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WEST VIRGINIA LEGISLATURE

WEST VIRGINIA
SECRETARY OF STATE

SEVENTY-NINTH LEGISLATURE

REGULAR SESSION, 2009



ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 227

(SENATORS MINARD, FANNING, PREZIOSO, UNGER,
BOLEY AND FACEMYER, *original sponsors*)

[Passed April 11, 2009; in effect from passage.]

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[Passed April 11, 2009; in effect from passage.]

AN ACT to amend and reenact article 7, chapter 64 of the Code of West Virginia, 1931, as amended, relating generally to the promulgation of administrative rules by the Department of Revenue; 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; repealing certain legislative rules; authorizing the State Tax Department to repeal a legislative rule relating to valuation of intangible personal property including stock accounts receivable and stock in banks and capital of savings and loan associations; authorizing the State Tax Department to promulgate a legislative rule relating to combined returns pursuant to an investigation by the Tax Commissioner; authorizing the State Tax Department to promulgate a legislative rule relating to the film industry investment tax credit; authorizing the State Tax Department to promulgate a legislative rule relating to electronic filing and payment of special district excise tax; authorizing the State Tax Department to promulgate a legislative rule relating to the withholding or denial of personal income tax refunds from taxpayers who owe municipal costs, fines, forfeitures or penalties; disapproving the State Tax Department's proposed legislative rule relating to an exchange of information agreement between the State Tax Division and the Department of Health and Human Resources Office of the Inspector General Medicaid Fraud Control Unit; authorizing the Insurance Commissioner to promulgate a legislative rule relating to coordination of health benefits; authorizing the Insurance Commissioner to promulgate a legislative rule relating to long-term care insurance; authorizing the Insurance Commissioner to promulgate a legislative rule relating to actuarial opinion and memorandum; 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 viatical settlements; authorizing the Insurance Commissioner to promulgate a legislative rule relating to discount medical plan organizations and discount prescription drug plan organizations; authorizing the Insurance Commissioner to promulgate a legislative rule relating to professional employer organizations; authorizing the Insurance Commissioner to promulgate a

legislative rule relating to preneed life insurance minimum standards for determining reserve liabilities and nonforfeiture values; authorizing the Racing Commission to promulgate a legislative rule relating to greyhound racing; and authorizing the Lottery Commission to promulgate a legislative rule relating to limited video lottery.

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. State Tax Department.

1 (a) The legislative rule filed in the State Register on
2 August 29, 2008, authorized under the authority of section
3 five, article ten, chapter eleven of this code, relating to the
4 State Tax Department (Valuation of Intangible Personal
5 Property Including Stock Accounts Receivable and Stock
6 in Banks and Capital of Savings and Loan Associations,
7 110 CSR 1L), is authorized.

8 (b) The legislative rule filed in the State Register on
9 August 29, 2008, authorized under the authority of section
10 seven-d, article ten, chapter eleven of this code, modified
11 by the State Tax Department to meet the objections of the
12 Legislative Rule-Making Review Committee and refiled in
13 the State Register on January 12, 2009, relating to the
14 State Tax Department (Combined Returns Pursuant to an
15 Investigation by the Tax Commissioner, 110 CSR 10K), is
16 authorized.

17 (c) The legislative rule filed in the State Register on
18 August 29, 2008, authorized under the authority of section
19 nine, article thirteen-x, chapter eleven of this code,
20 modified by the State Tax Department to meet the objec-

21 tions of the Legislative Rule-Making Review Committee
22 and refiled in the State Register on January 12, 2009,
23 relating to the State Tax Department (Film Industry
24 Investment Tax Credit, 110 CSR 13X), is authorized with
25 the following amendments:

26 On page five, paragraph 3.1.b.1. by striking out the
27 words "Tax Commissioner" and inserting in lieu thereof
28 the words "Film Office";

29 On page five, paragraph 3.1.b.2. by striking out the
30 words "this article" and inserting in lieu thereof "W.Va.
31 Code, §11-13X-1 et seq";

32 On page six, by striking out "4.1.d." and inserting in lieu
33 thereof "4.1.c.3.";

34 On page six, by striking out all of subdivision 4.1.e. and
35 inserting in lieu thereof a new subdivision, designated
36 subdivision 4.1.d., to read as follow:

37 4.1.d. Upon approval of an eligibility application, the
38 eligible company shall begin production within one
39 hundred twenty (120) days of approval, or shall otherwise
40 forfeit the right to claim any tax credit for the approved
41 qualified project. The forfeiture does not preclude the
42 eligible company from resubmitting an eligibility applica-
43 tion for the same project at a future date. Upon written
44 request by the eligible company, and prior to the expira-
45 tion of the one hundred twenty (120) day deadline, the
46 reviewing committee may extend the deadline at its
47 discretion.;

48 On page six, by striking out "4.2.c.1." and inserting in
49 lieu thereof "4.2.a.";

50 On page six, by striking out "4.2.c.2." and inserting in
51 lieu thereof "4.2.b.";

52 On page six, by striking out “4.2.c.3.” and inserting in
53 lieu thereof “4.2.c.”;

54 On page six, by striking out “4.2.c.4.” and inserting in
55 lieu thereof “4.2.d.”;

56 On page seven, by striking out “4.2.d” and inserting in
57 lieu thereof “4.2.e.”;

58 On page nine, subsection 5.5, by striking out the words
59 “be considered” and inserting in lieu thereof the words
60 “maintain its initial position in the queue”;

61 On page nine, by striking out all of subdivisions 5.5.a.
62 and 5.5.b.;

63 On page nine, by inserting two new subsections, desig-
64 nated subsections 5.6 and 5.7, to read as follows:

65 5.6. Requests for Increase in Tax Credit Allocation. – If
66 an eligible company seeks an increase in the amount of tax
67 credits for an approved qualified project, the eligible
68 company shall submit an application for modification to
69 the Film Office, which shall be submitted by and bear the
70 same signature as the person who submitted the original
71 eligibility application, or a duly authorized representative.
72 The reviewing committee shall place requests for an
73 increase in the order of receipt of all applications, assign
74 each request a new application number and review each
75 request separately from the original eligibility application.
76 The reviewing committee shall consider the application at
77 its next scheduled meeting, but within thirty (30) days of
78 receipt, and may request additional information from the
79 applicant to assist in its evaluation of the request. The
80 reviewing committee shall determine approval using the
81 same criteria of the review process and based on the
82 availability of any remaining credits for the fiscal year in
83 which the request is received. The Film Office shall notify

84 the eligible company in writing of the reviewing commit-
85 tee's decision.

86 5.7. Other Revisions to Application. – If an eligible
87 company seeks to revise its original eligibility application
88 for a qualified project for reasons other than those identi-
89 fied in subsection 5.6 of this rule, the eligible company
90 shall submit an application for modification to the Film
91 Office, which shall be submitted by and bear the same
92 signature as the person who submitted the original
93 eligibility application, or a duly authorized representative.
94 The reviewing committee shall consider the application at
95 its next scheduled meeting, but within thirty (30) days of
96 receipt, and may request additional information from the
97 applicant to assist in its evaluation of the request. The
98 reviewing committee shall determine the approval using
99 the same criteria of the review process. The Film Office
100 shall notify the eligible company in writing of the review-
101 ing committee's decision.;

102 And by renumbering the remaining subsections;

103 And,

104 On page ten, subsection 6.1., by striking out "4.1.e." and
105 inserting in lieu thereof "4.1.d.".

106 (d) The legislative rule filed in the State Register on
107 August 29, 2008, authorized under the authority of section
108 five, article ten, chapter eleven of this code, modified by
109 the State Tax Department to meet the objections of the
110 Legislative Rule-Making Review Committee and refiled in
111 the State Register on January 12, 2009, relating to the
112 State Tax Department (Electronic Filing and Payment of
113 Special District Excise Tax, 110 CSR 39), is authorized.

114 (e) The legislative rule filed in the State Register on
115 August 29, 2008, authorized under the authority of section
116 two-b, article ten, chapter eight of this code, modified by

117 the State Tax Department to meet the objections of the
118 Legislative Rule-Making Review Committee and refiled in
119 the State Register on January 12, 2009, relating to the
120 State Tax Department (Withholding or Denial of Personal
121 Income Tax Refunds from Taxpayers Who Owe Municipal
122 Costs, Fines, Forfeitures or Penalties, 110 CSR 40), is
123 authorized.

124 (f) The legislative rule filed in the State Register on
125 August 29, 2008, authorized under the authority of section
126 five-s, article ten, chapter eleven of this code, modified by
127 the State Tax Department to meet the objections of the
128 Legislative Rule-Making Review Committee and refiled in
129 the State Register on January 12, 2009, relating to the
130 State Tax Department (Exchange of Information Agree-
131 ment between the State Tax Division and the Department
132 of Health and Human Resources Office of the Inspector
133 General Medicaid Fraud Control Unit, 110 CSR 50E), is
134 disapproved.

§64-7-2. Insurance Commissioner.

1 (a) The legislative rule filed in the State Register on
2 August 29, 2008, authorized under the authority of section
3 ten, article two, chapter thirty-three of this code, modified
4 by the Insurance Commissioner to meet the objections of
5 the Legislative Rule-Making Review Committee and
6 refiled in the State Register on February 20, 2009, relating
7 to the Insurance Commissioner (Long-term Care Insur-
8 ance, 114 CSR 32), is authorized.

9 (b) The legislative rule filed in the State Register on
10 August 29, 2008, authorized under the authority of section
11 ten, article two, chapter thirty-three of this code, modified
12 by the Insurance Commissioner to meet the objections of
13 the Legislative Rule-Making Review Committee and
14 refiled in the State Register on February 20, 2009, relating
15 to the Insurance Commissioner (Actuarial Opinion and
16 Memorandum, 114 CSR 41), is authorized.

17 (c) The legislative rule filed in the State Register on
18 August 29, 2008, authorized under the authority of section
19 ten, article two, chapter thirty-three of this code, modified
20 by the Insurance Commissioner to meet the objections of
21 the Legislative Rule-Making Review Committee and
22 refiled in the State Register on October 22, 2008, relating
23 to the Insurance Commissioner (Continuing Education for
24 Individual Insurance Producers, 114 CSR 42), is autho-
25 rized, with the following amendment:

26 On page 11, subdivision 8.5.a., by striking out the words
27 “within fifteen (15) days of the date of hearing” and
28 inserting in lieu thereof the words “not less than fifteen
29 (15) days prior to the date of hearing”.

30 (d) The legislative rule filed in the State Register on
31 August 14, 2008, authorized under the authority of section
32 ten, article two, chapter thirty-three of this code, modified
33 by the Insurance Commissioner to meet the objections of
34 the Legislative Rule-Making Review Committee and
35 refiled in the State Register on February 20, 2009, relating
36 to the Insurance Commissioner (Viatical Settlements, 114
37 CSR 80), is authorized.

38 (e) The legislative rule filed in the State Register on
39 August 14, 2008, authorized under the authority of section
40 ten, article two, chapter thirty-three of this code, modified
41 by the Insurance Commissioner to meet the objections of
42 the Legislative Rule-Making Review Committee and
43 refiled in the State Register on February 20, 2009, relating
44 to the Insurance Commissioner (Discount Medical Plan
45 Organizations and Discount Prescription Drug Plan
46 Organizations, 114 CSR 83), is authorized.

47 (f) The legislative rule filed in the State Register on
48 August 29, 2008, authorized under the authority of section
49 ten, article two, chapter thirty-three of this code, modified
50 by the Insurance Commissioner to meet the objections of
51 the Legislative Rule-Making Review Committee and

52 refiled in the State Register on February 20, 2009, relating
53 to the Insurance Commissioner (Professional Employer
54 Organizations, 114 CSR 85), is authorized with the follow-
55 ing amendments:

56 On page 1, subsection 2.1., after the words 'voting stock'
57 by striking the word 'or' and inserting in lieu thereof the
58 word 'of';

59 On page 1, subdivision 2.3.a, after the word 'hiring' by
60 inserting the words 'his, her or';

61 On page 2, subsection 3.1., after the words 'itself out as
62 providing' by omitting the comma, and after the words
63 'professional employer' by inserting the word 'organiza-
64 tion';

65 On page 2, subdivision 3.2.b, after the words 'fee of' by
66 striking the word '\$300' and inserting in lieu thereof the
67 words '\$200, and an annual report fee of \$100';

68 On page 2, subdivision 3.2.h., by striking out said
69 subdivision 3.2.h. in its entirety and inserting in lieu
70 thereof a new subdivision 3.2.h. to read as follows:

71 h. A statement of management which includes the name
72 and evidence of business experience of any person who
73 serves as a president, chief executive officer or otherwise
74 has the authority to act as a senior executive officer of the
75 PEO.;

76 On page 3, subdivision 3.2.l., in the last sentence of the
77 subdivision, after the words 'certificate of authority' by
78 inserting the words 'to do business in the state, issued by
79 the Secretary of State,';

80 And,

81 On page 3, subsection 3.4 after the words 'file for
82 renewal of' by striking the word 'their' and inserting in
83 lieu thereof the word 'its', and after the words 'accompa-

84 nied by a fee of' by striking the word '\$300' and inserting
85 in lieu thereof the words '\$200 for the application fee and
86 \$100 for the annual report.'

87 (g) The legislative rule filed in the State Register on
88 August 29, 2008, authorized under the authority of section
89 ten, article two, chapter thirty-three of this code, modified
90 by the Insurance Commissioner to meet the objections of
91 the Legislative Rule-Making Review Committee and
92 refiled in the State Register on October 22, 2008, relating
93 to the Insurance Commissioner (Preneed Life Insurance
94 Minimum Standards for Determining Reserve Liabilities
95 and Nonforfeiture Values, 114 CSR 86), is authorized.

§64-7-3. Racing Commission.

1 The legislative rule filed in the State Register on July 29,
2 2006, authorized under the authority of section six, article
3 twenty-three, chapter nineteen of this code, approved for
4 promulgation by the Legislature on March 11, 2006 and
5 refiled in the State Register on May 5, 2006, relating to the
6 Racing Commission (Greyhound Racing, 178 CSR 2) is
7 authorized with the following amendment:

§178-2-53. Training Tracks.

1 2-53.1. General physical requirements.

2 53.1.a. Any public training track must be approved and
3 licensed by the commission. Only a public training track
4 meeting the following criteria shall be eligible to receive
5 funds as provided in WVC §19-23-10.

6 53.1.b. The state may own or operate or both own and
7 operate any training track built in this state, or a training
8 track may be on land leased at fair market value for a
9 period of twenty years. The state may contract operations
10 to a private entity. Any lease or contract for services will
11 follow the requirements of article three, chapter five-a of

12 this code and the requirements of the Department of
13 Administration regarding purchasing.

14 53.1.b.1. The track compound shall have (1) a minimum
15 area of twenty acres for development of the initial facility
16 and an additional ten acres available for future expansion,
17 (2) a ten-thousand-gallons-per-minute sewer plant, (3)
18 adequate ingress and egress for safety and accessibility
19 and (4) adequate public parking.

20 53.1.b.2. The track shall be at least 1,320 feet in circum-
21 ference or 1/4 mile in length, and the track shall have
22 adequate in-ground heating elements to ensure year-round
23 training.

24 53.1.b.3. The track shall have an approved racing
25 surface, rails, lure, timing equipment, and starting box.
26 The track surface shall consist of at least six inches of silt
27 surface, followed by at least six inches of fill sand, fol-
28 lowed by two inches of rigid insulation with an under-slab
29 membrane.

30 53.2. Security requirements.

31 53.2.a. Security shall be adequate to ensure the safety of
32 persons and dogs. The training track must have the
33 following minimum security measures at a kennel com-
34 pound.

35 53.2.b. The kennel compound must be surrounded by a
36 perimeter fence which will reduce the likelihood of
37 unauthorized entry. The perimeter fence must be ap-
38 proved by the commission's chief investigator.

39 53.2.b.1. The training track must have an appropriate
40 check in and out system which will ensure that only those
41 individuals who are licensees or authorized visitors and
42 whose duties clearly require entry to the area will be
43 allowed access.

44 53.2.b.2. No law-enforcement officer, employee of the
45 commission, or employee of a licensee, when in the perfor-
46 mance of official duties, may be denied entry to the kennel
47 compound. All visitors to the kennel compound will be
48 accompanied by a commission representative, the licensee
49 sponsoring the visitor or the licensee's security personnel.

50 53.2.b.3. Access records will be available to the commis-
51 sion, its investigative personnel and the board of judges on
52 request.

53 53.2.b.4. In a case of an emergency a veterinarian
54 licensed by the West Virginia State Board of Veterinarian
55 Examiners may be allowed in the kennel compound if
56 accompanied by appropriate personnel.

57 53.2.b.5. At least one fire extinguisher shall be installed
58 on the exterior wall of each kennel enclosure. The type
59 and size of fire extinguisher must meet the State Fire
60 Marshal's standards.

61 53.2.b.6. A veterinarian licensed by West Virginia may
62 possess, transport or use any drug or medication which by
63 federal or state law requires a prescription within the
64 confines of the kennel compound.

65 53.2.b.6.A. A person having a legally valid prescription
66 which includes a complete statement of the uses and
67 purposes of the medication upon the medicine container
68 may possess, transport or use a drug or medication which
69 by federal or state law requires a prescription within the
70 confines of the kennel compound if a copy of the prescrip-
71 tion has been filed with the commission veterinarian and
72 he or she has approved the use of the medication prior to
73 its use on a greyhound.

74 53.2.b.6.B. Over the counter drugs are allowed in the
75 kennel compound however, the medication must be in the

76 original container bearing the manufacturer's label with
77 the serial or lot number.

78 53.2.b.6.C. While in the compound all medications must
79 be stored in locked cabinets in the kennel.

80 53.2.b.6.D. The trainer must provide a list of all drugs or
81 medications in the trainer's kennel to the commission
82 veterinarian on a form provided by the commission
83 veterinarian. The trainer is responsible for updating the
84 list on a daily basis so that at all times it reflects the
85 current drugs or medications in the trainer's kennel. A
86 copy of the current list with the commission veterinarian's
87 initials or signature on it must be posted in the trainer's
88 kennel next to the medication cabinet.

89 53.3. Operation and Maintenance of Kennel Compound

90 53.3.a. No living quarters are provided and overnight
91 stays will not be permitted except for emergencies. For
92 emergency needs that require 24 hour assistance to a sick
93 or injured greyhound the stay must first be approved by
94 the training track's chief of security.

95 53.3.b. The following restrictions apply to entry to the
96 compound during the race meet, beginning with the start
97 of official schooling. The kennel compound is a restricted
98 area which requires special security controls and identity
99 verification by security for all persons entering and
100 leaving the compound:

101 53.3.b.1. The person is a race-meet licensee official, a
102 designated facility employee, or a West Virginia Racing
103 Commission official or employee, each of whom shall
104 present proper identification to the kennel compound
105 security officer;

106 53.3.b.2. Designated service-company personnel such as
107 a licensed food vendor, electrical maintenance and repair,

108 equipment and building servicing, telephone and utilities
109 service, or garbage collection. These individuals do not
110 require a kennel compound pass, but they must properly
111 identify themselves and their purpose for entering and
112 leaving the facility with the security officer prior to
113 entering and leaving the facility.

114 53.3.b.3. Visitors to the compound are discouraged;
115 however, the facility licensee may develop a visitor pass
116 system subject to the approval of the commission.

117 53.3.b.4. Alcoholic beverages are not allowed in the
118 kennel compound.

119 53.4.1. The facility licensee shall be responsible for
120 providing garbage and waste disposal;

121 53.4.2. Each kennel is responsible for the daily pick up
122 of all turn-out pen waste;

123 53.4.3. Each kennel is responsible for the regular water-
124 ing of turn-out pens to minimize odor;

125 53.4.4. A 5 mile per hour speed limit shall be posted in
126 the kennel compound.

§64-7-4. Lottery Commission.

1 The legislative rule filed in the State Register on April
2 20, 2004, under the authority of section four hundred two,
3 article twenty-two-b, chapter twenty-nine of this code,
4 approved for promulgation by the Legislature on March
5 12, 2004, relating to the Lottery Commission (Limited
6 Video Lottery, 179 CSR 5), is authorized with the follow-
7 ing amendments:

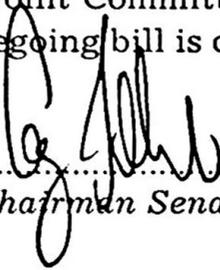
§179-5-35. Prohibition Against Extending Credit.

1 35.1. A video lottery retailer shall not extend credit, in
2 any manner, to a player to enable the player to play a
3 video lottery game.

4 35.2. For purposes of this rule, a video lottery retailer
5 shall be deemed to be extending credit when he or she
6 knows or has reason to know that the proceeds of the
7 check will be used solely to play or continue to play a
8 video lottery game.

Enr. Com. Sub. for S. B. No. 227] 16

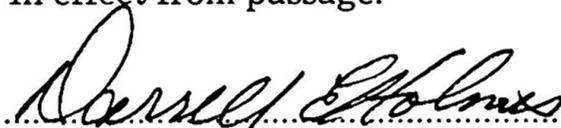
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

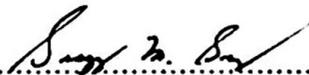

.....
Chairman Senate Committee


.....
Chairman House Committee

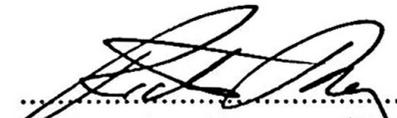
Originated in the Senate.

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 11th
Day of May 2009.


.....
Governor

PRESENTED TO THE
GOVERNOR

MAY 5 2009

Time 1:10 pm