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WEST VIRGINIA LEGISLATURE
EIGHTIETH LEGISLATURE
REGULAR SESSION, 2011

SECRETARY OF STATE

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ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 177

(SENATORS MINARD, SNYDER, PREZIOSO, UNGER,
BOLEY AND K. FACEMYER, ORIGINAL SPONSORS)

[PASSED MARCH 12, 2011; IN EFFECT FROM PASSAGE.]

SB177

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C. J. ... DONA
SECRETARY OF STATE

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COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 177

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

[Passed March 12, 2011; 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 the State Tax Department to promulgate a legislative rule relating to the commercial patent incentives tax credit; authorizing the State Tax Department to promulgate a legislative rule relating to the exchange of information agreement between the State Tax

Department and the West Virginia Lottery; authorizing the State Tax Department to promulgate a legislative rule relating to the exchange of information agreement between the State Tax Department and the Office of the State Fire Marshal; authorizing the Insurance Commissioner to promulgate a legislative rule relating to credit life insurance, credit accident and sickness insurance and credit unemployment insurance; authorizing the Insurance Commissioner to promulgate a legislative rule relating to suitability in annuity transactions; authorizing the Insurance Commissioner to promulgate a legislative rule relating to insurance adjusters; authorizing the Insurance Commissioner to promulgate a legislative rule relating to long-term care insurance; authorizing the Insurance Commissioner to promulgate a legislative rule relating to actuarial opinion and memorandum; authorizing the Insurance Commissioner to promulgate a legislative rule relating to property and casualty actuarial opinions; authorizing the Insurance Commissioner to promulgate a legislative rule relating to credit personal property; authorizing the Insurance Commissioner to promulgate a legislative rule relating to self-insurance pools for political subdivisions; authorizing the Insurance Commissioner to promulgate a legislative rule relating to valuation of life insurance companies; authorizing the Insurance Commissioner to promulgate a legislative rule relating to recognition of preferred mortality tables for use in determining minimum reserve liabilities; authorizing the Insurance Commissioner to promulgate a legislative rule relating to professional employer organizations; authorizing the Insurance Commissioner to promulgate a legislative rule relating to health maintenance organization point of service option; authorizing the Racing Commission to promulgate a legislative rule relating to thoroughbred racing; authorizing the Racing Commission to promulgate a legislative rule relating to greyhound racing; authorizing the Racing Commission to promulgate a legislative rule relating to pari-mutuel wagering; authorizing the Alcohol Beverage Control Commission to promulgate a legislative rule relating to licensed retailer operations; and authorizing the Alcohol Beverage Control Commission to promulgate a legislative rule relating to licensing of retail outlets.

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 REVENUE TO PROMULGATE LEGISLATIVE RULES.

§64-7-1. State Tax Department.

1 (a) The legislative rule filed in the state register on July 28,
2 2010, authorized under the authority of section ten, article
3 thirteen-aa, chapter eleven of this code, modified by the
4 State Tax Department to meet the objections of the Legisla-
5 tive Rule-Making Review Committee and refiled in the state
6 register on November 5, 2010, relating to the State Tax
7 Department (commercial patent incentives tax credit, 110
8 CSR 13Q), is authorized.

9 (b) The legislative rule filed in the state register on July 26,
10 2010, authorized under the authority of section five-s, article
11 ten, chapter eleven of this code, relating to the State Tax
12 Department (exchange of information agreement between
13 the State Tax Department and the West Virginia Lottery, 110
14 CSR 50E), is authorized.

15 (c) The legislative rule filed in the state register on July 26,
16 2010, authorized under the authority of section five-s, article
17 ten, chapter eleven of this code, modified by the State Tax
18 Department to meet the objections of the Legislative Rule-
19 Making Review Committee and refiled in the state register
20 on November 5, 2010, relating to the State Tax Department
21 (exchange of information agreement between the State Tax
22 Department and the Office of the State Fire Marshal, 110
23 CSR 50F), is authorized.

§64-7-2. Insurance Commissioner.

1 (a) The legislative rule filed in the state register on July 27,
2 2010, authorized under the authority of section three, article

3 two, chapter thirty-three of this code, modified by the
4 Insurance Commissioner to meet the objections of the
5 Legislative Rule-Making Review Committee and refiled in
6 the state register on September 28, 2010, relating to the
7 Insurance Commissioner (credit life insurance, credit
8 accident and sickness insurance and credit unemployment
9 insurance, 114 CSR 6), is authorized with the following
10 amendment:

11 On pages one and two, section 2, by striking out all of
12 section 2. and inserting in lieu thereof a new section 2. to
13 read as follows:

“§114-6-2. Definitions.

1 (1) “Commissioner” means the West Virginia Insurance
2 Commissioner.

3 (2) “Credit Accident and Sickness Insurance” means
4 insurance on a debtor to provide indemnity for payments
5 becoming due on a specific loan or other credit transaction
6 while the debtor is disabled as defined in the policy.

7 (3) “Credit Life Insurance” means insurance on the life of
8 a debtor pursuant to or in connection with a specific loan or
9 other credit transaction.

10 (4) “Credit unemployment insurance” means insurance on
11 a debtor to provide indemnity for payments becoming due on
12 a specific loan or other credit transaction while the debtor is
13 unemployed as defined in the policy.

14 (5) “Creditor” means the lender of money or vendor or
15 lesser goods, services, or property, rights or privileges, for
16 which payment is arranged through a credit transaction, or
17 any successor to the right, title or interest of any such lender,
18 vendor, or lessor, and an affiliate, associate or subsidiary of
19 them or any director, officer, or employee of any of them or
20 any other person in any way associated with any of them.

21 (6) "Debtor" means a borrower of money or purchaser or
22 lessee of goods, services, property, rights or privileges for
23 which payment is arranged through a credit transaction.

24 "Indebtedness" means the total amount payable by a
25 debtor to a creditor in connection with a loan or other credit
26 transaction.

27 (7) "Indebtedness" means the total amount payable by a
28 debtor to a creditor in connection with a loan or other credit
29 transaction."

30 (b) The legislative rule filed in the state register on July 29,
31 2010, authorized under the authority of section ten, article
32 two, chapter thirty-three of this code, relating to the Insur-
33 ance Commissioner (suitability in annuity transactions, 114
34 CSR 11B), is authorized.

35 (c) The legislative rule filed in the state register on July 27,
36 2010, authorized under the authority of section three, article
37 two, chapter thirty-three of this code, modified by the
38 Insurance Commissioner to meet the objections of the
39 Legislative Rule-Making Review Committee and refiled in
40 the state register on October 20, 2010, relating to the Insur-
41 ance Commissioner (insurance adjusters, 114 CSR 25), is
42 authorized with the following amendments:

43 On page two, subsection 3.1., by striking out all of subsec-
44 tion 3.1. and inserting in lieu thereof a new subsection 3.1. to
45 read as follows:

46 "3.1. No person shall in West Virginia act as or hold
47 himself to be an adjuster unless licensed by the Commis-
48 sioner. As used in the rule, the term "person" shall not
49 include those persons located in an office of an insurer
50 outside the State of West Virginia who adjust claims solely
51 by telephone, fax, United States Mail and electronic mail
52 and who do not physically enter the State of West Virginia in
53 the course of adjusting such claims.";

54 And,

55 On page four, subdivision 3.2.j., by striking out all of
56 subdivision 3.2.j. and renumbering the remaining subdivi-
57 sions.

58 (d) The legislative rule filed in the state register on July 29,
59 2010, authorized under the authority of section three, article
60 two, chapter thirty-three of this code, modified by the
61 Insurance Commissioner to meet the objections of the
62 Legislative Rule-Making Review Committee and refiled in
63 the state register on September 28, 2010, relating to the
64 Insurance Commissioner (long-term care insurance, 114 CSR
65 32), is authorized with the following amendments:

66 On page 51, paragraph 29.4.c.1., by striking out all of
67 paragraph 29.4.c.1. and inserting in lieu thereof a new
68 paragraph 29.4.c.1. to read as follows:

69 "29.4.c.1. Within five (5) business days of receiving a
70 written request for independent review, the insurer shall
71 choose an independent review organization approved or
72 certified by the state. The insurer shall vary its selection of
73 authorized independent review organizations on a rotating
74 basis.";

75 On page fifty-two, paragraph 29.4.c.6., by striking out the
76 word "8," and inserting in lieu thereof the word "3,";

77 And,

78 On page fifty-six, subsection 30.6., by striking out all of
79 subsection 30.6.

80 (e) The legislative rule filed in the state register on July 27,
81 2010, authorized under the authority of section three, article
82 two, chapter thirty-three of this code, relating to the Insur-
83 ance Commissioner (actuarial opinion and memorandum, 114
84 CSR 41), is authorized.

85 (f) The legislative rule filed in the state register on July 27,
86 2010, authorized under the authority of section three, article
87 two, chapter thirty-three of this code, modified by the
88 Insurance Commissioner to meet the objections of the
89 Legislative Rule-Making Review Committee and refiled in
90 the state register on December 1, 2010, relating to the
91 Insurance Commissioner (property and casualty actuarial
92 opinions, 114 CSR 41A), is authorized.

93 (g) The legislative rule filed in the state register on July 27,
94 2010, authorized under the authority of section three, article
95 two, chapter thirty-three of this code, relating to the Insur-
96 ance Commissioner (credit personal property, 114 CSR 61),
97 is authorized.

98 (h) The legislative rule filed in the state register on July 27,
99 2010, authorized under the authority of section three, article
100 two, chapter thirty-three of this code, modified by the
101 Insurance Commissioner to meet the objections of the
102 Legislative Rule-Making Review Committee and refiled in
103 the state register on December 1, 2010, relating to the
104 Insurance Commissioner (self-insurance pools for political
105 subdivisions, 114 CSR 65), is authorized with the following
106 amendment:

107 On pages ten and eleven, subsection 8.1., by striking out all
108 of subsection 8.1. and inserting in lieu thereof a new subsec-
109 tion 8.1. to read as follows:

110 "8.1. To the extent not inconsistent with this rule, each
111 workers' compensation pool is subject to the requirements of
112 *West Virginia Code* §§33-2-21 and 33-2-22 and *West Virginia*
113 *Code* Chapter Twenty-Three and the rules promulgated
114 thereunder, including but not limited to the payment of
115 surcharges pursuant to *West Virginia Code* §§23-2C-3(f)(2)
116 and 23-2C-3(f)(3)(B) and *West Virginia Code* St. R. Section
117 85-6-1 *et seq.*; the record retention requirements of *West*
118 *Virginia Code* St. R. Section 85-18-13; and the data require-
119 ments of *West Virginia Code* St. R. Section 85-2-1 *et. seq.*:
120 *Provided*, That such a pool is subject to *West Virginia Code*

121 St. R. Section 85-18-1 *et seq.*; as if the pool was a single self-
122 insured employer: *Provided*, however, That no provision of
123 Chapter Twenty-Three of this code or any rule promulgated
124 thereunder requiring participation in the self-insured
125 guarantee risk pool and the self-insured security risk pool, or
126 providing for industrial council approval of self-insured
127 status, termination of self-insured status or approval of
128 security, shall apply.”

129 (i) The legislative rule filed in the state register on July 27,
130 2010, authorized under the authority of section three, article
131 two, chapter thirty-three of this code, relating to the Insur-
132 ance Commissioner (valuation of life insurance companies,
133 114 CSR 68), is authorized.

134 (j) The legislative rule filed in the state register on July 27,
135 2010, authorized under the authority of section three, article
136 two, chapter thirty-three of this code, relating to the Insur-
137 ance Commissioner (recognition of preferred mortality tables
138 for use in determining minimum reserve liabilities, 114 CSR
139 69A), is authorized.

140 (k) The legislative rule filed in the state register on July 27,
141 2010, authorized under the authority of section three, article
142 two, chapter thirty-three of this code, relating to the Insur-
143 ance Commissioner (professional employer organizations,
144 114 CSR 85), is authorized.

145 (l) The legislative rule filed in the state register on July 27,
146 2010, authorized under the authority of section three, article
147 two, chapter thirty-three of this code, relating to the Insur-
148 ance Commissioner (health maintenance organization point
149 of service option, 114 CSR 91), is authorized.

§64-7-3. Racing Commission.

1 (a) The legislative rule filed in the state register on July 27,
2 2010, authorized under the authority of section six, article
3 twenty-three, chapter nineteen of this code, modified by the
4 Racing Commission to meet the objections of the Legislative

5 Rule-Making Review Committee and refiled in the state
6 register on January 20, 2011, relating to the Racing Commis-
7 sion (thoroughbred racing, 178 CSR 1), is authorized with the
8 following amendments:

9 On page forty-two, subdivision 26.4.q., by striking out
10 subdivision 26.4.q. in its entirety and inserting in lieu thereof
11 a new subdivision 26.4.q. to read as follows:

12 "26.4.q. No trainer shall move or permit to be moved any
13 horse or horses under his or her custody, care or control into
14 the association's grounds without permission from the
15 association's racing secretary or his or her designee. No
16 trainer shall move or permit to be moved any horse or horses
17 under his or her custody, care or control out of the associa-
18 tion's grounds without first signing out the horse on a form
19 prescribed by the association and made available at the
20 stable gate: *Provided*, That for all horses stabled on the
21 association grounds, permission is required from the associa-
22 tion's racing secretary or his or her designee at the time of
23 removal if the horse is entered to race or may be entered to
24 race at another racetrack during a period of seven (7) days
25 following the day of its removal from the association's
26 grounds. No trainer shall move or permit to be moved any
27 horse or horses under his or her custody, care or control into
28 the association's grounds without presenting a current
29 negative Coggins test for equine infectious anemia (EIA).";

30 On page fifty-six, subdivision 42.3.a., by striking out the
31 words "eighteen (118)" and inserting in lieu thereof the
32 words "sixteen (116)";

33 And,

34 On page sixty-nine, subdivision 48.2.d., by striking out
35 subdivision 48.2.d. in its entirety and inserting in lieu thereof
36 a new subdivision 48.2.d. to read as follows:

37 "48.2.d. Practicing veterinarians shall not have contact
38 with an entered horse on a race day except for the adminis-

39 tration of furosemide (lasix[®]) under the guidelines set forth
40 in subsection 49.7. of this rule unless approved by a Racing
41 Commission veterinarian. If approval to have contact with an
42 entered horse on race day for purposes other than the
43 administration of furosemide (lasix[®]) is obtained from a
44 Racing Commission veterinarian, or if reasonable efforts are
45 made to contact a Racing Commission veterinarian and he or
46 she is unavailable, a practicing veterinarian may have
47 contact with the horse for purposes other than the adminis-
48 tration of furosemide (lasix[®]): *Provided*, That the practicing
49 veterinarian shall complete a form prescribed by the Racing
50 Commission notifying the Racing Commission veterinarian
51 of the contact. Such form shall be provided to the Racing
52 Commission veterinarian one hour before post time.”

53 (b) The legislative rule filed in the state register on July 30,
54 2010, authorized under the authority of section six, article
55 twenty-three, chapter nineteen of this code, modified by the
56 Racing Commission to meet the objections of the Legislative
57 Rule-Making Review Committee and refiled in the state
58 register on January 20, 2011, relating to the Racing Commis-
59 sion (greyhound racing, 178 CSR 2), is authorized.

60 (c) The legislative rule filed in the state register on July 16,
61 2010, authorized under the authority of section six, article
62 twenty-three, chapter nineteen of this code, modified by the
63 Racing Commission to meet the objections of the Legislative
64 Rule-Making Review Committee and refiled in the state
65 register on January 20, 2011, relating to the Racing Commis-
66 sion (pari-mutuel wagering, 178 CSR 5), is authorized, with
67 the following amendment:

68 On page two, subsection 2.21, line 5, by striking out the
69 word “totalizator” and inserting in lieu thereof the word
70 “totalisator”.

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

1 (a) The legislative rule filed in the state register on Novem-
2 ber 20, 2009, authorized under the authority of section six,

3 article three-a, chapter sixty of this code, modified by the
4 Alcohol Beverage Control Commission to meet the objections
5 of the Legislative Rule-making Review Committee and
6 refiled in the state register on January 20, 2011, relating to
7 the Alcohol Beverage Commission (licensed retailer opera-
8 tions, 175 CSR 1), is authorized with the following amend-
9 ment:

10 On pages seven and eight, paragraph 4.1.a.3., by striking
11 out all of paragraph 4.1.a.3. and inserting in lieu thereof a
12 new paragraph 4.1.a.3. to read as follows:

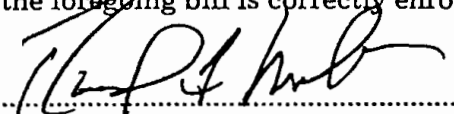
13 "4.1.a.3. Column 2 - "Unit Size." The product bottle size is
14 listed in metric measurement.

15 Metric Conversion Table

16	Metric Size	Converted to Ounces
17	50 ml.	1.7 oz.
18	200 ml.	6.8 oz.
19	375 ml.	12.7 oz.
20	500 ml.	16.9 oz.
21	750 ml.	25.4 oz.
22	1. Liter	33.8 oz.
23	1.75 Liter	59.2 oz."

24 (b) The legislative rule filed in the state register on Febru-
25 ary 22, 2010, authorized under the authority of section six,
26 article three-a, chapter sixty of this code, modified by the
27 Alcohol Beverage Control Commission to meet the objections
28 of the Legislative Rule-making Review Committee and
29 refiled in the state register on January 19, 2011, relating to
30 the Alcohol Beverage Commission (licensing of retail outlets,
31 175 CSR 5), is authorized.


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

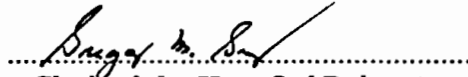

.....
Chairman Senate Committee

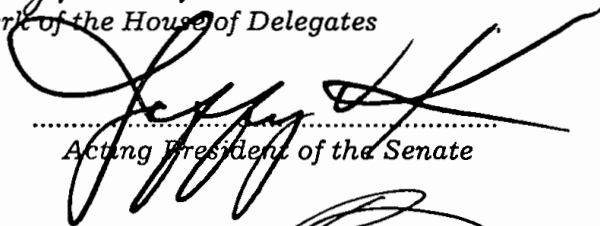

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Chairman House Committee

Originated in the Senate.

In effect from passage.


.....
Clerk of the Senate



.....
Clerk of the House of Delegates


.....
Acting President of the Senate


.....
Speaker of the House of Delegates

The within *is approved* this the *4th*

Day of *April*, 2011.


.....
Governor

2011 APR -4 PM 2:45

OFFICE OF THE CLERK
SECRETARY OF STATE

PRESENTED TO THE GOVERNOR

MAR 29 2011

Time 10:10am