

HB 2639

FILED

2011 APR -4 PM 2:47

CLERK OF WEST VIRGINIA  
SECRETARY OF STATE

**WEST VIRGINIA LEGISLATURE**  
FIRST REGULAR SESSION, 2011



**SECOND**  
**ENROLLMENT**

**COMMITTEE SUBSTITUTE**  
**FOR**  
**House Bill No. 2639**

(By Delegates Brown, D. Poling, Fleischauer, Talbott,  
Overington and Sobonya)



Amended and again passed, in an effort to meet  
the objections of the Governor, March 18, 2011

In Effect Ninety Days From Passage

FILED

2011 APR -4 PM 2:47

**S E C O N D  
E N R O L L M E N T**

OFFICE OF THE CLERK  
LEGISLATIVE DEPARTMENT  
STATE OF WEST VIRGINIA

COMMITTEE SUBSTITUTE  
FOR  
**H. B. 2639**

(BY DELEGATES BROWN, D. POLING, FLEISCHAUER, TALBOTT,  
OVERINGTON AND SOBONYA)



[Amended and again passed, in an effort to meet the objections of  
the Governor, March 18, 2011; in effect ninety days 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 Board of Pharmacy to promulgate a legislative rule relating to the licensure and the practice of pharmacy (15 CSR 1); authorizing the Board of Pharmacy to promulgate a legislative rule relating to controlled substances monitoring (15 CSR 8); authorizing the Board of Physical Therapy to promulgate a legislative rule titled general provisions (16 CSR 1); authorizing the Board of Physical Therapy to promulgate a legislative rule relating to fees for physical therapists and physical therapist assistants (16 CSR 4); authorizing the Board of Physical Therapy to promulgate a legislative rule titled general provisions for athletic trainers (16 CSR 5); authorizing the Board of Physical Therapy to promulgate a legislative rule relating to fees for athletic trainers (16 CSR 6); authorizing the Board of Sanitarians to promulgate a legislative rule relating to an interim fee schedule (20 CSR 3); authorizing the Board of Sanitarians to promulgate a legislative rule relating to the practice of public health sanitation (20 CSR 4); authorizing the Secretary of State to promulgate a legislative rule relating to the combined voter registration and driver licensing fund (153 CSR 25); authorizing the Board of Barbers and Cosmetologists to promulgate a legislative rule relating to procedures, criteria and curricula for examinations and licensure of barbers, cosmetologists, manicurists and aestheticians (3 CSR 1); authorizing the Board of Barbers and Cosmetologists to promulgate a legislative rule relating to qualifications, training, examination of instructors (3 CSR 2); authorizing the Board of Barbers and Cosmetologists to promulgate a legislative rule relating to operational standards for schools of barbering and beauty culture (3 CSR 4); authorizing the Board of Barbers and Cosmetologists to promulgate a legislative rule titled schedule of fees (3 CSR 6); authorizing the Commissioner of Agriculture to promulgate a legislative rule titled the West Virginia Apiary Rule (61 CSR 2); authorizing the repeal of the Commissioner

of Agriculture's legislative rule relating to general groundwater protection for fertilizers and manures (61 CSR 6C); authorizing the Commissioner of Agriculture to promulgate a legislative rule relating to the inspection of meat and poultry (61 CSR 16); authorizing the Board of Veterinary Medicine to promulgate a legislative rule relating to the organization, operation and licensing of veterinarians (26 CSR 1); authorizing the Board of Veterinary Medicine to promulgate a legislative rule relating to the registration of veterinary technicians (26 CSR 3); authorizing the Board of Veterinary Medicine to promulgate a legislative rule relating to the standards of practice (26 CSR 4); authorizing the Board of Veterinary Medicine to promulgate a legislative rule relating to certified animal euthanasia technicians (26 CSR 5); authorizing the Board of Veterinary Medicine to promulgate a legislative rule titled schedule of fees (26 CSR 6); authorizing the Board of Optometry to promulgate a legislative rule titled rules of the West Virginia Board of Optometry (14 CSR 1); authorizing the Board of Optometry to promulgate a legislative rule relating to oral pharmaceutical prescriptive authority (14 CSR 2); authorizing the Board of Optometry to promulgate a legislative rule titled schedule of fees (14 CSR 5); authorizing the Board of Optometry to promulgate a legislative rule relating to examination and scoring policy (14 CSR 6); authorizing the Board of Optometry to promulgate a legislative rule relating to licensure by endorsement (14 CSR 8); authorizing the Board of Optometry to promulgate a legislative rule relating to contact lenses that contain and deliver pharmaceutical agents (14 CSR 9); authorizing the Board of Optometry to promulgate a legislative rule relating to continuing education (14 CSR 10); authorizing the Board of Optometry to promulgate a legislative rule relating to injectable pharmaceutical agents (14 CSR 11); authorizing the Board of Osteopathy to promulgate a legislative rule relating to osteopathic assistants (24 CSR 2); authorizing the Board of Osteopathy to promulgate a legislative rule relating to fees for services rendered by the Board (24 CSR 5); authorizing the Treasurer's Office to promulgate a legislative

rule relating to the establishment of imprest funds (112 CSR 3); and authorizing the State Election Commission to promulgate a legislative rule relating to the West Virginia Supreme Court of Appeals Public Financing Pilot Program (146 CSR 5).

*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. Board of Pharmacy.**

1 (a) The legislative rule filed in the state register on July  
2 29, 2010, authorized under the authority of section five,  
3 article nine, chapter sixty-a, of this code, relating to the  
4 Board of Pharmacy (licensure and the practice of pharmacy,  
5 15 CSR 1), is authorized with the following amendments:

6 On page thirty-seven, subsection 21.1, by striking out all  
7 of subsection 21.1 and inserting in lieu thereof a new  
8 subsection 21.1 to read as follows:

9 “21.1. A prescription to be valid, shall be issued for a  
10 legitimate medical purpose by a practitioner acting within the  
11 course of legitimate professional practice, and shall bear the  
12 preprinted, stamped, typed, or manually printed name,  
13 address and telephone number of the prescribing practitioner.  
14 If it is a prescription for a controlled substance listed in  
15 Schedules II through V, then it shall also contain the  
16 prescriber’s DEA registration number, including any suffix.  
17 The National Provider Identification (NPI) number shall be  
18 required on all valid prescriptions beginning January 1,  
19 2012.”

20 And,

21 On page forty-seven, after subsection 26.1, by adding a  
22 new section 27 to read as follows:

**“15-1-27. West Virginia Official Prescription Paper Program  
Rules.**

1 27.1. The purpose of this section is to establish rules for  
2 the West Virginia Official Prescription Program Act set forth  
3 at West Virginia Code Section §16-5W-1, et seq. for use in  
4 writing prescriptions by practitioners.

5 27.2. Definitions. As used in this rule:

6 a. “Program Vendor” means the private contractor or  
7 contractors selected to manage the production and delivery of  
8 official state prescription paper.

9 b. “West Virginia Official Prescription Paper” means  
10 prescription paper, which has been authorized by the state for  
11 use, and meets the following criteria:

12 1. Prevention of unauthorized copying;

13 2. Prevention of erasure or modification;

14 3. An ability to prevent counterfeit prescription pads; and

15 4. Capable of supporting automated validation through  
16 pharmacy claims processing systems using the official state  
17 prescription control number.

18 27.3. Minimum Requirements of West Virginia Official  
19 Prescription Paper. The prescription paper shall contain the  
20 following security features:

21 a. Shall meet all requirements issued by the Center for  
22 Medicare and Medicaid Services for a written prescription for  
23 controlled substances as required by Section 2002(b) of PL.  
24 110-28 of the Iraq War Supplemental Appropriations Bill  
25 enacted by the United States Congress in 2007;

26 b. shall contain six (6) quantity check-off boxes printed  
27 on the form and in the following quantities shall appear:

28 1. 1-24;

29 2. 25-49;

30 3. 50-74;

31 4. 75-100;

32 5. 101-150; and

33 6. 151 and over:

34 *Provided*, That if the blank has the quantity prescribed  
35 electronically printed in both numeric and word format, then  
36 the quantity check-off boxes shall not be necessary;

37 c. Shall contain space for the prescriber to indicate  
38 number of refills, if any, or to indicate no refills;

39 d. Shall provide space for the patient's name and address,  
40 the prescribing practitioner's signature;

41 e. Shall provide space for the preprinted, stamped, typed,  
42 or manually printed name, address and telephone number of  
43 the prescribing practitioner, and the practitioner's DEA  
44 registration number and NPI number;

45 f. Shall contain the following statement printed on the  
46 bottom of the prescription blank: “This prescription may be  
47 filled with a generically equivalent drug product unless the  
48 words ‘Brand Medically Necessary’ are written in the  
49 practitioner’s own handwriting, on this prescription form.”;  
50 and

51 g. Each blank must be numbered on the face with a  
52 unique identifying control number in both human readable  
53 and barcode format.

54 27.4. The Board will solicit open bids and select a vendor  
55 or vendors to provide West Virginia Official Prescription  
56 Paper and maintain appropriate records of such product  
57 supplied to practitioners based on ability of proposed  
58 program to prevent prescription fraud, price and ability to  
59 meet these requirements.

60 a. Practitioners licensed to practice in this State may  
61 purchase West Virginia Official Prescription Paper as per  
62 individual orders from the selected vendor(s). The cost of the  
63 Official Prescription Paper will be borne by the ordering  
64 practitioner/institution, unless the state is successful in  
65 securing offsetting funds such as federal grants, risk/reward  
66 programs or private funding applied for and received by the  
67 state for the express purpose of partially or fully funding the  
68 West Virginia Official Prescription Program.

69 b. Orders shall be placed through a vendor supplied  
70 secure on-line order capture system or on an order form to be  
71 supplied by the Vendor, and must contain the requesting  
72 practitioner’s name, specialty, primary address and other  
73 practice site address(s), Federal DEA registration number, if  
74 any, National Provider Identification number, the State  
75 professional practice license number, number of prescriptions  
76 requested, and shall be signed by the requesting practitioner.

77 c. Records of West Virginia Official Prescription Paper  
78 supplied to practitioners will be maintained by the vendor or  
79 vendors and will be subject to random and regular audits.  
80 Discrepancies shall be reported to the Board in a regular and  
81 timely manner.

82 27.5. On and after January 1, 2012 every written  
83 prescription written in West Virginia by a practitioner shall  
84 be written on West Virginia Official Prescription Paper. A  
85 pharmacist may not fill a written prescription from a West  
86 Virginia practitioner unless issued upon an official state  
87 issued prescription form.

88 27.6. Practitioners; control and reporting of West  
89 Virginia Official Prescription Paper.

90 a. Adequate safeguards and security measures shall be  
91 undertaken by practitioners holding West Virginia Official  
92 Prescription Paper to assure against the loss, destruction, theft  
93 or unauthorized use of the forms. The forms may be used  
94 only by the practitioner to whom they are issued and are not  
95 transferable.

96 b. The Practitioner must also notify the vendor of any  
97 failure to receive Official Prescription Paper within a  
98 reasonable time after ordering them. Further, practitioners  
99 must immediately notify the Board and vendor in writing of  
100 the loss through destruction, theft or loss, or unauthorized use  
101 of any Official Prescription Paper blanks, including:

102 1. Estimated number of blanks affected;

103 2. Control numbers if available; and

104 3. Suspected reason for destruction, theft, or loss.

105 c. The program vendor must provide annual SAS70 or  
106 SSAE16 third party audits of the prescription paper  
107 printing/personalization facility used in the preparation and  
108 distribution of West Virginia Official Prescription Paper  
109 blanks upon request. The program vendor must be able to  
110 provide such report for each year and for two years prior to  
111 the term of the contract.”

112 (b) The legislative rule filed in the state register on July  
113 29, 2010, authorized under the authority of section five,  
114 article nine, chapter sixty-a, of this code, relating to the  
115 Board of Pharmacy (controlled substances monitoring, 15  
116 CSR 8), is authorized with the following amendments:

117 On page two, subsection 2.15, by striking out the words  
118 “15-1-27 of the West Virginia Code of State Rules” and  
119 inserting in lieu thereof the word “5”;

120 On page six, subdivision 7.3(b), by striking out all of  
121 subdivision 7.3(b) and inserting in lieu thereof a new  
122 subdivision 7.3(b) to read as follows:

123 “(b) members of the West Virginia State Police expressly  
124 authorized by the superintendent of the West Virginia State  
125 Police to have access to the information;”

126 On page six, subdivision 7.3(e), after the word “(e)”, by  
127 striking out the word “The” and inserting in lieu thereof the  
128 word “the”;

129 On page six, subdivision 7.3(f), after the word “(f)” by  
130 striking out the word “A” and inserting in lieu thereof the  
131 word “a”;

132 On page six, subdivision 7.3(g), by striking out the word  
133 “board” and inserting in lieu thereof the word “Board”;

134 On page six, subdivision 7.3(j), by striking out the word  
135 “date” and inserting in lieu thereof the word “data”;

136 On page six, subsection 7.4, by striking out the word  
137 “board” and inserting in lieu thereof the word “Board”;

138 And,

139 On page six, subsection 7.4, after the words “subsection  
140 7.3” by inserting the words “(a) through (i)”.

**§64-9-2. Physical Therapy.**

1 (a) The legislative rule filed in the state register on July  
2 30, 2010, authorized under the authority of section six, article  
3 twenty, chapter thirty, of this code, modified by the Board of  
4 Physical Therapy to meet the objections of the Legislative  
5 Rule-Making Review Committee and refiled in the state  
6 register on December 21, 2010, relating to the Board of  
7 Physical Therapy (general provisions, 16 CSR 1), is  
8 authorized with the following amendments:

9 On page two, by striking 2.15a in its entirety and  
10 inserting in lieu thereof the following:

11 “2.15.a. A physical therapy aide works under the direct  
12 supervision of a physical therapist; *Provided*, That a physical  
13 therapist assistant may directly supervise a physical therapy  
14 aide in emergency situations necessary to provide patient  
15 safety.”

16 On page 3, by striking out section 5 in its entirety and  
17 inserting in lieu thereof the following:

**§16-1-5. Issuance, Renewal or Reinstatement of License.**

1           5.1. The Board reserves the right to evaluate the applicant  
2 according to the testing, licensure, and procedural  
3 requirements as initiated by the agency responsible for the  
4 ownership and development of the National exam.

5           5.2. Licenses expiring on December 31, of each particular  
6 year must be renewed by payment of applicable fee along  
7 with completed renewal application.

8           5.3. A license not renewed without specific request to  
9 place it in “inactive” status will automatically be placed on  
10 delinquent status.

11           5.4. Delinquent licensee is responsible for penalty fees  
12 including but not limited to: application fee, delinquent  
13 license fee, and the current year renewal fee. A licensee must  
14 also complete and show proof of Board approved continuing  
15 education requirements.

16           5.5. To reinstate an “inactive” license, the licensee must  
17 submit an application for renewal along with a non-  
18 refundable application fee and license renewal fee.

19           5.6. A volunteer license will be marked as a “volunteer”  
20 license and is restricted to practicing in accordance with §30-  
21 20-13.

22           5.7. Any change in personal contact and  
23 employer/supervisor information must be submitted in  
24 writing to the Board as changes occur.”

25           On page 4, by striking out subsection 6.1 in its entirety  
26 and inserting in lieu thereof the following:

27           “6.1. An individual possessing a temporary permit issued  
28 by the Board to practice Physical Therapy or act as a physical  
29 therapist assistant in the State of West Virginia shall practice

30 under the on-site supervision of a Physical Therapist. All  
31 progress notes written by the Physical Therapist or physical  
32 therapist assistant with a temporary permit shall be cosigned  
33 by a Physical Therapist supervisor within twenty-four (24)  
34 hours.”

35 On page six, by inserting a new subsection 7.7, to read as  
36 follows:

37 “7.7. A licensee must report to the board any discipline  
38 received in another jurisdiction within 30 days of that  
39 discipline. The Board reserves the right to discipline up to  
40 and including revocation of a license until disciplinary  
41 process in the other jurisdiction is completed. If the licensee  
42 fails to report discipline in another jurisdiction, they are  
43 subject to disciplinary procedures in our jurisdiction  
44 determined by the Board.”

45 On page seven, by striking subdivision 8.2.a., in its  
46 entirety and inserting in lieu thereof the following:

47 “8.2.a. When care is delivered in a hospital or other  
48 acute-care center, free-standing, outpatient, or independent  
49 practice setting, a Physical Therapist must provide on-site  
50 supervision, with the exception that general supervision is  
51 permitted in a hospital or other acute-care center,  
52 free-standing, outpatient, or independent practice setting 40%  
53 of the time once the physical therapist assistant performing  
54 treatment has at least 1000 hours of experience. The  
55 supervising physical therapist shall document when general  
56 supervision is utilized under this subdivision.”

57 On page seven, by striking out subdivision 8.2.b., in its  
58 entirety and inserting in lieu thereof the following:

59 “8.2.b. General supervision may be utilized when care is  
60 delivered in a skilled/unskilled nursing facility, distinct part

61 skilled/unskilled nursing unit or swing-bed unit in an  
62 acute-care hospital, home health, or school system setting,  
63 and the following requirements must be observed and  
64 documented in the patient records when general supervision  
65 is used:”

66 On page seven, by striking out subparagraph 8.2.b.1 in its  
67 entirety and inserting in lieu thereof the following:

68 “8.2.b.1. A physical therapist must be accessible by  
69 telecommunications to the physical therapist assistant at all  
70 times that the physical therapist assistant is treating patients;  
71 and available to make a joint onsite visit with the physical  
72 therapist assistant within 24 hours as prudent practice  
73 indicates.”

74 On page seven, by striking out subparagraph 8.2.b.2 in its  
75 entirety and inserting in lieu thereof the following:

76 “8.2.b.2. The physical therapist must visit the patient at  
77 least once every 10 physical therapist assistant visits, or  
78 within 30 calendar days, whichever occurs first.”

79 On page seven, by striking out subparagraph 8.2.b.3 in its  
80 entirety and inserting in lieu thereof the following:

81 “8.2.b.3. In the event that the supervising physical  
82 therapist changes, the new supervising physical therapist  
83 must discuss the patient’s diagnosis and plan of care with the  
84 previous supervising physical therapist before the next  
85 physical therapist assistant visit is made. Either physical  
86 therapist must document such communication.”

87 On page 8, by striking out subsection 8.5 in its entirety  
88 and inserting in lieu thereof the following:

89           “8.5. In an emergency situation, such as serious illness or  
90 injury of the therapist or therapist’s family member or death  
91 of a family member, which causes the unanticipated absence  
92 of the supervising physical therapist for not more than three  
93 consecutive days, and no more than twelve days per calendar  
94 year, a licensed physical therapist assistant may continue to  
95 render services, under the supervision of another physical  
96 therapist, to only those patients for which the licensed  
97 physical therapist assistant has previously participated in the  
98 intervention for established plans of care not to exceed the  
99 regularly scheduled operational hours of the particular day or  
100 days the supervising physical therapist is absent. When this  
101 provision is utilized, the ratio in subdivision 8.1.c. may be  
102 exceeded and the physical therapist shall document the dates  
103 and the emergency situation.”

104           On page 8, by striking out subsection 8.6 in its entirety  
105 and inserting in lieu thereof the following:

106           “8.6. In a temporary situation, which causes the absence  
107 of the supervising physical therapist up to one day, and no  
108 more than eighty hours in a calendar year, a licensed physical  
109 therapist assistant may continue to render services, under  
110 general supervision of the supervising physical therapist, to  
111 only those patients for which the licensed physical therapist  
112 assistant has previously participated in the intervention for  
113 established plans of care not to exceed the regularly  
114 scheduled operational hours of the particular day the  
115 supervising physical therapist is absent. When this provision  
116 is utilized, the level of supervision in subdivision 8.2.a. may  
117 be exceeded and the physical therapist shall document the  
118 hours, date and temporary situation.”

119           On page 9, by inserting a new section 10 to read as  
120 follows:

**§16-1-10. Continuing Education.**

1           10.1. A “unit” is one clock hour spent in a continuing  
2 education activity unless otherwise defined in this section.

3           10.2. All licensees desiring to remain “active” and in  
4 good standing must complete 24 units of Board approved  
5 continuing education within the two year licensing period. If  
6 the licensee does not complete the 24 units of Board  
7 approved continuing education within the license period, that  
8 licensee will be placed on delinquent status and will be  
9 subject to all fees associated with delinquent status.

10           10.2.a. For those applicants reinstating their license for a  
11 period of 6 months or less, only 6 units are required for that  
12 year.

13           10.2.b. Volunteer licensees need only to complete twenty  
14 (20) units of Board approved continuing education activities  
15 within a two year renewal cycle.

16           10.2.c. Accumulated CEU’s may not be carried over from  
17 one renewal period to another.

18           10.2.d. A new graduate does not need continuing  
19 education hours for the current year of graduation.

20           10.3. Completion of examinations, residencies,  
21 fellowships, tools, and courses for continuing education  
22 credit.

23           10.3.a. A maximum of 8 units per license period can be  
24 obtained from any combination of clinical instruction or  
25 competency tools.

26           10.3.b. Passing the following specialty examinations will  
27 qualify for twenty-four contact hours of continuing education  
28 in the year the examination is taken:

29        10.3.b.1 Specialty examinations and recertification  
30 administered by the American Board of Physical Therapy  
31 specialties (ABPTS).

32        10.3.b.2. The Hand Therapy Certification Commission  
33 (HTCC) certification examination.

34        10.3.b.3. Continuing education course instructors can  
35 receive 1 unit per hour of class instruction time will be  
36 awarded for board approved continuing education courses in  
37 the year the course given. Credit awarded to the instructor  
38 for said course will be granted only one time.

39        10.3.c. The successful completion of an American  
40 Physical Therapy Association credentialed residency or  
41 fellowship program will qualify for twenty-four contact hours  
42 of continuing education in the year the residency or  
43 fellowship is completed.

44        10.3.d. The successful completion of a practice review  
45 tool of the Federation of State Boards of Physical Therapy  
46 pertaining to continued competence will qualify for  
47 continuing education.

48        10.3.d.1. Eight contact hours of continuing education will  
49 be awarded for completion of a practice review tool.

50        10.3.d.2. Licensees may use a practice review tool  
51 identified in paragraph 3.d.1 of this section no more than  
52 every other renewal period.

53        10.3.e. Clinical instruction.

54        10.3.e.1. Providing clinical instruction to PT or PTA  
55 student(s) enrolled in a CAPTE approved physical therapist  
56 or physical therapist assistant program can qualify for up to  
57 a maximum 8 units per year.

58        10.3.e.2. Four weeks of clinical instruction is equal to 1  
59        unit of continuing education.

60        10.3.f. Continuing education courses are subject to board  
61        approval.

62        10.3.f.1 One unit per hour of class instruction time will  
63        be awarded for board approved continuing education courses  
64        in the year the course is taken.

65        10.3.g. One unit per hour of class instruction time shall  
66        be awarded and automatically approved for CAPTE  
67        College/University, American Physical Therapy Association  
68        or West Virginia Physical Therapy Association sponsored  
69        continuing education courses in the year the course is taken.

70        10.3.h. One unit per hour of class instructions for CAPTE  
71        college or university physical therapy or doctorate physical  
72        therapy programs.

73        10.4. The board may grant a waiver of the continuing  
74        education requirements in the case of illness, disability or  
75        undue hardship.

76        10.4.a. A request for waiver form must be completed in  
77        full. In the case of illness or disability, a physician's  
78        statement is required.

79        10.4.b. All completed forms must be received by the  
80        Board for consideration no later than the first day of October  
81        of the year preceding the renewal date.

82        10.4.c. A waiver may be granted for any period of time  
83        not to exceed one renewal cycle.

84        10.4.d. In the event that the illness, disability or hardship  
85        continues to the next renewal cycle, then a new waiver  
86        request is required.

87           10.4.e. Should a waiver be granted due to disability or  
88 illness, the section may require the individual to provide  
89 appropriate documentation from a physician or another  
90 qualified and appropriate practitioner to verify the  
91 individual's competency and ability to practice physical  
92 therapy in the state of West Virginia prior to the return to  
93 active practice of physical therapy in West Virginia.”.

94           (b) The legislative rule filed in the state register on July  
95 30, 2010, authorized under the authority of section six, article  
96 twenty, chapter thirty, of this code, relating to the Board of  
97 Physical Therapy (fees for physical therapists and physical  
98 therapist assistants, 16 CSR 4), is authorized.

99           (c) The legislative rule filed in the state register on July  
100 30, 2010, authorized under the authority of section four,  
101 article twenty-a, chapter thirty, of this code, modified by the  
102 Board of Physical Therapy to meet the objections of the  
103 Legislative Rule-Making Review Committee and refiled in  
104 the state register on September 20, 2010, relating to the  
105 Board of Physical Therapy (general provisions for athletic  
106 trainers, 16 CSR 5), is authorized.

107           (d) The legislative rule filed in the state register on July  
108 30, 2010, authorized under the authority of section four,  
109 article twenty-a, chapter thirty, of this code, modified by the  
110 Board of Physical Therapy to meet the objections of the  
111 Legislative Rule-Making Review Committee and refiled in  
112 the state register on September 20, 2010, relating to the  
113 Board of Physical Therapy (fees for athletic trainers, 16 CSR  
114 6), is authorized.

### **§64-9-3. Sanitarians.**

1           (a) The legislative rule filed in the state register on July  
2 29, 2010, authorized under the authority of section six, article  
3 seventeen, chapter thirty, of this code, relating to the of

4 Board of Sanitarians (interim fee schedule, 20 CSR 3), is  
5 authorized.

6 (b) The legislative rule filed in the state register on July  
7 29, 2010, authorized under the authority of section six, article  
8 seventeen, chapter thirty, of this code, relating to the Board  
9 of Sanitarians (practice of public health sanitation, 20 CSR  
10 4), is authorized, with the following amendments:

11 On page three, following subdivision 4.1.c, by inserting  
12 a new subdivision 4.1.d. to read as follows:

13 “4.1.d. Has not previously failed an examination for  
14 licensure in this state;”;

15 And,

16 By re-designating the remaining subdivisions  
17 accordingly.

**§64-9-4. Secretary of State.**

1 The legislative rule filed in the state register on  
2 November 12, 2010, authorized under the authority of section  
3 twelve, article two, chapter three, of this code, relating to the  
4 Secretary of State (combined voter registration and driver  
5 licensing fund, 153 CSR 25), is authorized with the following  
6 amendments:

7 On page one, section two, following the words “For the  
8 purposes of this rule:”, by striking out subsection 2.1 in its  
9 entirety and renumbering the following subsections of section  
10 two;

11 On page three, subdivision 4.2.2 following the words  
12 “under this subsection on a”, by striking out the word  
13 “quarterly” and inserting in lieu thereof the word “annual”;

14 On page three, subsection 4.3, following the words  
15 “collection and transmission of the completed forms:”, by  
16 striking out the proviso in its entirety, and inserting in lieu  
17 thereof the following proviso “*Provided*, That the total  
18 reimbursement shall not exceed sixty (60) percent of the total  
19 annual revenue of the Fund. In any year in which the revenue  
20 is insufficient to pay the reimbursement rate of \$1.00 per  
21 completed registration as provided in this subsection, the  
22 amount per registration application shall be reduced  
23 proportionally.”;

24 And,

25 On page four, by striking out subsection 4.4 and  
26 subdivisions 4.4.1, 4.4.2, 4.4.3 and 4.4.4 in their entirety and  
27 renumbering the remaining sections of the rule.

**§64-9-5. Board of Barbers and Cosmetologists.**

1 (a) The legislative rule filed in the state register on July  
2 30, 2010, authorized under the authority of section six, article  
3 twenty-seven, chapter thirty, of this code, modified by the  
4 Board of Barbers and Cosmetologists to meet the objections  
5 of the Legislative Rule-Making Review Committee and  
6 refiled in the state register on October 18, 2010, relating to  
7 the Board of Barbers and Cosmetologists (procedures, criteria  
8 and curricula for examinations and licensure of barbers,  
9 cosmetologists, manicurists and aestheticians, 3 CSR 1), is  
10 authorized with the following amendments:

11 On page two, by striking out the words “43.1” and  
12 inserting in lieu thereof the word “3.1.”;

13 And,

14 On page three, subsection 4.2, after the word “obtain” by  
15 inserting the word “a”.

16 (b) The legislative rule filed in the state register on July  
17 30, 2010, authorized under the authority of section six, article  
18 twenty-seven, chapter thirty, of this code, modified by the  
19 Board of Barbers and Cosmetologists to meet the objections  
20 of the Legislative Rule-Making Review Committee and  
21 refiled in the state register on October 18, 2010, relating to  
22 the Board of Barbers and Cosmetologists (qualifications,  
23 training, examination of licensure of instructors, 3 CSR 2), is  
24 authorized, with the following amendments:

25 On page one, by striking out subdivision 2.1.1 in its  
26 entirety and inserting in lieu thereof the following:

27 “2.1.1 Have been licensed 5 years with 5 years of  
28 salon/shop experience.”;

29 On page one, subdivision 2.1.6 by striking out the  
30 percentage amount “70%” and inserting in lieu thereof the  
31 percentage amount “80%”;

32 And,

33 On page one, by striking out all of subdivisions 2.1.7. and  
34 2.1.8. and inserting in lieu new subdivisions 2.1.7. and 2.1.8.  
35 to read as follows:

36 “2.1.7. Submit an application to the board;

37 2.1.8. Pay applicable certification, examination and  
38 registration fees.”.

39 (c) The legislative rule filed in the state register on July  
40 30, 2010, authorized under the authority of section six, article  
41 twenty-seven, chapter thirty, of this code, modified by the  
42 Board of Barbers and Cosmetologists to meet the objections  
43 of the Legislative Rule-Making Review Committee and  
44 refiled in the state register on October 18, 2010, relating to

45 the Board of Barbers and Cosmetologists (operational  
46 standards for schools of barbering and beauty culture, 3 CSR  
47 4), is authorized with the following amendments:

48 On page five, by striking out section caption "3-4-5.  
49 Enrollment" and inserting in lieu thereof a new section  
50 caption to read as follows:

51 "§3-4-5. Enrollment";

52 And,

53 On page six, by striking out the section caption "3-4-8.  
54 Teaching Staff" and inserting in lieu thereof a new section  
55 caption to read as follows:

56 "§3-4-8 Teaching Staff".

57 (d) The legislative rule filed in the state register on June  
58 18, 2010, authorized under the authority of section six, article  
59 twenty-seven, chapter thirty, of this code, relating to the  
60 Board of Barbers and Cosmetologists (schedule of fees, 3  
61 CSR 6), is authorized with the following amendment:

62 On page one, subsection 2.1, by striking out the words  
63 "\$99.00" and inserting in lieu thereof the words "Based on  
64 the National Interstate Council Index with a cap of \$107.00".

**§64-9-6. Commissioner of Agriculture.**

1 (a) The legislative rule filed in the state register on July  
2 26, 2010, authorized under the authority of section four,  
3 article thirteen, chapter nineteen, of this code, modified by  
4 the Commissioner of Agriculture to meet the objections of  
5 the Legislative Rule-Making Review Committee and refiled  
6 in the state register on September 21, 2010, relating to the

7 Commissioner of Agriculture (West Virginia Apiary Rule, 61  
8 CSR 2), is authorized.

9 (b) The legislative rule filed in the state register on July  
10 12, 2010, authorized under the authority of section five-c,  
11 article twelve, chapter twenty-two, of this code, relating to  
12 the Commissioner of Agriculture (general groundwater  
13 protection rules for fertilizers and manures, 61 CSR 6C), is  
14 authorized.

15 (c) The legislative rule filed in the state register on the  
16 July 20, 2010, authorized under the authority of section three,  
17 article two-B, chapter nineteen, of this code, relating to the  
18 Commissioner of Agriculture (inspection of meat and  
19 poultry, 61 CSR 16), is authorized.

**§64-9-7. Board of Veterinary Medicine.**

1 (a) The legislative rule filed in the state register on July  
2 27, 2010, authorized under the authority of section six, article  
3 ten, chapter thirty, of this code, modified by the West  
4 Virginia, 1931, as amended, relating to authorizing the Board  
5 of Veterinary Medicine to meet the objections of the  
6 Legislative Rule-Making Review Committee and refiled in  
7 the state register on November 24, 2010, relating to the West  
8 Virginia, 1931, as amended, relating to the Board of  
9 Veterinary Medicine (organization and operation and  
10 licensing of veterinarians, 26 CSR 1), is authorized with the  
11 following amendments:

12 On page two, subdivision 2.4.4, by striking out the  
13 subdivision in its entirety;

14 On page twelve, subsection 8.1, by striking out the words  
15 “the supervision of a West Virginia licensed veterinarian”  
16 and inserting in lieu thereof the words “the indirect or general  
17 supervision of a West Virginia licensed supervising

18 veterinarian. During the period of supervision of a temporary  
19 permittee, the supervising veterinarian must remain within  
20 one hour's physical access to the location where the  
21 temporary permittee is rendering veterinary care.”

22 And,

23 On page twelve, subsection 8.2, in the last sentence of the  
24 subsection, by striking out the word “supervisory” and  
25 inserting in lieu thereof the word “supervising”.

26 (b) The legislative rule filed in the state register on July  
27 27, 2010, authorized under the authority of section six, article  
28 ten, chapter thirty of this code, modified by the Board of  
29 Veterinary Medicine to meet the objections of the Legislative  
30 Rule-Making Review Committee and refiled in the state  
31 register on November 24, 2010, relating to the Board of  
32 Veterinary Medicine (registration of veterinary technicians,  
33 26 CSR 3), is authorized.

34 (c) The legislative rule filed in the state register on July  
35 27, 2010, authorized under the authority of section six, article  
36 ten, chapter thirty of this code, modified by the Board of  
37 Veterinary Medicine to meet the objections of the Legislative  
38 Rule-Making Review Committee and refiled in the state  
39 register on November 24, 2010, relating to the Board of  
40 Veterinary Medicine (standards of practice, 26 CSR 4), is  
41 authorized, with the following amendments:

42 On page four, subsection 3.6, in the title to the  
43 subsection, by striking out the words “position or trust” and  
44 inserting in lieu thereof the words “position of trust”.

45 (d) The legislative rule filed in the state register on July  
46 27, 2010, authorized under the authority of section six, article  
47 ten, chapter thirty of this code, modified by the Board of  
48 Veterinary Medicine to meet the objections of the Legislative

49 Rule-Making Review Committee and refiled in the state  
50 register on November 24, 2010, relating to the Board of  
51 Veterinary Medicine (certified animal euthanasia technicians,  
52 26 CSR 5), is authorized, with the following amendment:

53 On page eight, subdivision 10.1.d., by striking out the  
54 words "Section 10" and inserting in lieu thereof the words  
55 "Section 13".

56 (e) The legislative rule filed in the state register on July  
57 27, 2010, authorized under the authority of section six, article  
58 ten, chapter thirty of this code, modified by the Board of  
59 Veterinary Medicine to meet the objections of the Legislative  
60 Rule-Making Review Committee and refiled in the state  
61 register on November 24, 2010, relating to the Board of  
62 Veterinary Medicine (schedule of fees, 26 CSR 6), is  
63 authorized.

**§64-9-8. Board of Optometry.**

1 (a) The legislative rule filed in the state register on July  
2 30, 2010, authorized under the authority of section six, article  
3 eight, chapter thirty, of this code, modified by the Board of  
4 Optometry to meet the objections of the Legislative Rule-  
5 Making Review Committee and refiled in the state register on  
6 November 24, 2010, relating to the Board of Optometry  
7 (rules of the West Virginia Board of Optometry, 14 CSR 1),  
8 is authorized.

9 (b) The legislative rule filed in the state register on July  
10 30, 2010, authorized under the authority of section six, article  
11 eight, chapter thirty, of this code, modified by the Board of  
12 Optometry to meet the objections of the Legislative Rule-  
13 Making Review Committee and refiled in the state register on  
14 January 3, 2011, relating to the Board of Optometry (oral  
15 pharmaceutical prescriptive authority, 14 CSR 2), is  
16 authorized.

17 (c) The legislative rule filed in the state register on July  
18 30, 2010, authorized under the authority of section six, article  
19 eight, chapter thirty, of this code, modified by the Board of  
20 Optometry to meet the objections of the Legislative Rule-  
21 Making Review Committee and refiled in the state register on  
22 November 24, 2010, relating to the Board of Optometry  
23 (schedule of fees, 14 CSR 5), is authorized.

24 (d) The legislative rule filed in the state register on July  
25 30, 2010, authorized under the authority of section six, article  
26 eight, chapter thirty, of this code, modified by the Board of  
27 Optometry to meet the objections of the Legislative Rule-  
28 Making Review Committee and refiled in the state register on  
29 November 24, 2010, relating to the Board of Optometry  
30 (examination and scoring policy, 14 CSR 6), is authorized  
31 with the following amendments:

32 On page one, subsection 2.1., by striking out all of  
33 subsection 2.1. and inserting in lieu thereof a new subsection  
34 2.1. to read as follows:

35 “2.1. The Board shall conduct the interview with a  
36 quorum of the Board being present.”;

37 On page one, subsection 3.2, after the word “The” by  
38 inserting the word “Board”;

39 And,

40 On page two, subsection 4.1., by striking out all of  
41 subsection 4.1. and inserting a new subsection 4.1. to read as  
42 follows:

43 “4.1. A Board quorum may evaluate the applicant’s  
44 successful or unsuccessful completion of the interview by  
45 consensus”.

46 (e) The legislative rule filed in the state register on July  
47 30, 2010, authorized under the authority of section six, article  
48 eight, chapter thirty, of this code, modified by the Board of  
49 Optometry to meet the objections of the Legislative Rule-  
50 Making Review Committee and refiled in the state register on  
51 November 24, 2010, relating to the Board of Optometry  
52 (licensure by endorsement, 14 CSR 8), is authorized with the  
53 following amendments:

54 On page one, after subdivision 2.2.5., by inserting a new  
55 subdivision 2.2.6. to read as follows:

56 “2.2.6. At the option of the Board, an applicant for  
57 licensure by reciprocity may be required to take the National  
58 Board Examination;

59 On page one, subsection 3.2., by striking out the word  
60 “licensee” and inserting in lieu thereof the word “applicant”;

61 On page two, subsection 3.7, by striking out the word  
62 “person” and inserting in lieu thereof the word “applicant”;

63 On page two, subsection 3.8, after the words “Code of”,  
64 by inserting the word “State”;

65 And,

66 On page two, subsection 3.9., by striking out all of  
67 subsection 3.9. and inserting in lieu thereof a new subsection  
68 3.9. to read as follows:

69 “3.9. The Board may require an applicant to interview  
70 with the Board.”

71 (f) The legislative rule filed in the state register on July  
72 30, 2010, authorized under the authority of section six, article  
73 eight, chapter thirty, of this code, modified by the Board of

74 Optometry to meet the objections of the Legislative Rule-  
75 Making Review Committee and refiled in the state register on  
76 November 24, 2010, relating to the Board of Optometry  
77 (contact lenses that contain and deliver pharmaceutical agents  
78 certificates, 14 CSR 9), is authorized with the following  
79 amendment:

80 On page one, subsection 3.3., after the words “Code of”,  
81 by inserting the word “State”.

82 (g) The legislative rule filed in the state register on July  
83 30, 2010, authorized under the authority of section six, article  
84 eight, chapter thirty, of this code, modified by the Board of  
85 Optometry to meet the objections of the Legislative Rule-  
86 Making Review Committee and refiled in the state register on  
87 November 24, 2010, relating to the Board of Optometry  
88 (continuing education, 14 CSR 10), is authorized with the  
89 following amendments:

90 On page one, subsection 2.1., after the words “Code of”  
91 by inserting the word “State”;

92 On page one, subsection 3.2., after the word “hours” by  
93 inserting the words “of continuing education”;

94 On page one, subsection 3.6., after the word “outlined”  
95 by inserting the word “in”;

96 On page one, subsection 3.7., by striking out the word  
97 “hold” and inserting in lieu thereof the word “holds”;

98 On page two, subdivision 4.1(d), by striking out the word  
99 “Postgraduate” and inserting in lieu thereof the word  
100 “postgraduate”;

101 On page two, subsection 5.1., after the words “Code of”  
102 by inserting the word “State”;

103           On page two, subsection 6.1., after the word “instruction”  
104 by striking out the words “by correspondence, Internet or  
105 other electronic means”;

106           And,

107           On page two, subsection 6.1, after the word “attendance”  
108 by changing the period to a comma and inserting the words  
109 “by correspondence, Internet or other electronic means.”

110           (h) The legislative rule filed in the state register on July  
111 30, 2010, authorized under the authority of section fifteen,  
112 article eight, chapter thirty, of this code, modified by the  
113 Board of Optometry to meet the objections of the Legislative  
114 Rule-Making Review Committee and refiled in the state  
115 register on December 23, 2010, relating to the Board of  
116 Optometry (injectable pharmaceutical agents certificate, 14  
117 CSR 11), is authorized with the following amendments:

118           On page five, subsection 10.1., by striking out the word  
119 ‘not’;

120           And,

121           On page five, by striking out subsection 11.1 in its  
122 entirety and inserting in lieu thereof the following:

123           “11.1 A certificate holder may not establish a pharmacy  
124 in an optometric office or sell injectable pharmaceutical  
125 agents prescribed in treatment unless there is a licensed  
126 pharmacist on staff or present when the prescription is filled.  
127 Nothing in this rule shall prohibit the optometrist from  
128 charging a usual and customary fee for performing the  
129 injection.

130           11.2 Retrobulbar and Peribulbar injections are  
131 prohibited.

132       11.3. The board shall establish a formulary of  
133       pharmaceutical agents to be administered by injection.

134       11.3.1. The injection formulary shall be created from  
135       those agents that certificate holders have been authorized  
136       previously to administer or prescribe as topical agents or oral  
137       medication categories listed in the oral formulary of the  
138       Board in the W.Va. Code of State Rules, §14-2-7.2a through  
139       §14-2-7.2g.

140       11.3.2. New drugs or drug indications may be added to  
141       the formulary by a decision of the Board based on any of the  
142       following criteria:

143       11.3.2.1. A new or existing drug has been approved by  
144       the Food and Drug Administration for the treatment of the  
145       eye or its appendages.

146       11.3.2.2. A new drug or new drug indication has gained  
147       accepted use in the eye care field. Such acceptance may be  
148       indicated by its inclusion in the curriculum of an optometry  
149       school accredited by the Accreditation Council on  
150       Optometric Education or its successor approved by the U.S.  
151       Department of Education or approved post-graduate  
152       continuing education, through peer-reviewed, evidence-based  
153       research and professional journal articles, or by inclusion in  
154       established standards of practice and care published by  
155       professional organizations.

**§64-9-9. Board of Osteopathy.**

1       (a) The legislative rule filed in the state register on July  
2       30, 2010, authorized under the authority of section one,  
3       article fourteen-a, chapter thirty, of this code, modified by the  
4       Board of Osteopathy to meet the objections of the Legislative  
5       Rule-Making Review Committee and refiled in the state  
6       register on November 29, 2010, relating to the Board of

7 Osteopathy (osteopathic physician assistants, 24 CSR 2), is  
8 authorized with the following the following amendments:

9 On page nine, subsection 6.6., after the words “Board and  
10 the”, by striking out the word “board” and inserting in lieu  
11 thereof the word “Board”;

12 And,

13 On page eleven, subsection 8.6., after the words “and  
14 expire with, the”, by inserting the word “osteopathic”.

15 (b) The legislative rule filed in the state register on July  
16 28, 2010, authorized under the authority of section three,  
17 article fourteen-a, chapter thirty, of this code, modified by the  
18 Board of Osteopathy to meet the objections of the Legislative  
19 Rule-Making Review Committee and refiled in the state  
20 register on November 29, 2010, relating to the Board of  
21 Osteopathy (fees for services rendered by the Board, 24 CSR  
22 5), is authorized.

**§64-9-10. Treasurer’s Office.**

1 The legislative rule filed in the state register on July 30,  
2 2010, authorized under the authority of section two, article  
3 two, chapter twelve, of this code, modified by the Treasurer’s  
4 Office to meet the objections of the Legislative Rule-Making  
5 Review Committee and refiled in the state register on July  
6 30, 2010, relating to the Treasurer’s Office (establishment of  
7 imprest funds, 112 CSR 3), is authorized.

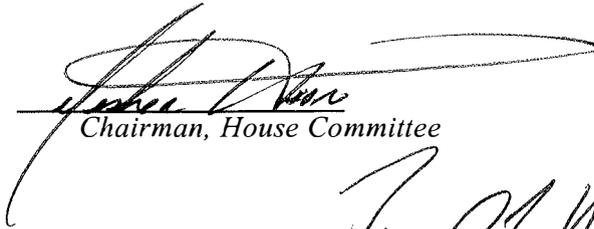
**§64-9-11. State Election Commission.**

1 The legislative rule filed in the state register on the July  
2 29, 2010, authorized under the authority of section fourteen,  
3 article twelve, chapter three, of this code, modified by the  
4 State Election Commission to meet the objections of the

5 Legislative Rule-Making Review Committee and refiled in  
6 the state register on January 14, 2011, relating to the State  
7 Election Commission (West Virginia Supreme Court of  
8 Appeals Public Campaign Financing Pilot Program, 146 CSR  
9 5), is authorized, with the following amendment:

10 On page nine, subdivision 6.9.a., by striking out “per W.  
11 Va. Code §3-12-9(f)” and inserting in lieu thereof “as  
12 required by W. Va. Code §3-12-9(g)”.

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

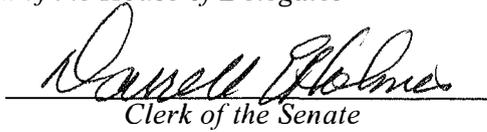
  
Chairman, House Committee

  
Chairman, Senate Committee

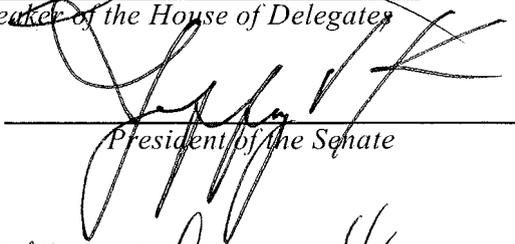
Originating in the House.

To take effect ninety days from passage.

  
Clerk of the House of Delegates

  
Clerk of the Senate

  
Speaker of the House of Delegates

  
President of the Senate

2011 APR -4 PM 2:47  
SECRETARY OF STATE

The within is appended this the 4th  
day of April, 2011.

  
Governor

PRESENTED TO THE GOVERNOR

MAR 31 2011

Time 11:30 am  
EDT