WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

Enrolled

Committee Substitute

for

Senate Bill 127

BY SENATOR MAYNARD, original sponsor

[Passed March 24, 2017; in effect from passage]
Enr. CS for SB 127

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[Passed March 24, 2017; in effect from passage]
AN ACT to amend and reenact §64-7-1, §64-7-2, §64-7-3, §64-7-4 and §64-7-5 of the Code of West Virginia, 1931, as amended, all relating to authorizing certain Department of Revenue legislative rules; repealing certain legislative, procedural or interpretive rules promulgated by certain agencies and boards under the Department of Revenue which are no longer authorized or are obsolete; authorizing the Insurance Commissioner to promulgate a legislative rule relating to adoption of a valuation manual; repealing the Office of the Insurance Commissioner legislative rule relating to utilization management; repealing the Office of the Insurance Commissioner legislative rule relating to Medicare supplement insurance coverage; authorizing the Racing Commission to promulgate a legislative rule relating to thoroughbred racing; authorizing the Racing Commission to promulgate a legislative rule relating to pari-mutuel wagering; authorizing the Lottery Commission to promulgate a legislative rule relating to limited video lottery; repealing the Tax Division legislative rule relating to listing of interests in natural resources for purposes of first statewide appraisal; repealing the Tax Division legislative rule relating to guidelines for assessors to assure fair and uniform nonutility personal property values; repealing the Tax Division legislative rule relating to review by circuit court on certiorari; repealing the Tax Division legislative rule relating to review of appraisals by the county commission sitting as an administrative appraisal review board; repealing the Tax Division legislative rule relating to additional review and implementation of property appraisals; repealing the Tax Division legislative rule relating to review by circuit court on certiorari; repealing the Tax Division legislative rule relating to revision of levy estimates; repealing the Tax Division legislative rule relating to inheritance and transfer tax; repealing the Tax Division legislative rule relating to annual tax on incomes of certain carriers; repealing the Tax Division legislative rule relating to the telecommunications tax; repealing the Tax Division legislative rule relating to tax credit for employing former members of Colin Anderson Center; repealing the Tax Division legislative rule relating to tax credits for new value-added, wood manufacturing facilities; repealing the Tax Division legislative rule relating to tax credits for new steel, aluminum and polymer manufacturing operations; repealing the
Tax Division legislative rule relating to the business investment and jobs expansion tax
credit, corporation headquarters relocation tax credit and small business tax credit;
repealing the Tax Division legislative rule relating to appraisal of property for periodic
statewide reappraisals for ad valorem property tax purposes; repealing the Banking
Commissioner legislative rule relating to the West Virginia Consumer Credit and
Protection Act; and repealing the Banking Commissioner procedural rule relating to West
Virginia Board of Banking and Financial Institutions.

Be it enacted by the Legislature of West Virginia:

That §64-7-1, §64-7-2, §64-7-3, §64-7-4 and §64-7-5 of the Code of West Virginia, 1931,
as amended, be amended and reenacted, all to read as follows:

ARTICLE 7. AUTHORIZATION FOR DEPARTMENT OF REVENUE TO PROMULGATE
LEGISLATIVE RULES.

§64-7-1. Insurance Commissioner.

(a) The legislative rule filed in the State Register on August 22, 2016, authorized under
the authority of section ten, article two, chapter thirty-three of this code, relating to the Insurance
Commissioner (adoption of valuation manual, 114 CSR 98), is authorized.

(b) The legislative rule effective on May 16, 1997, authorized under the authority of section
four, article twenty-five-a, chapter thirty-three of this code, relating to the Office of the Insurance
Commissioner (utilization management, 114 CSR 51), is repealed.

(c) The legislative rule effective on December 28, 1981, authorized under the authority of
section ten, article two, chapter thirty-three of this code, relating to the Office of the Insurance
Commissioner (Medicare supplement insurance coverage, 114 CSR 17), is repealed.

§64-7-2. Racing Commission.

(a) The legislative rule filed in the State Register on August 18, 2016, authorized under
the authority of section two, article twenty-three, chapter nineteen of this code, modified by the
Racing Commission to meet the objections of the Legislative Rule-Making Review Committee
and refiled in the State Register on September 19, 2016, relating to the Racing Commission
(thoroughbred racing, 178 CSR 01), is authorized with the following amendment:
On pages 91 through 93, by striking out all of subdivision 49.3.m. and inserting in lieu thereof a new subdivision 49.3.m. to read as follows:

49.3.m. Multiple Medication Violations. A trainer who receives a penalty for a medication violation based upon a horse testing positive for a Class 1-5 medication with a Penalty Class A-C, as provided in the Uniform Classification Guidelines for Foreign Substances as promulgated by the Association of Racing Commissioners International (RCI), Version 12.0 (revised April 8, 2016), set forth in table 178-1D at the end of this rule, shall be assigned points as follows:

<table>
<thead>
<tr>
<th>Penalty Class</th>
<th>Points if Controlled Therapeutic Substance</th>
<th>Points if Non-Controlled Substance</th>
</tr>
</thead>
<tbody>
<tr>
<td>Class A</td>
<td>N/A</td>
<td>6</td>
</tr>
<tr>
<td>Class B</td>
<td>2</td>
<td>4</td>
</tr>
<tr>
<td>Class C</td>
<td>½ for first violation with an additional ½ point for each additional violation within 365 days.</td>
<td>1 for first violation with an additional ½ point for each additional violation within 365 days.</td>
</tr>
<tr>
<td>Class D</td>
<td>0</td>
<td>0</td>
</tr>
</tbody>
</table>
49.3.m.1. If the stewards or the Commission determine that the violation is due to environmental contamination, they may assign lesser or no points against the trainer based upon the specific facts of the case.

49.3.m.2. The points assigned to a medication violation by the stewards’ or the Commission’s ruling shall be included in the Association of Racing Commissioners International official database. The Association of Racing Commissioners International shall record points consistent with the table set forth under subdivision 49.3.m. including, when appropriate, a designation that the points have been suspended for the medication violation. Points assigned by such regulatory ruling shall reflect, in the case of multiple positive tests as described in paragraph 49.3.m.3, whether they shall constitute a single violation. The stewards’ or the Commission’s ruling shall be posted on the official website of the Commission and within the official database of the Association of Racing Commissioners International. If an appeal is pending, that fact shall be noted in such ruling. No points shall be applied until a final adjudication of the enforcement of any such violation.

49.3.m.3. A trainer’s cumulative points for violations in all racing jurisdictions shall be maintained by the Association of Racing Commissioners International. Once all appeals are waived or exhausted, the points shall immediately become part of the trainer’s official Association of Racing Commissioners International record and shall be considered by the stewards or the Commission in their determination to subject the trainer to the mandatory enhanced penalties as provided in this rule.

49.3.m.4. Multiple positive tests for the same medication incurred by a trainer prior to delivery of official notice by the stewards or the Commission may be treated as a single violation. In the case of a positive test indicating multiple substances found in a single post-race sample, the stewards or the Commission may treat each substance found as an individual violation for which points will be assigned, depending upon the facts and circumstances of the case.
49.3.m.5. The official Association of Racing Commissioners International record shall be used to advise the stewards or the Commission of a trainer’s past record of violations and cumulative points. Nothing in this rule shall be construed to confer upon a trainer the right to appeal a violation for which the remedies have been exhausted or for which the appeal time has expired as provided by West Virginia Code §§ 19-23-16(c) and 19-23-17.

49.3.m.6. The stewards or the Commission shall consider all points for violations in all racing jurisdictions as contained in the trainers’ official Association of Racing Commissioners International record when determining whether the mandatory enhancements provided in this rule shall be imposed.

49.3.m.7. In addition to the penalty for the underlying offense, the following enhancements shall be imposed upon a trainer based upon the cumulative points contained in his or her official Association of Racing Commissioners International record:

<table>
<thead>
<tr>
<th>Points</th>
<th>Suspension in days</th>
</tr>
</thead>
<tbody>
<tr>
<td>5-5.5</td>
<td>15 to 30</td>
</tr>
<tr>
<td>6-8.5</td>
<td>45 to 60</td>
</tr>
<tr>
<td>9-10.5</td>
<td>90 to 180</td>
</tr>
<tr>
<td>11 or more</td>
<td>180 to 360</td>
</tr>
</tbody>
</table>

49.3.m.8. The multiple medication violation penalty system is not a substitute for the penalty system otherwise set forth in this rule and is intended to be an additional uniform penalty when a permit holder:

49.3.m.8.A. Has more than one violation for the relevant time period; and

49.3.m.8.B. Exceeds the permissible number of points.

49.3.m.9. The stewards and the Commission shall consider aggravating and mitigating factors, including the trainer’s prior record for medication violations, when determining the
appropriate penalty for the underlying offense. The multiple medication violation penalty is intended to be a separate and additional penalty for a pattern of violations.

49.3.m.10. The suspension periods as provided in the table set forth under paragraph 49.3.m.6. shall run consecutive to any suspension imposed for the underlying offense.

49.3.m.11. The stewards' or the Commission's ruling shall distinguish between the penalty for the underlying offense and any enhancement based upon a stewards' or Commission review of a trainer's cumulative points and regulatory record, which may be considered an aggravating factor in a case.

49.3.m.12. Points shall expire as follows:

<table>
<thead>
<tr>
<th>Penalty Classification</th>
<th>Time to Expungement</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>3 years</td>
</tr>
<tr>
<td>B</td>
<td>2 years</td>
</tr>
<tr>
<td>C</td>
<td>1 year</td>
</tr>
</tbody>
</table>

49.3.m.-13. In the case of a medication violation that results in a suspension, any points assessed expire on the anniversary date of the date the suspension is completed.

(b) The legislative rule filed in the State Register on August 18, 2016, authorized under the authority of section six, article twenty-three, chapter nineteen of this code, modified by the Racing Commission to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 19, 2016, relating to the Racing Commission (pari-mutuel wagering, 178 CSR 05), is authorized.

§64-7-3. Lottery Commission.

The legislative rule filed in the State Register on August 22, 2016, authorized under the authority of section four hundred two, article twenty-two-b, chapter twenty-nine of this code,
modified by the Lottery Commission to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 7, 2016, relating to the Lottery Commission (limited video lottery, 179 CSR 5), is authorized with the following amendments:

On page 4, subdivision 2.12.1., after the words “straight-line feet from”, by inserting the words “the closest exterior wall of”;

On page 4, subdivision 2.12.1., after the word “engine”, by inserting the words “as determined by the commission during the license application review”; 

On page 4, paragraph 2.12.2.a., following the designation “(ii)”, by striking out the word “with” and inserting in lieu thereof the word “has”;

On page 4, paragraph 2.12.2.b., following the words “requirement in”, by striking out the words “section 2.12.2.” and inserting in lieu thereof the words “this subdivision 2.12.2. of this subsection.”;

On page 4, after paragraph 2.12.2.b., before the words “The provisions of any” by inserting “2.12.3.”;

And,

On page 4, subdivision 2.12.3. by striking out “2.12”.

§64-7-4. Tax Division.

(a) The legislative rule effective on June 12, 1987, authorized under the authority of section one, article one-a, chapter eleven of this code, relating to the Tax Division (listing of interests in natural resources for purposes of first statewide appraisal, 110 CSR 1B), is repealed.

(b) The legislative rule effective on May 13, 1987, authorized under the authority of section twenty-nine-a, article one-a, chapter eleven of this code, relating to the Tax Division (guidelines for assessors to assure fair and uniform nonutility personal property values, 110 CSR 1C), is repealed.
(c) The legislative rule effective on June 12, 1987, authorized under the authority of section one, article one-a, chapter eleven of this code, relating to the Tax Division (review by circuit court on certiorari, 110 CSR 1D), is repealed.

(d) The legislative rule effective on June 12, 1987, authorized under the authority of section one, article one-a, chapter eleven of this code, relating to the Tax Division (review of appraisals by the county commission sitting as an administrative appraisal review board, 110 CSR 1E), is repealed.

(e) The legislative rule effective on May 13, 1987, authorized under the authority of section one, article one-a, chapter eleven of this code, relating to the Tax Division (additional review and implementation of property appraisals, 110 CSR 1F), is repealed.

(f) The legislative rule effective on May 13, 1987, authorized under the authority of section one, article one-a, chapter eleven of this code, relating to the Tax Division (review by circuit court on certiorari, 110 CSR 1G), is repealed.

(g) The legislative rule effective on June 29, 1964, authorized under the authority of article one, chapter eleven of this code, relating to the Tax Division (revision of levy estimates, 110 CSR 8), is repealed.

(h) The legislative rule effective on September 16, 1966, authorized under the authority of article ten, chapter eleven of this code, relating to the Tax Division (inheritance and transfer tax, 110 CSR 11), is repealed.

(i) The legislative rule effective on January 1, 1974, authorized under the authority of section five-a, article ten, chapter eleven of this code, relating to the Tax Division (annual tax on incomes of certain carriers, 110 CSR 12A), is repealed.

(j) The legislative rule effective on April 4, 1988, authorized under the authority of section five, article ten, chapter eleven of this code, relating to the Tax Division (telecommunications tax, 110 CSR 13B), is repealed.
(k) The legislative rule effective on May 1, 1996, authorized under the authority of section three, article thirteen-i, chapter eleven of this code, relating to the Tax Division (tax credit for employing former members of Colin Anderson Center, 110 CSR 13I), is repealed.

(l) The legislative rule effective on May 1, 1999, authorized under the authority of section seven, article thirteen-m, chapter eleven of this code, relating to the Tax Division (tax credits for new value-added, wood manufacturing facilities, 110 CSR 13M), is repealed.

(m) The legislative rule effective on May 1, 1999, authorized under the authority of section seven, article thirteen-n, chapter eleven of this code, relating to the Tax Division (tax credits for new steel, aluminum and polymer manufacturing operations, 110 CSR 13N), is repealed.

(n) The legislative rule effective on May 1, 1995, authorized under the authority of section five, article ten, chapter eleven of this code, relating to the Tax Division (business investment and jobs expansion tax credit, corporation headquarters relocation tax credit and small business tax credit, 110 CSR 13C), is repealed.

(o) The legislative rule effective on April 4, 1988, authorized under the authority of section one, article one-a, chapter eleven of this code, relating to the Tax Division (appraisal of property for periodic statewide reappraisals for ad valorem property tax purposes, 110 CSR 1), is repealed.

§64-7-5. Banking Commissioner.

(a) The legislative rule effective on April 23, 1982, authorized under the authority of section four, article three, chapter thirty-one-a of this code, relating to the Banking Commissioner (West Virginia Consumer Credit and Protection Act, 106 CSR 8), is repealed.

(b) The procedural rule effective on January 10, 1975, authorized under the authority of section two, article three, chapter thirty-one-a of this code, relating to the Banking Commissioner (West Virginia Board of Banking and Financial Institutions, 107 CSR 5), is repealed.
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___ day of ___April___ 2017.

Governor
PRESENTED TO THE GOVERNOR

MAR 31 2017

Time 2:49 pm