WEST VIRGINIA LEGISLATURE
SEVENTY-NINTH LEGISLATURE
REGULAR SESSION, 2010

ENROLLED
COMMITTEE SUBSTITUTE
FOR

Senate Bill No. 407

(Senators Minard, Snyder, Prezioso, Unger, Boley and K. Facemyer, original sponsors)

[Passed March 13, 2010; in effect from passage.]
ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 407

(SENATORS MINARD, SNYDER, PREZIOSO,
UNGER, BOLEY AND K. FACEMYER, original sponsors)

[Passed March 13, 2010; 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 by various executive or administrative agencies of the state; authorizing certain of the agencies to promulgate certain legislative rules in the form that the rules were filed in the State Register; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the Legislative Rule-Making Review Committee; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the Legislative Rule-Making Review Committee and as amended by the Legislature; authorizing certain of the agencies to promulgate certain legislative rules in the form that the rules were filed in the State Register and as amended by the Legislature; 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 the Consumers Sales and Service Tax and Use Tax - drugs, durable medical goods, mobility-enhancing equipment and prosthetic devices per se exemption; motor vehicles per se exemption; authorizing the State Tax Department to promulgate a legislative rule relating to the residential solar energy tax credit; authorizing the State Tax Department to promulgate a legislative rule relating to the corporation net income tax; authorizing the Directors of the West Virginia Health Insurance Plan to promulgate a legislative rule relating to a premium subsidy; authorizing the Directors of the West Virginia Health Insurance Plan to promulgate a legislative rule relating to a preexisting conditions exclusion; authorizing the Insurance Commissioner to promulgate a legislative rule relating to variable life insurance; authorizing the Insurance Commissioner to promulgate a legislative rule relating to annuity disclosure; authorizing the Insurance Commissioner to promulgate a legislative rule relating to Medicare supplement insurance; 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 the West Virginia Life and Health Insurance Guaranty Association Act notice requirements; authorizing the Insurance Commissioner to promulgate a legislative rule relating to mental health parity; authorizing the Insurance Commissioner to promulgate a legislative rule relating to viatical settlements; authorizing the Insurance Commissioner to promulgate a legislative rule relating to the preventive care pilot program; authorizing the Insurance Commissioner to promulgate a legislative rule relating to the use of senior-specific certifications and professional designations in the sale of life insurance and annuities; authorizing the Alcohol Beverage Control Commission to promulgate a legislative rule relating to nonintoxicating beer licensing and operations procedures;
authorizing the West Virginia State Athletic Commission to promulgate a legislative rule relating to the administration of the commission; and authorizing the Lottery Commission to promulgate a legislative rule relating to limited gaming facilities.

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.

(a) The legislative rule filed in the State Register on July 30, 2009, authorized under the authority of section nine, article thirteen-x, 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 21, 2010, relating to the State Tax Department (Film Industry Investment Tax Credit, 110 CSR 13X), is authorized.

(b) The legislative rule filed in the State Register on June 23, 2009, 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 November 30, 2009, relating to the State Tax Department (Consumer Sales and Service Tax and Use Tax - Drugs, Durable Medical Goods, Mobility Enhancing Equipment and Prosthetic Devices Per Se Exemption; and Motor Vehicles Per Se Exemption, 110 CSR 15C), is authorized.

(c) The legislative rule filed in the State Register on July 30, 2009, authorized under the authority of section three, article thirteen-z, 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 November 30, 2009, relating to the State Tax Department (Residential Solar Energy Tax Credit, 110 CSR 21D), is authorized with the following amendments:

On page two, beginning on line twenty, by striking out subdivision 2.2.d in its entirety and redesignating the remaining subdivisions accordingly;

On page five, subsection 4.2, line twenty-one, following the word "incentive", by changing the comma to a period and striking out the remainder of the sentence;

On page nine, subsection 9.1, line thirteen, following the words "until the" by striking out the following:

"earlier of the following:

9.1.a. Four taxable years have elapsed; or
9.1.b. The full"

And,

On page nine, line twenty-two, by striking out subsection 9.4 in its entirety.

(d) The legislative rule filed in the State Register on July 31, 2009, 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 21, 2010, relating to the State Tax Department (Corporation Net Income Tax, 110 CSR 24), is authorized with the following amendments:

On page eight, 5.1.a.3, line eighteen, following the words "superseding state”, by striking out the word “of” and inserting in lieu thereof the word “or”;
5 [Enr. Com. Sub. for S. B. No. 407]

54 On page sixteen, 7.5.c.1, line eleven, following the words "such-the", by inserting the word "the";

56 On page eighteen, 7.6.c.1, line twenty-three, by striking out the word "employees" and inserting in lieu thereof the word "employees";

59 On page twenty-nine, 7a.1.a, line thirty-one, following the words "are subject to apportionment as described in the following paragraph";

63 On page thirty, 7a.1.a.1, line ten, following the words "special apportionment members" by striking out the comma;

66 On page thirty-one, 8.4.a, line twenty-three, following the words "which are determined" by striking out the comma;

69 On page thirty-two, 8.5.a.2, line ten, following the words "W. Va. Code §11-24-8(e)" by striking out the comma;

71 On page forty-one, 13a.1.a, line one, following the words "insurance company" by striking out the comma;

73 On page forty-one, 13a.1.a, line three, following the words "shall not be included" by inserting the word "in";

75 On page forty-two, 13a.2.b.2, line twelve, following the words "the stock of", by striking out the words "such that" and inserting in lieu thereof the word "the";

78 On page forty-two, 13a.2.b.2, line fifteen, following the words "income of", by striking out the words "such this" and inserting in lieu thereof the word "the";

81 On page forty-three, 13a.3.a.6, line thirty-four, following the words "below in", by striking out the word "paragraph" and inserting in lieu thereof the word "subparagraph";
On page fifty-four, 13a.3.d.1, line fourteen, following the word “member” by striking out the comma;

On page seventy, 13d.4.a.2, line thirteen, by reinserting the word “see”;

On page ninety-nine, 13e.2.a.3, beginning on line three, following the word “privileges”, by reinserting the word “must” and striking out the word “shall”;

On page ninety-nine, 13e.2.a.3, line four, following the words “and it”, by reinserting the word “must” and striking out the word “shall”;

On page one hundred, 13e.4.c, line seventeen, following the words “group return” by striking out the comma;

On page one hundred, 13e.4.e, line twenty-two, following the words “group return” by striking out the comma;

On page one hundred two, 13e.8, line twenty-two, following the word “corporation” and the comma, by striking out the word “then”;

On page one hundred ten, 26.4, line nineteen, following the words “transactions include”, by inserting a colon;

On page one hundred ten, 26.4, line twenty, following the word “property” and the semi-colon, by striking out the words “sales or transfers” and inserting in lieu thereof the words “the sale or transfer”;

On page one hundred ten, 26.4, line twenty-one, by striking out the words “the owner or for consideration” and inserting in lieu thereof the words “the owner; or consideration”;

And,

On page one hundred fifteen, 27.2.c.6, line five, following the word “annual”, by striking out the word “of”.

§64-7-2. Directors of the West Virginia Health Insurance Plan.

(a) The legislative rule filed in the State Register on July 17, 2009, authorized under the authority of section seven-b, article forty-eight, chapter thirty-three of this code, modified by the Directors of the West Virginia Health Insurance Plan to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on January 25, 2010, relating to the Directors of the West Virginia Health Insurance Plan (Premium Subsidy, 113 CSR 1), is authorized.

(b) The legislative rule filed in the State Register on July 17, 2009, authorized under the authority of section ten, article two, chapter thirty-three of this code, modified by the Directors of the West Virginia Health Insurance Plan to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on January 26, 2010, relating to the Directors of the West Virginia Health Insurance Plan (Pre-existing Conditions Exclusion, 113 CSR 2), is authorized.

§64-7-3. Insurance Commissioner.

(a) The legislative rule filed in the State Register on July 17, 2009, 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 January 26, 2010, relating to the Insurance Commissioner (Variable Life Insurance, 114 CSR 11D), is authorized.

(b) The legislative rule filed in the State Register on July 17, 2009, 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 January 25, 2010, relating to the
(c) The legislative rule filed in the State Register on July 17, 2009, 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 January 26, 2010, relating to the Insurance Commissioner (Medicare Supplement Insurance, 114 CSR 24), is authorized.

(d) The legislative rule filed in the State Register on July 17, 2009, authorized under the authority of section ten, article two, chapter thirty-three of this code, relating to the Insurance Commissioner (Coordination of Health Benefits, 114 CSR 28), is authorized with the following amendments:

On page one, subsection 1.1, after the word “after” by striking out the words “the effective date of this rule” and inserting in lieu thereof the words “January 21, 2011,”;

And,

On page one, subsection 1.1, after the word “before” by striking out the words “the effective date of this rule” and inserting in lieu thereof the words “January 21, 2011.”.

(e) The legislative rule filed in the State Register on July 31, 2009, authorized under the authority of section ten, article two, chapter thirty-three of this code, relating to the Insurance Commissioner (West Virginia Life and Health Insurance Guaranty Association Act Notice Requirements, 114 CSR 36), is authorized.

(f) The legislative rule filed in the State Register on July 17, 2009, 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 December 17, 2009, relating to the Insurance Commissioner (Mental Health Parity, 114 CSR 64), is authorized.

(g) The legislative rule filed in the State Register on July 24, 2009, authorized under the authority of section seventeen, article thirteen-c, chapter thirty-three of this code, relating to the Insurance Commissioner (Viatical Settlements, 114 CSR 80), is authorized with the following amendments:

On page two, subsection 2.6., after the word “viators” by striking out the words “by viatical settlement providers”; On page four, subsection 4.2., subdivision b., after the word “domicile” by striking out the words “and a West Virginia business license from the Secretary of State’s Office”; On page five, by striking out subdivision 4.2.c. in its entirety; And, by renumbering the remaining subdivisions; On page five, subsection 4.2., subdivision f., by striking out the words “all information” and inserting in lieu thereof the word “informational”; On page five, subsection 4.2., subdivision f., after the word “viators” by inserting the words “describing the viatical settlement process”; On page five, subsection 4.3., subdivision b., after the word “five” by inserting the word “consecutive”; On page six, by striking out subsection 4.6. in its entirety; And, by renumbering the remaining subsections;
On page six, subsection 4.8., after the word “license.” by striking out the words “All viatical settlement broker licenses, as fixed by the Commissioner, shall expire at midnight on the thirty first day of May next following the date of issuance.” and inserting in lieu thereof the words “The date upon which the viatical settlement broker license shall expire for individuals and entities shall be at the discretion of the Commissioner.”;

On page six, subsection 4.10., subdivision a., after the word “directions” by striking out the word “posited” and inserting in lieu thereof the word “posted”;

On page nine, subsection 6.2., after the word “broker” by inserting the words “and each insurance producer whose viatical settlement activities are incidental to their business activities”;

On page twelve, section 9, after the word “A” by striking out the word “person” and inserting in lieu thereof the words “viatical settlement provider”;

On page twelve, section 9, after the word “similar” by striking the word “ro” and inserting in lieu thereof the word “to”;

And,

On page fourteen, subsection 12.1., subdivision b., after the words “case of” by striking the word “in” and inserting in lieu thereof the word “an”.

(h) The legislative rule filed in the State Register on July 17, 2009, 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 January 25, 2010, relating to the Insurance Commissioner (Preventive Care Pilot Program, 114 CSR 87), is authorized.
The legislative rule filed in the State Register on July 17, 2009, 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 December 12, 2009, relating to the Insurance Commissioner (Use of Senior-Specific Certifications and Professional Designations in the Sale of Life Insurance and Annuities, 114 CSR 89), is authorized.

§64-7-4. Alcohol Beverage Control Commission.

The legislative rule filed in the State Register on July 16, 2009, authorized under the authority of section twenty-two-a, article sixteen, chapter eleven of this code, modified by the Alcohol Beverage Control Commission to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on January 21, 2010, relating to the Alcohol Beverage Commission (Nonintoxicating Beer Licensing and Operations Procedures, 176 CSR 1), is authorized.

§64-7-5. Athletic Commission.

The legislative rule filed in the State Register on July 31, 2009, authorized under the authority of section twenty-four, article five-a, chapter twenty-nine of this code, modified by the Athletic Commission to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register January 8, 2010, relating to the Athletic Commission (Administrative Rules of the West Virginia State Athletic Commission, 177 CSR 1), is authorized.

§64-7-6. Lottery Commission.

The legislative rule filed in the State Register on July 27, 2009, authorized under the authority of section five, article twenty-five, chapter twenty-nine of this code, modified by the Lottery Commission to meet the objec-

tions of the Legislative Rule-Making Review Committee
and refiled in the State Register on January 20, 2010,
relating to the Lottery Commission (Limited Gaming
Facility Rule, 179 CSR 4), is authorized with the following
amendments:

On page fifty-one, line seven, following the word
"through", by striking out the numeral “37” and inserting
in lieu thereof the numeral “38”;

On page fifty-one, beginning on line eight, by striking
out section thirty-eight in its entirety;

On page eighty-one, 57.5.c, line thirty-four, following
the word “section”, by striking out the word “fifty-three”
and inserting in lieu thereof the word “thirty-three”;

On page eighty-four, 57.6.d, line six, following the word
“fifteen”, by striking out the word “thirty-three” and
inserting in lieu thereof the word “sixteen”;

On page one hundred twelve, 88.2.b, line thirteen,
following the word “paragraphs”, by striking out the
numerals “88.1.i.2 to 88.1.i.4” and inserting in lieu thereof
the numerals “88.1.g.2 to 88.1.g.4”;

On page one hundred thirty-three, beginning on line
seventeen, by striking out the following:

\[
\begin{align*}
115.5.c.2 & \quad 115.5.b.1. \text{ Dice;} \\
115.5.c.3 & \quad 115.5.b.1. \text{ Tokens;} \\
115.5.c.4 & \quad 115.5.b.1. \text{ Playing cards; and} \\
115.5.c.5 & \quad 115.5.b.1. \text{ Positions on the roulette wheel.}
\end{align*}
\]

and inserting in lieu thereof the following:

\[
\begin{align*}
115.5.c.2 & \quad 115.5.b.2. \text{ Dice;} \\
115.5.c.3 & \quad 115.5.b.3. \text{ Tokens;}
\end{align*}
\]

34 \[115.5.c.4. \ 115.5.b.4.\] Playing cards; and

35 \[115.5.c.5. \ 115.5.b.5.\] Positions on the roulette wheel.

36 On page one hundred forty-one, line two, following the
numeral “119.2.a.” by striking out the numeral “119.2.a.”
and inserting in lieu thereof the numeral “119.2.b.”;

39 On page one hundred forty-one, line three, following the
numeral “119.2.c.” by striking out the numeral “119.2.a.”
and inserting in lieu thereof the numeral “119.2.c.”;

42 On page one hundred forty-three, line twenty, following
the numeral “121.3.a.3.” by striking out the numeral
“121.3.a.4.” and inserting in lieu thereof the numeral
“121.3.a.2.”;

46 On page one hundred forty-three, line twenty-one,
following the numeral “121.3.a.4.” by striking out the
numeral “121.3.a.5.” and inserting in lieu thereof the
numeral “121.3.a.3.”;

50 On page one hundred fifty-eight, 145.1, line thirty-one,
by striking out the numeral “§25-25-22a” and inserting in
lieu the numeral “§29-25-22a”;

53 And,

54 On page one hundred seventy, 173.1, line thirty-one,
following the word “gambling”, by inserting a comma.

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 2nd Day of .........., 2010.

.................................
Governor