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WEST VIRGINIA LEGISLATURE

Regular Session, 2003

ENROLLED

Committee Substitute for
SENATE BILL NO. 287

(By Senator Pass, et al)

PASSED March 17, 2003

In Effect from Passage

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SENATE

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COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 287

(SENATORS ROSS, MINARD, SNYDER, BOLEY
AND MINEAR, *original sponsors*)

[Passed March 7, 2003; in effect from passage.]

AN ACT to amend and reenact article seven, 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 Legislature; authorizing the insurance commissioner to promulgate a legislative rule relating to unfair trade practices; authorizing the insurance commissioner to promulgate a legislative rule relating to examiners' compensation, qualifications and classification; authorizing the insurance commissioner to promulgate a legislative rule relating to licensing and conduct of agents, agencies and solicitors; authorizing the insurance commissioner to promulgate a legislative rule relating to excess line brokers; authorizing the insurance commissioner to promulgate a legislative rule relating to AIDS; authorizing the insurance commissioner to promulgate a legislative rule relating to "tail" insurance covering certain medical and allied health care providers; authorizing the insurance commissioner to promulgate a legislative rule relating to group accident and sickness insurance minimum policy coverage standards; authorizing the insurance commissioner to promulgate a legislative rule relating to continuing education for individual insurance producers; authorizing the insurance commissioner to promulgate a legislative rule relating to quality assurance; authorizing the insurance commissioner to promulgate a legislative rule relating to medical malpractice insurance consent to rate and guide "A" rate agreements; authorizing the insurance commissioner to promulgate a legislative rule relating to credit personal property insurance; authorizing the insurance commissioner to promulgate a legislative rule relating to standards for safeguarding consumer information; authorizing the insurance commissioner to promulgate a legislative rule relating to standard motor vehicle policy provisions; authorizing the insurance commissioner to promulgate a legislative rule relating to mental health parity; authorizing the tax commissioner to promulgate a legislative rule relating to payment of taxes by

electronic funds transfer; and authorizing the tax commissioner to promulgate a legislative rule relating to tax credit for medical malpractice liability insurance premiums.

Be it enacted by the Legislature of West Virginia:

That article seven, 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 7. AUTHORIZATION FOR DEPARTMENT OF TAX AND REVENUE
TO PROMULGATE LEGISLATIVE RULES.**

§64-7-1. Insurance commissioner.

1 (a) The legislative rule filed in the state register on the
2 twenty-sixth day of July, two thousand two, authorized
3 under the authority of section ten, article two, chapter
4 thirty-three of this code, modified by the insurance
5 commissioner to meet the objections of the legislative rule-
6 making review committee and refiled in the state register
7 on the fifth day of December, two thousand two, relating
8 to the insurance commissioner (unfair trade practices, 114
9 CSR 14), is authorized.

10 (b) The legislative rule filed in the state register on the
11 twenty-sixth day of July, two thousand two, authorized
12 under the authority of section ten, article two, chapter
13 thirty-three of this code, modified by the insurance
14 commissioner to meet the objections of the legislative rule-
15 making review committee and refiled in the state register
16 on the fourth day of November, two thousand two, relating
17 to the insurance commissioner (examiners' compensation,
18 qualifications and classification, 114 CSR 15), is autho-
19 rized with the following amendment:

20 "On page one, section two, subsection 2.1 by striking the
21 words 'Market Conduct Examiner'."

22 (c) The legislative rule filed in the state register on the
23 twenty-sixth day of July, two thousand two, authorized
24 under the authority of section ten, article two, chapter

25 thirty-three of this code, modified by the insurance
26 commissioner to meet the objections of the legislative rule-
27 making review committee and refiled in the state register
28 on the first day of October, two thousand two, relating to
29 the insurance commissioner (licensing and conduct of
30 agents, agencies and solicitors, 114 CSR 2), is authorized
31 with the following amendment:

32 “On page four, by striking out all of subsection 3.8 and
33 inserting in lieu thereof the following:

34 ‘3.8. Every business entity transacting insurance as
35 defined in W. Va. Code §33-1-4 must be licensed as an
36 agency insurance producer. For purposes of this section,
37 “insurance” means all products defined or regulated by
38 the State of West Virginia except: (i) Limited lines
39 insurance as defined in West Virginia Code §33-12-2(i) and
40 (k); (ii) insurance placed by a lender in connection with
41 collateral pledged for a loan when the debtor breaches the
42 contractual obligation to provide this insurance; and (iii)
43 private mortgage insurance.’

44 On page four, subsection 4.1 after the word ‘with’ by
45 striking out the word ‘whom’ and inserting in lieu thereof
46 the word ‘which’;

47 On page five, by striking out all of subsection 5.1 and
48 inserting in lieu thereof the following:

49 ‘5.1. No person that owns or is affiliated with an insur-
50 ance agency or individual insurance producer may require,
51 as a condition precedent to making a loan, that the
52 borrower cancel insurance and purchase new insurance
53 with the individual insurance producer or with an agency
54 insurance producer with which the person is affiliated.’

55 And,

56 On page five, by striking out all of subsection 5.3 and
57 inserting in lieu thereof the following:

58 '5.3. The act of any person, that owns or is affiliated with
59 an insurance agency or individual insurance producer, in
60 making a loan in violation of this section, will be consid-
61 ered to be the act of the individual insurance producer or
62 agency insurance producer with which the person making
63 the loan is affiliated. The individual insurance producer
64 or agency insurance producer will be held strictly account-
65 able for the acts of a person who is affiliated with the
66 individual insurance producer or agency insurance pro-
67 ducer and who makes a loan in violation of this section.'"

68 (d) The legislative rule filed in the state register on the
69 twenty-sixth day of July, two thousand two, authorized
70 under the authority of section ten, article two, chapter
71 thirty-three of this code, modified by the insurance
72 commissioner to meet the objections of the legislative rule-
73 making review committee and refiled in the state register
74 on the first day of October, two thousand two, relating to
75 the insurance commissioner (excess line brokers, 114 CSR
76 20), is authorized with the amendments set forth below:

77 "On page three, subdivision 4.2.a., at the end of the
78 subdivision by adding the following: 'The form shall
79 contain an affidavit that the individual insurance producer
80 complied with the due diligence requirements of this rule.'

81 And,

82 On page six, subdivision 4.6.j., after the word 'producer'
83 by inserting the words 'required in section 4.2. of this rule'.

84 (e) The legislative rule filed in the state register on the
85 twenty-sixth day of July, two thousand two, authorized
86 under the authority of section ten, article two, chapter
87 thirty-three of this code, modified by the insurance
88 commissioner to meet the objections of the legislative rule-
89 making review committee and refiled in the state register
90 on the fourth day of November, two thousand two, relating
91 to the insurance commissioner (AIDS, 114 CSR 27), is
92 authorized with the following amendment:

93 “On Appendix A to rule, fifth paragraph, by striking the
94 entire paragraph and inserting in lieu thereof the follow-
95 ing: ‘Positive HIV antibody or antigen test results or other
96 significant abnormalities discovered in the body fluid
97 sample tested for the presence of HIV will adversely affect
98 your application for insurance. This means that your
99 application may be declined, that an increased premium
100 may be charged, or that other policy changes may be
101 necessary.’”

102 (f) The legislative rule filed in the state register on the
103 twenty-sixth day of July, two thousand two, authorized
104 under the authority of section ten, article two, chapter
105 thirty-three of this code, relating to the insurance commis-
106 sioner (“tail” malpractice insurance covering certain
107 medical and allied health care providers, 114 CSR 30), is
108 authorized.

109 (g) The legislative rule filed in the state register on the
110 twenty-sixth day of July, two thousand two, authorized
111 under the authority of section ten, article two, chapter
112 thirty-three of this code, modified by the insurance
113 commissioner to meet the objections of the legislative rule-
114 making review committee and refiled in the state register
115 on the fifth day of December, two thousand two, relating
116 to the insurance commissioner (group accident and
117 sickness insurance minimum policy coverage standards,
118 114 CSR 39), is authorized.

119 (h) The legislative rule filed in the state register on the
120 twenty-sixth day of July, two thousand two, authorized
121 under the authority of section ten, article two, chapter
122 thirty-three of this code, modified by the insurance
123 commissioner to meet the objections of the legislative rule-
124 making review committee and refiled in the state register
125 on the first day of October, two thousand two, relating to
126 the insurance commissioner (continuing education for
127 individual insurance producers, 114 CSR 42), is autho-
128 rized.

129 (i) The legislative rule filed in the state register on the
130 twenty-sixth day of July, two thousand two, authorized
131 under the authority of section ten, article two, chapter
132 thirty-three of this code, relating to the insurance commis-
133 sioner (quality assurance, 114 CSR 53), is authorized.

134 (j) The legislative rule filed in the state register on the
135 twenty-second day of February, two thousand two,
136 authorized under the authority of section ten, article two,
137 chapter thirty-three of this code, relating to the insurance
138 commissioner (medical malpractice insurance consent to
139 rate and guide "A" rate agreements, 114 CSR 59), is
140 authorized.

141 (k) The legislative rule filed in the state register on the
142 twenty-sixth day of July, two thousand two, authorized
143 under the authority of section ten, article two, chapter
144 thirty-three of this code, modified by the insurance
145 commissioner to meet the objections of the legislative rule-
146 making review committee and refiled in the state register
147 on the third day of January, two thousand three, relating
148 to the insurance commissioner (credit personal property
149 insurance, 114 CSR 61), is authorized.

150 (l) The legislative rule filed in the state register on the
151 twenty-sixth day of July, two thousand two, authorized
152 under the authority of section ten, article two, chapter
153 thirty-three of this code, modified by the insurance
154 commissioner to meet the objections of the legislative rule-
155 making review committee and refiled in the state register
156 on the fourth day of November, two thousand two, relating
157 to the insurance commissioner (standards for safeguarding
158 consumer information, 114 CSR 62), is authorized.

159 (m) The legislative rule filed in the state register on the
160 twenty-sixth day of July, two thousand two, authorized
161 under the authority of section ten, article two, chapter
162 thirty-three of this code, modified by the insurance
163 commissioner to meet the objections of the legislative rule-
164 making review committee and refiled in the state register

165 on the fourth day of November, two thousand two, relating
166 to the insurance commissioner (standard motor vehicle
167 policy provisions, 114 CSR 63), is authorized with the
168 following amendments:

169 “On page two, subsection 3.4, lines twenty-two and
170 twenty-three, by striking out the words ‘and may not
171 exclude the liability of the owner with respect to use by a
172 bailee for hire, restricted driver, or other permissive user’;

173 And,

174 On page three, subsection 3.13, lines sixteen and seven-
175 teen, by striking out the words, ‘in exchange for a multi-
176 car discount.’”

177 (n) The legislative rule filed in the state register on the
178 twenty-sixth day of July, two thousand two, authorized
179 under the authority of section ten, article two, chapter
180 thirty-three of this code, modified by the insurance
181 commissioner to meet the objections of the legislative rule-
182 making review committee and refiled in the state register
183 on the fourth day of November, two thousand two, relating
184 to the insurance commissioner (mental health parity, 114
185 CSR 64), is authorized with the following amendments:

186 “On page one, subsection 1.1.b.1, by striking the word
187 ‘Any’ and inserting in lieu thereof the words ‘Group health
188 benefit plans issued by any’;

189 And,

190 On page one, subsection 1.1.b.3, by striking the word
191 ‘plans’ and inserting in lieu thereof the words, ‘benefit
192 plans.’”

§64-7-2. Tax commissioner.

1 (a) The legislative rule filed in the state register on the
2 twenty-fourth day of July, two thousand two, authorized
3 under the authority of section five-t, article ten, chapter
4 eleven of this code, modified by the tax commissioner to

5 meet the objections of the legislative rule-making review
6 committee and refiled in the state register on the twenty-
7 second day of November, two thousand two, relating to the
8 tax commissioner (payment of taxes by electronic funds
9 transfer, 110 CSR 10F), is authorized with the following
10 amendments:

11 “On page three, subsection 3.2, by striking out the words
12 “for all taxable years or reporting periods” and inserting
13 in lieu thereof the words “in tax liability per tax type per
14 taxable year or reporting period”;

15 On page four, subsection 4.2, by striking out the entire
16 subsection;

17 On page four, subsection 5.2, first sentence, by striking
18 out the words “Each EFT payment under this rule shall be
19 limited to” and inserting in lieu thereof the words “The
20 Department will determine whether a taxpayer meets the
21 \$100,000 tax liability threshold requiring payment of taxes
22 by EFT by considering taxes paid for”;

23 On page four, subsection 5.2, second sentence, by
24 striking out the words “amount paid” and inserting in lieu
25 thereof the words “taxes paid for all tax types”;

26 On page four, subsection 5.3, first sentence, by striking
27 out the words “Each EFT payment under this rule shall be
28 limited to” and inserting in lieu thereof the words “The
29 Department will determine whether a taxpayer meets the
30 \$100,000 tax liability threshold requiring payment of taxes
31 by EFT by considering”;

32 On page five, subsection 7.1, by striking out the words
33 “Form WV/EFT-005” and inserting in lieu thereof the
34 words “Form WV/EFT-5”;

35 And,

36 On page five, subsection 7.2, by striking out the words
37 “Form WV/EFT-005” and inserting in lieu thereof the
38 words “Form WV/EFT-5”.

39 (b) The legislative rule filed in the state register on the
40 twenty-fourth day of July, two thousand two, authorized
41 under the authority of section eight, article thirteen-p,
42 chapter eleven of this code, modified by the tax commis-
43 sioner to meet the objections of the legislative rule-making
44 review committee and refiled in the state register on the
45 first day of October, two thousand two, relating to the tax
46 commissioner (tax credit for medical malpractice insur-
47 ance premiums, 110 CSR 13P), is authorized.

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

Carey M. Orr
.....
Chairman Senate Committee

Shaw Spaw
.....
Chairman House Committee

Originated in the Senate.

In effect from passage.

David E. Holmes
.....
Clerk of the Senate

Bruce R. Day
.....
Clerk of the House of Delegates

Carl Ray Tomblin
.....
President of the Senate

Robert Skiss
.....
Speaker House of Delegates

The within *is approved* this the *3/12*
Day of *March* , 2003.
Bob Wise
.....
Governor

PRESENTED TO THE
GOVERNOR

Date 3/27/03

Time 10:10am