WEST VIRGINIA LEGISLATURE
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 August 29, 2008, authorized under the authority of section five, article ten, chapter eleven of this code, relating to the State Tax Department (Valuation of Intangible Personal Property Including Stock Accounts Receivable and Stock in Banks and Capital of Savings and Loan Associations, 110 CSR 1L), is authorized.

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

17 (c) The legislative rule filed in the State Register on August 29, 2008, authorized under the authority of section nine, article thirteen-x, chapter eleven of this code, modified by the State Tax Department to meet the objec-
On page five, paragraph 3.1.b.1. by striking out the words “Tax Commissioner” and inserting in lieu thereof the words “Film Office”;

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

On page six, by striking out “4.1.d.” and inserting in lieu thereof “4.1.c.3.”;

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

4.1.d. Upon approval of an eligibility application, the eligible company shall begin production within one hundred twenty (120) days of approval, or shall otherwise forfeit the right to claim any tax credit for the approved qualified project. The forfeiture does not preclude the eligible company from resubmitting an eligibility application for the same project at a future date. Upon written request by the eligible company, and prior to the expiration of the one hundred twenty (120) day deadline, the reviewing committee may extend the deadline at its discretion.;

On page six, by striking out “4.2.c.1.” and inserting in lieu thereof “4.2.a.”;

On page six, by striking out “4.2.c.2.” and inserting in lieu thereof “4.2.b.”;
On page six, by striking out “4.2.c.3.” and inserting in lieu thereof “4.2.c.”;

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

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

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

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

On page nine, by inserting two new subsections, designated subsections 5.6 and 5.7, to read as follows:

5.6. Requests for Increase in Tax Credit Allocation. — If an eligible company seeks an increase in the amount of tax credits for an approved qualified project, the eligible company shall submit an application for modification to the Film Office, which shall be submitted by and bear the same signature as the person who submitted the original eligibility application, or a duly authorized representative. The reviewing committee shall place requests for an increase in the order of receipt of all applications, assign each request a new application number and review each request separately from the original eligibility application. The reviewing committee shall consider the application at its next scheduled meeting, but within thirty (30) days of receipt, and may request additional information from the applicant to assist in its evaluation of the request. The reviewing committee shall determine approval using the same criteria of the review process and based on the availability of any remaining credits for the fiscal year in which the request is received. The Film Office shall notify
5.7. Other Revisions to Application. – If an eligible company seeks to revise its original eligibility application for a qualified project for reasons other than those identified in subsection 5.6 of this rule, the eligible company shall submit an application for modification to the Film Office, which shall be submitted by and bear the same signature as the person who submitted the original eligibility application, or a duly authorized representative. The reviewing committee shall consider the application at its next scheduled meeting, but within thirty (30) days of receipt, and may request additional information from the applicant to assist in its evaluation of the request. The reviewing committee shall determine the approval using the same criteria of the review process. The Film Office shall notify the eligible company in writing of the reviewing committee's decision.

And by renumbering the remaining subsections;

And,

On page ten, subsection 6.1., by striking out “4.1.e.” and inserting in lieu thereof “4.1.d.”.

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

(e) The legislative rule filed in the State Register on August 29, 2008, authorized under the authority of section two-b, article ten, chapter eight of this code, modified by
the State Tax Department to meet the objections of the
Legislative Rule-Making Review Committee and refiled in
the State Register on January 12, 2009, relating to the
State Tax Department (Withholding or Denial of Personal
Income Tax Refunds from Taxpayers Who Owe Municipal
Costs, Fines, Forfeitures or Penalties, 110 CSR 40), is
authorized.

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

§64-7-2. Insurance Commissioner.

(a) The legislative rule filed in the State Register on
August 29, 2008, 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 February 20, 2009, relating
to the Insurance Commissioner (Long-term Care Insur-
ance, 114 CSR 32), is authorized.

(b) The legislative rule filed in the State Register on
August 29, 2008, 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 February 20, 2009, relating
to the Insurance Commissioner (Actuarial Opinion and
Memorandum, 114 CSR 41), is authorized.
(c) The legislative rule filed in the State Register on August 29, 2008, 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 October 22, 2008, relating to the Insurance Commissioner (Continuing Education for Individual Insurance Producers, 114 CSR 42), is authorized, with the following amendment:

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

(d) The legislative rule filed in the State Register on August 14, 2008, 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 February 20, 2009, relating to the Insurance Commissioner (Viatical Settlements, 114 CSR 80), is authorized.

(e) The legislative rule filed in the State Register on August 14, 2008, 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 February 20, 2009, relating to the Insurance Commissioner (Discount Medical Plan Organizations and Discount Prescription Drug Plan Organizations, 114 CSR 83), is authorized.

(f) The legislative rule filed in the State Register on August 29, 2008, 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 February 20, 2009, relating
to the Insurance Commissioner (Professional Employer
Organizations, 114 CSR 85), is authorized with the follow-
ing amendments:

On page 1, subsection 2.1., after the words ‘voting stock’
by striking the word ‘or’ and inserting in lieu thereof the
word ‘of’;

On page 1, subdivision 2.3.a, after the word ‘hiring’ by
inserting the words ‘his, her or’;

On page 2, subsection 3.1., after the words ‘itself out as
providing’ by omitting the comma, and after the words
‘professional employer’ by inserting the word ‘organiza-
tion’;

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

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

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

On page 3, subdivision 3.2.l., in the last sentence of the
subdivision, after the words ‘certificate of authority’ by
inserting the words ‘to do business in the state, issued by
the Secretary of State,’;

And,

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

nied by a fee of’ by striking the word ‘$300’ and inserting
in lieu thereof the words ‘$200 for the application fee and
$100 for the annual report.’

(g) The legislative rule filed in the State Register on
August 29, 2008, 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 October 22, 2008, relating
to the Insurance Commissioner (Preneed Life Insurance
Minimum Standards for Determining Reserve Liabilities
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:


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
to a private entity. Any lease or contract for services will
11 follow the requirements of article three, chapter five-a of
The track compound shall have (1) a minimum area of twenty acres for development of the initial facility and an additional ten acres available for future expansion, (2) a ten-thousand-gallons-per-minute sewer plant, (3) adequate ingress and egress for safety and accessibility and (4) adequate public parking.

The track shall be at least 1,320 feet in circumference or 1/4 mile in length, and the track shall have adequate in-ground heating elements to ensure year-round training.

The track shall have an approved racing surface, rails, lure, timing equipment, and starting box. The track surface shall consist of at least six inches of silt surface, followed by at least six inches of fill sand, followed by two inches of rigid insulation with an under-slab membrane.

Security shall be adequate to ensure the safety of persons and dogs. The training track must have the following minimum security measures at a kennel compound.

The kennel compound must be surrounded by a perimeter fence which will reduce the likelihood of unauthorized entry. The perimeter fence must be approved by the commission's chief investigator.

The training track must have an appropriate check in and out system which will ensure that only those individuals who are licensees or authorized visitors and whose duties clearly require entry to the area will be allowed access.
53.2.b.2. No law-enforcement officer, employee of the commission, or employee of a licensee, when in the performance of official duties, may be denied entry to the kennel compound. All visitors to the kennel compound will be accompanied by a commission representative, the licensee sponsoring the visitor or the licensee's security personnel.

53.2.b.3. Access records will be available to the commission, its investigative personnel and the board of judges on request.

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

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

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

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

53.2.b.6.B. Over the counter drugs are allowed in the kennel compound however, the medication must be in the
53.2.b.6.C. While in the compound all medications must be stored in locked cabinets in the kennel.

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

53.3. Operation and Maintenance of Kennel Compound

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

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

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

53.3.b.2. Designated service-company personnel such as a licensed food vendor, electrical maintenance and repair,
equipment and building servicing, telephone and utilities service, or garbage collection. These individuals do not require a kennel compound pass, but they must properly identify themselves and their purpose for entering and leaving the facility with the security officer prior to entering and leaving the facility.

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

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

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

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

53.4.3. Each kennel is responsible for the regular watering of turn-out pens to minimize odor;

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

§64-7-4. Lottery Commission.

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

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

1 35.1. A video lottery retailer shall not extend credit, in any manner, to a player to enable the player to play a video lottery game.
4 35.2. For purposes of this rule, a video lottery retailer shall be deemed to be extending credit when he or she knows or has reason to know that the proceeds of the check will be used solely to play or continue to play a video lottery game.
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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 bill approved this the 11th Day of May, 2009.

Governor