WEST VIRGINIA LEGISLATURE
FIRST REGULAR SESSION, 2005

ENROLLED

COMMITTEE SUBSTITUTE
FOR
House Bill No. 2669

(By Delegates Mahan, Palumbo, Cann, Pino, Armstead and Overington)

Passed April 9, 2005

In Effect from Passage
AN ACT to amend and reenact article 9, 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
recommended by the Legislative Rule-Making Review Committee and as amended by the Legislature; disapproving the promulgation of certain legislative rules; disapproving the promulgation of a legislative rule by the Board of Acupuncture relating to the dispensing of materia medica, formulary and legend drugs; authorizing the Department of Agriculture to promulgate a legislative rule relating to animal disease control; authorizing the Department of Agriculture to promulgate a legislative rule relating to the inspection of meat and poultry; authorizing the Department of Agriculture to promulgate a legislative rule relating to commercial feed; authorizing the Board of Chiropractic Examiners to promulgate a legislative rule relating to the chiropractic practice; authorizing the Contractor Licensing Board to promulgate a legislative rule relating to the West Virginia contractor licensing act; relating to authorizing the Board of Dental Examiners to promulgate a legislative rule relating to the Board; authorizing the Board of Dental Examiners to promulgate a legislative rule relating to the formation and approval of professional limited liability companies; authorizing the Board of Dental Examiners to promulgate a legislative rule relating to fees; authorizing the Board of Dental Examiners to promulgate a legislative rule relating to the formation and approval of dental corporations; authorizing the Family Protection Services Board to promulgate a legislative rule relating to perpetrator intervention programs licensure for correctional institutions; authorizing the Governor’s Committee on Crime, Delinquency and Correction to promulgate a legislative rule relating to law enforcement training standards; authorizing the Governor’s Committee on Crime, Delinquency and Correction to promulgate a legislative rule relating to the protocol for law enforcement response to domestic violence; disapproving the promulgation of a legislative rule by the Governor’s Committee on Crime, Delinquency and Correction relating to motor vehicle stop data collection standards for the study of racial profiling; authorizing the Hatfield-McCoy Regional Recreation Authority to promulgate a legislative rule
relating to use of facilities; authorizing the Board of Professional Surveyors to promulgate a legislative rule relating to minimum standards for the practice of land surveying in West Virginia; authorizing the Board of Examiners for Licensed Practical Nurses to promulgate a legislative rule relating to fees for services rendered by the Board; authorizing the Public Service Commission to promulgate a legislative rule relating to statewide telephone information and referral 211 service; authorizing the Radiologic Technology Board of Examiners to promulgate a legislative rule relating to the Board; authorizing the Board of Examiners for Registered Professional Nurses to promulgate a legislative rule relating to fees for services rendered by the Board; authorizing the Secretary of State to promulgate a legislative rule relating to agencies designated to provide voter registration services; authorizing the Board of Examiners for Speech-Language Pathology and Audiology to promulgate a legislative rule relating to speech-language pathology and audiology assistants; authorizing the State Treasurer to promulgate a legislative rule relating to procedures for fees in collections by charge, credit or debit card or by electronic payment; authorizing the Board of Veterinary Medicine to promulgate a legislative rule relating to organization and operation; authorizing the Board of Veterinary Medicine to promulgate a legislative rule relating to certified animal euthanasia technicians; and authorizing the Board of Veterinary Medicine to promulgate a legislative rule relating to a schedule of fees.

Be it enacted by the Legislature of West Virginia:

That article 9, chapter 64 of the Code of West Virginia, 1931, 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 Acupuncture.
The legislative rule filed in the state register on the second
day of September, two thousand three, under the authority of
section seven, article thirty-six, chapter thirty, of this code,
modified by the Board of Acupuncture to meet the objections
of the Legislative Rule-Making Review Committee and refiled
in the state register on the fourteenth day of October, two
thousand four, relating to the Board of Acupuncture (dispensing
of materia medica, formulary and legend drugs, 32 CSR 2), is
disapproved and not authorized.

§64-9-2. Department of Agriculture.

(a) The legislative rule filed in the state register on the
twenty-seventh day of August, two thousand four, under the
authority of section two, article nine, chapter nineteen, of this
code, modified by the Department of Agriculture to meet the
objections of the Legislative Rule-Making Review Committee
and refiled in the state register on the nineteenth day of Novem-
ber, two thousand four, relating to the Department of Agricul-
ture (animal disease control, 61 CSR 1), is authorized, with the
following amendments:

On page twelve, paragraph 6.19.b.C., after the words
‘pullorum/typhoid’ by changing the period to a semicolon and
inserting the word ‘and’;

and

On page twelve, paragraph 6.19.b.D. by striking out the
entire paragraph and inserting in lieu thereof the following: ‘a
United States Department of Agriculture Form 9-3 stating that
a minimum of 20 birds per flock or the entire flock of 20 birds
or less had a negative test for avian influenza within 10 days
prior to import. The test shall be a NPIP approved procedure.’

(b) The legislative rule filed in the state register on the
fourth day of August, two thousand four, under the authority of
section three, article two-b, chapter nineteen, of this code, relating to the Department of Agriculture (inspection of meat and poultry, 61 CSR 16), is authorized.

(c) The legislative rule filed in the state register on the twenty-seventh day of August, two thousand four, under the authority of section three, article fourteen, chapter nineteen, of this code, modified by the Department of Agriculture to meet the objections of the Legislative Rule-Making Review Committee and refiled in the state register on the twenty-fourth day of November, two thousand four, relating to the Department of Agriculture (commercial feed, 61 CSR 5), is authorized.


The legislative rule filed in the state register on the twenty-sixth day of August, two thousand four, under the authority of section five, article sixteen, chapter thirty, of this code, modified by the Board of Chiropractic Examiners to meet the objections of the Legislative Rule-Making Review Committee and refiled in the state register on the first day of February, two thousand five, relating to the Board of Chiropractic Examiners (chiropractic practice, 4 CSR 1), is authorized, with the following amendments:

On page two, paragraph 3.1.d.1, after the word “subdivision”, by striking the reference “3.1.c.2” and inserting in lieu thereof the reference “3.1.d.3”;


On page seven, subsection 11.2, after the words “The Board”, by striking the word “my” and inserting in lieu thereof the word “may”;
And,

On page nine, subsection 15.5., by striking out the words “That upon” and inserting in lieu thereof the word “Upon”.

§64-9-4. Contractor Licensing Board.

The legislative rule filed in the state register on the twenty-seventh day of August, two thousand four, under the authority of section five, article eleven, chapter twenty-one, of this code, modified by the Contractor Licensing Board to meet the objections of the Legislative Rule-Making Review Committee and refiled in the state register on the twenty-fifth day of January, two thousand five, relating to the Contractor Licensing Board (West Virginia contractor licensing act, 28 CSR 2), is authorized, with the following amendments:

On page two, subdivision 3.9.a, after the word “five” by inserting the word “hundred”;

On page seven, subdivision 3.30., after the word “repair.” by inserting the words “A residential contractor is considered licensed for all crafts required in the construction, repair or improvement of a residential structure, as that term is defined in subsection 3.33 of this rule, except those crafts for which local ordinance or state law other than W. Va. Code § 21-11-1, et seq, require licensure, such as the electrician’s license required by the Office of the State Fire Marshal under the provisions of W. Va. Code §29-3b-1, et seq.”;

On page fifteen, subdivision 8.1, after the word “person.” by striking out the word “The” and inserting in lieu thereof the words “After an administrative hearing, as provided for in Section 9 of this rule, the”;

On page fifteen, subdivision 8.1, after the word “license.” by striking out the remainder of the subdivision;
and

On page fifteen, after subdivision 8.3, by inserting a new subdivision, designated subdivision 8.4, to read as follows: “The Board shall, in accordance with Section 9 of this rule, provide for an administrative hearing before a penalty is assessed.”

§64-9-5. Board of Dental Examiners.

(a) The legislative rule filed in the state register on the twenty-fifth day of August, two thousand four, under the authority of section six, 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 fifteenth day of February, two thousand five, relating to the Board of Dental Examiners (rule for the board of dental examiners, 5 CSR 1), is authorized.

(b) The legislative rule filed in the state register on the twenty-fifth day of August, two thousand four, under the authority of section thirteen hundred four, article thirteen, chapter thirty-one-b, 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 fifteenth day of February, two thousand five, relating to the Board of Dental Examiners (formation and approval of professional limited liability companies, 5 CSR 2), is authorized, with the following amendment:

On page one, subsection 3.4., line four, after the words “filing fee” by inserting the words “of $200”, and after the words “renewal fee” by striking out the words “as set forth in the Board’s fee schedule 5CSR3” and inserting in lieu thereof the words “of $150”.

(c) The legislative rule filed in the state register on the twenty-fifth day of August, two thousand four, under the authority of section six, 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 fifteenth day of February, two thousand five, relating to the Board of Dental Examiners (formation and approval of dental corporations, 5 CSR 6), is authorized.

§64-9-6. Family Protection Services Board.

The legislative rule filed in the state register on the twenty-seventh day of August, two thousand four, under the authority of section four hundred four, 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 eighteenth day of February, two thousand five, relating to the Family Protection Services Board (perpetrator intervention programs licensure for correctional institutions, 191 CSR 5), is authorized, with the following amendments:

On page eight, subsection 4.6., by striking out the word “shall”, and inserting in lieu thereof the word “may” and after the word “subdivision” by striking out the letter “d” and inserting in lieu thereof the letter “c”.

§64-9-7. Governor’s Committee on Crime, Delinquency and Correction.

(a) The legislative rule filed in the state register on the fifteenth day of June, two thousand four, 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 twenty-sixth day of July, two thousand four, relating to the Governor’s Committee on Crime, Delinquency and Correction (law enforcement training standards, 149 CSR 2), is authorized.

(b) The legislative rule filed in the state register on the ninth day of August, two thousand four, under the authority of section one thousand one hundred two, article twenty-seven, chapter forty-eight, of this code, relating to the Governor’s Committee on Crime, Delinquency and Correction (protocol for law enforcement response to domestic violence, 149 CSR 3), is authorized.

(c) The legislative emergency rule filed in the state register on the twenty-third day of November, two thousand four, under the authority of section three, article two, chapter seventeen-G, of this code, relating to the Governor’s Committee on Crime, Delinquency and Correction (motor vehicle stop data collection standards for the study of racial profiling, 149 CSR 5), is disapproved and not authorized.


The legislative rule filed in the state register on the eighth day of April, two thousand four, under the authority of section one, article fourteen, chapter twenty, of this code, modified by the Hatfield-McCoy Regional Recreation Authority to meet the objections of the Legislative Rule-Making Review Committee and refiled in the state register on the twenty-fifth of January, two thousand five, relating to the Hatfield-McCoy Regional Recreation Authority (use of facilities, 204 CSR 1), is authorized, with the following amendments:

On page four, after subsection 3.5, by adding a new subsection, designated subsection 3.6, to read as follows:

“3.6. No person may operate an ATV on any road or highway with a center line or more than two lanes within the
Hatfield-McCoy enforcement area except for the purpose of crossing the road or highway at an angle of approximately ninety degrees to the direction of the highway and at a place where no obstruction prevents a quick and safe crossing. An ATV operator is permitted to crossing the road or highway if:

a. The vehicle is brought to a complete stop before crossing the shoulder or main traveled way of the highway;

b. The operator yields his or her right-of-way to all oncoming traffic that constitutes an immediate potential hazard; and

c. Both the headlight and taillight are illuminated when the crossing is made if the vehicle is so equipped.”;

On page four, by redesignating subsection 3.6. as subsection 3.7. and by renumbering the remaining subsections accordingly;

On page six, after subsection 4.1., by inserting a new subsection, designated subsection 4.2., to read as follows:

“4.2. No person under the age of eighteen may operate an ATV without a written statement, signed by the minor’s parent or guardian certifying that:

a. Any machine operated by the minor will be of a model that is recommended by the manufacturer as appropriate to the minor’s age and size;

b. All rules governing the use of the Area have been reviewed by the parent or guardian and explained to the minor in sufficient detail to enable the minor to abide by the rules; and

c. Any minor under the age of sixteen will remain under the supervision of and within the sight of the parent or guardian at all times.”;
On page six, by redesignating subsection 4.2. as subsection 4.3.;

On page six, by redesignating subsection 4.3. as subsection 4.4., and at the end of the subsection, by inserting the following: “No person may operate an ATV with a passenger under the age of eighteen unless the operator has, at a minimum, a level two intermediate driver’s license or its equivalent or is eighteen years of age or older.”;

On page six, by redesignating subsection 4.4. as subsection 4.6. and by renumbering the remaining subsections accordingly;

And,

On page seven, subsection 5.2., after the words “When operated from”, by striking out the words “one-half hour after” and after the words “sunset to”, by striking out the words “one-half hour before”.


The legislative rule filed in the state register on the seventeenth day of May, two thousand four, under the authority of section four, article thirteen-a, chapter thirty, of this code, modified by the Board of Examiners of Surveyors to meet the objections of the Legislative Rule-Making Review Committee and refiled in the state register on the fourth day of February, two thousand five, relating to the Board of Examiners of Land Surveyors (minimum standards for the practice of land surveying in West Virginia, 23 CSR 1), is authorized, with the following amendments:

On page four, by striking out subdivisions 5.3.1. and 5.3.2 and by inserting in lieu thereof two new subdivisions to read as follows:
“5.3.a. To be eligible for ‘retired’ status, a licensee must have an active or inactive license and certify that he or she is no longer practicing surveying or supervising any employees who perform surveying activities in West Virginia.

5.3.a.1. A licensee on retired status may not affix his or her P.S. seal to any surveying documents.

5.3.a.2. A licensee on retired status is not required to pay an annual license renewal fee or to complete Professional Development Hours (PDHs).

5.3.a.3. The Board will issue to each licensee on retired status a certificate noting the honorific title of ‘Professional Surveyor, Retired.’

5.3.a.4. Before returning to the active practice of surveying a licensee on retired status must complete delinquent Professional Development Hours (PDHs) for each year on retired status up to a maximum of 16 PDHs and must pay the current license renewal fee.

5.3.b. Any licensee may apply for ‘inactive’ status.

5.3.b.1. A licensee on inactive status may not provide surveying services or receive any compensation for any type of surveying activities conducted in West Virginia.

5.3.b.2. A licensee on inactive status is not required to complete the required number of Professional Development Hours (PDHs).

5.3.b.3. A licensee on inactive status is required to pay the annual license renewal fee and any required late fees accrued for the license period unless the licensee applies to the Board and is granted an exemption. A licensee may request an
exemption from the renewal fee if he or she can demonstrate with supporting documentation that during the license year he or she will be serving on active duty in the Armed Forces of the United States for a period of more than 120 consecutive days or experiencing physical disability, illness or other extenuating circumstances.

5.3.b.4. The Board will issue to each licensee who is granted inactive status an annual license card noting ‘Inactive Status’.

5.3.b.5. A licensee on inactive status who elects to return to the active practice of surveying must complete Professional Development Hours (PDHs) for each year on inactive status up to a maximum of 16 PDHs.”]


The legislative rule filed in the state register on the eighteenth day of August, two thousand four, under the authority of section seven-a, article seven-a, chapter thirty, of this code, relating to the Board of Examiners of Licensed Practical Nurses (fees for services rendered by the Board, 10 CSR 4), is authorized.


The legislative rule filed in the state register on the fourth day of March, two thousand four, under the authority of section two, article eight, chapter twenty-four, of this code, modified by the Public Service Commission to meet the objections of the Legislative Rule-Making Review Committee and refiled in the state register on the twenty-first day of January, two thousand five, relating to the Public Service Commission (statewide telephone information and referral 211 service, 150 CSR 29), is authorized.
§64-9-12. Radiologic Technology Board of Examiners.

The legislative rule filed in the state register on the tenth day of June, two thousand four, under the authority of section five, article twenty-three, chapter thirty, of this code, modified by the Radiologic Technology Board of Examiners to meet the objections of the Legislative Rule-Making Review Committee and refiled in the state register on the twenty-sixth day of July, two thousand four, relating to the Radiologic Technology Board of Examiners (Board rule, 18 CSR 1), is authorized.


The legislative rule filed in the state register on the seventeenth day of August, two thousand four, under the authority of section eight-a, 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 September, two thousand four, relating to the Board of Examiners for Registered Professional Nurses (fees for services rendered by the Board, 19 CSR 12), is authorized, with the following amendments:

On page one, subsection 2.9., by striking out the subsection in its entirety and inserting in lieu thereof the following:

“2.9. Reinstatement of Lapsed License ............ $50.00”;

And,

On page two, by striking out subsections 2.23. and 2.24., in their entirety and inserting in lieu thereof the following:

“2.23. Midwife License ......................... $20.00
2.24. Midwife License Renewal ............... $10.00”.
§64-9-14. Secretary of State.

1 The legislative rule filed in the state register on the twenty-seventh day of August, two thousand four, authorized under the authority of section thirteen, article two, chapter three, of this code, relating to the Secretary of State (agencies designated to provide voter registration services, 153 CSR 28), is authorized.


1 The legislative rule filed in the state register on the ninth day of August, two thousand four, 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 thirteenth day of December, two thousand four, relating to the Board of Examiners for Speech-Language Pathology and Audiology (speech-language pathology and audiology assistants, 29 CSR 2), is authorized, with the following amendment:

11 On page one, subsection 2.5., after the word “licensure”, by inserting the words “and who assumes legal responsibility for services provided by an assistant”.


1 The legislative rule filed in the state register on the eighteenth day of August, two thousand four, under the authority of section six, article three-a, chapter twelve, of this code, modified by the State Treasurer to meet the objections of the Legislative Rule-Making Review Committee and refiled in the state register on the seventh day of February, two thousand five, relating to the State Treasurer (procedures for fees in collections by charge, credit or debit card or by electronic payment, 112 CSR 12), is authorized.
§64-9-17. Board of Veterinary Medicine.

(a) The legislative rule filed in the state register on the eleventh day of August, two thousand three, 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 fourteenth day of June, two thousand four, relating to the Board of Veterinary Medicine (organization and operation, 26 CSR 1), is authorized, with the following amendments:

On page two, subsection 3.4., the last line, by striking out the words “or upon the written request of any three (3) members of the Board”;

On page two, subsection 3.6., by striking out “$150.00” and inserting in lieu thereof “$100.00”;

On page four, subsection 4.7., line four, after the words “not qualified to take the examination, the” by striking out the word “Board” and inserting in lieu thereof the words “Secretary-Treasurer”;

On page four, subsection 4.7., after the words “The Board shall refund”, by striking out the words “fifty percent of the”; 

On page four, subsection 5.4., after the word “The” at the beginning of the subsection, by striking out the word “Board” and inserting in lieu thereof the words “Secretary-Treasurer”;

And,

On page six, subsection 7.1., after the words “On or”, by striking out the word “about” and inserting in lieu thereof the word “before”.
(b) The legislative rule filed in the state register on the eleventh day of August, two thousand three, under the authority of section nine, article ten-a, 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 fourteenth day of June, two thousand four, relating to the Board of Veterinary Medicine (certified animal euthanasia technicians, 26 CSR 5), is authorized.

(c) The legislative rule filed in the state register on the ninth day of August, two thousand three, 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-first day of January, two thousand five, relating to the Board of Veterinary Medicine (schedule of fees, 26 CSR 6), is authorized, with the following amendments:

On page one, by striking out all of subsections 2.1 through 2.8, and inserting in lieu thereof the following:

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2.1 Veterinarian application and examination fee .. $295.00
2.2 Veterinarian license fee ...................... $5.00
2.3 Duplicate license .......................... $15.00
2.4 Annual renewal fee ......................... $225.00
2.5 Temporary permit ........................ $100.00
2.6 Temporary permit renewal fee .............. $25.00
2.7 Written confirmation of licensure, registration or certification by West Virginia ............... $25.00
2.8 North American Veterinary License Exam (NAVLE) eligibility processing fee ................ $50.00
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That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

[Signatures]

Originating in the House.

In effect from passage.

[Signatures]

The within is approved this the ____ day of ____ 2005.

[Signatures]