WEST VIRGINIA LEGISLATURE
Regular Session, 2003

ENROLLED
Revised Committee Substitute for
SENATE BILL NO. 329

(By Senator Ross, et al)

PASSED March 8, 2003

In Effect from Passage
ENROLLED
REVISED
COMMITTEE SUBSTITUTE
FOR
Senate Bill No. 329

(Senators Ross, Minard, Snyder, Boley
and Minear, original sponsors)

[Passed March 8, 2003; 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 Legislature; authorizing commissioner of agriculture to promulgate legislative rule relating to inspection of meat and poultry; authorizing contractor licensing board to promulgate legislative rule relating to contractor licensing act; authorizing courthouse facilities improvement authority to promulgate legislative rule relating to authority; authorizing board of dental examiners to promulgate legislative rule relating to board; authorizing board of dental examiners to promulgate legislative rule relating to formation and approval of dental corporations; authorizing family protection services board to promulgate legislative rule relating to operation of board; authorizing family protection services board to promulgate legislative rule relating to licensure of domestic violence and perpetrator intervention programs; authorizing family protection services board to promulgate legislative rule relating to perpetrator intervention program licensure; authorizing family protection services board to promulgate legislative rule relating to monitored visitation and exchange program certification; authorizing board of funeral service examiners to promulgate legislative rule relating to board; authorizing board of funeral service examiners to promulgate legislative rule relating to crematory requirements; authorizing governor's committee on crime, delinquency and correction to promulgate legislative rule relating to law-enforcement training standards; authorizing governor's committee on crime, delinquency and correction to promulgate legislative rule relating to community corrections standards; authorizing massage therapy licensure board to promulgate legislative rule relating to board; authorizing board of medicine to promulgate legislative rule relating to licensure, disciplinary and complaint procedures, continuing education and physician assistants; authorizing nursing home administrators licensing board to
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. Commissioner of agriculture.

1 The legislative rule filed in the state register on the twenty-second day of July, two thousand two, authorized

3 under the authority of section three, article two-b, chapter
4 nineteen of this code, relating to the commissioner of
5 agriculture (inspection of meat and poultry, 61 CSR 16), is
6 authorized.

§64-9-2. Contractor licensing board.

1 The legislative rule filed in the state register on the ninth
2 day of July, two thousand two, authorized under the
3 authority of sections five and sixteen, article eleven,
4 chapter twenty-one of this code, modified by the contractor licensing board to meet the objections of the legislative
5 rule-making review committee and refiled in the state
6 register on the fourth day of December, two thousand two,
7 relating to the contractor licensing board (West Virginia
8 contractor licensing act, 28 CSR 2), is authorized with the
9 following amendment:

10 "On page nine, section four, subsection 4.1, following the
11 last semicolon by inserting the following ‘or any commercial property intended for sale or lease by an entity other
12 than the employer where the total cost of the total undertaking, labor and materials, exceeds ten thousand dollars
13 ($10,000.00);’"


1 The legislative rule filed in the state register on the
2 twenty-fifth day of July, two thousand two, under the
3 authority of section three-a, article twenty-six, chapter
4 twenty-nine of this code, modified by the courthouse
5 facilities improvement authority to meet the objections of
6 the legislative rule-making review committee and refiled
7 in the state register on the nineteenth day of September,
8 two thousand two, relating to the courthouse facilities
9 improvement authority (courthouse facilities improvement
10 authority, 203 CSR 1), is authorized with the following
11 amendment:

12 "On page one, subsection 3.4, after the words “the
13 Authority shall” by striking out the words “make a written
recommendation” and inserting in lieu thereof the words “issue a written notification”.

§64-9-4. Board of dental examiners.

(a) The legislative rule filed in the state register on the fifth day of April, two thousand two, under the authority of section one, article four, chapter thirty of this code, modified by the board of dental examiners to meet the objections of the legislative rule-making review committee and refiled in the state register on the first day of November, two thousand two, relating to the board of dental examiners (general provisions, 5 CSR 1), is authorized with the following amendment:

“Beginning on page eleven, section eight, subsection 8.2, by striking subdivisions (d), (e), (i), (j), (k), (l), (n), (p), (q), (r), (s), (t), (u), (y), (z), (aa), (bb), (cc), and (dd); And,

Beginning on page thirteen, section eight, subsection 8.3 by striking the entire subsection and inserting the following:

8.3 Expanded duties of dental hygienists. In addition to and including those duties set forth in subsection 8.2 of this section, a licensed dentist may assign the following duties and for intraoral tasks assigned by a licensed dentist to a dental hygienist in the licensed dentist’s employment:

(a). Supra and Subgingival scaling of teeth;

(b). Placement of subgingival medicaments, fibers, chips, etc.;

(b) (c). Polishing of coronal and/or exposed surfaces of teeth;

(c). Dental Health Education;

(d). Nutritional Counseling;
(e) Application of caries preventive agents and other topical medicaments to the surfaces of teeth and surrounding tissues (including topical anesthesia);

(f) Placing, exposing, developing, and mounting dental radiographs;

(g) Finishing and polishing amalgams, resin, composite, and silicate restorations;

(h) Examining and recording periodontal findings;

(h) Scaling excessive cement from the surfaces of teeth and restorations;

(i) Performing clinical examinations and diagnostic tests of teeth and surrounding tissues and recording findings for interpretation by a dentist (includes such procedures as restorative chartings, caries activity test, cytology smears, salivary analysis and smears, endodontic cultures, vitality test, etc.);

(j) Removing soft tissue dressings;

(j) Removing ligature wires;

(k) Preparing medical and dental histories for interpretation by a dentist;

(l) Placing and removing rubber dams;

(m) Taking intra and extra-oral photographs; and

(n) Removing oral sutures.

(o) Applying pit and fissure sealants with a final evaluation by the supervising dentist;

(o) Using a power-driven handpiece with a rubber cup or brush only for preparing a tooth for accepting a restoration or appliance.

(p) Examining and recording periodontal findings.”
79 (b) The legislative rule filed in the state register on the
tenth day of May, two thousand two, under the authority
of section one, article four, chapter thirty of this code,
modified by the board of dental examiners to meet the
objections of the legislative rule-making review committee
and refiled in the state register on the twenty-eighth day
of May, two thousand two, relating to the board of dental
service examiners (formation and approval of dental
corporations, 5 CSR 6), is authorized with the following
amendment:

60 "On page one, section three, subsection one, after the
words 'shall have as a', by striking the word 'member' and
inserting in lieu thereof the word 'shareholder';

61 On page one, section three, subsection four, after the
words 'on or before the', by striking the words 'first day of
July' and inserting in lieu thereof the words 'thirtieth day
of June' and after the word 'every' by striking the word
'member' and inserting in lieu thereof the word 'share-
holder';

62 On page one, section three, subsection five, after the
words 'on or before the', by striking the words 'first day of
July' and inserting in lieu thereof the words 'thirtieth day
of June';

63 And,

64 On page one, section three, subsection seven, on each of
the three occasions that the word 'member' appears, by
striking the word 'member' and inserting in lieu thereof
the word 'shareholder'."

§64-9-5. Family protection services board.

1 (a) The legislative rule filed in the state register on the
twenty-sixth day of July, two thousand two, under the
authority of section four hundred one, article twenty-six,
chapter forty-eight of this code, modified by the family
protection services board to meet the objections of the
legislative rule-making review committee and refiled in
the state register on the tenth day of January, two thou-
sand three, relating to the family protection services board
(operation of the family protection services board, 191
CSR 1), is authorized with the following amendments:

"On page three, section three, by inserting a new subsec-
tion to read as follows:

3.11 "Partner Agencies" means state and community
organizations whose mission and purpose require their
response to the needs of victims of domestic violence and
their children.", and by renumbering the remaining
subsections accordingly,

And,

On page eight, section five, subsection six, subdivision c,
following the words ‘fifteen (15) days’, by inserting the
words ‘after the receipt of the notice’.

(b) The legislative rule filed in the state register on the
twenty-sixth day of July, two thousand two, under the
authority of section four hundred one, article twenty-six,
chapter forty-eight of this code, modified by the family
protection services board to meet the objections of the
legislative rule-making review committee and refiled in
the state register on the tenth day of January, two thou-
sand three, relating to the family protection services board
(licensure of domestic violence and perpetrator interven-
tion programs, 191 CSR 2), is authorized with the follow-
ing amendments:

On page seven, section three, subsection one, subdivision
g, after the words ‘client service agreements’ by striking
the words ‘and other purchase of service agreements that
exceed one-thousand dollars ($1000.00) annually’.

(c) The legislative rule filed in the state register on the
twenty-sixth day of July, two thousand two, under the
authority of section four hundred one, article twenty-six,
chapter forty of this code, modified by the family protection services board to meet the objections of the legislative rule-making review committee and refiled in the state register on the tenth day of January, two thousand three, relating to the family protection services board (perpetrator intervention program licensure, 191 CSR 3), is authorized with the following amendments:

"On page one, section three, subsection one, subdivision b, after the words 'client service agreements' by striking the words 'and other purchase of service agreements that exceed one-thousand dollars ($1000.00) annually';

On page six, section three, subsection three, subdivision c, paragraph 4, by striking the words 'Cultural competency', and inserting in lieu thereof the words 'Cultural sensitivity';

On page six, section three, subsection four, after the words 'conducted by the program', by inserting the word 'director';

And,

On page nine, section three, subsection twelve, subdivision a, by striking out the words 'Frequency of and reasons for low attendance of perpetrator(s).', and inserting in lieu thereof the words 'Attendance records of perpetrator(s) including reason(s) for repeated absences.'"

(d) The legislative rule filed in the state register on the twenty-sixth day of July, two thousand two, under the authority of section four hundred one, article twenty-six, chapter forty-eight of this code, modified by the family protection services board to meet the objections of the legislative rule-making review committee and refiled in the state register on the tenth day of January, two thousand three, relating to the family protection services board (monitored visitation and exchange program certification, 191 CSR 4), is authorized.
§64-9-6. Board of funeral service examiners.

(a) The legislative rule filed in the state register on the twenty-sixth day of June, two thousand two, under the authority of sections five and six, article six, chapter thirty of this code, modified by the board of funeral service examiners to meet the objections of the legislative rule-making review committee and refiled in the state register on the sixteenth day of January, two thousand three, relating to the board of funeral service examiners (general provisions, 6 CSR 1), is authorized with the following amendment:

"On page thirteen, section sixteen, subsection ten, subdivision two, by striking the words 'twenty five dollars ($25)' and inserting in lieu thereof the words 'fifteen dollars ($15)'."

(b) The legislative rule filed in the state register on the twenty-sixth day of July, two thousand two, under the authority of section six, article six, chapter thirty of this code, modified by the board of funeral service examiners to meet the objections of the legislative rule-making review committee and refiled in the state register on the sixteenth day of January, two thousand three, relating to the board of funeral service examiners (crematory requirements, 6 CSR 2), is authorized with the following amendment:

"On page twenty-three, section twenty, subsection seven, subdivision two, by striking the words 'twenty five dollars ($25)' and inserting in lieu thereof the words 'fifteen dollars ($15)'."

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

(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 three, article eleven-c, chapter sixty-two of this code, relating to the governor's
committee on crime, delinquency and correction (community corrections standards, 149 CSR 4), is authorized.

(b) The legislative rule filed in the state register on the eighth day of July, two thousand two, authorized under the authority of section three, article twenty-nine, chapter thirty of this code, modified by the 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 nineteenth day of December, two thousand two, relating to the governor's committee on crime, delinquency and correction (law-enforcement training standards, 149 CSR 2), is authorized.


The legislative rule filed in the state register on the twenty-sixth day of July, two thousand two, under the authority of section six, article thirty-seven, chapter thirty of this code, modified by the massage therapy licensure board 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 massage therapy licensure board (general provisions, 194 CSR 1), is authorized.


The legislative rule filed in the state register on the twenty-sixth day of July, two thousand two, under the authority of section sixteen, article three, chapter thirty of this code, modified by the board of medicine to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-third day of October, two thousand two, relating to the board of medicine (licensure, disciplinary and complaint procedures, continuing education and physician assistants, 11 CSR 1B), is authorized.

§64-9-10. Nursing home administrators licensing board.
The legislative rule filed in the state register on the sixteenth day of May, two thousand two, under the authority of section seven, article twenty-five, chapter thirty of this code, modified by the nursing home administrators licensing board to meet the objections of the legislative rule-making review committee and refiled in the state register on the twentieth day of December, two thousand two, relating to the nursing home administrators licensing board (nursing home administrators, 21 CSR 1), is authorized.


The legislative rule filed in the state register on the fifth day of June, two thousand two, authorized under the authority of section five, 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 twenty-third day of December, two thousand two, relating to the board of optometry (licensure by endorsement, 14 CSR 8), is authorized.

§64-9-12. Board of pharmacy.

(a) The legislative rule filed in the state register on the seventeenth day of July, two thousand two, authorized under the authority of section six, article nine, chapter sixty-a 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 twenty-eighth day of October, two thousand two, relating to the board of pharmacy (controlled substances monitoring, 15 CSR 8), is authorized with the following amendment:

"On page three, by striking out all of section five and inserting in lieu thereof the following:

§15-8-5. Prescription Forms.

5.1. The purpose of this section is to establish minimum requirements that will decrease the potential for forgery or
alteration of a prescription or a prescription blank for a controlled substance.

5.2. After June 1, 2003, the Board of Pharmacy recommends that a written prescription for a controlled substance in Schedules II, III or IV be on a security prescription blank.


5.3.1. A prescription for a controlled substance should contain the following security features:

(a) A latent, repetitive “void” pattern screened and printed across the entire front of the prescription blank. If the prescription is photocopied, the word “void” shall appear in a pattern across the entire front of the prescription;

(b) A watermark printed on the backside of the prescription blank so that it is only seen at a forty-five (45) degree angle;

(c) An opaque “Rx” symbol or an “Rx” symbol printed in disappearing ink shall appear in the upper part of the blank. The symbol shall disappear if the prescription copy is lightened;

(d) Six (6) quantity check-off boxes printed on the form and the following quantities shall appear:

1-24;
25-49;
50-74;
75-100;
101-150; and
151 and over:
Provided, That if the blank has the quantity prescribed electronically printed in both numeric and word format, then the quantity check-off boxes would not be necessary;

(e) The following statement printed on the bottom of the prescription blank: “Prescription is void if more than one (1) controlled substance prescription is written per blank”; and

(f) Refill options in the following order: Refill NR 1 2 3 4 5: Provided, That if the blank has the refill amount electronically printed in both numeric and word format, then the quantity check-off boxes would not be necessary.

5.3.2. A prescription shall bear the preprinted, stamped, typed, or manually printed name, address and telephone number of the prescribing practitioner.

5.3.3. A prescription blank for a controlled substance shall not contain:

(a) An advertisement on the front or the back of the prescription blank;

(b) The preprinted name of a controlled substance; or

(c) The written, typed or rubber-stamped name of a controlled substance until the prescription blank is signed, dated and issued to a patient.

5.3.4. A prescription blank for a controlled substance shall provide space for the patient’s name and address, the practitioner’s signature and the practitioner’s DEA registration number.

5.3.5. Only one (1) controlled substance prescription blank shall be written per prescription blank.

5.3.6. A quantity check-off box that corresponds to the quantity prescribed shall be marked or the quantity electronically printed in both numeric and word format.
5.3.7. If a prescribed drug is a schedule II, III or IV controlled substance, a refill option shall be marked or the refill amount electronically printed in both numeric and word format.

5.3.8. If a prescription for a schedule II, III or IV controlled substance will be transmitted to a pharmacy by facsimile, the practitioner or the practitioner's agent shall, prior to transmission, write or stamp "FAXED" on the face of the original prescription along with the date and the person's initials.

5.3.9. If a prescription for a schedule II, III or IV controlled substance has been transmitted to a pharmacy by facsimile, the transmitting practitioner shall file the original prescription in the patient's record.

5.3.10. A pharmacist shall not be required to use a security prescription blank to record an oral prescription or a transferred prescription for a Schedule II, III or IV controlled substance.

5.3.11. The requirements of this section do not apply to prescriptions for controlled substances that are electronically transmitted from a prescriber to a pharmacy: Provided, That all electronically transmitted prescriptions for controlled substances shall comply with all federal requirements.

(b) The legislative rule filed in the state register on the seventeenth day of July, two thousand two, authorized under the authority of section seven-c, 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 twenty-eighth day of October, two thousand two, relating to the board of pharmacy (pharmacist recovery networks, 15 CSR 10), is authorized.


The legislative rule filed in the state register on the twenty-fifth day of July, two thousand two, 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 nineteenth day of November, two thousand two, relating to the board of examiners of radiologic technology (rules of the board, 18 CSR 1), is authorized with the following amendments:

"On page two, section two, subsection e, subdivision seven, after the word 'violating', by striking the words 'provisions of subsection 3.6 of this rule' and inserting in lieu thereof the words 'rules of the board';

On page three, section four, subsection two, subdivision e, by striking the word 'penalty';

And,

On page six, section seven, subsection 4.7.e by striking the words "$15.00" and inserting in lieu thereof the words 'maximum allowable by West Virginia State Code'."

§64-9-14. Real estate appraiser licensing and certification board.

(a) The legislative rule filed in the state register on the twenty-fifth day of July, two thousand two, under 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 filed in the state register on the thirtieth day of September, two thousand two, relating to the real estate appraiser licensing and certification board (requirements for licensure and certification, 190 CSR 2), is authorized.

(b) The legislative rule filed in the state register on the twenty-fifth day of July, two thousand two, under the authority of section nine, article thirty-eight, chapter thirty of this code, relating to the real estate appraiser
licensing and certification board (renewal of licensure or certification, 190 CSR 3), is authorized.


(a) The legislative rule filed in the state register on the nineteenth day of July, two thousand two, under the authority of section eight, article forty, chapter thirty of this code, relating to the real estate commission (requirements in licensing real estate brokers, associate brokers and salespersons and the conduct of brokerage business, 174 CSR 1), is authorized with the following amendment:

"On page nine, section sixteen, paragraph 16.3.b.1., following the words 'interest bearing', by striking out the word 'account' and inserting in lieu thereof the words 'trust fund account established in compliance with WV Code § 30-40-18'."

(b) The legislative rule filed in the state register on the nineteenth day of July, two thousand two, under the authority of section eight, article forty, chapter thirty of this code, relating to the real estate commission (schedule of fees, 174 CSR 2), is authorized.

(c) The legislative rule filed in the state register on the nineteenth day of July, two thousand two, under the authority of section eight, article forty, chapter thirty of this code, modified by the real estate commission 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 real estate commission (requirements in approval and registration of real estate courses, course providers and instructors, 174 CSR 3), is authorized.

§64-9-16. Secretary of state.

The legislative rule filed in the state register on the twenty-second day of July, two thousand two, authorized under the authority of section four, article six-j, chapter
forty-six-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
twenty-first day of October, two thousand two, relating to
the secretary of state (registry for notification of a state of
emergency, 153 CSR 33), is authorized.

§64-9-17. Board of veterinary medicine.

(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 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-seventh day of December, two thousand
two, relating to the board of veterinary medicine (stand-
dards of practice, 26 CSR 4), 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 four, article ten, chapter
thirty of this code, relating to the board of veterinary
medicine (schedule of fees 26 CSR 6), 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............... this the......

Day of................., 2003.

Governor
PRESENTED TO THE GOVERNOR

Date 3/27/03

Time 10:10 a.m.