state bar mediator referral service. Division staff
11 may be utilized to prepare any mediation agreement.

12 7.3 A notice of the mediation must be provided to the
13 parties by certified mail at least twenty days in advance of
14 the mediation date. The notice must contain the time, date
15 and location of the mediation and the issues to be medi-
16 ated.

17 7.4 The mediation is not considered a proceeding open to
18 the public and any reports and records introduced at the
19 mediation are not part of the public record. The mediator
20 and all participants in the mediation shall maintain and
21 preserve the confidentiality of all proceedings and records.
22 The mediator may not be subpoenaed or called to testify or
23 otherwise be subject to process requiring disclosure of
24 confidential information in any proceeding relating to or
arising out of the complaint matter mediated: Provided,
That any confidentiality agreement and any written
agreement made and signed by the parties as a result of
the mediation may be used in any proceeding subsequently
instituted to enforce the written agreement. The agree-
ment may be used in other proceedings if the parties agree
to the use in writing.

7.5 The written agreement made and signed by the
parties as a result of the mediation is binding and must list
the issues resolved, the corrective actions, if any, agreed to,
with time frames and any issues not resolved at the
mediation.

7.6 A mediated agreement under the provisions of this
section does not waive a contractor's potential liability for
board disciplinary action if the board determines that the
contractor has violated any provision of West Virginia
code §21-11-1, et seq., or legislative rules promulgated
pursuant to that article.

7.7 Any issues not resolved at mediation are returned to
the board for formal hearing pursuant to the provisions of
section 6 of this rule.

And,

By renumbering the remaining section of the rule.

§64-9-6. Board of licensed dietitians.

(a) The legislative rule filed in the state register on the
twenty-seventh day of July, two thousand one, under the
authority of section four, article thirty-five, chapter thirty
of this code, modified by the board of licensed dietitians to
meet the objections of the legislative rule-making review
committee and refiled in the state register on the sixteenth
day of October, two thousand one, relating to the board of
licensed dietitians (licensure and renewal requirements, 31
CSR 1), is authorized with the following amendments:
On page three, section nine, section 9.1.6, after the words “confidential communication” by inserting the words “with a client or patient”; and,

On page three, beginning with section 9.1.7., by striking out the remainder of the rule and inserting in lieu thereof the following:

9.1.7. Demonstrated a lack of professional competence to practice medical nutrition therapy or other nutrition or dietetic-related services with a reasonable degree of skill and safety for patients;

9.1.8. Been convicted of or found guilty of a crime in any jurisdiction which directly relates to the practice of medical nutrition therapy or other nutrition or dietetic-related services. A plea of nolo contendere may be considered conviction for the purposes of this rule;

9.1.9. Failed to report to the Board any person whom the licensee knows is in violation of this rule or of provisions of article thirty-five of chapter thirty of the West Virginia code;

9.1.10. Aided, assisted, procured or advised any unlicensed person to practice as a licensed dietitian contrary to this rule or provisions of article thirty-five of chapter thirty of the West Virginia code;

9.1.11. Failed to perform any statutory or legal obligation placed upon a licensed dietitian;

9.1.12. Made or filed a report which the licensee knows to be false, or intentionally or negligently failed to file a report or record required by state or federal law;

9.1.13. Paid or received any commission, bonus, rebate or other financial incentive, or engaged in any split-fee arrangement with any organization, agency or person, for referring patients to providers of health care goods and services, including, but not limited to, hospitals, nursing
homes, clinical laboratories, renal dialysis facilities or pharmacies;

9.1.14. Exercised influence on a patient or client for purposes of exploiting for financial gain or engaging in sexual activity;

9.1.15. Failed to keep written records justifying the course of treatment of the patient, including, but not limited to, patient histories, examination results and treatment;

9.1.16. Engaged in false or deceptive advertising; advertised, practiced or attempted to practice under a name other than his or her own; charged or collected any fee for any type of services rendered within forty-eight (48) hours of the initial visit, if the licensee advertised free consultation or treatment;

9.1.17. Charged an excessive or unconscionable fee. If the Board finds that an excessive or unconscionable fee has been charged and collected, the Board may require the licensee to reduce or reimburse the fee. Factors to be considered in determining the reasonableness of a fee include the following:

9.1.17.1. The time and effort required;

9.1.17.2. The novelty and difficulty of the procedure or treatment;

9.1.17.3. The skill required to perform the procedure or treatment properly;

9.1.17.4. Any requirements or conditions imposed by the patient or circumstances;

9.1.17.5. The nature and length of the professional relationship with the patient;

9.1.17.6. The experience, reputation and ability of the licensee; and
The nature of the circumstances under which the services are provided."

(b) The legislative rule filed in the state register on the twenty-seventh day of July, two thousand one, under the authority of section four, article thirty-five, chapter thirty of this code, modified by the board of licensed dietitians to meet the objections of the legislative rule-making review committee and refiled in the state register on the sixteenth day of October, two thousand one, relating to the board of licensed dietitians (code of professional ethics, 31 CSR 2), is authorized with the following amendment:

On page one, section two, by striking out subsection 2.5 in its entirety.

§64-9-7. Governor's committee on crime, delinquency and correction.

The legislative rule filed in the state register on the twenty-seventh day of July, two thousand one, authorized under the authority of section nine, article two-a, chapter forty-eight of this code, modified by governor's committee on crime, delinquency and correction to meet the objections of the legislative rule-making review committee and refiled in the state register on the second day of October, two thousand one, relating to the governor's committee on crime, delinquency and correction (protocol for law-enforcement response to domestic violence, 149 CSR 3), is authorized.


(a) The legislative rule filed in the state register on the twenty-seventh day of July, two thousand one, under the authority of section eight, article eleven, chapter five of this code, modified by the human rights commission to meet the objections of the legislative rule-making review committee and refiled in the state register on the fifteenth day of January, two thousand two, relating to the human
rights commission (waiver of rights under the West Virginia human rights act, 77 CSR 6), is authorized.

(b) The legislative rule filed in the state register on the twenty-seventh day of July, two thousand one, under the authority of section eight, article eleven, chapter five of this code, modified by the human rights commission to meet the objections of the legislative rule-making review committee and refiled in the state register on the fifteenth day of January, two thousand two, relating to the human rights commission (definition of employee under the West Virginia human rights act, 77 CSR 7), is authorized.


(a) The legislative rule filed in the state register on the twenty-seventh day of July, two thousand one, under the authority of section four, article thirteen-a, chapter thirty of this code, modified by the board of examiners of land surveyors to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-sixth day of November, two thousand one, relating to the board of examiners of land surveyors (rules and minimum standards for the practice of land surveying in West Virginia, 23 CSR 1), is authorized.

(b) The legislative rule filed in the state register on the twenty-seventh day of July, two thousand one, under the authority of section four, article thirteen-a, chapter thirty of this code, modified by the board of examiners of land surveyors to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-sixth day of November, two thousand one, relating to the board of examiners of land surveyors (mandatory continuing education for land surveyors, 23 CSR 2), is authorized.

§64-9-10. Board of optometry.

(a) The legislative rule filed in the state register on the eighteenth day of July, two thousand one, under the
authority of section three, article eight, chapter thirty of this code, modified by the board of optometry to meet the objections of the legislative rule-making review committee and refiled in the state register on the nineteenth day of November, two thousand one, relating to the board of optometry (rules of the board, 14 CSR 1), is authorized.

(b) The legislative rule filed in the state register on the twenty-seventh day of July, two thousand one, authorized under the authority of sections two-a and two-b, article eight, chapter thirty of this code, modified by the board of optometry to meet the objections of the legislative rule-making review committee and refiled in the state register on the seventh day of January, two thousand two, relating to the board of optometry (expanded prescriptive authority, 14 CSR 2), is authorized.

(c) The legislative rule filed in the state register on the eighteenth day of July, two thousand one, authorized under the authority of section three, article eight, chapter thirty of this code, modified by the board of optometry to meet the objections of the legislative rule-making review committee and refiled in the state register on the twentieth day of September, two thousand one, relating to the board of optometry (schedule of fees, 14 CSR 5), is authorized.


(a) The legislative rule filed in the state register on the tenth day of October, two thousand one, authorized under the authority of section nine-a, article five, chapter thirty of this code, modified by the board of pharmacy to meet the objections of the legislative rule-making review committee and refiled in the state register on the eleventh day of January, two thousand two, relating to the board of pharmacy (rules of the board of pharmacy, 15 CSR 1), is authorized.

(b) The legislative rule filed in the state register on the tenth day of October, two thousand one, authorized under
the authority of section nine, article five, chapter thirty of this code, modified by the board of pharmacy to meet the objections of the legislative rule-making review committee and refiled in the state register on the eleventh day of January, two thousand two, relating to the board of pharmacy (continuing education for the licensure of pharmacists, 15 CSR 3), is authorized.

§64-9-12. Radiologic technology board of examiners.

The legislative rule filed in the state register on the twenty-fourth day of July, two thousand one, under the authority of section five, article twenty-three, chapter thirty of this code, modified by the board of examiners of radiologic technology to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-first day of August, two thousand one, relating to the board of examiners of radiologic technology (rules of the board, 18 CSR 1), is authorized.


(a) The legislative rule filed in the state register on the second day of July, two thousand one, under the authority of section nine, article thirty-eight, chapter thirty of this code, modified by the real estate appraiser licensing and certification board to meet the objections of the legislative rule-making review committee and refiled in the state register on the fifteenth day of August, two thousand one, relating to the real estate appraiser licensing and certification board (requirements for licensure and certification, 190 CSR 2), is authorized with the following amendment:

On page twenty-nine, section 14.1, by striking out "2001" and inserting in lieu thereof "2002".

(b) The legislative rule filed in the state register on the second day of July, two thousand one, under the authority of section nine, article thirty-eight, chapter thirty of this code, modified by the real estate appraiser licensing and
certification board to meet the objections of the legislative rule-making review committee and refiled in the state register on the fifteenth day of August, two thousand one, relating to the real estate appraiser licensing and certification board (renewal of licensure or certification, 190 CSR 3), is authorized with the following amendment:

On page six, section 8.1, by striking out “2001” and inserting in lieu thereof “2002”.

§64-9-14. Board of examiners of registered professional nurses.

(a) The legislative rule filed in the state register on the thirtieth day of July, two thousand one, authorized under the authority of section four, article seven, chapter thirty of this code, modified by the board of examiners for registered professional nurses to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-ninth day of November, two thousand one, relating to the board of examiners for registered professional nurses (requirements for registration and licensure, 19 CSR 3), is authorized with the following amendment:

On page twenty-one, section 14.1.ii, following the words “failed to disclose”, by striking out the words “to the board” and inserting in lieu thereof the words “information when required by the board concerning”.

(b) The legislative rule filed in the state register on the twenty-seventh day of July, two thousand one, authorized under the authority of section four, article seven, chapter thirty of this code, relating to the board of examiners for registered professional nurses (fees, 19 CSR 12), is authorized.

§64-9-15. Secretary of state.

(a) The legislative rule filed in the state register on the twenty-sixth day of July, two thousand one, authorized under the authority of section three, article three, chapter
thirty-nine-a of this code, modified by the secretary of 
state to meet the objections of the legislative rule-making 
review committee and refiled in the state register on the 
tenth day of October, two thousand one, relating to the 
secretary of state (use of digital signatures, state certifica-
tion authority and state repository, 153 CSR 30), is autho-
rized.

(b) The legislative rule filed in the state register on the 
twenty-seventh day of July, two thousand one, authorized 
under the authority of section four hundred two, article 
two, chapter forty-eight of this code, modified by the 
secretary of state to meet the objections of the legislative 
rule-making review committee and refiled in the state 
register on the second day of November, two thousand one, 
relating to the secretary of state (registry requirements, 
153 CSR 32), is authorized.

(c) The legislative rule filed in the state register on the 
twenty-sixth day of July, two thousand one, authorized 
under the authority of section five hundred twenty-six, 
article nine, chapter forty-six of this code, modified by the 
secretary of state to meet the objections of the legislative 
rule-making review committee and refiled in the state 
register on the fifteenth day of January, two thousand two, 
relating to the secretary of state (uniform commercial 
code, revised article nine, 153 CSR 35), is authorized.

(d) The legislative rule effective the first day of April, 
one thousand nine hundred ninety-nine, authorized under 
the authority of section four, article five, chapter thirty-
nine of this code (use of digital signatures, state certifica-
tion authority and state repository, 153 CSR 31), is re-
pealed.

§64-9-16. Board of social work examiners.

(a) The legislative rule filed in the state register on the 
twenty-fourth day of July, two thousand one, under the 
authority of section three, article thirty, chapter thirty of
this code, modified by the board of social work examiners to meet the objections of the legislative rule-making review committee and refiled in the state register on the eleventh day of October, two thousand one, relating to the board of social work examiners (qualifications for licensure as a social worker, 25 CSR 1), is authorized.

(b) The legislative rule filed in the state register on the twenty-fourth day of July, two thousand one, under the authority of section three, article thirty, chapter thirty of this code, relating to the board of social work examiners (fee schedule, 25 CSR 3), is authorized.

§64-9-17. Board of examiners for speech-language pathology and audiology.

The legislative rule filed in the state register on the thirtieth day of July, two thousand one, under the authority of section ten, article thirty-two, chapter thirty of this code, modified by the board of examiners for speech-language pathology and audiology to meet the objections of the legislative rule-making review committee and refiled in the state register on the fourteenth day of December, two thousand one, relating to the board of examiners for speech-language pathology and audiology (licensure of speech-language pathology and audiology, 29 CSR 1), is authorized.


The legislative rule filed in the state register on the thirty-first day of August, two thousand one, authorized under the authority of section four, article ten, chapter thirty of this code, modified by the board of veterinary medicine to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-sixth day of December, two thousand one, relating to the board of veterinary medicine (registration of veterinary technicians, 26 CSR 3), is authorized with the amendments set forth below:
On page two, section three, subsection 3.4, subdivision b., following the words “convicted of a felony”, by striking out the words “or other crime involving moral turpitude” and inserting in lieu thereof the words “offense relating to controlled substances”;

On page two, section three, subsection 3.7, following the words “office of the veterinary facility”, by striking out the words “of the person to whom it is issued” and inserting in lieu thereof the words “where the veterinary technician is employed”;

On page three, section three, subsection 3.10, subdivision h., following the words “has an adjudication of”, by striking out the word “insanity” and inserting in lieu thereof the words “mental incompetency,”;

On page five, section 3.14.1, line three, after the words “such registration” by inserting the words “without examination”;

On page five, section 3.14.1, line four, after the words “registration ended” by deleting the period and inserting the words “by providing to the Board:

a. Proof of employment under the direct supervision of a licensed veterinarian during each of the years not renewed.

b. Proof of having met the continuing education requirement of a minimum of six hours of classroom continuing education in an approved program during each of the years not renewed. Each year’s continuing education is to renew for the subsequent year.

c. Payment of all delinquent fees from the last renewal date to the current renewal period.”;

And,

On page 6, section 14.2, after the words “the registration examinations.” by striking out the remainder of the subdivision.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

In effect from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within...is approved...this the...

Day of...2002.

Governor