WEST VIRGINIA LEGISLATURE
Regular Session, 2003

ENROLLED
Committee Substitute for
SENATE BILL NO. 287

(By Senator [Signature])

PASSED March 7, 2003

In Effect _______ 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 "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
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.

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

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

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

(c) The legislative rule filed in the state register on the twenty-sixth day of July, two thousand two, authorized under the authority of section ten, article two, chapter
On page four, by striking out all of subsection 3.8 and inserting in lieu thereof the following:

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

On page four, subsection 4.1 after the word 'with' by striking out the word 'whom' and inserting in lieu thereof the word 'which';

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

5.1. No person that owns or is affiliated with an insurance agency or individual insurance producer may require, as a condition precedent to making a loan, that the borrower cancel insurance and purchase new insurance with the individual insurance producer or with an agency insurance producer with which the person is affiliated.

And,

On page five, by striking out all of subsection 5.3 and inserting in lieu thereof the following:
5.3. The act of any person, that owns or is affiliated with an insurance agency or individual insurance producer, in making a loan in violation of this section, will be considered to be the act of the individual insurance producer or agency insurance producer with which the person making the loan is affiliated. The individual insurance producer or agency insurance producer will be held strictly accountable for the acts of a person who is affiliated with the individual insurance producer or agency insurance producer and who makes a loan in violation of this section."

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

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

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

(e) The legislative rule filed in the state register on the twenty-sixth day of July, two thousand two, authorized under the authority of section ten, article two, chapter thirty-three of this code, modified by the insurance commissioner to meet the objections of the legislative rule-making review committee and refiled in the state register on the fourth day of November, two thousand two, relating to the insurance commissioner (AIDS, 114 CSR 27), is authorized with the following amendment:
"On Appendix A to rule, fifth paragraph, by striking the entire paragraph and inserting in lieu thereof the follow-
ing: ‘Positive HIV antibody or antigen test results or other significant abnormalities discovered in the body fluid sample tested for the presence of HIV will adversely affect your application for insurance. This means that your application may be declined, that an increased premium may be charged, or that other policy changes may be necessary.’"

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

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

(h) The legislative rule filed in the state register on the twenty-sixth day of July, two thousand two, authorized under the authority of section ten, article two, chapter thirty-three of this code, modified by the insurance commissioner to meet the objections of the legislative rule-
making review committee and refiled in the state register on the first day of October, two thousand two, relating to the insurance commissioner (continuing education for individual insurance producers, 114 CSR 42), is autho-
rized.
(i) The legislative rule filed in the state register on the twenty-sixth day of July, two thousand two, authorized under the authority of section ten, article two, chapter thirty-three of this code, relating to the insurance commissioner (quality assurance, 114 CSR 53), is authorized.

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

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

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

(m) The legislative rule filed in the state register on the twenty-sixth day of July, two thousand two, authorized under the authority of section ten, article two, chapter thirty-three of this code, modified by the insurance commissioner to meet the objections of the legislative rule-making review committee and refiled in the state register
on the fourth day of November, two thousand two, relating
to the insurance commissioner (standard motor vehicle
policy provisions, 114 CSR 63), is authorized with the
following amendments:

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

And,

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

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

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

And,

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

§64-7-2. Tax commissioner.

(a) The legislative rule filed in the state register on the
twenty-fourth day of July, two thousand two, authorized
under the authority of section five-t, article ten, chapter
eleven of this code, modified by the tax commissioner to
meet the objections of the legislative rule-making review
committee and refiled in the state register on the twenty-
second day of November, two thousand two, relating to the
tax commissioner (payment of taxes by electronic funds
transfer, 110 CSR 10F), is authorized with the following
amendments:

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

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

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

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

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

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

On page five, subsection 7.2, by striking out the words
“Form WV/EFT-005” and inserting in lieu thereof the
words “Form WV/EFT-5”.
(b) The legislative rule filed in the state register on the twenty-fourth day of July, two thousand two, authorized under the authority of section eight, article thirteen-p, chapter eleven of this code, modified by the tax commissioner to meet the objections of the legislative rule-making review committee and refiled in the state register on the first day of October, two thousand two, relating to the tax commissioner (tax credit for medical malpractice insurance premiums, 110 CSR 13P), is authorized.
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 third Day of March 2003.

Governor