

COMMITTEE SUBSTITUTE

FOR

H. B. 4139

(BY DELEGATES BROWN, D. POLING,
FLEISCHAUER, AND OVERINGTON)

(Originating in the Committee on the Judiciary)
[February 17, 2012]

A BILL to amend and reenact article 9, chapter 64 of the Code of West Virginia, 1931, as amended, relating generally to the promulgation of administrative rules by the various executive or administrative agencies and the procedures relating thereto; legislative mandate or authorization for the promulgation of certain legislative rules; 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 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 and as amended by the Legislature; authorizing the Board of Dental Examiners to promulgate a legislative rule relating to fees established by the Board; authorizing the Board of Accountancy to promulgate a legislative rule relating to the Board and rules of professional conduct; authorizing the Massage Therapy Licensure Board to promulgate a legislative rule relating to general provisions; authorizing the Massage Therapy Licensure Board to promulgate a legislative rule relating to a schedule of fees; authorizing the Board of Medicine to promulgate a legislative rule relating to the formation and approval of professional limited liability companies; authorizing the Human Rights Commission to promulgate a legislative rule relating to housing discrimination against persons with disabilities who utilize assistance animals; authorizing the State Auditor to promulgate a legislative rule relating to the transaction fee and rate structure; authorizing the Commissioner of Agriculture to promulgate a legislative rule relating to the

inspection of meat and poultry; authorizing the Commissioner of Agriculture to promulgate a legislative rule relating to the labeling of imported honey, honey products or honey bee by-products and adulterated honey, honey products or honey bee by-products; authorizing the Commissioner of Agriculture to promulgate a legislative rule relating to nutrient management certification; authorizing the Board of Barbers and Cosmetologists to promulgate a legislative rule relating to the procedures, criteria and curricula for examinations and licensure of barbers, cosmetologists, manicurists and aestheticians; authorizing the Board of Barbers and Cosmetologists to promulgate a legislative rule relating to licensing schools of barbering and beauty culture; authorizing the Board of Barbers and Cosmetologists to promulgate a legislative rule relating to shampoo assistants; authorizing the Courthouse Facilities Improvement Authority to promulgate a legislative rule relating to the Courthouse Facilities Improvement Fund; authorizing the Secretary of State to promulgate a legislative rule relating to the Vote-by-Mail Pilot Project Phase 2: Voting by Mail; authorizing the Secretary of State to promulgate a legislative rule relating to the general management and preservation of state records;

authorizing the Board of Professional Surveyors to promulgate a legislative rule relating to the examination and licensing of professional surveyors in West Virginia; authorizing the Nursing Home Administrators Licensing Board to promulgate a legislative rule relating to nursing home administrators; authorizing the Board of Occupational Therapy to promulgate a legislative rule relating to fees for services rendered by the Board; authorizing the Board of Osteopathy to promulgate a legislative rule relating to licensing procedures for osteopathic physicians; authorizing the Board of Pharmacy to promulgate a legislative rule relating to the Uniform Controlled Substances Act; authorizing the Board of Pharmacy to promulgate a legislative rule relating to continuing education for the licensure of pharmacists; authorizing the Board of Pharmacy to promulgate a legislative rule relating to the licensure of wholesale drug distributors; and authorizing the Board of Pharmacy to promulgate a legislative rule relating to immunizations administered by pharmacists.

Be it enacted by the Legislature of West Virginia:

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

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

§64-9-1. Board of Dental Examiners.

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

10 On page two, section four, by inserting a new subsection
11 4.8, as follows:

12 “4.8 Annual Information & Renewal fee for a Dental
13 Hygienist employed by a public health agency \$65.00”

14 And,

15 By renumbering the subsections of section 4 that follow
16 the new subsection 4.8.

§64-9-2. Board of Accountancy.

1 The legislative rule filed in the State Register on the
2 twenty-eighth day of July, two thousand eleven, authorized

3 under the authority of section five, article nine, chapter thirty
4 of this code, relating to the Board of Accountancy (the Board
5 and rules of professional conduct, 1 CSR 1), is authorized.

§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
3 under the authority of section six, article thirty-seven, chapter
4 thirty, of this code, relating to the Massage Therapy
5 Licensure Board (general provisions, 194 CSR 1), is
6 authorized.

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

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

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

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

§64-9-4. Board of Medicine.

1 The legislative rule filed in the State Register on the
2 twelfth day of July, two thousand eleven, authorized under
3 the authority of section fifteen, article three, chapter thirty, of
4 this code, relating to the Board of Medicine (formation and
5 approval of professional limited liability companies, 11 CSR
6 7), is authorized.

§64-9-5. Human Rights Commission.

1 The legislative rule filed in the State Register on the
2 twenty-ninth day of July, two thousand eleven, authorized
3 under the authority of section eight, article eleven, chapter
4 five of this code, relating to the Human Rights Commission
5 (housing discrimination against persons with disabilities who
6 utilize assistance animals, 77 CSR 9), is authorized.

§64-9-6. Auditor.

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

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

9 “3.1. The transaction fee structure and rate shall be in
10 compliance with the following federal Office of Management
11 and Budget Circulars and provisions of the Code of Federal
12 Regulations: Circular No. A-21, “Cost Principles for
13 Educational Institutions” as amended ~~August 29, 1997~~ May
14 10, 2004; 2CFR Part 225; Circular No. A-87, “Cost
15 Principles for State, Local, and Indian Tribal Governments”
16 as amended ~~August 29, 1997~~ August 31, 2005; and Circular
17 A-110, “Uniform Administrative Requirements for Grants
18 and Agreements with Institutions of Higher Education,
19 Hospitals, and other Non-Profit Organizations” as amended
20 ~~August 29, 1997~~ September 30, 1999.”.

§64-9-7. Department of Agriculture.

1 (a) The legislative rule filed in the State Register on the
2 twenty-seventh day of July, two thousand eleven, authorized
3 under the authority of section three, article two-b, chapter
4 nineteen, of this code, relating to the Commissioner of
5 Agriculture (inspection of meat and poultry, 61 CSR 16), is
6 authorized.

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

18 (c) The legislative rule filed in the State Register on the
19 twenty-ninth day of July, two thousand eleven, authorized
20 under the authority of section twelve, article fifteen, chapter
21 nineteen, of this code, modified by the Department of
22 Agriculture to meet the objections of the Legislative Rule-
23 Making Review Committee and refiled in the State Register
24 on the nineteenth day of October, two thousand eleven,
25 relating to the Commissioner of Agriculture (nutrient
26 management certification, 61 CSR 6D), is authorized.

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

1 (a) The legislative rule filed in the State Register on the
2 twenty-ninth day of July, two thousand eleven, authorized
3 under the authority of section six, article twenty-seven,
4 chapter thirty, of this code, relating to the Board of Barbers
5 and Cosmetologists (procedures, criteria and curricula for
6 examinations and licensure of barbers, cosmetologists,
7 manicurists and aestheticians, 3 CSR 1), is authorized.

8 (b) The legislative rule filed in the State Register on the
9 twenty-ninth day of July, two thousand eleven, authorized
10 under the authority of section six, article twenty-seven,
11 chapter thirty, of this code, modified by the Board of Barbers
12 and Cosmetologists to meet the objections of the Legislative
13 Rule-Making Review Committee and refiled in the State
14 Register on the twentieth day of September, two thousand
15 eleven, relating to the Board of Barbers and Cosmetologists
16 (licensing schools of barbering and beauty culture, 3 CSR 3),
17 is authorized.

18 (c) The legislative rule filed in the State Register on the
19 twenty-ninth day of July, two thousand eleven, authorized
20 under the authority of section eleven-a, article twenty-seven,

21 chapter thirty, of this code, relating to the Board of Barbers
22 and Cosmetologists (shampoo assistants, 3 CSR 8), is
23 authorized.

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

1 The legislative rule filed in the State Register on the first
2 day of September, two thousand eleven, authorized under the
3 authority of section three, article twenty-six, chapter twenty-
4 nine, of this code, modified by the Courthouse Facilities
5 Improvement Authority to meet the objections of the
6 Legislative Rule-Making Review Committee and refiled in
7 the State Register on the eleventh day of January, two
8 thousand twelve, relating to the Courthouse Facilities
9 Improvement Authority (Courthouse Facilities Improvement
10 Fund, 203 CSR 1), is authorized.

§64-9-10. Secretary of State.

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

7 third day of December, two thousand eleven, relating to the
8 Secretary of State (Vote-by-Mail Pilot Project Phase 2:
9 Voting by Mail, 153 CSR 39), is authorized.

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

20 On page one, subsection 1.5, line ten, following the
21 words “record-keeping systems”, by inserting the words “for
22 essential public records created or filed with the West
23 Virginia Secretary of State”;

24 On page four, subsection 3.1, line twelve, following the
25 words “Archives and History”, by striking out the word
26 “division” and inserting in lieu thereof the word “section”;

27 On page four, subsection 3.2a, line fourteen, following
28 the words “Culture and History”, by inserting a comma and
29 the words “Archives and History section”;

30 And

31 On page four, subsection 3.2d, line twenty-five,
32 following the words “Director of Archives”, by inserting the
33 words “and History”.

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

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

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

1 The legislative rule filed in the State Register on the
2 twenty-eighth day of March, two thousand eleven, authorized
3 under the authority of section six, article twenty-five, chapter

4 thirty, of this code, modified by the Nursing Home
5 Administrators Licensing Board to meet the objections of the
6 Legislative Rule-Making Review Committee and refiled in
7 the State Register on the eighteenth day of October, two
8 thousand eleven, relating to the Nursing Home
9 Administrators Licensing Board (nursing home
10 administrators, 21 CSR 1), is authorized.

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

1 The legislative rule filed in the State Register on the
2 fourteenth day of July, two thousand eleven, authorized
3 under the authority of section seven, article twenty-eight,
4 chapter thirty, of this code, relating to the Board of
5 Occupational Therapy (fees for services rendered by the
6 Board, 13 CSR 3), is authorized.

§64-9-14. Board of Osteopathy.

1 The legislative rule filed in the State Register on the
2 twenty-eighth day of July, two thousand eleven, authorized
3 under the authority of section four, article one, chapter thirty,
4 of this code, relating to the Board of Osteopathy (licensing
5 procedures for osteopathic physicians, 24 CSR 1), is
6 authorized.

§64-9-15. Board of Pharmacy.

1 (a) The legislative rule filed in the State Register on the
2 twenty-ninth day of July, two thousand eleven, authorized under
3 the authority of section three hundred one, article three, chapter
4 sixty-a, of this code, relating to the Board of Pharmacy (Uniform
5 Controlled Substances Act, 15 CSR 2), 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
8 the authority of section three-a, article five, chapter thirty, of this
9 code, relating to the Board of Pharmacy (continuing education
10 for licensure of pharmacists, 15 CSR 3), 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
13 the authority of section nine, article eight, chapter sixty-a, of this
14 code, relating to the Board of Pharmacy (licensure of wholesale
15 drug distributors, 15 CSR 5), is authorized.

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