WEST VIRGINIA LEGISLATURE
EIGHTIETH LEGISLATURE
REGULAR SESSION, 2012

ENROLLED
COMMITTEE SUBSTITUTE
FOR
Senate Bill No. 287
(Senator Minard, original sponsor)

[Passed March 10, 2012; 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 in the form that the rules were filed in the State Register and 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; 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 payment of taxes by electronic funds transfer; 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 an exchange of information agreement between the State Tax Department and the Department of Commerce, the Department of Transportation and the Department of Environmental Protection; authorizing the Insurance Commissioner to promulgate a legislative rule relating to the licensing and conduct of insurance producers and agencies; authorizing the Insurance Commissioner to promulgate a legislative rule relating to surplus lines insurance; authorizing the Insurance Commissioner to promulgate a legislative rule relating to insurance holding company systems; authorizing the Insurance Commissioner to promulgate a legislative rule relating to continuing education for individual insurance producers; authorizing the Insurance Commissioner to promulgate a legislative rule relating to mini COBRA; authorizing the Insurance Commissioner to promulgate a legislative rule relating to workers' compensation insurance for state agencies; authorizing the Division of Banking to promulgate a legislative rule relating to residential mortgage lenders, brokers and loan originators; authorizing the Alcohol Beverage Control Commission to promulgate a legislative rule relating to licensed retailer operations; authorizing the Alcohol Beverage Control Commission to promulgate a legislative rule relating to the licensing of retail outlets; authorizing the Racing Commission to promulgate a legislative rule relating to simulcast pari-mutuel wagering at an authorized gaming facility in a historic hotel; authorizing the Athletic Commission to promulgate a legislative rule relating to mixed martial arts; and authorizing the Board of Directors of the West Virginia Health Insurance Plan to promulgate a legislative rule relating to a premium subsidy.

*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.

(a) The legislative rule filed in the State Register on April 21, 2011, authorized under the authority of section five-z, article ten, chapter eleven of this code, modified by the State Tax Department to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on August 5, 2011, relating to the State Tax Department (payment of taxes by electronic funds transfer, 110 CSR 10F), is authorized with the following amendments:

On page four, subsection 3.2., by striking out all of subsection 3.2. and inserting in lieu thereof a new subsection 3.2., to read as follows:

3.2. The threshold amount is $100,000.00 in tax liability per tax type per taxable year or reporting period beginning on or after January 1, 2004, subject to subdivisions 3.2.1., 3.2.2., 3.2.3. and 3.2.4. of this subsection.;

And,

On page four, after subsection 3.2., by inserting four new subdivisions, designated subdivisions 3.2.1., 3.2.2., 3.2.3. and 3.2.4., to read as follows:

3.2.1. For tax years beginning on or after January 1, 2013, the threshold amount for determining whether a taxpayer shall pay electronically is $50,000 in tax liability paid for a single tax type in the immediately preceding tax year: Provided, That for tax years beginning on or after January 1, 2013, any taxpayer that pays more than $50,000 for any tax type in the immediately preceding tax year shall electronically pay the taxes for all tax returns filed;

3.2.2. For tax years beginning on or after January 1, 2014, the threshold amount for determining whether a taxpayer shall pay electronically is $25,000 in tax liability paid for a single tax type in the immediately preceding tax year: Provided, That for tax years beginning on or after January 1, 2014, any taxpayer that pays more than $25,000
for any tax type in the immediately preceding tax year shall electronically pay the taxes for all tax returns filed;

3.2.3. For tax years beginning on or after January 1, 2015, the threshold amount for determining whether a taxpayer shall pay electronically is $10,000 in tax liability paid for a single tax type in the immediately preceding tax year: Provided, That for tax years beginning on or after January 1, 2015, any taxpayer that pays more than $10,000 for any tax type in the immediately preceding tax year shall electronically pay the taxes for all tax returns filed;

3.2.4. Tax Commissioner may determine the tax types for which electronic payment of taxes is not required.”

(b) The legislative rule filed in the State Register on July 18, 2011, authorized under the authority of section ten, article thirteen-aa, chapter eleven of this code, modified by the State Tax Department to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on November 22, 2011, relating to the State Tax Department (commercial patent incentives tax credit, 110 CSR 13Q), is authorized, with the following amendment:

On page three, subsection 2.18, line twenty-one, following the words “June 19” and the comma, by striking out the number “2970” and inserting in lieu thereof the number “1970”;

On page five, subsection 3.1.7, line six, following the words “allowed under”, by striking out the words “Subsection 3.1 or 3.2 of”;

And,

On page five, subsection 3.1.8, line ten, following the words “allowed under”, by striking out the words “Subsection 3.1 or 3.2 of”.

(c) The legislative rule filed in the State Register on July 29, 2011, authorized under the authority of section five-s,
article ten, chapter eleven of this code, modified by the State
Tax Department to meet the objections of the Legislative
Rule-Making Review Committee and refiled in the State
Register on November 22, 2011, relating to the State Tax
Department (exchange of information agreement between
the State Tax Department and the Department of Commerce,
the Department of Transportation and the Department of
Environmental Protection, 110 CSR 50G), is authorized.

§64-7-2. Insurance Commissioner.

(a) The legislative rule filed in the State Register on July
28, 2011, authorized under the authority of section ten,
article two, chapter thirty-three of this code, relating to the
Insurance Commissioner (licensing and conduct of insurance
producers and agencies, 114 CSR 2), is authorized.

(b) The legislative rule filed in the State Register on July
28, 2011, authorized under the authority of section ten,
article two, chapter thirty-three of this code, relating to the
Insurance Commissioner (surplus lines insurance, 114 CSR
20), is authorized.

(c) The legislative rule filed in the State Register on July
28, 2011, authorized under the authority of section ten,
article two, chapter thirty-three of this code, modified by the
Insurance Commissioner to meet the objections of the
Legislative Rule-Making Review Committee and refiled in
the State Register on October 21, 2011, relating to the
Insurance Commissioner (insurance holding company
systems, 114 CSR 35), is authorized.

(d) The legislative rule filed in the State Register on July
28, 2011, authorized under the authority of section ten,
article two, chapter thirty-three of this code, modified by the
Insurance Commissioner to meet the objections of the
Legislative Rule-Making Review Committee and refiled in
the State Register on October 21, 2011, relating to the
Insurance Commissioner (continuing education for individ-
dual insurance producers, 114 CSR 42), is authorized with the
following amendment:
On page three, subsection 4.2., by striking out all of subsection 4.2. and inserting in lieu thereof a new subsection 4.2. to read as follows:

"4.2. The commissioner shall, in consultation with the board, develop a program regarding continuing education requirements during the transition to the new biennium period established pursuant to the 2012 amendments to this rule; such program shall be posted on the agency website."

(e) The legislative rule filed in the State Register on July 28, 2011, authorized under the authority of section ten, article two, chapter thirty-three of this code, relating to the Insurance Commissioner (mini COBRA, 114 CSR 93), is authorized with the following amendments:

On page three, subsection 3.5., after the word "subsection" by striking out "3.5." and inserting in lieu thereof "3.4.";

On page three, subsection 3.6, by striking out the subsection in its entirety and inserting in lieu thereof, the following:

"3.6. Election of coverage by beneficiary. A covered employee or other qualified beneficiary who wants to elect continuation coverage must do so in writing to the carrier within 30 days after receiving a notice under subsection 3.5 of this section and must include payment of the initial premium set forth in such notice. The premium payment due shall be for the period beginning on the date coverage would have otherwise terminated due to the qualifying event. The premium charged for continuation of coverage may not exceed 100% percent of the applicable premium."

On page four, subdivision 3.6.a., by striking out the subdivision in its entirety and inserting in lieu thereof, the following:

"3.6.a. The carrier or its designee shall process all elections promptly and provide coverage retroactively to the date coverage would otherwise have terminated on the basis
of the qualifying event. Employers are required to promptly provide to the carrier or its designee any information and paperwork necessary to facilitate the processing of a request for continuation of coverage. After an election and initial premium remittance, the carrier must bill the beneficiary for premiums no more often than monthly and with an allowance for a 30-day grace period for payment.”;

And,

On page four, subsection 3.7., by striking out all of subsection 3.7. and inserting in lieu thereof a new subsection 3.7., to read as follows:

“3.7. Remedies in the event of carrier noncompliance. If a carrier fails to comply with the requirements of this rule, including the notice requirements of subsection 3.5. of this section, and such noncompliance results in the failure of an eligible adult qualified beneficiary of a covered employee to timely elect continuation coverage, every qualified beneficiary of the covered employee covered on the day of the qualifying event shall remain covered under the health benefit plan until the qualified beneficiaries are afforded the opportunity to elect such coverage.”

(f) The legislative rule filed in the State Register on July 28, 2011, authorized under the authority of section ten, article two, chapter thirty-three of this code, relating to the Insurance Commissioner (Workers’ Compensation Insurance for state agencies, 114 CSR 94), is authorized with the following amendments:

On page one, subsection 2.2., by striking out all of subsection 2.2. and inserting in lieu thereof a new subsection 2.2., to read as follows:

“2.2. ‘Discretionary participant’ means any discretionary participant as defined in W. Va. Code §33-2-21a(a)(1).”;

On page two, subsection 2.8., by striking out the words “and those discretionary participants that have agreed to participate in SAWC under an agreement with the Commis-
98 "sioner" and inserting in lieu thereof the words "and for those
discretionary participants that participate in SAWC";

100 On page two, subsection 3.1., by striking out the words
101 "and shall send to each a notice of such determination";

102 On page two, subdivision 3.1.a., by striking out the words
103 "Such notice shall inform: (i) Executive state entities that
104 they will be required to execute the Agreement and" and
105 inserting in lieu thereof the words "The Commissioner shall
106 inform: (i) Executive state entities that they will be re-
107 quired";

108 On page two, subdivision 3.1.b., by striking out the words
109 "Any recipient of a notice sent pursuant to subdivision a of
110 this subsection that believes it should have been classified
differently, or any entity that did not receive a notice" and
112 inserting in lieu thereof the words "Any entity that believes
113 it should have been classified differently, or any entity that
114 did not receive a notice of eligibility";

115 On page two, subsection 3.2., by striking out all of
116 subsection 3.2. and inserting in lieu thereof a new subsection
117 3.2., to read as follows:

118 "3.2. The Commissioner may make participation in
119 SAWC by a discretionary participant contingent on the
120 execution of the Agreement.";

121 On page three, subdivision 3.3.a., after the word
122 "Agreement" by inserting the words "or other noncompli-
123 ance with program requirements";

124 On page three, subdivision 3.3.c., by striking out the
125 words "the latter of one year from removal or the next open
126 enrollment period" and inserting in lieu thereof the words "a
127 period of not more than one year to be determined by the
128 commissioner based on the seriousness of the non-compli-
129 ance and the efforts of the participant to come into compli-
130 ance";
On page three, subdivision 3.3.d., by striking out the words “upon application and re-execution of the Agreement” and inserting in lieu thereof the words “upon written request and expiration of the exclusion period determined in accordance with subdivision 3.3.c. of this subsection”;

On page three, subdivision 3.4.a., by striking out the words “any fee” and inserting in lieu thereof the words “any assessment”;

On page three, subdivision 3.4.a., by striking out the words “assessed fee” and inserting in lieu thereof the word “assessment”;

On page three, subdivision 3.4.a., by striking out the words “such fee” and inserting in lieu thereof the words “such assessment”;

And,

On page three, subdivision 3.4.b., by striking out the word “fees” and inserting in lieu thereof the word “assessment”.

§64-7-3. Division of Banking.

The legislative rule filed in the State Register on July 21, 2011, authorized under the authority of section three, article seventeen, chapter thirty-one of this code, relating to the Division of Banking (residential mortgage lenders, brokers and loan originators, 106 CSR 5), is authorized.

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

(a) The legislative rule filed in the State Register on July 13, 2011, authorized under the authority of section six, article three-a, chapter sixty of this code, modified by the Alcohol Beverage Control Commission to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on November 21, 2011, relating to the Alcohol Beverage Commission (licensed retailer operations, 175 CSR 1), is authorized.
9  (b) The legislative rule filed in the State Register on July
10  13, 2011, authorized under the authority of section six,
11  article three-a, chapter sixty of this code, relating to the
12  Alcohol Beverage Control Commission (licensing of retail
13  outlets, 175 CSR 5), is authorized.

§64-7-5. Racing Commission.

1  The legislative rule filed in the State Register on Septem-
2  ber 13, 2011, authorized under the authority of section
3  twelve-d, article twenty-three, chapter nineteen of this code,
4  relating to the Racing Commission (simulcast pari-mutual
5  wagering at an authorized gaming facility in a historic hotel,
6  178 CSR 7), is authorized.

§64-7-6. Athletic Commission.

1  The legislative rule filed in the State Register on July 28,
2  2011, authorized under the authority of section three-a,
3  article five-a, chapter twenty-nine of this code, modified by
4  the Athletic Commission to meet the objections of the
5  Legislative Rule-Making Review Committee and refiled in
6  the State Register on January 6, 2012, relating to the Athletic
7  Commission (mixed martial arts, 177 CSR 2), is authorized,
8  with the following amendments:

9  On pages three and four, §177-2.5., by striking out all of
10  §177-2.5. and inserting in lieu thereof a new §177-2.5., to
11  read as follows:

12  "§177-2.5. Venues must have a minimum seating capacity
13  of 2,500 and video replay capabilities in good working order.
14  However, the Commission may waive the minimum seating
15  capacity requirement. Venues with a seating capacity of
16  3,500 or more must have a minimum of four video monitors
17  displaying a continuous live feed of the match for the
18  spectators; venues with a maximum seating capacity of 3,499
19  or less must have at least two monitors displaying a continu-
20  ous live feed of the match for the spectators. All such video
21  monitors must be a minimum of six feet by six feet. No event
22  shall take place until the venue has been approved by the
23  commission.";
On page twelve, subsection 29.5., by striking out all of subsection 29.5. and inserting in lieu thereof a new subsection 29.5., to read as follows:

"29.5. Prohibition of certain dressings. – No second shall be permitted to use grease or any other substances on the body of a contestant. The use of petroleum jelly in corners is not allowed except in the use of stopping blood and on cuts. Petroleum jelly, or other substances approved by the commission, may be used in between rounds in the use of stopping blood and on cuts and only in the presence of a representative of the commission. The use of drugs, alcohols or stimulants during a match by any contestant is adequate cause for revoking license.";

On page twenty, subsection 41.1., by striking out all of subsection 41.1. and inserting in lieu thereof a new subsection 41.1., to read as follows:

"41.1. Matches may take place in a cage or ring that has been approved by the commission. The cage or ring shall meet the requirements set forth by the commission and is subject to inspection prior to each match by a commission representative such as a referee.";

On page twenty-one, subsection 41.3., by striking out all of subsection 41.3. and inserting in lieu thereof a new subsection 41.3., to read as follows:

"41.3. The commission shall determine all seating arrangements at cage side necessary to effectuate the match. A promoter may submit a proposed seating arrangement to the commission one week before the event.";

And,

On page twenty-one, after subsection 41.3., by inserting a new subsection, designated subsection 41.4., to read as follows:

41.4. Ring - The ring specifications shall meet the following requirements:
41.4.a. The ring shall be no smaller than twenty feet square and larger than thirty-two feet square within the ropes. One corner shall have a red designation and the corner directly opposite shall have a blue designation.

41.4.b. The floor must extend at least eighteen inches beyond the ropes. The ring floor must be padded in a manner as approved by the commission, with at least one inch layer of foam padding. No vinyl or other plastic rubberized cover shall be permitted. The fighting area canvas shall not be more than four feet above the floor of the building and shall have suitable steps or ramp for use by the participants.

41.4.c. Ring posts must be made of metal, not more than three inches in diameter, extending from the floor of the building to a minimum height of fifty-eight inches above the ring floor, and must be properly padded in a manner approved by the commission. Ring posts must be at least eighteen inches away from the ring ropes.

41.4.d. There must be five ring ropes, not less than one inch in diameter and wrapped in soft material. The lowest ring rope must be twelve inches above the ring floor.

41.4.e. There must not be any obstruction or object, including, without limitation, a triangular border, on any part of the ring floor.”.

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

The legislative rule filed in the State Register on the twenty-eighth day of July, two thousand eleven, authorized under the authority of section seven-b, article forty-eight, chapter thirty-three, of this code, relating to the Board of Directors of the West Virginia Health Insurance Plan (premium subsidy, 113 CSR 1), is authorized.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

In effect from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within is approved this the 3rd Day of April, 2012.

Governor
PRESENTED TO THE GOVERNOR

MAR 29 2012

Time 4:10 p.m.