

1 COMMITTEE SUBSTITUTE

2 FOR

3 **H. B. 4139**

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

5
6 (Originating in the Committee on the Judiciary)

7
8 [February 17, 2012]

9
10 A BILL to amend and reenact article 9, chapter 64 of the Code of
11 West Virginia, 1931, as amended, relating generally to the
12 promulgation of administrative rules by the various executive
13 or administrative agencies and the procedures relating
14 thereto; legislative mandate or authorization for the
15 promulgation of certain legislative rules; authorizing certain
16 of the agencies to promulgate certain legislative rules in the
17 form that the rules were filed in the State Register;
18 authorizing certain of the agencies to promulgate certain
19 legislative rules with various modifications presented to and
20 recommended by the Legislative Rule-Making Review Committee;
21 authorizing certain of the agencies to promulgate certain
22 legislative rules as amended by the Legislature; authorizing
23 certain of the agencies to promulgate certain legislative
24 rules with various modifications presented to and recommended
25 by the Legislative Rule-Making Review Committee and as amended
26 by the Legislature; authorizing the Board of Dental Examiners
27 to promulgate a legislative rule relating to fees established
28 by the Board; authorizing the Board of Accountancy to

1 promulgate a legislative rule relating to the Board and rules
2 of professional conduct; authorizing the Massage Therapy
3 Licensure Board to promulgate a legislative rule relating to
4 general provisions; authorizing the Massage Therapy Licensure
5 Board to promulgate a legislative rule relating to a schedule
6 of fees; authorizing the Board of Medicine to promulgate a
7 legislative rule relating to the formation and approval of
8 professional limited liability companies; authorizing the
9 Human Rights Commission to promulgate a legislative rule
10 relating to housing discrimination against persons with
11 disabilities who utilize assistance animals; authorizing the
12 State Auditor to promulgate a legislative rule relating to the
13 transaction fee and rate structure; authorizing the
14 Commissioner of Agriculture to promulgate a legislative rule
15 relating to the inspection of meat and poultry; authorizing
16 the Commissioner of Agriculture to promulgate a legislative
17 rule relating to the labeling of imported honey, honey
18 products or honey bee by-products and adulterated honey, honey
19 products or honey bee by-products; authorizing the
20 Commissioner of Agriculture to promulgate a legislative rule
21 relating to nutrient management certification; authorizing the
22 Board of Barbers and Cosmetologists to promulgate a
23 legislative rule relating to the procedures, criteria and
24 curricula for examinations and licensure of barbers,
25 cosmetologists, manicurists and aestheticians; authorizing the
26 Board of Barbers and Cosmetologists to promulgate a
27 legislative rule relating to licensing schools of barbering
28 and beauty culture; authorizing the Board of Barbers and

1 Cosmetologists to promulgate a legislative rule relating to
2 shampoo assistants; authorizing the Courthouse Facilities
3 Improvement Authority to promulgate a legislative rule
4 relating to the Courthouse Facilities Improvement Fund;
5 authorizing the Secretary of State to promulgate a legislative
6 rule relating to the Vote-by-Mail Pilot Project Phase 2:
7 Voting by Mail; authorizing the Secretary of State to
8 promulgate a legislative rule relating to the general
9 management and preservation of state records; authorizing the
10 Board of Professional Surveyors to promulgate a legislative
11 rule relating to the examination and licensing of professional
12 surveyors in West Virginia; authorizing the Nursing Home
13 Administrators Licensing Board to promulgate a legislative
14 rule relating to nursing home administrators; authorizing the
15 Board of Occupational Therapy to promulgate a legislative rule
16 relating to fees for services rendered by the Board;
17 authorizing the Board of Osteopathy to promulgate a
18 legislative rule relating to licensing procedures for
19 osteopathic physicians; authorizing the Board of Pharmacy to
20 promulgate a legislative rule relating to the Uniform
21 Controlled Substances Act; authorizing the Board of Pharmacy
22 to promulgate a legislative rule relating to continuing
23 education for the licensure of pharmacists; authorizing the
24 Board of Pharmacy to promulgate a legislative rule relating to
25 the licensure of wholesale drug distributors; and authorizing
26 the Board of Pharmacy to promulgate a legislative rule
27 relating to immunizations administered by pharmacists.

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

1 That article nine, chapter 64 of the Code of West Virginia,
2 1931, as amended, be amended and reenacted to read as follows:

3 **ARTICLE 9. AUTHORIZATION FOR MISCELLANEOUS AGENCIES AND BOARDS TO**
4 **PROMULGATE LEGISLATIVE RULES.**

5 **§64-9-1. Board of Dental Examiners.**

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

15 On page two, section four, by inserting a new subsection 4.8,
16 as follows:

17 "4.8 Annual Information & Renewal fee for a Dental Hygienist
18 employed by a public health agency \$65.00"

19 And,

20 By renumbering the subsections of section 4 that follow the
21 new subsection 4.8.

22 **§64-9-2. Board of Accountancy.**

23 The legislative rule filed in the State Register on the
24 twenty-eighth day of July, two thousand eleven, authorized under
25 the authority of section five, article nine, chapter thirty of this
26 code, relating to the Board of Accountancy (the Board and rules of
27 professional conduct, [1 CSR 1](#)), is authorized.

28 **§64-9-3. Massage Therapy Licensure Board.**

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

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

12 On page 1, at the end of the rule, by adding thereto a new
13 section, designated section 3, to read as follows:

14 **“§194-4-3. Expiration of fee increases.**

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

17 **§64-9-4. Board of Medicine.**

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

24 **§64-9-5. Human Rights Commission.**

25 The legislative rule filed in the State Register on the
26 twenty-ninth day of July, two thousand eleven, authorized under the
27 authority of section eight, article eleven, chapter five of this

1 code, relating to the Human Rights Commission (housing
2 discrimination against persons with disabilities who utilize
3 assistance animals, [77 CSR 9](#)), is authorized.

4 **§64-9-6. Auditor.**

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

10 On page one, section three, by striking out all of subsection
11 3.1 and inserting in lieu thereof the following:

12 "3.1. The transaction fee structure and rate shall be in
13 compliance with the following federal Office of Management and
14 Budget Circulars and provisions of the Code of Federal Regulations:
15 Circular No. A-21, "Cost Principles for Educational Institutions"
16 as amended ~~August 29, 1997~~ May 10, 2004; 2CFR Part 225: Circular
17 No. A-87, "Cost Principles for State, Local, and Indian Tribal
18 Governments" as amended ~~August 29, 1997~~ August 31, 2005; and
19 Circular A-110, "Uniform Administrative Requirements for Grants and
20 Agreements with Institutions of Higher Education, Hospitals, and
21 other Non-Profit Organizations" as amended ~~August 29, 1997~~
22 September 30, 1999.".

23 **§64-9-7. Department of Agriculture.**

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

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

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

19 **§64-9-8. Board of Barbers & Cosmetologists.**

20 (a) The legislative rule filed in the State Register on the
21 twenty-ninth day of July, two thousand eleven, authorized under the
22 authority of section six, article twenty-seven, chapter thirty, of
23 this code, relating to the Board of Barbers and Cosmetologists
24 (procedures, criteria and curricula for examinations and licensure
25 of barbers, cosmetologists, manicurists and aestheticians, [3 CSR](#)
26 [1](#)), is authorized.

27 (b) The legislative rule filed in the State Register on the
28 twenty-ninth day of July, two thousand eleven, authorized under the

1 authority of section six, article twenty-seven, chapter thirty, of
2 this code, modified by the Board of Barbers and Cosmetologists to
3 meet the objections of the Legislative Rule-Making Review Committee
4 and refiled in the State Register on the twentieth day of
5 September, two thousand eleven, relating to the Board of Barbers
6 and Cosmetologists (licensing schools of barbering and beauty
7 culture, [3 CSR 3](#)), is authorized.

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

13 **§64-9-9. Courthouse Facilities Improvement Authority.**

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

23 **§64-9-10. Secretary of State.**

24 (a) The legislative rule filed in the State Register on the
25 twenty-ninth day of July, two thousand eleven, authorized under the
26 authority of section three, article three-a, chapter three, of this
27 code, modified by the Secretary of State to meet the objections of
28 the Legislative Rule-Making Review Committee and refiled in the

1 State Register on the twenty-third day of December, two thousand
2 eleven, relating to the Secretary of State (Vote-by-Mail Pilot
3 Project Phase 2: Voting by Mail, [153 CSR 39](#)), is authorized.

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

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

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

20 On page four, subsection 3.2a, line fourteen, following the
21 words "Culture and History", by inserting a comma and the words
22 "Archives and History section";

23 And

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

26 **§64-9-11. Board of Professional Surveyors.**

27 The legislative rule filed in the State Register on the
28 twelfth day of July, two thousand eleven, authorized under the

1 authority of section six, article thirteen-a, chapter thirty, of
2 this code, modified by the Board of Professional Surveyors to meet
3 the objections of the Legislative Rule-Making Review Committee and
4 refiled in the State Register on the twenty-first day of November,
5 two thousand eleven, relating to the Board of Professional
6 Surveyors (examination and licensing of professional surveyors in
7 West Virginia, [23 CSR 1](#)), is authorized.

8 **§64-9-12. Nursing Home Administrators Licensing Board.**

9 The legislative rule filed in the State Register on the
10 twenty-eighth day of March, two thousand eleven, authorized under
11 the authority of section six, article twenty-five, chapter thirty,
12 of this code, modified by the Nursing Home Administrators Licensing
13 Board to meet the objections of the Legislative Rule-Making Review
14 Committee and refiled in the State Register on the eighteenth day
15 of October, two thousand eleven, relating to the Nursing Home
16 Administrators Licensing Board (nursing home administrators, [21 CSR](#)
17 [1](#)), is authorized.

18 **§64-9-13. Board of Occupational Therapy.**

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

24 **§64-9-14. Board of Osteopathy.**

25 The legislative rule filed in the State Register on the
26 twenty-eighth day of July, two thousand eleven, authorized under
27 the authority of section four, article one, chapter thirty, of this
28 code, relating to the Board of Osteopathy (licensing procedures for

1 osteopathic physicians, [24 CSR 1](#)), is authorized.

2 **§64-9-15. Board of Pharmacy.**

3 (a) The legislative rule filed in the State Register on the
4 twenty-ninth day of July, two thousand eleven, authorized under the
5 authority of section three hundred one, article three, chapter
6 sixty-a, of this code, relating to the Board of Pharmacy (Uniform
7 Controlled Substances Act, [15 CSR 2](#)), is authorized.

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

13 (c) The legislative rule filed in the State Register on the
14 twenty-ninth day of July, two thousand eleven, authorized under the
15 authority of section nine, article eight, chapter sixty-a, of this
16 code, relating to the Board of Pharmacy (licensure of wholesale
17 drug distributors, [15 CSR 5](#)), is authorized.

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