WEST VIRGINIA LEGISLATURE
SECOND REGULAR SESSION, 2010

ENROLLED

COMMITTEE SUBSTITUTE FOR
House Bill No. 4108

(By Delegates Brown, D. Poling, Miley and Talbott)

Passed March 13, 2010

In Effect From Passage
AN ACT to amend and reenact article 9, chapter 64 of the Code of West Virginia, 1931, as amended, 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; 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 State Board of Examiners for Licensed Practical Nurses to promulgate a legislative rule relating to policies and procedures for development and maintenance of educational programs in practical nursing (10
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CSR 1); authorizing the Board of Examiners in Counseling to promulgate legislative rules relating to marriage and family license renewal and continuing professional education (27 CSR 10), licensed professional counselor fees (27 CSR 2), licensed professional counselor license renewal and continuing professional education requirements (27 CSR 3), marriage and family therapists licensing (27 CSR 8), and marriage and family therapists fees (27 CSR 9); authorizing the Board of Medicine to promulgate a legislative rule relating to fees for services rendered by the Board of Medicine including assistance to the Board-designated physician health program for physicians, podiatrists and physician assistants (11 CSR 4); authorizing the Conservation Agency to promulgate a legislative rule relating to the operation of the West Virginia State Conservation Committee and conservation districts (63 CSR 1); authorizing the Commissioner of Agriculture to promulgate legislative rule relating to animal disease control (61 CSR 1), integrated pest management programs in schools and child care centers and facilities (61 CSR 12J), West Virginia shellfish (61 CSR 23B), and best management practices for land application of waste products from aquaculture facilities (61 CSR 27); authorizing the Board of Barbers and Cosmetologists to promulgate legislative rule relating to continuing education (3 CSR 11), qualifications, training, examination and licensure of instructors in barbering and beauty culture (3 CSR 2), licensing schools of barbering and beauty culture (3 CSR 3), operation of barber, beauty shops and schools of barbering and beauty culture (3 CSR 5), schedule of fees (3 CSR 6), and schedule of fines (3 CSR 7); authorizing the Board of Examiners for Speech-Language Pathology and Audiology to promulgate a legislative rule relating to licensure of speech-pathology and audiology (29 CSR 1); authorizing the Real Estate Appraiser Licensing and Certification Board to promulgate legislative rules relating to the requirements for licensure and certification (190 CSR 2) and the renewal of licensure or certification (190 CSR 3); authorizing the Board of Osteopathy to promulgate legislative rules relating to fees for services rendered by the Board (24 CSR 5), licensing procedures
for osteopathic physicians (24 CSR 1), and the formation and approval of professional limited liability companies (24 CSR 4); authorizing the Secretary of State to promulgate legislative rules relating to early voting in person satellite precincts (153 CSR 13), Vote-by-mail Pilot Project Phase 1: Class IV Early Voting by Mail (153 CSR 38) and Vote-by-mail Pilot Project Phase 2: Voting by Mail (153 CSR 39); authorizing the Board of Occupational Therapy to promulgate legislative rules relating to the administrative rules of the Board of Occupational Therapy and licensure of occupational therapists and occupational therapy assistants (13 CSR 1), fees for services rendered by the Board (13 CSR 3), continuing education and competence (13 CSR 4), competency standards for advance practice by occupational therapists and occupational therapy assistants (13 CSR 5) and ethical standards of practice (13 CSR 6); authorizing the Board of Psychologists to promulgate a legislative rule relating to the qualifications for licensure as a psychologist or a school psychologist (17 CSR 3); and authorizing the Governor's Office of Health Enhancement and Lifestyle Planning to promulgate a legislative rule relating to prescription drug advertising expense reporting (210 CSR 1).

Be it enacted by the Legislature of West Virginia:

That article nine, 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. State Board of Examiners for Licensed Practical Nurses.

The legislative rule filed in the state register on July 9, 2009, authorized under the authority of section five, article seven-a, chapter thirty, of this code, modified by the State
Board of Examiners for Licensed Practical Nurses to meet the objections of the legislative rule-making review committee and refiled in the state register on October 19, 2009, relating to the State Board of Examiners for Licensed Practical Nurses (policies and procedures for development and maintenance of educational programs in practical nursing, 10 CSR 1), is authorized.

§64-9-2. Board of Examiners in Counseling.

(a) The legislative rule filed in the state register on July 31, 2009, authorized under the authority of section six, article thirty-one, chapter thirty, of this code, modified by the Board of Examiners in Counseling to meet the objections of the legislative rule-making review committee and refiled in the state register on November 25, 2009, relating to the Board of Examiners in Counseling (licensed professional counselor fees, 27 CSR 2), is authorized.

(b) The legislative rule filed in the state register on July 31, 2009, authorized under the authority of section six, article thirty-one, chapter thirty, of this code, modified by the Board of Examiners in Counseling to meet the objections of the legislative rule-making review committee and refiled in the state register on October 19, 2009, relating to the Board of Examiners in Counseling (licensed professional counselor license renewal and continuing professional education requirements, 27 CSR 3), is authorized with the following amendment:

On page one, subsection 1.2., by striking out “§30-31-5(b)(18)” and inserting in lieu thereof “§30-31-6”.

(c) The legislative rule filed in the state register on July 31, 2009, authorized under the authority of section six, article thirty-one, chapter thirty, of this code, modified by the Board of Examiners in Counseling to meet the objections of the
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legislative rule-making review committee and refiled in the
state register on November 25, 2009, relating to the Board of
Examiners in Counseling (marriage and family therapists
licensing, 27 CSR 8), is authorized.

(d) The legislative rule filed in the state register on July
31, 2009, authorized under the authority of section six, article
thirty-one, chapter thirty, of this code, modified by the Board
of Examiners in Counseling to meet the objections of the
legislative rule-making review committee and refiled in the
state register on November 25, 2009, relating to the Board of
Examiners in Counseling (marriage and family therapists
fees, 27 CSR 9), is authorized.

(e) The legislative rule filed in the state register on July
31, 2009, authorized under the authority of section six, article
thirty-one, chapter thirty, of this code, modified by the Board
of Examiners in Counseling to meet the objections of the
legislative rule-making review committee and refiled in the
state register on October 19, 2009, relating to the Board of
Examiners in Counseling (marriage and family license
renewal and continuing professional education, 27 CSR 10),
is authorized with the following amendments:

On page one, subsection 1.2., by striking out “§30-31-
5(b)” and inserting in lieu thereof “§30-31-6”.

On page one section 2.1, by striking the words “of
Marriage and Family Therapist and code of ethics.” and
inserting in lieu thereof the following words, “for Marriage
and Family Therapy Code of Ethics.”;

On page two section 2.7 by striking the words, “you
attend” and inserting in lieu thereof the word, “attended”;

On page three section 4.1, striking the word “Therapist”
and inserting in lieu of the word, “Therapy”;
On page four section 4.9 striking the word “therapist” and inserting in lieu of the following word, “therapy”;

On page four section 4.10 striking the words, “of Marriage and Family Therapist” and inserting in lieu thereof the following words, “for Marriage and Family Therapy”;

On page six, subparagraph (I) by striking the apostrophe;

On page seven, subparagraph (D) by striking the apostrophe;

On page eight paragraph 6 by striking the words, “of Marriage and Family Therapist” and inserting in lieu thereof the following words, “for Marriage and Family Therapy”;

On page nine, subparagraph (C) by striking out the words, “of Marriage and Family Therapist” and inserting in lieu of the following words, “for Marriage and Family Therapy”.


The legislative rule filed in the state register on July 30, 2009, authorized under the authority of section seven, article three, chapter thirty, of this code, relating to the Board of Medicine (fees for services rendered by the Board of Medicine including assistance to the Board-designated physician health program for physicians, podiatrists and physician assistants, 11 CSR 4), is authorized.


The legislative rule filed in the state register on July 29, 2009, authorized under the authority of section six, article twenty-one-a, chapter nineteen, of this code, modified by the Conservation Agency to meet the objections of the legislative
rule-making review committee and refiled in the state register on October 23, 2009, relating to the Conservation Agency (operation of the West Virginia State Conservation Committee and conservation districts, 63 CSR 1), is authorized.


(a) The legislative rule filed in the state register on July 28, 2009, authorized under the authority of section two, article nine, chapter nineteen, of this code, modified by the Commissioner of Agriculture to meet the objections of the legislative rule-making review committee and refiled in the state register on September 22, 2009, relating to the Commissioner of Agriculture (animal disease control, 61 CSR 1), is authorized.

(b) The legislative rule filed in the state register on July 21, 2009, authorized under the authority of section four, article sixteen-a, chapter nineteen, of this code, modified by the Commissioner of Agriculture to meet the objections of the legislative rule-making review committee and refiled in the state register on September 4, 2009, relating to the Commissioner of Agriculture (integrated pest management programs in schools and child care centers and facilities, 61 CSR 12J), is authorized.

(c) The legislative rule filed in the state register on July 31, 2009, authorized under the authority of section one, article twenty-nine, chapter nineteen, of this code, modified by the Commissioner of Agriculture to meet the objections of the legislative rule-making review committee and refiled in the state register on September 23, 2009, relating to the Commissioner of Agriculture (West Virginia shellfish, 61 CSR 23B), is authorized with the following amendments:
On page 4, by striking out subdivision 4.1.i. in its entirety and inserting in lieu thereof a new subdivision 4.1.i. to read as follows:

"Refer violations to a court of competent jurisdiction for the violation of this rule as allowed under West Virginia laws. Nothing in this rule shall be construed as requiring the commissioner to report for prosecution or institute an embargo, detention or quarantine for the violation of this rule when he or she believes that the public interest may best be served by a written notice of the violation."

On page 6, after subdivision 7.1.j. by adding a new subsection, designated 7.2 to read as follows:

"7.2. Any person who violates the provisions of this rule shall have his or her Shellfish Certificate suspended until the facility is in compliance with the provisions of this rule."

On pages 6 and 7, by striking §61-23A-8 in its entirety;

And, by renumbering the remaining section.

(d) The legislative rule filed in the state register on July 15, 2009, authorized under the authority of section six, article twenty-nine, chapter nineteen, of this code, modified by the Commissioner of Agriculture to meet the objections of the legislative rule-making review committee and refiled in the state register on January 14, 2010, relating to the Commissioner of Agriculture (best management practices for land application of waste products from aquaculture facilities, 61 CSR 27), is authorized.

§64-9-6. Board of Barbers and Cosmetologists.

(a) The legislative rule filed in the state register on July 31, 2009, authorized under the authority of section six, article
twenty-seven, chapter thirty, of this code, modified by the Board of Barbers and Cosmetologists to meet the objections of the legislative rule-making review committee and refilled in the state register on December 14, 2009, relating to the Board of Barbers and Cosmetologists (qualifications, training, examination and licensure of instructors in barbering and beauty culture, 3 CSR 2), is authorized with the following amendments:

On page one, after the caption “SERIES 2”, by striking out the word “Licensure” and inserting in lieu thereof the word “Certification”;

On page one, subsection 1.1, by striking out the word “licensure” and inserting in lieu thereof the word “certification”;

On page one, in the “§3-2-2” caption, by striking out the word “Licensure” and inserting in lieu thereof the word “Certification”.

On page one, subsection 2.1, by striking out said subsection 2.1 in its entirety and inserting in lieu thereof a new subsection 2.1 to read as follows:

2.1. An individual seeking certification must;

On page one, subdivision 2.1.3, by striking out the word “offered” and inserting in lieu thereof the word “approved”.

On page two, subdivision 2.1.9, by striking out said subdivision 2.1.9 in its entirety and inserting in lieu thereof a new subdivision 2.1.9 to read as follows:

“2.1.9. Submit a letter from a school owner or manager certifying that the applicant has completed 375 hours of instructor training and attesting to the applicant’s professional capabilities.”

33 On page two, subdivision 2.1.11, at the beginning of said subdivision, by striking out the word “Must”;

35 On page two, subdivision 2.1.12, at the beginning of said subdivision, by striking out the word “Must”;

37 On page two, subdivision 2.1.13, by striking out the word “license” and inserting in lieu thereof the word “certification”;

39 On page two, subsection 3.1, by striking out the word “licensure” and inserting in lieu thereof the word “certification”;

43 On page two, subdivision 3.1.1, by striking out the word “Licensure” and inserting in lieu thereof the word “Certification”;

46 On page two, subdivision 3.1.6, by striking out said subdivision 3.1.6 in its entirety and inserting in lieu thereof a new subdivision 3.1.6 to read as follows:

49 “3.1.6. Submit a letter from a school owner or manager certifying that the applicant has completed 375 hours of instructor training and attesting to the applicant’s professional capabilities and employment and instructing experience.”

53 On page three, subdivision 3.1.8, at the beginning of said subdivision, by striking out the word “Must”;

56 On page three, subdivision 3.1.9, at the beginning of said subdivision, by striking out the word “Must”;

58 On page three, subdivision 3.1.10, by striking out the word “license” and inserting in lieu thereof the word “certification”;
On page three, subsection 3.2, by striking out subsection 3.2 in its entirety and inserting in lieu thereof a new subsection 3.2 to read as follows:

3.2. An instructor certification must be renewed annually or biennially on or before January 1.;

On page three, subsection 3.3, by striking out the word “registered” and inserting in lieu thereof the word “certified”;

On page three, subsection 3.3, by striking out the word “license” and inserting in lieu thereof the word “certificate”;

On page three, in the “§3-2-4” caption, by striking out the word “Licensure” and inserting in lieu thereof the word “Certification”;

On page three, subsection 4.1, by striking out the word “licensure” and inserting in lieu thereof the word “certification”;

On page three, subsection 4.1, in the last sentence, by striking out the underlined word “student”;

On page four, in the “§3-2-5” caption, by striking out the word “Licensure” and inserting in lieu thereof the word “Certification”;

On page four, subsection 5.2, by striking out the last sentence that reads: “This section applies to only 1800 hour barber graduates.”;

On page five, in the “§3-2-6” caption, by striking out the word “Licensure” and inserting in lieu thereof the word “Certification”;

On page five, by striking out subsection 6.1 in its entirety and renumbering the remaining subsections;
On page five, subsection 6.2, by striking out the word “license” and inserting in lieu thereof the words “a certificate”;

On page six, by striking out subsection 7.1 in its entirety and inserting in lieu thereof a new subsection 7.1 to read as follows:

7.1. An applicant from another state seeking certification as an instructor or master instructor is eligible for certification by reciprocity if the applicant has acquired training in another state equal to the requirements established in this rule for the respective certificate requested: Provided, that the state in which said applicant is certified extends the same privilege to certified instructors from this State.;

On page six, in the “§3-2-8” caption, by striking out the word “License” and inserting in lieu thereof the word “Certificate”;

On page six, subsection 8.1, by striking out the word “license” and inserting in lieu thereof the word “certificate”;

On page six, subsection 8.2, by striking out the word ‘whose’ and inserting in lieu thereof the words “who is”;

On page six, subsection 8.2, by striking out the word “licensed” and inserting in lieu thereof the word “certified”;

And,

On page six, subsection 9.1, by striking out the words “contested case”.

(b) The legislative rule filed in the state register on July 31, 2009, authorized under the authority of section six, article twenty-seven, chapter thirty, of this code, modified by the
Board of Barbers and Cosmetologists to meet the objections of the legislative rule-making review committee and refiled in the state register on December 14, 2009, relating to the Board of Barbers and Cosmetologists (licensing schools of barbering and beauty culture, 3 CSR 3), is authorized with the following amendments:

On page one, subdivision 2.1.d, by striking said subdivision 2.1.d in its entirety and inserting in lieu thereof a new subdivision 2.1.d to read as follows:

"The applicant has employed or contracted with at least 2 licensed master instructors, and such additional licensed instructors as necessary to meet the instructor-to-student ratio requirements of 3 CSR 4 (Title 3, Legislative Rule of the Board of Barbers and Cosmetologists, Series 4, Operational Standards for Schools of Barbering and Beauty Culture).";

On page two, subdivision 3.1.5, by striking out subdivision 3.1.5 in its entirety and inserting in lieu thereof a new subdivision 3.1.5 to read as follows:

3.1.5. A copy of a proposed floor plan of the school, which arrangement shall have at least two (2) classrooms for each profession taught and a room for clinical and demonstration work. On page three, subdivision 3.1.13, by striking said subdivision 3.1.13 in its entirety and inserting in lieu thereof a new subdivision 3.1.13 to read as follows:

"A statement by the applicant that the school is handicapped accessible."

On page four, subsection 3.6, by striking said subsection 3.6 in its entirety and inserting in lieu thereof a new subsection 3.6 to read as follows:

"Applicants who acquire or relocate an existing school must meet the requirements set forth in this section.";
On page four, subsection 4.4, after the words “The Board” by striking the word “shall” and inserting in lieu thereof the word “may”, and after the words “general grounds” by inserting the word “suspend,”; and

On page four, subdivision 4.4.3, by striking said subdivision 4.4.3 in its entirety and inserting in lieu thereof a new subdivision 4.4.3 to read as follows:

“A licensee, owner, administrator, manager, director or other key interested party is convicted of a felony or misdemeanor relating to the school or its operation.”.

(c) The legislative rule filed in the state register on July 31, 2009, authorized under the authority of section six, article twenty-seven, chapter thirty, of this code, modified by the Board of Barbers and Cosmetologists to meet the objections of the legislative rule-making review committee and refiled in the state register on December 14, 2009, relating to the Board of Barbers and Cosmetologists (operation of barber, beauty shops and schools of barbering and beauty culture, 3 CSR 5), is authorized with the following amendments:

On page one, subsection 1.1, by striking out the subsection and inserting in lieu thereof “Scope - This legislative rule governs the sanitary requirements for salons and schools licensed by the Board of Barbers and Cosmetologists.”;

On page one, subsection 2.1, after the word “All”, by striking out the words “barber, beauty, nail and aesthetic shops/salons or schools of barbering and beauty culture” and inserting in lieu thereof the words “salons or schools”;

On page one, subsection 2.2, after the word “All”, by striking out the words “shop’s or school’s” and inserting in lieu thereof the words “salons’ and schools’”;
On page one, subsection 2.2, after the word “such”, by striking out the word “shop” and inserting in lieu thereof the word “salon”;

On page one, subsection 2.2, after the word “such”, by striking out the word “shops” and inserting in lieu thereof the word “salons”;

On page one, subsection 2.3, after the word “Each”, by striking out the words “barber, cosmetologist, aesthetician, nail technician/manicurist,”;

On page two, subsection 2.6, by striking out the word “in” and inserting in lieu thereof the word “is”;

On page two, subsection 2.8, after the word “All”, by striking out the words “barber, beauty, nail and aesthetic shops/”;

On page two, subsection 2.9, after the word “for”, by striking out the words “barber, beauty, nail and aesthetic shops/”;

On page two, subsection 2.9, after the word “in”, by striking out the words “barber or beauty shops” and inserting in lieu thereof the word “salons”;

On page two, subsection 2.9, by striking out the word “Shops” and inserting in lieu thereof the word “salons”; 

On page three, subsection 2.15, after the word “each”, by striking out the word “shop” and inserting in lieu thereof the word “salon”;

On page three, subsection 2.15, after the word “the”, by striking out the word “shop” and inserting in lieu thereof the word “salon”;
On page three, subsection 2.16, after the word “Each”, by striking out the words “barber, aesthetician, nail technician/manicurist, or cosmetologist” and inserting in lieu thereof the word “licensee”;

On page three, subsection 2.16, after the word “student”, by striking out the words “barber, aesthetician, nail technician/manicurist, or cosmetologist”;

On page three, subsection 2.16, after the word “such”, by striking out the words “barber, aesthetician, nail technician/manicurist, or cosmetologist” and inserting in lieu thereof the word “licensee”;

On page three, subsection 2.17, after the word “Every”, by striking out the words “barber, aesthetician, nail technician/manicurist, or cosmetologist” and inserting in lieu thereof the word “licensee”;

On page three, subsection 2.19, by striking out the words “marks and where possible” and inserting in lieu thereof the words “and, where possible”;

On page three, subsection 2.20, by striking out subsection 2.20 in its entirety and inserting in lieu thereof a new subsection 2.20 to read as follows:

2.20. Any member of the Board, or its inspectors may enter or inspect any barber, beauty, nail and aesthetic shops/salons or school of barbering or beauty culture during business hours to check any part of the premises in order to ascertain whether or not any part of these rules are being violated, and to take any other action necessary to properly enforce the law;

On page four, subsection 2.21, after the word “every”, by striking out the words “barber, beauty, nail and aesthetic shops/salons” and inserting in lieu thereof the word “salon”;
On page four, subsection 2.24, after the word “All”, by striking out the words “barber, beauty, nail and aesthetic shops/salons and beauty shops or” and inserting in lieu thereof the words “salons and”;

On page four, subsection 2.24, after the word “the”, by striking out the word “shop” and inserting in lieu thereof the words “salon or school”;

On page four, subsection 2.25, by striking out the word “have” and inserting in lieu thereof the word “operate”;

On page four, subsection 2.25, after the word “the”, by striking out the word “shop” and inserting in lieu thereof the word “salon”;

On page four, subsection 2.26, after the word “All”, by striking out the words “barber, beauty, nail and aesthetic shops/salons and shop” and inserting in lieu thereof the word “salon”;

On page four, subsection 2.27, after the word “All”, by striking out the words “barber, beauty, nail and aesthetic shops/salons and beauty shops” and inserting in lieu thereof the word “salons”;

On page four, subsection 2.27, by striking out the words “water marks or stains,”;

On page four, subsection 3.1, after the word “all”, by striking out the words “barber, beauty, nail and aesthetic shops/salons, barber or beauty” and inserting in lieu thereof the words “salons and”;

On page four, subsection 3.1, after the word “all”, by striking out the words “licensed barbers, cosmetologists, aestheticians, nail technicians/manicurists” and inserting in lieu thereof the word “licensees”;
And,

On page four, subsection 4.1, after the word “a” by striking out the words “contested case”.

(d) The legislative rule filed in the state register on July 31, 2009, authorized under the authority of section six, article twenty-seven, chapter thirty, of this code, relating to the Board of Barbers and Cosmetologists (schedule of fees, 3 CSR 6), is authorized with the following amendments:

On page one, subsection 1.1, after the word “Cosmetologists” by striking out the remainder of the sentence;

And,

On page one, subsection 1.2, by striking out “§30-27-1” and inserting in lieu thereof “§30-27-6”.

(e) The legislative rule filed in the state register on July 31, 2009, authorized under the authority of section six, article twenty-seven, chapter thirty, of this code, modified by the Board of Barbers and Cosmetologists to meet the objections of the legislative rule-making review committee and refiled in the state register on December 14, 2009, relating to the Board of Barbers and Cosmetologists (schedule of fines, 3 CSR 7), is authorized with the following amendment:

On page one, section 2, after the words “any person licensed” by striking out the words “and/or licensed facility” and inserting in lieu thereof the following words “or holding a salon license”;

On page ten, subsection 2.63, by striking out the word “Failure” and inserting in lieu thereof the word “Failing”;
On page eleven, subsection 2.64, by striking out the word “Failure” and inserting in lieu thereof the word “Failing”;

On page eleven, subsection 2.65, by striking out the words “Failure for a shop or shop owner” and inserting in lieu thereof the word “Failing”;

On page eleven, subsection 2.66, by striking out the words “Failure for a shop or shop manager” and inserting in lieu thereof the word “Failing”;

On page eleven, by striking out subsection 2.68 in its entirety and by renumbering the remaining subsections;

And,

On page twelve, by striking out subsections 2.71 and 2.72 in their entirety.

(f) The legislative rule filed in the state register on July 31, 2009, authorized under the authority of section six, article twenty-seven, chapter thirty, of this code, modified by the Board of Barbers and Cosmetologists to meet the objections of the legislative rule-making review committee and refiled in the state register on December 14, 2009, relating to the Board of Barbers and Cosmetologists (continuing education, 3 CSR 11), is authorized with the following amendments:

On page one, subsection 1.1, by striking out the words “barbering, cosmetology, manicuring/nail technology, and aesthetics” and inserting in lieu thereof the words “beauty culture in West Virginia”;

On page one, subsection 1.2, by striking out “§30-27-6-9” and inserting in lieu thereof “§30-27-6”.

On page one, after the section heading “§3-11-2 Definitions” by striking out everything after the said section
heading and inserting in lieu thereof the following, all to read
as follows:

“2.1. ‘Approved academic course’ means a formal course
of study offered by an accredited postsecondary educational
institution as it relates to the barbering, cosmetology,
manicuring/nail technology, and aesthetics.

2.2. ‘Approved provider’ means a local, state or national
agency, organization or association recognized by the Board.

2.3. ‘Audit’ means the selection of licensees for
verification of satisfactory completion of continuing
education during a specified time period, or the selection of
approved providers for verification of adherence to
continuing education approved provider requirements during
a specified time period.

2.4. ‘Beauty Culture’ means the act or practice of
aesthetics, barbering, barbering crossover, barber permanent
waving, cosmetology, cosmetology crossover and nail care;

2.5. ‘Contact person’ means a person submitting a
Request for Approval Form.

2.6. ‘Continuing education’ means planned, organized
learning activities engaged in following initial licensure and
designed to maintain, improve, or expand beauty knowledge
and skills or to develop new knowledge and skills related to
beauty culture practice, education, or theory development.

2.7. ‘Continuing education activity’ means a learning activity
that is planned, organized and administered to enhance the
professional knowledge and skills underlying the professional
performance that the licensee uses to provide services the public.
To qualify as continuing education, the activity must provide
sufficient depth and scope of a subject area.
2.8. 'Continuing education credit' means credit earned for completing a continuing education activity, expressed in units as provided in section 3.1 of this rule.

2.9. 'Continuing Education Provider License' means a licensed provider of continuing education.

2.10. 'Documentation' means proof of participation in a continuing education activity.

2.11. 'Formal offering' means an extension course, independent study, or other course which is offered, for college credit, by a recognized educational institution.

2.12. 'Informal offering' means a workshop, seminar, institute, conference, lecture, or short term course, which is offered for credit in continuing education units.

2.13. 'Objectives' means an expression in measurable and observable terms of what the participant will learn as a result of the educational activity.

2.14. 'Sponsor' means an organization, including professional societies, academic institutions, individuals, corporations, or governmental agencies, which plans, organizes, supports, endorses, subsidizes and/or administers educational activities, and is responsible for the content, quality and integrity of the educational activity.

§3-11-3. Continuing Education.

3.1. Each applicant for renewal or reinstatement of a license shall verify that he or she has satisfactorily completed four (4) credits of continuing education during the prescribed year reporting period.

3.1.a. Units of measurement for continuing education credits are calculated as follows:
30 to 49 minutes = 0.5 CE credits

50 to 74 minutes = 1 CE credits

75 to 99 minutes = 1.5 CE credits

100 minutes = 2 CE credits

Activities lasting less than 30 minutes are not eligible for credit.

3.1.b. Writing an article which is published in a magazine directly related to the profession will qualify for 4 credits of continuing education within the continuing education reporting period. A copy of the article must be maintained by the licensee for a period of 3 years following the continuing education activity.

3.2. Credits may not be granted for identical continuing education activities submitted during any single year reporting period. Credits may not be accumulated for use in a future single year reporting period.

3.3. Documentation of continuing education credits must be submitted with applications for license renewal.

§3-11-4. Exceptions to Continuing Education Requirements.

4.1. Reciprocity applicants and newly licensed applicants are exempt from the continuing education requirements until the first renewal period after initial West Virginia licensure.

4.2. A licensee who resides outside of West Virginia and who holds a current license to practice in a state other than West Virginia shall satisfy the continuing education requirements for West Virginia in order to renew his or her license in this state.
4.3. The Board may grant a waiver to a licensee who has a physical or mental disability or illness or who is providing direct care to a member of his or her immediate family during all or a portion of the reporting period. A waiver provides for an extension of time or exception from some or all of the continuing education requirements. Any licensee may request an application for a waiver from the Board. The Board may approve or deny an application for waiver after review of the application. The Board may not grant a waiver of continuing education requirements for more than one (1) year reporting period.

§3-11-5. Failure to Meet Requirements or Exceptions to Requirements.

5.1. The Board may place the licensee on inactive status without penalty and may waive the continuing education requirements, providing that the licensee notifies the Board in writing of his or her desire to have the Board place his or her license on inactive status before the last day of the reporting period.

5.2. The Board may suspend the license of any person who fails to notify the Board, in writing, prior to the last day of the reporting period that he or she wishes to place his or her license on the inactive status.

§3-11-6. Reinstatement of a License on Inactive Status or Issuance of a Probational Temporary License.

6.1. A person wishing to reinstate a license from inactive status or from suspended status shall:

6.1.a. Make application for reinstatement of the license from inactive status or suspended status;

6.1.b. Meet the continuing education requirements as set forth in this rule; and
6.1.c. Pay the fee for reinstatement of suspended license as specified in the Board’s rule, Schedule of fees for services rendered.

§3-11-7. Audit of Licensee.

7.1 The Board may select any licensee who holds a current license to audit for compliance with continuing education requirements no fewer than 60 days prior to the expiration of the license.

7.2. To comply with the audit request from the Board, a licensee shall submit legible copies of certificates of attendance at continuing education activities.

7.3. The licensee shall submit the required documents within thirty (30) days of the date he or she receives notification of the audit. The Board may grant an extension of time for submission of the documents, on an individual basis in cases of hardship, if the licensee makes a written request for an extension of time and provides justification for such the request.

7.4. Licensees shall keep certificates of attendance at continuing education activities, letters verifying special approval for informal offerings from non-approved providers, transcripts of courses, and documentation of compliance with exceptions for a three (3) year period following the continuing education activities.

7.5. The Board shall complete the audit within 30 days of receipt of required documentation and shall notify the licensee of the satisfactory completion of the audit.

7.6. If a person fails to submit the audit information requested by the Board, the Board may not renew the license Board before the information is received and the audit is completed.
7.7. Licensees shall notify the Board of any changes of mailing address, and are not absolved from the audit requirements.

§3-11-8. Minimum Standards for Approved Provider.

8.1. All providers of continuing education shall complete an application, and pay the required fees, and obtain a Continuing Education Provider License, before offering to provide continuing education.

8.2. The Board shall maintain a current list of approved providers which is available to the public upon request.

8.3. The Board shall notify providers who fail to meet the minimum acceptable provider standards, in writing, of specific deficiencies and offer a reasonable period of time to correct deficiencies.

8.4. The Board may remove an approved provider who fails to meet the approved provider standards from the list of approved providers.

8.5. The providers shall provide a certificate to the licensee indicating the following information:

8.5.a. Name of licensee who attended the continuing education class;

8.5.b. The date attended;

8.5.c. The value of continuing education credits; and

8.5.d. Contact information for the continuing education provider.
8.6. The providers shall provide a list to the State Board in a Microsoft Excel format in paper and disc form within 30 days of the continuing education class. The list shall include:

8.6.a. Names of licensees;
8.6.b. License numbers of licensee;
8.6.c. Location of class;
8.6.d. The date held; and
8.6.e. Title of continuing education class or activity.

8.7. The application for a continuing education provider license shall provide detailed descriptions of the subject areas, sponsors, speakers, instructors, training courses, events, demonstrations or shows for which the applicant seeks approval.

§3-11-9. Continuing Education Subjects/Events.

9.1. Continued education offerings shall consist of one or more of the following subject areas or events:

9.1.a. Product information or training;
9.1.b. Events, speakers, or shows by third party administrators held at beauty schools/conventions;
9.1.c. Tax, business, or computer training or courses;
9.1.d. Styling or application demonstrations;
9.1.e. Sanitation courses;
9.1.f. HIV/AIDS awareness and other communicable disease awareness courses;
9.1.g. Training or courses on West Virginia state laws governing the practices licensed by the board; and

9.1.h. Continuing education activities sponsored by the National Cosmetology Association (NCA), National Interstate Council of State Boards of Cosmetology (NIC), National Cosmetology Seminar, Aesthetic International Association, National Association of Barbering and Hairstyling, National Association of Barber Boards of American approved courses, seminars, and demonstrations or any other national association approved by the Board.

§3-11-10. Activities Not Acceptable for Continuing Education Credit.

10.1. The following activities are not acceptable for continuing education credit:

10.1.a. Job related practice;

10.1.b. Development and presentation of programs as part of the licensee’s on-going job responsibilities;

10.1.c. Orientation to and update of policies and procedures specific to the licensee's employing facility;

10.1.d. Activities which are part of a licensee's usual job responsibility; and/or

10.1.e. In-house training from a regular employee, manager or owner of the facility.”.


The legislative rule filed in the state register on the seventeenth day of June, two thousand nine, authorized 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 July 23, 2009, relating to the Board of Examiners for Speech-Language Pathology and Audiology (licensure of speech-pathology and audiology, 29 CSR 1), is authorized with the following amendment:

On page 6, subsection 12.2, by striking out the second sentence of the subsection “These continuing education hours may only be credited if they are acquired during the 2-year licensure period, unless the licensee falls under 12.1.a.” and inserting in lieu thereof a new second sentence “Licensees who exceed the minimum continuing education requirement may carry a maximum of 6 hours forward to the next reporting period only.”.


(a) The legislative rule filed in the state register on July 31, 2009, authorized under the authority of section nine, article thirty-eight, chapter thirty, of this code, modified by the Real Estate Appraiser Licensing and Certification Board to meet the objections of the legislative rule-making review committee and refiled in the state register on September 22, 2009, relating to the Real Estate Appraiser Licensing and Certification Board (requirements for licensure and certification, 190 CSR 2), is authorized.

(b) The legislative rule filed in the state register on March 23, 2009, authorized under the authority of section nine, article thirty-eight, chapter thirty, of this code, relating to the Real Estate Appraiser Licensing and Certification Board (renewal of licensure or certification, 190 CSR 3), is authorized.

1 (a) The legislative rule filed in the state register on July 31, 2009, authorized under the authority of section four, article fourteen, chapter thirty, of this code, modified by the Board of Osteopathy to meet the objections of the legislative rule-making review committee and refiled in the state register on October 3, 2009, relating to the Board of Osteopathy (licensing procedures for osteopathic physicians, 24 CSR 1), is authorized.

(b) The legislative rule filed in the state register on July 31, 2009, authorized under the authority of section nine-a, article fourteen, chapter thirty, of this code, modified by the Board of Osteopathy to meet the objections of the legislative rule-making review committee and refiled in the state register on November 24, 2009, relating to the Board of Osteopathy (formation and approval of professional limited liability companies, 24 CSR 4), is authorized.

(c) The legislative rule filed in the state register on July 31, 2009, authorized under the authority of section four, article fourteen, chapter thirty, of this code, modified by the Board of Osteopathy to meet the objections of the legislative rule-making review committee and refiled in the state register on October 23, 2009, relating to the Board of Osteopathy (fees for services rendered by the Board, 24 CSR 5), is authorized.

§64-9-10. Secretary of State.

1 (a) The legislative rule filed in the state register on the July 31, 2009, authorized under the authority of two-a, article three, chapter three, of this code, modified by the Secretary of State to meet the objections of the legislative rule-making review committee and refiled in the state register on November 19, 2009, relating to the Secretary of State (early
voting in person satellite precincts, 153 CSR 13), is authorized with the following amendment:

On page 5, section 7.3, after the word, "workers" by inserting a comma and the following words, "of differing political affiliation, ",

(b) The legislative rule filed in the state register on July 31, 2009, authorized under the authority of three, article three-a, chapter three, of this code, modified by the Secretary of State to meet the objections of the legislative rule-making review committee and refiled in the state register on November 5, 2009, relating to the Secretary of State (Vote-by-mail Pilot Project Phase 1: Class IV Early Voting by Mail, 153 CSR 38), is authorized.

(c) The legislative rule filed in the state register on July 31, 2009, authorized under the authority of three, article three-a, chapter three, of this code, modified by the Secretary of State to meet the objections of the legislative rule-making review committee and refiled in the state register on November 5, 2009, relating to the Secretary of State (Vote-by-mail Pilot Project Phase 2: Voting by Mail, 153 CSR 39), is authorized with the following amendments:

On page 2, by inserting a new subdivision designated, 3.1.e. to read as follows:

"3.1.e. A municipality shall submit the required information to the Office of the Secretary of State by November 11, 2010."

On page 2, subparagraph 3.1.d.6, by striking the word, "pubic" and inserting the word, "public";

On page 3, subdivision 3.2.a, by striking the words, "an ordinance" and inserting the words, "a resolution".

(a) The legislative rule filed in the state register on July 7, 2009, authorized under the authority of section seven, article twenty-eight, chapter thirty, of this code, modified by the Board of Occupational Therapy to meet the objections of the legislative rule-making review committee and refiled in the state register on November 24, 2009, relating to the Board of Occupational Therapy (administrative rules of the Board of Occupational Therapy and licensure of occupational therapists and occupational therapy assistants, 13 CSR 1), is authorized with the following amendments:

On page five, subsection 9.1., after the colon, by inserting a new subdivision to read as follows:

9.1.a. Is of good moral character;

And, by renumbering the remaining subdivisions;

On page twelve, after the words, ‘are dependent upon the’, by inserting a colon;

On page twelve, by striking subdivisions 12.5.b and 12.5.c their entirety and inserting in lieu thereof new subdivisions 12.5.b and 12.5.c to read as follows:

12.5.b. A licensed supervising occupational therapist or occupational therapy assistant must maintain direct continuous supervision over aides;

12.5.c. A licensed supervising occupational therapist must maintain direct continuous supervision over occupational therapy students. As the occupational therapy student demonstrates competency in performance, supervision can progress to direct close supervision at the discretion of the supervising occupational therapist;
And,

On page twelve, by inserting two new subdivisions designated 12.5.d and 12.5.e to read as follows:

12.5.d. A licensed supervising occupational therapist or occupational therapy assistant must maintain direct continuous supervision over occupational therapy assistant students. As the occupational therapy assistant student demonstrates competency in performance, supervision can progress to direct close supervision at the discretion of the supervising occupational therapist / occupational therapy assistant;

12.5.e. Direct supervision is demonstrated through co-signatures on all paperwork or electronic notes pertaining to the practice of occupational therapy for the person requiring direct supervision. All paperwork or electronic notes pertaining to the practice of occupational therapy must be signed and dated, electronically or otherwise, by the supervising licensed occupational therapist.

(b) The legislative rule filed in the state register on July 7, 2009, authorized under the authority of section seven, article twenty-eight, chapter thirty, of this code, modified by the Board of Occupational Therapy to meet the objections of the legislative rule-making review committee and refiled in the state register on November 24, 2009, relating to the Board of Occupational Therapy (fees for services rendered by the Board, 13 CSR 3), is authorized with the following amendment:

On page one, subsection 1.2., by striking out “§30-28-6” and inserting “§30-28-7”.

(c) The legislative rule filed in the state register on July 7, 2009, authorized under the authority of section seven, article
twenty-eight, chapter thirty, of this code, modified by the
Board of Occupational Therapy to meet the objections of the
legislative rule-making review committee and refiled in the
state register on November 24, 2009, relating to the Board of
Occupational Therapy (continuing education and
competence, 13 CSR 4), is authorized with the following
amendment:

On page one, subsection 1.2., by striking out “§30-28-6”
and inserting in lieu thereof “§30-28-7”.

(d) The legislative rule filed in the state register on July 7,
2009, authorized under the authority of section seven, article
twenty-eight, chapter thirty, of this code, modified by the
Board of Occupational Therapy to meet the objections of the
legislative rule-making review committee and refiled in the
state register on November 24, 2009, relating to the Board of
Occupational Therapy (competency standards for advance
practice by occupational therapists and occupational therapy
assistants, 13 CSR 5), is authorized with the following
amendments:

On page one, subsection 1.2, by striking out “§30-28-6”
and inserting in lieu thereof “§30-28-7”;

On page two, by striking subdivisions 4.5.a, 4.5.b, 4.5.c,
and 4.5.d in their entirety and inserting in lieu thereof new
subdivisions 4.5.a, 4.5.b, and 4.5.c to read as follows:

4.5.a. Accredited educational programs;

4.5.b. Specific certification as endorsed by the American
Occupational Therapy Association or its successor, or as
approved by the WVBOT;

4.5.c. Successful completion of an appropriate continuing
education course which includes theory, indications, contra-
indications and applications;
And,

On page two, by inserting a new subdivision 4.6.a to read as follows:

4.6.a. The Board shall conduct random audits of occupational therapy assistants to substantiate competency in physical agent modalities.

(e) The legislative rule filed in the state register on July 7, 2009, authorized under the authority of section seven, article twenty-eight, chapter thirty, of this code, modified by the Board of Occupational Therapy to meet the objections of the legislative rule-making review committee and refiled in the state register on November 24, 2009, relating to the Board of Occupational Therapy (ethical standards of practice, 13 CSR 6), is authorized with the following amendment:

On page one, subsection 1.2., by striking out “§30-28-6” and inserting in lieu thereof “§30-28-7”.

§64-9-12. Board of Psychologists.

The legislative rule filed in the state register on July 27, 2009, authorized under the authority of section six, article twenty-one, chapter thirty, of this code, modified by the Board of Psychologists to meet the objections of the legislative rule-making review committee and refiled in the state register on January 14, 2010, relating to the Board of Psychologists (qualifications for licensure as a psychologist or a school psychologist, 17 CSR 3), is authorized with the following amendment:

On page 3, section 5.1, after the words “W.Va. Code §30-21-2.”, by adding the following:

“For the purposes of this rule, the supervised professionally oriented teaching, supervising and research
activities of applicants who are full-time, university clinical faculty members may apply towards the required hours of supervised work experience."


The legislative rule filed in the state register on October 30, 2009, authorized under the authority of section eight, article twenty-nine-H, chapter sixteen, of this code, relating to the Governor’s Office of Health Enhancement and Lifestyle Planning (prescription drug advertising expense reporting, 210 CSR 1), is authorized.
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 16th
day of April, 2010.

Governor