WEST VIRGINIA LEGISLATURE
SECOND REGULAR SESSION, 2004

ENROLLED

COMMITTEE SUBSTITUTE FOR
House Bill No. 4217

(By Delegates Mahan, R. Thompson, Cann, Kominar, Armstead and Faircloth)

Passed March 12, 2004
In Effect from Passage
AN ACT to amend and reenact article 7, chapter 64 of the code of West Virginia, 1931, as amended, all relating generally to the promulgation of administrative rules by the various executive or administrative agencies and the procedures relating thereto; legislative mandate or authorization for the promulgation of certain legislative rules by various executive or administrative agencies of the state; 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 recom-
mended by the legislative rule-making review committee and as amended by the Legislature; authorizing the division of banking to promulgate a legislative rule relating to residential mortgage lenders, brokers and loan originators; authorizing the insurance commissioner to promulgate a legislative rule relating to the licensing and conduct of individual insurance producers, agencies and solicitors; authorizing the insurance commissioner to promulgate a legislative rule relating to surplus lines insurance; authorizing the insurance commissioner to promulgate a legislative rule relating to Medicare supplement insurance; authorizing the insurance commissioner to promulgate a legislative rule relating to accident and sickness rate filing; authorizing the insurance commissioner to promulgate a legislative rule relating to credit for reinsurance; authorizing the insurance commissioner to promulgate a legislative rule relating to self-insurance pools for political subdivisions; authorizing the lottery commission to promulgate a legislative rule relating to the state lottery; authorizing the lottery commission to promulgate a legislative rule relating to limited video lottery; authorizing the racing commission to promulgate a legislative rule relating to thoroughbred racing; authorizing the racing commission to promulgate a legislative rule relating to greyhound racing; and authorizing the tax commissioner to promulgate a legislative rule relating the alternative resolution of tax disputes.

Be it enacted by the Legislature of West Virginia:

That article 7, chapter 64 of the code of West Virginia, 1931, 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. Division of banking.

1 The legislative rule filed in the state register on the fifteenth day of July, two thousand three, authorized under the authority
of section three, article seventeen, chapter thirty-one, of this code, modified by the division of banking to meet the objections of the legislative rule-making review committee and refiled in the state register on the twentieth day of January, two thousand four, relating to the division of banking (residential mortgage lenders, brokers and loan originators, 106 CSR 5), is authorized, with the following amendment:

On page three, after section 3.1, by adding a new section to read “3.2 All records required to be maintained by section 3.1 shall be kept in the specific loan file relating to the individual borrower or loan applicant except for those records listed in subsections 3.1.z, 3.1.aa, 3.1.bb and 3.1.cc.”;

On page four, after section 4.1, by adding a new section to read “4.2 All records required to be maintained by section 4.1 shall be kept in the specific loan file relating to the individual borrower or loan applicant except for those records listed in subsections 4.1.g, 4.1.h, 4.1.i, 4.1.j and 4.1.k.”;

On page five, after section 5.1, by adding a new section to read “5.2 All records required to be maintained by section 5.1 shall be kept in the specific loan file relating to the individual borrower or loan applicant except for those records listed in subsections 5.1.j, 5.1.k, 5.1.l, 5.1.m and 5.1.n.”;

And,

On page seven, after section 6.1, by adding a new section to read “6.2 All records required to be maintained by section 6.1 shall be kept in the specific loan file relating to the individual borrower or loan applicant except for those records listed in subsections 6.1.t, 6.1.u, 6.1.v, 6.1.w and 6.1.y.”

§64-7-2. Insurance commissioner.
(a) The legislative rule filed in the state register on the twenty-ninth day of July, two thousand three, 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 December, two thousand three, relating to the insurance commissioner (licensing and conduct of individual insurance producers, agencies and solicitors, 114 CSR 2), is authorized.

(b) The legislative rule filed in the state register on the twenty-ninth day of July, two thousand three, 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 December, two thousand three, relating to the insurance commissioner (surplus lines insurance, 114 CSR 20), is authorized with the following amendments:

On page three, by striking out all of subdivision 4.1 and inserting in lieu thereof the following:

“4.1 Diligent Search – In accordance with the provisions of West Virginia code §33-12C-5(a)(3), insurance coverage written by a surplus lines insurer and placed by a surplus lines licensee may not be procured until a diligent search has been made by the individual insurance producer to place the risk with an admitted insurer. The surplus lines licensee shall submit to the commissioner a sworn notarized affidavit, as provided in subsection 4.5 of this rule, that a diligent search has been made by the individual insurance producer to place the risk with licensed insurers authorized to write and actually writing the particular risk sought to be placed in the excess lines market. This affidavit shall be maintained, as required by West Virginia code §33-12C-16, as part of the full and true record of each surplus lines contract procured.”;
On page three, section 4 (subdivision 4.2.a.) following the word “rule” and the period by inserting the following:

“The affidavit shall affirm that the insured was expressly advised prior to the placement of the insurance that:

(1) the surplus lines insurer with which the insurance is to be placed is not an admitted authorized insurer in this state and is not subject to the commissioner’s supervision; and,

(2) in the event the surplus lines insurance becomes insolvent, claims will not be paid nor will unearned premiums be returned by any West Virginia insurance guaranty fund.”;

On pages three and four by striking out all of subdivision 4.2.b. and inserting in lieu thereof the following:

“b. No individual insurance producer may solicit, procure, place, or renew any insurance with a nonadmitted insurer unless the producer has been unable to procure the requested insurance from an authorized insurer after conducting a diligent search. A diligent search requires the individual insurance producer to contact as many insurers as the individual insurance producer represents, that customarily write the kind of insurance requested by the insured. A diligent search is presumed if declinations are received from each authorized insured contacted.”;

AND,

On pages eleven and twelve, by striking out all of subdivision 7.2.b. and inserting in lieu thereof the following:
“b. Insurance coverages and classes not included on the export list may only be placed with surplus lines insurers once a diligent search has been made.”

(c) The legislative rule filed in the state register on the twenty-first day of March, two thousand three, authorized under the authority of section ten, article two, chapter thirty-three, of this code, relating to the insurance commissioner (Medicare supplement insurance, 114 CSR 24), is authorized.

(d) The legislative rule filed in the state register on the twenty-ninth day of July, two thousand three, 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 December, two thousand three, relating to the insurance commissioner (accident and sickness rate filing, 114 CSR 26), is authorized.

(e) The legislative rule filed in the state register on the twenty-ninth day of July, two thousand three, 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 twenty-third day of January, two thousand four, relating to the insurance commissioner (credit for reinsurance, 114 CSR 40), is authorized, with the following amendment:

On page one, subsection 2.2, line one, after the words “alien ceding insurer”, by inserting the words “which is”;

On page one, subsection 2.2, line two, by striking out the word “that” and inserting in lieu thereof the word “and”;
On page two, subdivision 4.1.d, line four, after the words “The accredited reinsurer”, by striking out the word “shall” and inserting in lieu thereof the word “may”;

On page three, subsection 5.1, line two, after the words “insurer which”, by inserting a comma:

On page three, subsection 5.1, line three, after the words “on which”, by striking out the remainder of the subsection and inserting in lieu thereof the words “credit for reinsurance is claimed on the domestic insurer’s statutory financial statement”;

On page four, subdivision 6.2.b, line two, after the word “underwriters”, by inserting a comma;

On page four, subdivision 6.2.b, line three, after the words “United States”, by inserting a period, striking out the words “and in” and inserting in lieu thereof the word “In”;

On page seven, subsection 6.6, line three, after the word “dollars”, by changing the comma to a semi-colon;

On page seven, subsection 6.6, line four, after the terms “(f) and (g)”, by changing the comma to a semi-colon;

On page seven, subsection 6.6, line five, after the terms “(f) and (g)”, by changing the comma to a semi-colon;

On page ten, subparagraph 6.6.f.1.B, line five, by striking out the word “shall” and inserting in lieu thereof the word “may”;

On page eleven, subdivision 6.6.i, line three, by striking out the words “shall be” and inserting in lieu thereof the word “is”;
On page fifteen, subdivision 9.1.i, line three, by striking out the words “shall have” and inserting in lieu thereof the word “has”; And,

On page fifteen, subdivision 9.1.j, line three, by striking out the words “shall be” and inserting in lieu thereof the word “is”.

(f) The legislative rule filed in the state register on the twenty-ninth day of July, two thousand three, authorized under the authority of section sixteen, article twelve-a, chapter twenty-nine, of this code, relating to the insurance commissioner (self-insurance pools for political subdivisions, 114 CSR 65), is authorized.

§64-7-3. Lottery commission.

(a) The legislative rule filed in the state register on the tenth day of July, two thousand three, authorized under the authority of section five, article twenty-two, chapter twenty-nine, of this code, modified by the lottery commission to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-second day of December, two thousand three, relating to the lottery commission (state lottery rules, 179 CSR 1), is authorized.

(b) The legislative rule filed in the state register on the twenty-fourth day of July, two thousand three, authorized under the authority of section four hundred two, article twenty-two-b, chapter twenty-nine, of this code, modified by the lottery commission to meet the objections of the legislative rule-making review committee and refiled in the state register on the twelfth day of January, two thousand four, relating to the lottery commission (limited video lottery, 179 CSR 5), is authorized with the following amendment:
On page three, section two, subsection 2.13, line four, following the words “operating on”, by inserting the word “that”;

On page four, section two, subsection 2.15, line two, following the word “Code”, by striking out the citation “§11-14-2”, and inserting in lieu thereof the citation “§11-14C-2”;

On page seven, section five, subsection 5.2, line one, following the word “subdivision”, by striking out the citation “5.1.a”, and inserting in lieu thereof the citation “5.1.b”;

On page twenty-one, beginning on line four, by striking out section 30 in its entirety and redesignating the remaining sections and parts thereof accordingly;

And,

On page twenty-four, section 34.2, by changing the period at the end of the sentence to a colon and inserting the words: “Provided, That a limited video lottery retailer may display a sign on the exterior of the establishment that states ‘West Virginia Lottery Products available here,’ which sign is of uniform size and design, no greater than twelve inches by twelve inches, produced and distributed to retailers by the lottery commission.”

§64-7-4. Racing commission.

(a) The legislative rule filed in the state register on the thirty-first day of July, two thousand three, authorized under the authority of section six, article twenty-three, chapter nineteen, of this code, modified by the racing commission 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 three, relating to the racing commission (thoroughbred racing, 178 CSR 1), is authorized.
(b) The legislative rule filed in the state register on the thirty-first day of July, two thousand three, authorized under the authority of section six, article twenty-three, chapter nineteen, of this code, relating to the racing commission (greyhound racing, 178 CSR 2), is authorized.

§64-7-5. Tax commissioner.

The legislative rule filed in the state register on the eighteenth day of February, two thousand three, authorized under the authority of section twenty-three, 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-first day of April, two thousand three, relating to the tax commissioner (alternative resolution of tax disputes, 110 CSR 10g), is authorized, with the following amendment:

On page two, subdivision 3.1.1, line two, after the word “and”, by inserting a comma;

On page two, subsection 3.5, line three, by striking the word “shall” and inserting the in lieu thereof the word “must”;

One page two, subsection 3.5, line six, after the word “assessment” by inserting a comma;

One page two, subsection 3.5, line six, by striking the word “commence” and inserting in lieu thereof the work “begin”;

On page two, subdivision 3.5.1, line two, by striking the word “that” and inserting in lieu thereof the word “as”;

On page three, subsection 4.1, line two, after the word “coordinator” by inserting a comma;
On page three, subdivision 4.2.1, line three, after the word “approved” by striking the comma and inserting in lieu thereof a period;

One page three, subdivision 4.2.1, line three, by striking the word “and” and inserting in lieu thereof “The conciliation coordinator or assistant conciliation coordinator”; 

On page three, subdivision 4.2.1, line four, following the word “date” by striking the comma and inserting in lieu thereof a period;

On page three, subdivision 4.2.1, line five, by striking the word “which” and inserting in lieu thereof the words “The conference date”;

On page three, subsection 4.4, line one by striking out the words “without regard to the rules of evidence”; 

On page three, subsection 4.4, line three after the word “dispute” by striking the period and inserting the words “and without regard to the rules of evidence”.


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

Chairman Senate Committee

Chairman House Committee

Originating in the House.

In effect from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within is approved this the 1st day of April, 2004.

Governor