WEST VIRGINIA LEGISLATURE
FIRST REGULAR SESSION, 2007

ENROLLED

COMMITTEE SUBSTITUTE
FOR
House Bill No. 2590

(By Delegates Brown, Miley, Burdiss, and Talbott)

Passed March 8, 2007

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 Department of Revenue 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; authorizing the Alcoholic Beverage Control Commission to promulgate a legislative rule relating to private club licensing; authorizing the Alcoholic Beverage Control Commission to promulgate a legislative rule relating to licensing of retail liquor stores; authorizing the Alcoholic Beverage Control Commission to promulgate a legislative rule relating to nonintoxicating beer licensing & operations procedures; authorizing the
Insurance Commissioner to promulgate a legislative rule relating to rate filing requirements for title insurance companies; authorizing the Insurance Commissioner to promulgate a legislative rule relating to individual limited health benefit plans; authorizing the Insurance Commissioner to promulgate a legislative rule relating to group limited health benefit plans; authorizing the Racing Commission to promulgate a legislative rule relating to thoroughbred racing; authorizing the Tax Commissioner to promulgate a legislative rule relating to abusive tax shelters; and authorizing the Tax Commissioner to promulgate a legislative rule relating to consumers sales & service tax & use tax - reduced sales tax on food.

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 THE DEPARTMENT OF REVENUE TO PROMULGATE LEGISLATIVE RULES.

§64-7-1. Alcohol Beverage Control Commission.

(a) The legislative rule filed in the State Register on the twenty-fifth day of July, two thousand six, authorized under the authority of section ten, article seven, chapter sixty, of this code, relating to the Alcohol Beverage Control Commission (private club licensing, 175 CSR 2), is authorized with the following amendment:

On page one, by redesignating subdivision 2.5.1. as subsection 2.6. and renumbering the remaining subsections accordingly;

On page fifteen, subdivision 6.7.1., after the word “effect” by striking out the comma and the word “and”;

And,

On page fifteen, subdivision 6.7.2. following the word “rule” by inserting a comma and the following: “and

6.7.3. A suspension order suspending a license in the interest of public safety, as specified in W. Va. Code §60-7-13a”.
(b) The legislative rule filed in the State Register on the twenty-eighth day of July, two thousand six, authorized under the authority of section six, article three-A, chapter sixty, of this code, relating to the Alcohol Beverage Control Commission (licensing of retail liquor stores, 175 CSR 5), is authorized, with the following amendment:

On page fifteen, by redesignating paragraph 8.1.1.a. as subdivision 8.1.2. and by renumbering the remaining subdivision accordingly;

And,

On page fifteen, subdivision 8.1.1.a., line two, after the word "for" by striking out the word "the" and inserting in lieu thereof the word "a" and, after the word "investigation", by inserting the following: "undertaken pursuant to subdivision 8.1.1. of this rule".

(c) The legislative rule filed in the State Register on the twenty-eighth day of July, two thousand six, authorized under the authority of section twenty-two, article sixteen, chapter eleven, of this code, relating to the Alcohol Beverage Control Commission (nonintoxicating beer licensing and operations procedures, 176 CSR 1), is authorized, with the following amendments:

On page four, by redesignating paragraph 3.1.2.a. as subdivision 3.1.3. and renumbering the remaining subdivision accordingly;

On page four, paragraph 3.1.2.a., line two, after the words "by the ABCC for" by striking out the word "the" and inserting in lieu thereof the word "a" and after the word "investigation" by inserting the following: "undertaken pursuant to subdivision 3.1.2. of this rule";

On page twelve, subdivision 3.2.2, on line three, after the word "manufacturer" by striking out the word "whose chief place of business is outside of the State of West Virginia";

and

On page twenty-seven, following paragraph 13.2.1.3, by inserting a new paragraph designated as 13.2.1.4, to read as follows:
“13.2.1.4. The provisions of this rule and W. Va. Code § 11-16-1 et. seq. shall be part of all franchise agreements subject to the provisions of W. Va. Code § 11-16-21 and may not be altered by the parties.”;

On page twenty, subdivision 6.1.14, by striking out the word “and” and the comma;

On page twenty, subdivision 6.1.15, by changing the period to a semicolon and inserting the word “and” and a comma;

And,

On page twenty, following subdivision 6.1.15, by inserting a new subdivision, designated as 6.1.16, to read as follows:

“6.1.16. For any person to manufacture, sell, transport, deliver, furnish, purchase, consume or possess any nonintoxicating beer except as provided by the laws of this state or rules lawfully promulgated by the Commissioner.”.

§64-7-2. Insurance Commissioner.

(a) The legislative rule filed in the State Register on the twenty-seventh day of July, two thousand six, 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 twentieth day of December, two thousand six, relating to the insurance Commissioner (rate filing requirements for title insurance companies, 114 CSR 77), is authorized with the following amendment:

On page one, section 3, subsection 3.3, line thirty-five, following the words “household purposes”, by striking out the comma and the words “where the insurance affords coverage in whole or in part to the person occupying the property”.

(b) The legislative rule filed in the State Register on the twenty-seventh day of July, two thousand six, 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
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Review Committee and refiled in the State Register on the twentieth day of December, two thousand six, relating to the insurance Commissioner (individual limited health benefits plans, 114 CSR 78), is authorized with the following amendment:

On page two, section five, subsection 5.3, line eighteen, by striking out the word “An” and inserting in lieu thereof the following: “Except as provided in section three, article fifteen-d, chapter thirty-three of the Code of West Virginia, an”;

And,

On page three, section six, after subsection 6.3., by inserting a new subsection, designated subsection 6.4., to read as follows:

“6.4. Before approving any plan or policy under this rule, the Commissioner must find that the plan or policy furthers the legislative purpose of W. Va. Code §33-15D-1, et seq., by providing substantial preventative care and primary care benefits. This subsection does not apply to any plan or policy approved by the Commissioner prior to the effective date of this rule unless and until the provider of the plan or policy makes a subsequent filing with regard to such plan or policy.”

(c) The legislative rule filed in the State Register on the twenty-seventh day of July, two thousand six, 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 twentieth day of December, two thousand six, relating to the insurance Commissioner (group limited health benefits plans, 114 CSR 79), is authorized, with the following amendment:

On page two, section seven, after subsection 7.3., by inserting a new subsection, designated subsection 7.4., to read as follows:

“7.4. Before approving any plan or policy under this rule, the Commissioner must find that the plan or policy furthers the legislative purpose of W. Va. Code §33-16F-1, et seq., by providing substantial preventative care and primary care benefits. This subsection does not apply to any plan or policy
approved by the Commissioner prior to the effective date of this rule unless and until the provider of the plan or policy makes a subsequent filing with regard to such plan or policy.”.

§64-7-3. Racing Commission.

The legislative rule filed in the State Register on the twenty-eighth day of July, two thousand six, 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 seventeenth day of January, two thousand seven, relating to the Racing Commission (thoroughbred racing, 178 CSR 1), is authorized, with the following amendment:

On page four, subsection 2.53, after the word “substance” by striking out the comma;

On page fifty-eight, subsection 66.10., after the word “electrolytes.” by striking out the words “Prerace-testing” and inserting in lieu thereof the words “Pre-race testing”;  

On page fifty-eight, subsection 66.10., after the words “If testing” by striking out “post race” and inserting in lieu thereof the word “post-race”;

On page fifty-eight, subsection 66.10., after the words “dioxide concentration.” by striking out the word “If” and capitalizing the word “the”;

On page fifty-eight, subsection 66.10., after the words “racing chemist” by inserting the words “shall inform the stewards if he or she”;  

On page fifty-eight, subsection 66.10., after the words “per liter” by changing the comma to a period and by striking out the remainder of the subsection;

On page fifty-eight, subsection 66.11., by striking out the word “shall” and inserting in lieu thereof the word “do”;

On page sixty-three, by striking out subdivision 73.2.1. through subparagraph 73.2.1.1.c. and inserting in lieu thereof the following:
acting with reasonable cause, the stewards or a designated representative of the Racing Commission may direct any licensee, occupational permit holder or employee to deliver a specimen of urine in the presence of a designated person or subject himself or herself to the taking of a sample of blood or other bodily fluids by a designated person.”

And,

On pages sixty-three and sixty-four, by redesignating subdivisions 73.2.2. through 7.3.5. as subdivisions 73.2.b. through 73.2.e.

§64-7-4. Tax Department.

(a) The legislative rule filed in the State Register on the twenty-fifth day of July, two thousand six, authorized under the authority of section five, article ten, chapter eleven, of this code, modified by the Tax Department to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on the second day of November, two thousand six, relating to the Tax Department (abusive tax shelters, 110 CSR 10J), is authorized, with the following amendments:

On page five, paragraph 3.2.17.1., on line three, by striking out “3.2.13.1” and inserting in lieu thereof “3.2.13”;

On page fifteen, subdivision 6.3.2., by striking out the words “Makes or causes another person to make a false or fraudulent statement with respect to securing a tax benefit or a gross valuation as to any material matter, and”;

And,

On page seventeen, subdivision 7.3.2., by striking out the subdivision in its entirety and renumbering the remaining subdivision.

(b) The legislative rule filed in the State Register on the twenty-second day of December, two thousand five, authorized under the authority of section five, article ten, chapter eleven, of this code, modified by the Tax Department to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on the eighth day of June, two thousand six, relating to the Tax Department (Consumers Sales and Service Tax and Use Tax
- reduced sales tax on food, 110 CSR 15H), is authorized, with the following amendment:

On page eight, section 5.1, line one, after the word “Section”, by striking out “2” and inserting in lieu thereof “3”.

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 appeared this the 19th
day of March, 2007.

Governor