

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 177

(By Senators Minard, Snyder, Prezioso,
Unger, Boley and K. Facemyer)

[Originating in the Committee on the Judiciary;
reported February 22, 2011.]

A BILL 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 Commis-

sion 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 the
2 twenty-eighth day of July, two thousand ten, authorized
3 under the authority of section ten, article thirteen-aa,
4 chapter eleven of this code, modified by the State Tax
5 Department to meet the objections of the Legislative Rule-
6 Making Review Committee and refiled in the state register
7 on the fifth day of November, two thousand ten, relating to
8 the State Tax Department (commercial patent incentives tax
9 credit, 110 CSR 13Q), is authorized.

10 (b) The legislative rule filed in the state register on the
11 twenty-sixth day of July, two thousand ten, authorized under
12 the authority of section five-s, article ten, chapter eleven of

13 this code, relating to the State Tax Department (exchange of
14 information agreement between the State Tax Department
15 and the West Virginia Lottery, 110 CSR 50E), is authorized.

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

§64-7-2. Insurance Commissioner.

1 (a) The legislative rule filed in the state register on the
2 twenty-seventh day of July, two thousand ten, authorized
3 under the authority of section three, article two, chapter
4 thirty-three of this code, modified by the Insurance Commis-
5 sioner to meet the objections of the Legislative Rule-Making
6 Review Committee and refiled in the state register on the
7 twenty-eighth day of September, two thousand ten, relating
8 to the Insurance Commissioner (credit life insurance, credit

9 accident and sickness insurance and credit unemployment
10 insurance, 114 CSR 6), is authorized with the following
11 amendment:

12 On pages one and two, section 2, by striking out all of
13 section 2. and inserting in lieu thereof a new section 2. to
14 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 debtor
25 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 the
31 twenty-ninth day of July, two thousand ten, authorized
32 under the authority of section ten, article two, chapter
33 thirty-three of this code, relating to the Insurance Commis-
34 sioner (suitability in annuity transactions, 114 CSR 11B), is
35 authorized.

36 (c) The legislative rule filed in the state register on the
37 twenty-seventh day of July, two thousand ten, authorized

38 under the authority of section three, article two, chapter
39 thirty-three of this code, modified by the Insurance Commis-
40 sioner to meet the objections of the Legislative Rule-Making
41 Review Committee and refiled in the state register on the
42 twentieth day of October, two thousand ten, relating to the
43 Insurance Commissioner (insurance adjusters, 114 CSR 25),
44 is authorized with the following amendments:

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

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

56 And,

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

60 (d) The legislative rule filed in the state register on the
61 twenty-ninth day of July, two thousand ten, authorized
62 under the authority of section three, article two, chapter
63 thirty-three of this code, modified by the Insurance Commis-
64 sioner to meet the objections of the Legislative Rule-Making
65 Review Committee and refiled in the state register on the
66 twenty-eighth day of September, two thousand ten, relating
67 to the Insurance Commissioner (long-term care insurance,
68 114 CSR 32), is authorized with the following amendments:

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

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

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

80 And,

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

82 subsection 30.6.

83 (e) The legislative rule filed in the state register on the
84 twenty-seventh day of July, two thousand ten, authorized
85 under the authority of section three, article two, chapter
86 thirty-three of this code, relating to the Insurance Commis-
87 sioner (actuarial opinion and memorandum, 114 CSR 41), is
88 authorized.

89 (f) The legislative rule filed in the state register on the
90 twenty-seventh day of July, two thousand ten, authorized
91 under the authority of section three, article two, chapter
92 thirty-three of this code, modified by the Insurance Commis-
93 sioner to meet the objections of the Legislative Rule-Making
94 Review Committee and refiled in the state register on the
95 first day of December, two thousand ten, relating to the
96 Insurance Commissioner (property and casualty actuarial
97 opinions, 114 CSR 41A), is authorized.

98 (g) The legislative rule filed in the state register on the
99 twenty-seventh day of July, two thousand ten, authorized
100 under the authority of section three, article two, chapter
101 thirty-three of this code, relating to the Insurance Commis-
102 sioner (credit personal property, 114 CSR 61), is authorized.

103 (h) The legislative rule filed in the state register on the

104 twenty-seventh day of July, two thousand ten, authorized
105 under the authority of section three, article two, chapter
106 thirty-three of this code, modified by the Insurance Commis-
107 sioner to meet the objections of the Legislative Rule-Making
108 Review Committee and refiled in the state register on the
109 first day of December, two thousand ten, relating to the
110 Insurance Commissioner (self-insurance pools for political
111 subdivisions, 114 CSR 65), is authorized with the following
112 amendment:

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

116 “8.1. To the extent not inconsistent with this rule, each
117 workers’ compensation pool is subject to the requirements of
118 *West Virginia Code* §§33-2-21 and 33-2-22 and *West Virginia*
119 *Code* Chapter Twenty-Three and the rules promulgated
120 thereunder, including but not limited to the payment of
121 surcharges pursuant to *West Virginia Code* §§23-2C-3(f)(2)
122 and 23-2C-3(f)(3)(B) and *West Virginia Code* St. R. Section
123 85-6-1 *et seq.*; the record retention requirements of *West*
124 *Virginia Code* St. R. Section 85-18-13; and the data require-
125 ments of *West Virginia Code* St. R. Section 85-1-2: *Provided,*

126 That such a pool is subject to *West Virginia Code* St. R.
127 Section 85-18-1 *et seq.*; as if the pool was a single self-
128 insured employer: *Provided, however,* That no provision of
129 Chapter Twenty-Three of this code or any rule promulgated
130 thereunder requiring participation in the self-insured
131 guarantee risk pool and the self-insured security risk pool, or
132 providing for industrial council approval of self-insured
133 status, termination of self-insured status or approval of
134 security, shall apply.”

135 (i) The legislative rule filed in the state register on the
136 twenty-seventh day of July, two thousand ten, authorized
137 under the authority of section three, article two, chapter
138 thirty-three of this code, relating to the Insurance Commis-
139 sioner (valuation of life insurance companies, 114 CSR 68),
140 is authorized.

141 (j) The legislative rule filed in the state register on the
142 twenty-seventh day of July, two thousand ten, authorized
143 under the authority of section three, article two, chapter
144 thirty-three of this code, relating to the Insurance Commis-
145 sioner (recognition of preferred mortality tables for use in
146 determining minimum reserve liabilities, 114 CSR 69A), is
147 authorized.

148 (k) The legislative rule filed in the state register on the
149 twenty-seventh day of July, two thousand ten, authorized
150 under the authority of section three, article two, chapter
151 thirty-three of this code, relating to the Insurance Commis-
152 sioner (professional employer organizations, 114 CSR 85), is
153 authorized.

154 (l) The legislative rule filed in the state register on the
155 twenty-seventh day of July, two thousand ten, authorized
156 under the authority of section three, article two, chapter
157 thirty-three of this code, relating to the Insurance Commis-
158 sioner (health maintenance organization point of service
159 option, 114 CSR 91), is authorized.

§64-7-3. Racing Commission.

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

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

13 “26.4.q. No trainer shall move or permit to be moved any
14 horse or horses under his or her custody, care or control into
15 the association’s grounds without permission from the
16 association’s racing secretary or his or her designee. No
17 trainer shall move or permit to be moved any horse or horses
18 under his or her custody, care or control out of the associa-
19 tion’s grounds without first signing out the horse on a form
20 prescribed by the association and made available at the
21 stable gate. Provided however, for all horses stabled on the
22 association grounds permission is required from the associa-
23 tions’s racing secretary or his or her designee at the time of
24 removal if the horse is to race at another racetrack within a
25 period of thirty (30) days following the day of its removal
26 from the association’s grounds. No trainer shall move or
27 permit to be moved any horse or horses under his or her
28 custody, care or control into the association’s grounds
29 without presenting a current negative Coggins test for equine
30 infectious anemia (EIA).”;

31 And,

32 On page fifty-six, subdivision 42.3.a., by striking out the
33 words “eighteen (118)” and inserting in lieu thereof the
34 words “sixteen (116)”.

35 (b) The legislative rule filed in the state register on the
36 thirtieth day of July, two thousand ten, authorized under the
37 authority of section six, article twenty-three, chapter
38 nineteen of this code, modified by the Racing Commission to
39 meet the objections of the Legislative Rule-Making Review
40 Committee and refiled in the state register on the twentieth
41 day of January, two thousand eleven, relating to the Racing
42 Commission (greyhound racing, 178 CSR 2), is authorized.

43 (c) The legislative rule filed in the state register on the
44 sixteenth day of July, two thousand ten, authorized under
45 the authority of section six, article twenty-three, chapter
46 nineteen of this code, modified by the Racing Commission to
47 meet the objections of the Legislative Rule-Making Review
48 Committee and refiled in the state register on the twentieth
49 day of January, two thousand eleven, relating to the Racing
50 Commission (pari-mutuel wagering, 178 CSR 5), is autho-
51 rized.

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

1 (a) The legislative rule filed in the state register on the

2 twentieth day of November, two thousand nine, authorized
3 under the authority of section six, article three-a, chapter
4 sixty of this code, modified by the Alcohol Beverage Control
5 Commission to meet the objections of the Legislative Rule-
6 making Review Committee and refiled in the state register on
7 the nineteenth day of January, two thousand eleven, relating
8 to the Alcohol Beverage Commission (licensed retailer
9 operations, 175 CSR 1), is authorized with the following
10 amendment:

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

14 “4.1.a.3. Column 2 - “Unit Size.” The product bottle size is
15 listed in metric measurement.

16 Metric Conversion Table

17 Metric Size	Converted to Ounces
18 50 ml.	1.7 oz.
19 200 ml.	6.8 oz.
20 375 ml.	12.7 oz.
21 500 ml.	16.9 oz.
22 750 ml.	25.4 oz.
23 1. Liter	33.8 oz.
24 1.75 Liter	59.2 oz.”

25 (b) The legislative rule filed in the state register on the
26 twenty-second day of February, two thousand ten, autho-
27 rized under the authority of section six, article three-a,
28 chapter sixty of this code, modified by the Alcohol Beverage
29 Control Commission to meet the objections of the Legislative
30 Rule-making Review Committee and refiled in the state
31 register on the twentieth day of January, two thousand
32 eleven, relating to the Alcohol Beverage Commission (licens-
33 ing of retail outlets, 175 CSR 5), is authorized.