

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

**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.]

---

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

1 recommended by the Legislative Rule-Making Review Committee  
2 and as amended by the Legislature; authorizing the State Tax  
3 Department to promulgate a legislative rule relating to the  
4 commercial patent incentives tax credit; authorizing the State  
5 Tax Department to promulgate a legislative rule relating to  
6 the exchange of information agreement between the State Tax  
7 Department and the West Virginia Lottery; authorizing the  
8 State Tax Department to promulgate a legislative rule relating  
9 to the exchange of information agreement between the State Tax  
10 Department and the Office of the State Fire Marshal;  
11 authorizing the Insurance Commissioner to promulgate a  
12 legislative rule relating to credit life insurance, credit  
13 accident and sickness insurance and credit unemployment  
14 insurance; authorizing the Insurance Commissioner to  
15 promulgate a legislative rule relating to suitability in  
16 annuity transactions; authorizing the Insurance Commissioner  
17 to promulgate a legislative rule relating to insurance  
18 adjusters; authorizing the Insurance Commissioner to  
19 promulgate a legislative rule relating to long-term care  
20 insurance; authorizing the Insurance Commissioner to  
21 promulgate a legislative rule relating to actuarial opinion  
22 and memorandum; authorizing the Insurance Commissioner to  
23 promulgate a legislative rule relating to property and  
24 casualty actuarial opinions; authorizing the Insurance  
25 Commissioner to promulgate a legislative rule relating to

1 credit personal property; authorizing the Insurance  
2 Commissioner to promulgate a legislative rule relating to  
3 self-insurance pools for political subdivisions; authorizing  
4 the Insurance Commissioner to promulgate a legislative rule  
5 relating to valuation of life insurance companies; authorizing  
6 the Insurance Commissioner to promulgate a legislative rule  
7 relating to recognition of preferred mortality tables for use  
8 in determining minimum reserve liabilities; authorizing the  
9 Insurance Commissioner to promulgate a legislative rule  
10 relating to professional employer organizations; authorizing  
11 the Insurance Commissioner to promulgate a legislative rule  
12 relating to health maintenance organization point of service  
13 option; authorizing the Racing Commission to promulgate a  
14 legislative rule relating to thoroughbred racing; authorizing  
15 the Racing Commission to promulgate a legislative rule  
16 relating to greyhound racing; authorizing the Racing  
17 Commission to promulgate a legislative rule relating to pari-  
18 mutuel wagering; authorizing the Alcohol Beverage Control  
19 Commission to promulgate a legislative rule relating to  
20 licensed retailer operations; and authorizing the Alcohol  
21 Beverage Control Commission to promulgate a legislative rule  
22 relating to licensing of retail outlets.

23 *Be it enacted by the Legislature of West Virginia:*

24 That article 7, chapter 64 of the Code of West Virginia, 1931,  
25 as amended, be amended and reenacted to read as follows:

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

3 **§64-7-1. State Tax Department.**

4 (a) The legislative rule filed in the state register on July  
5 28, 2010, authorized under the authority of section ten, article  
6 thirteen-aa, chapter eleven of this code, modified by the State Tax  
7 Department to meet the objections of the Legislative Rule-Making  
8 Review Committee and refiled in the state register on November 5,  
9 2010, relating to the State Tax Department (commercial patent  
10 incentives tax credit, 110 CSR 13Q), is authorized.

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

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

25 **§64-7-2. Insurance Commissioner.**

1 (a) The legislative rule filed in the state register on July  
2 27, 2010, authorized under the authority of section three, article  
3 two, chapter thirty-three of this code, modified by the Insurance  
4 Commissioner to meet the objections of the Legislative Rule-Making  
5 Review Committee and refiled in the state register on September 28,  
6 2010, relating to the Insurance Commissioner (credit life  
7 insurance, credit accident and sickness insurance and credit  
8 unemployment insurance, 114 CSR 6), is authorized with the  
9 following amendment:

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

13 **"§114-6-2. Definitions.**

14 (1) "Commissioner" means the West Virginia Insurance  
15 Commissioner.

16 (2) "Credit Accident and Sickness Insurance" means insurance  
17 on a debtor to provide indemnity for payments becoming due on a  
18 specific loan or other credit transaction while the debtor is  
19 disabled as defined in the policy.

20 (3) "Credit Life Insurance" means insurance on the life of a  
21 debtor pursuant to or in connection with a specific loan or other  
22 credit transaction.

23 (4) "Credit unemployment insurance" means insurance on a  
24 debtor to provide indemnity for payments becoming due on a specific  
25 loan or other credit transaction while the debtor is unemployed as

1 defined in the policy.

2 (5) "Creditor" means the lender of money or vendor or lesser  
3 goods, services, or property, rights or privileges, for which  
4 payment is arranged through a credit transaction, or any successor  
5 to the right, title or interest of any such lender, vendor, or  
6 lessor, and an affiliate, associate or subsidiary of them or any  
7 director, officer, or employee of any of them or any other person  
8 in any way associated with any of them.

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

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

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

17 (b) The legislative rule filed in the state register on July  
18 29, 2010, authorized under the authority of section ten, article  
19 two, chapter thirty-three of this code, relating to the Insurance  
20 Commissioner (suitability in annuity transactions, 114 CSR 11B), is  
21 authorized.

22 (c) The legislative rule filed in the state register on July  
23 27, 2010, authorized under the authority of section three, article  
24 two, chapter thirty-three of this code, modified by the Insurance  
25 Commissioner to meet the objections of the Legislative Rule-Making

1 Review Committee and refiled in the state register on October 20,  
2 2010, relating to the Insurance Commissioner (insurance adjusters,  
3 114 CSR 25), is authorized with the following amendments:

4 On page two, subsection 3.1., by striking out all of  
5 subsection 3.1. and inserting in lieu thereof a new subsection 3.1.  
6 to read as follows:

7 "3.1. No person shall in West Virginia act as or hold himself  
8 to be an adjuster unless licensed by the Commissioner. As used in  
9 the rule, the term "person" shall not include those persons located  
10 in an office of an insurer outside the State of West Virginia who  
11 adjust claims solely by telephone, fax, United States Mail and  
12 electronic mail and who do not physically enter the State of West  
13 Virginia in the course of adjusting such claims.";

14 And,

15 On page four, subdivision 3.2.j., by striking out all of  
16 subdivision 3.2.j. and renumbering the remaining subdivisions.

17 (d) The legislative rule filed in the state register on July  
18 29, 2010, authorized under the authority of section three, article  
19 two, chapter thirty-three of this code, modified by the Insurance  
20 Commissioner to meet the objections of the Legislative Rule-Making  
21 Review Committee and refiled in the state register on September 28,  
22 2010, relating to the Insurance Commissioner (long-term care  
23 insurance, 114 CSR 32), is authorized with the following  
24 amendments:

25 On page 51, paragraph 29.4.c.1., by striking out all of

1 paragraph 29.4.c.1. and inserting in lieu thereof a new paragraph  
2 29.4.c.1. to read as follows:

3 "29.4.c.1. Within five (5) business days of receiving a  
4 written request for independent review, the insurer shall choose an  
5 independent review organization approved or certified by the state.  
6 The insurer shall vary its selection of authorized independent  
7 review organizations on a rotating basis.";

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

10 And,

11 On page fifty-six, subsection 30.6., by striking out all of  
12 subsection 30.6.

13 (e) The legislative rule filed in the state register on July  
14 27, 2010, authorized under the authority of section three, article  
15 two, chapter thirty-three of this code, relating to the Insurance  
16 Commissioner (actuarial opinion and memorandum, 114 CSR 41), is  
17 authorized.

18 (f) The legislative rule filed in the state register on July  
19 27, 2010, authorized under the authority of section three, article  
20 two, chapter thirty-three of this code, modified by the Insurance  
21 Commissioner to meet the objections of the Legislative Rule-Making  
22 Review Committee and refiled in the state register on December 1,  
23 2010, relating to the Insurance Commissioner (property and casualty  
24 actuarial opinions, 114 CSR 41A), is authorized.

25 (g) The legislative rule filed in the state register on July

1 27, 2010, authorized under the authority of section three, article  
2 two, chapter thirty-three of this code, relating to the Insurance  
3 Commissioner (credit personal property, 114 CSR 61), is authorized.

4 (h) The legislative rule filed in the state register on July  
5 27, 2010, authorized under the authority of section three, article  
6 two, chapter thirty-three of this code, modified by the Insurance  
7 Commissioner to meet the objections of the Legislative Rule-Making  
8 Review Committee and refiled in the state register on December 1,  
9 2010, relating to the Insurance Commissioner (self-insurance pools  
10 for political subdivisions, 114 CSR 65), is authorized with the  
11 following amendment:

12 On pages ten and eleven, subsection 8.1., by striking out all  
13 of subsection 8.1. and inserting in lieu thereof a new subsection  
14 8.1. to read as follows:

15 "8.1. To the extent not inconsistent with this rule, each  
16 workers' compensation pool is subject to the requirements of *West*  
17 *Virginia Code* §§33-2-21 and 33-2-22 and *West Virginia Code* Chapter  
18 Twenty-Three and the rules promulgated thereunder, including but  
19 not limited to the payment of surcharges pursuant to *West Virginia*  
20 *Code* §§23-2C-3(f) (2) and 23-2C-3(f) (3) (B) and *West Virginia Code*  
21 *St. R. Section 85-6-1 et seq.*; the record retention requirements of  
22 *West Virginia Code St. R. Section 85-18-13*; and the data  
23 requirements of *West Virginia Code St. R. Section 85-2-1 et. seq.*:  
24 *Provided*, That such a pool is subject to *West Virginia Code St. R.*  
25 *Section 85-18-1 et seq.*; as if the pool was a single self-insured

1 employer: *Provided, however, That no provision of Chapter Twenty-*  
2 *Three of this code or any rule promulgated thereunder requiring*  
3 *participation in the self-insured guarantee risk pool and the self-*  
4 *insured security risk pool, or providing for industrial council*  
5 *approval of self-insured status, termination of self-insured status*  
6 *or approval of security, shall apply."*

7 (i) The legislative rule filed in the state register on July  
8 27, 2010, authorized under the authority of section three, article  
9 two, chapter thirty-three of this code, relating to the Insurance  
10 Commissioner (valuation of life insurance companies, 114 CSR 68),  
11 is authorized.

12 (j) The legislative rule filed in the state register on July  
13 27, 2010, authorized under the authority of section three, article  
14 two, chapter thirty-three of this code, relating to the Insurance  
15 Commissioner (recognition of preferred mortality tables for use in  
16 determining minimum reserve liabilities, 114 CSR 69A), is  
17 authorized.

18 (k) The legislative rule filed in the state register on July  
19 27, 2010, authorized under the authority of section three, article  
20 two, chapter thirty-three of this code, relating to the Insurance  
21 Commissioner (professional employer organizations, 114 CSR 85), is  
22 authorized.

23 (l) The legislative rule filed in the state register on July  
24 27, 2010, authorized under the authority of section three, article  
25 two, chapter thirty-three of this code, relating to the Insurance

1 Commissioner (health maintenance organization point of service  
2 option, 114 CSR 91), is authorized.

3 **§64-7-3. Racing Commission.**

4 (a) The legislative rule filed in the state register on July  
5 27, 2010, authorized under the authority of section six, article  
6 twenty-three, chapter nineteen of this code, modified by the Racing  
7 Commission to meet the objections of the Legislative Rule-Making  
8 Review Committee and refiled in the state register on January 20,  
9 2011, relating to the Racing Commission (thoroughbred racing, 178  
10 CSR 1), is authorized with the following amendments:

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

14 "26.4.q. No trainer shall move or permit to be moved any  
15 horse or horses under his or her custody, care or control into the  
16 association's grounds without permission from the association's  
17 racing secretary or his or her designee. No trainer shall move or  
18 permit to be moved any horse or horses under his or her custody,  
19 care or control out of the association's grounds without first  
20 signing out the horse on a form prescribed by the association and  
21 made available at the stable gate: *Provided*, That for all horses  
22 stabled on the association grounds, permission is required from the  
23 association's racing secretary or his or her designee at the time  
24 of removal if the horse is entered to race or may be entered to  
25 race at another racetrack during a period of seven (7) days

1 following the day of its removal from the association's grounds.  
2 No trainer shall move or permit to be moved any horse or horses  
3 under his or her custody, care or control into the association's  
4 grounds without presenting a current negative Coggins test for  
5 equine infectious anemia (EIA).";

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

9 And,

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

13 "48.2.d. Practicing veterinarians shall not have contact with an  
14 entered horse on a race day except for the administration of furosemide  
15 (lasix®) under the guidelines set forth in subsection 49.7. of this rule  
16 unless approved by a Racing Commission veterinarian. If approval to have  
17 contact with an entered horse on race day for purposes other than the  
18 administration of furosemide (lasix®) is obtained from a Racing  
19 Commission veterinarian, or if reasonable efforts are made to contact a  
20 Racing Commission veterinarian and he or she is unavailable, a practicing  
21 veterinarian may have contact with the horse for purposes other than the  
22 administration of furosemide (lasix®): *Provided*, That the practicing  
23 veterinarian shall complete a form prescribed by the Racing  
24 Commission notifying the Racing Commission veterinarian of the  
25 contact. Such form shall be provided to the Racing Commission  
26 veterinarian one hour before post time."

1 (b) The legislative rule filed in the state register on July  
2 30, 2010, authorized under the authority of section six, article  
3 twenty-three, chapter nineteen of this code, modified by the Racing  
4 Commission to meet the objections of the Legislative Rule-Making  
5 Review Committee and refiled in the state register on January 20,  
6 2011, relating to the Racing Commission (greyhound racing, 178 CSR  
7 2), is authorized.

8 (c) The legislative rule filed in the state register on July  
9 16, 2010, authorized under the authority of section six, article  
10 twenty-three, chapter nineteen of this code, modified by the Racing  
11 Commission to meet the objections of the Legislative Rule-Making  
12 Review Committee and refiled in the state register on January 20,  
13 2011, relating to the Racing Commission (pari-mutuel wagering, 178  
14 CSR 5), is authorized, with the following amendment:

15 On page two, subsection 2.21, line 5, by striking out the word  
16 "totalizator" and inserting in lieu thereof the word "totalisator".

17 **§64-7-4. Alcohol Beverage Control Commission.**

18 (a) The legislative rule filed in the state register on  
19 November 20, 2009, authorized under the authority of section six,  
20 article three-a, chapter sixty of this code, modified by the  
21 Alcohol Beverage Control Commission to meet the objections of the  
22 Legislative Rule-making Review Committee and refiled in the state  
23 register on January 20, 2011, relating to the Alcohol Beverage  
24 Commission (licensed retailer operations, 175 CSR 1), is authorized  
25 with the following amendment:

