WEST VIRGINIA LEGISLATURE
SECOND REGULAR SESSION, 2012

ENROLLED

COMMITTEE SUBSTITUTE
FOR
House Bill No. 4139

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

Passed March 10, 2012
To Take Effect From Passage
AN ACT to amend and reenact article 9, chapter 64 of the Code of West Virginia, 1931, as amended, relating generally to the promulgation of administrative rules by the various executive or administrative agencies and the procedures relating thereto; legislative mandate or authorization for the promulgation of certain legislative rules; authorizing certain of the agencies to promulgate certain legislative rules in the form that the rules were filed in the State Register; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the Legislative Rule-Making Review Committee; authorizing certain of the agencies to promulgate certain legislative rules as amended by the Legislature; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the Legislative Rule-Making Review Committee and as amended by the Legislature; authorizing the Board of Dental Examiners to promulgate a legislative rule relating to fees established by the Board; authorizing the Board of Accountancy to promulgate a legislative rule relating to the Board and rules of professional conduct; authorizing the Massage Therapy Licensure Board to promulgate a legislative rule relating to general provisions; authorizing the Massage Therapy Licensure Board to promulgate a legislative rule relating to a schedule of fees; authorizing the Board of Medicine to promulgate a legislative
rule relating to the formation and approval of professional limited liability companies; authorizing the Human Rights Commission to promulgate a legislative rule relating to housing discrimination against persons with disabilities who utilize assistance animals; authorizing the State Auditor to promulgate a legislative rule relating to the transaction fee and rate structure; authorizing the Commissioner of Agriculture to promulgate a legislative rule relating to the inspection of meat and poultry; authorizing the Commissioner of Agriculture to promulgate a legislative rule relating to the labeling of imported honey, honey products or honey bee by-products and adulterated honey, honey products or honey bee by-products; authorizing the Commissioner of Agriculture to promulgate a legislative rule relating to nutrient management certification; authorizing the Board of Barbers and Cosmetologists to promulgate a legislative rule relating to the procedures, criteria and curricula for examinations and licensure of barbers, cosmetologists, manicurists and aestheticians; authorizing the Board of Barbers and Cosmetologists to promulgate a legislative rule relating to licensing schools of barbering and beauty culture; authorizing the Board of Barbers and Cosmetologists to promulgate a legislative rule relating to shampoo assistants; authorizing the Courthouse Facilities Improvement Authority to promulgate a legislative rule relating to the Courthouse Facilities Improvement Fund; authorizing the Secretary of State to promulgate a legislative rule relating to the Vote-by-Mail Pilot Project Phase 2: Voting by Mail; authorizing the Secretary of State to promulgate a legislative rule relating to the general management and preservation of state records; authorizing the Board of Professional Surveyors to promulgate a legislative rule relating to the examination and licensing of professional surveyors in West Virginia; authorizing the Nursing Home Administrators Licensing Board to promulgate a legislative rule relating to nursing home administrators; authorizing the Board of Occupational Therapy to promulgate a legislative rule relating to fees for services rendered by the Board; authorizing the Board of Osteopathy to promulgate a legislative rule relating to licensing procedures for osteopathic physicians; authorizing the Board of Pharmacy to promulgate a legislative rule relating to the Uniform Controlled Substances Act; authorizing the Board of Pharmacy to promulgate a legislative rule relating to continuing education
for the licensure of pharmacists; authorizing the Board of Pharmacy to promulgate a legislative rule relating to the licensure of wholesale drug distributors; and authorizing the Board of Pharmacy to promulgate a legislative rule relating to immunizations administered by pharmacists.

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 Dental Examiners.

The legislative rule filed in the State Register on the twenty-ninth day of July, two thousand eleven, authorized under the authority of section eighteen, article four-a, chapter thirty, of this code, modified by the Board of Dental Examiners to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on the twenty-first day of October, two thousand eleven, relating to the Board of Dental Examiners (fees established by the Board, 5 CSR 3), is authorized, with the following amendments:

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

2.1. Dental Licensure Application $185.00;

On page one, subsection 2.8., by striking out all of subsection 2.8. and inserting in lieu thereof a new subsection 2.8. to read as follows:

2.8. Annual Information & Renewal fee for a Dentist $185.00;
On page one, subsection 4.1., by striking out all of
subsection 4.1. and inserting in lieu thereof a new subsection
4.1. to read as follows:

4.1. Dental Hygiene Licensure Application $75.00;

On page two, subsection 4.7., by striking out all of
subsection 4.7. and inserting in lieu thereof a new subsection
4.7. to read as follows:

4.7. Annual Information & Renewal fee
for a Dental Hygienist $75.00;

On page two, subsections 4.8. through 4.15., by striking
out all of subsections 4.8. through 4.15. and inserting in lieu
thereof new subsections, designated subsections 4.8. through
subsection 4.16. to read as follows:

4.8 Annual Information & Renewal fee
for a Dental Hygienist employed
by a public health agency $65.00

4.9. Local Anesthesia Certificate Application fee $50.00

4.10. Nitrous Oxide Monitoring
Certificate Application fee $50.00

4.11. Bleaching Certificate Application fee $25.00

4.12. General Supervision Application fee $100.00

4.13. Public Health Practice Application fee $25.00

Anesthesia Certificate $25.00

4.15. Annual Renewal fee of
General Supervision Certificate $50.00

4.16. Annual Renewal fee of Public
Health Practice Certificate $25.00;
5 [Enr. Com. Sub. for H. B. 4139

48 On page two, subsection 7.2., by striking out all of
49 subsection 7.2. and inserting in lieu thereof a new subsection
50 7.2. to read as follows:

51 7.2. Class Two Certification Renewal Fee $15.00;

52 And,

53 On page two, subsection 7.6., by striking out all of
54 subsection 7.6. and inserting in lieu thereof a new subsection
55 7.6. to read as follows:

56 7.6. Qualified Monitor Annual Renewal Fee $25.00;

§64-9-2. Board of Accountancy.

1 The legislative rule filed in the State Register on the
2 twenty-eighth day of July, two thousand eleven, authorized
3 under the authority of section five, article nine, chapter thirty
4 of this code, relating to the Board of Accountancy (the Board
5 and rules of professional conduct, 1 CSR 1), is authorized.


1 (a) The legislative rule filed in the State Register on the
2 twenty-ninth day of July, two thousand eleven, authorized
3 under the authority of section six, article thirty-seven, chapter
4 thirty, of this code, relating to the Massage Therapy
5 Licensure Board (general provisions, 194 CSR 1), is
6 authorized.

7 (b) The legislative rule filed in the State Register on the
8 twenty-ninth day of July, two thousand eleven, authorized
9 under the authority of section six, article thirty-seven, chapter
10 thirty, of this code, relating to the Massage Therapy
11 Licensure Board (schedule of fees, 194 CSR 4), is authorized,
12 with the following amendment:

13 On page 1, at the end of the rule, by adding thereto a new
14 section, designated section 3, to read as follows:
“§194-4-3. Expiration of fee increases.

The fee increases enacted by emergency rule in 2011 and by legislative rule in 2012 will expire as of July 1, 2014”.

§64-9-4. Board of Medicine.

The legislative rule filed in the State Register on the twelfth day of July, two thousand eleven, authorized under the authority of section fifteen, article three, chapter thirty, of this code, relating to the Board of Medicine (formation and approval of professional limited liability companies, 11 CSR 7), is authorized.


The legislative rule filed in the State Register on the twenty-ninth day of July, two thousand eleven, authorized under the authority of section eight, article eleven, chapter five of this code, relating to the Human Rights Commission (housing discrimination against persons with disabilities who utilize assistance animals, 77 CSR 9), is authorized.

§64-9-6. Auditor.

The legislative rule filed in the State Register on the twenty-ninth day of July, two thousand eleven, authorized under the authority of section ten-c, article three, chapter twelve, of this code, relating to the State Auditor (transaction fee and rate structure, 155 CSR 4), is authorized, with the following amendment:

On page one, section three, by striking out all of subsection 3.1 and inserting in lieu thereof the following:


(a) The legislative rule filed in the State Register on the twenty-seventh day of July, two thousand eleven, authorized under the authority of section three, article two-b, chapter nineteen, of this code, relating to the Commissioner of Agriculture (inspection of meat and poultry, 61 CSR 16), is authorized.

(b) The legislative rule filed in the State Register on the twenty-ninth day of July, two thousand eleven, authorized under the authority of section four, article one, chapter nineteen, of this code, modified by the Commissioner of Agriculture to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on the nineteenth day of October, two thousand eleven, relating to the Commissioner of Agriculture (labeling of imported honey, honey products or honey bee by-products and adulterated honey, honey products or honey bee by-products, 61 CSR 2A), is authorized.

(c) The legislative rule filed in the State Register on the twenty-ninth day of July, two thousand eleven, authorized under the authority of section twelve, article fifteen, chapter nineteen, of this code, modified by the Department of Agriculture to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on the nineteenth day of October, two thousand eleven, relating to the Commissioner of Agriculture (nutrient management certification, 61 CSR 6D), is authorized.


(a) The legislative rule filed in the State Register on the twenty-ninth day of July, two thousand eleven, authorized under the authority of section six, article twenty-seven, chapter thirty, of this code, relating to the Board of Barbers
and Cosmetologists (procedures, criteria and curricula for examinations and licensure of barbers, cosmetologists, manicurists and aestheticians, 3 CSR 1), is authorized.

(b) The legislative rule filed in the State Register on the twenty-ninth day of July, two thousand eleven, authorized under the authority of section six, article twenty-seven, chapter thirty, of this code, modified by the Board of Barbers and Cosmetologists to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on the twentieth day of September, two thousand eleven, relating to the Board of Barbers and Cosmetologists (licensing schools of barbering and beauty culture, 3 CSR 3), is authorized.

(c) The legislative rule filed in the State Register on the twenty-ninth day of July, two thousand eleven, authorized under the authority of section eleven-a, article twenty-seven, chapter thirty, of this code, relating to the Board of Barbers and Cosmetologists (shampoo assistants, 3 CSR 8), is authorized.


The legislative rule filed in the State Register on the first day of September, two thousand eleven, authorized under the authority of section three, article twenty-six, chapter twenty-nine, of this code, modified by the Courthouse Facilities Improvement Authority to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on the eleventh day of January, two thousand twelve, relating to the Courthouse Facilities Improvement Authority (Courthouse Facilities Improvement Fund, 203 CSR 1), is authorized.

§64-9-10. Secretary of State.

(a) The legislative rule filed in the State Register on the twenty-ninth day of July, two thousand eleven, authorized under the authority of section three, article three-a, chapter three, of this code, modified by the Secretary of State to meet the objections of the Legislative Rule-Making Review
Committee and refiled in the State Register on the twenty-third day of December, two thousand eleven, relating to the Secretary of State (Vote-by-Mail Pilot Project Phase 2: Voting by Mail, 153 CSR 39), is authorized.

(b) The legislative rule filed in the State Register on the twenty-ninth day of July, two thousand eleven, authorized under the authority of three, article three-a, chapter three, of this code, modified by the Secretary of State to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on the twelfth day of January, two thousand twelve, relating to the Secretary of State (general management and preservation of state records, 153 CSR 42), is authorized, with the following amendment:

On page one, subsection 1.5, line ten, following the words “record-keeping systems”, by inserting the words “for essential public records created or filed with the West Virginia Secretary of State”;

On page four, subsection 3.1, line twelve, following the words “Archives and History”, by striking out the word “division” and inserting in lieu thereof the word “section”;

On page four, subsection 3.2a, line fourteen, following the words “Culture and History”, by inserting a comma and the words “Archives and History section”;

And

On page four, subsection 3.2d, line twenty-five, following the words “Director of Archives”, by inserting the words “and History”.


The legislative rule filed in the State Register on the twelfth day of July, two thousand eleven, authorized under the authority of section six, article thirteen-a, chapter thirty, of this code, modified by the Board of Professional Surveyors to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on the

twenty-first day of November, two thousand eleven, relating to the Board of Professional Surveyors (examination and licensing of professional surveyors in West Virginia, 23 CSR 1), is authorized.


The legislative rule filed in the State Register on the twenty-eighth day of March, two thousand eleven, authorized under the authority of section six, article twenty-five, chapter thirty, of this code, modified by the Nursing Home Administrators Licensing Board to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on the eighteenth day of October, two thousand eleven, relating to the Nursing Home Administrators Licensing Board (nursing home administrators, 21 CSR 1), is authorized.


The legislative rule filed in the State Register on the fourteenth day of July, two thousand eleven, authorized under the authority of section seven, article twenty-eight, chapter thirty, of this code, relating to the Board of Occupational Therapy (fees for services rendered by the Board, 13 CSR 3), is authorized.


The legislative rule filed in the State Register on the twenty-eighth day of July, two thousand eleven, authorized under the authority of section four, article one, chapter thirty, of this code, relating to the Board of Osteopathy (licensing procedures for osteopathic physicians, 24 CSR 1), is authorized.


(a) The legislative rule filed in the State Register on the twenty-ninth day of July, two thousand eleven, authorized under the authority of section three hundred one, article three, chapter sixty-a, of this code, relating to the Board of
Pharmacy (Uniform Controlled Substances Act, 15 CSR 2),
is authorized with the following amendment:

On page twenty three, subdivision 7.10.1., by striking out
the word “full” and inserting in lieu thereof the word “fill”.

(b) The legislative rule filed in the State Register on the
twenty-ninth day of July, two thousand eleven, authorized
under the authority of section three-a, article five, chapter
thirty, of this code, relating to the Board of Pharmacy
(continuing education for licensure of pharmacists, 15 CSR
3), is authorized.

(c) The legislative rule filed in the State Register on the
twenty-ninth day of July, two thousand eleven, authorized
under the authority of section nine, article eight, chapter
sixty-a, of this code, relating to the Board of Pharmacy
(licensure of wholesale drug distributors, 15 CSR 5), is
authorized with the following amendment:

On page three, subsection 3.1, after the words
“prescription drugs.” by adding the following:
Notwithstanding the provisions of W. Va. Code §60A-8-7,
the fee for a license for the wholesale distribution of drugs is
$750.00.

(d) The legislative rule filed in the State Register on the
ninth day of December, two thousand eleven, authorized
under the authority of section thirty, article five, chapter
thirty, of this code, relating to the Board of Pharmacy
(immunizations administered by pharmacists, 15 CSR 12), is
authorized.
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 from passage.

Clerk of the House of Delegates

Clerk of the Senate

Speaker of the House of Delegates

President of the Senate

The within bill has been approved this the ___ day of March, 2012.

Governor
PRESENTED TO THE GOVERNOR

MAR 23, 2012

Time 3:35 pm