

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]

1 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
2 West Virginia, 1931, as amended, all relating to authorizing certain Department of
3 Revenue legislative rules; repealing certain legislative, procedural or interpretive rules
4 promulgated by certain agencies and boards under the Department of Revenue which are
5 no longer authorized or are obsolete; authorizing the Insurance Commissioner to
6 promulgate a legislative rule relating to adoption of a valuation manual; repealing the
7 Office of the Insurance Commissioner legislative rule relating to utilization management;
8 repealing the Office of the Insurance Commissioner legislative rule relating to Medicare
9 supplement insurance coverage; authorizing the Racing Commission to promulgate a
10 legislative rule relating to thoroughbred racing; authorizing the Racing Commission to
11 promulgate a legislative rule relating to pari-mutuel wagering; authorizing the Lottery
12 Commission to promulgate a legislative rule relating to limited video lottery; repealing the
13 Tax Division legislative rule relating to listing of interests in natural resources for purposes
14 of first statewide appraisal; repealing the Tax Division legislative rule relating to guidelines
15 for assessors to assure fair and uniform nonutility personal property values; repealing the
16 Tax Division legislative rule relating to review by circuit court on certiorari; repealing the
17 Tax Division legislative rule relating to review of appraisals by the county commission
18 sitting as an administrative appraisal review board; repealing the Tax Division legislative
19 rule relating to additional review and implementation of property appraisals; repealing the
20 Tax Division legislative rule relating to review by circuit court on certiorari; repealing the
21 Tax Division legislative rule relating to revision of levy estimates; repealing the Tax
22 Division legislative rule relating to inheritance and transfer tax; repealing the Tax Division
23 legislative rule relating to annual tax on incomes of certain carriers; repealing the Tax
24 Division legislative rule relating to the telecommunications tax; repealing the Tax Division
25 legislative rule relating to tax credit for employing former members of Colin Anderson
26 Center; repealing the Tax Division legislative rule relating to tax credits for new value-
27 added, wood manufacturing facilities; repealing the Tax Division legislative rule relating to
28 tax credits for new steel, aluminum and polymer manufacturing operations; repealing the

29 Tax Division legislative rule relating to the business investment and jobs expansion tax
30 credit, corporation headquarters relocation tax credit and small business tax credit;
31 repealing the Tax Division legislative rule relating to appraisal of property for periodic
32 statewide reappraisals for ad valorem property tax purposes; repealing the Banking
33 Commissioner legislative rule relating to the West Virginia Consumer Credit and
34 Protection Act; and repealing the Banking Commissioner procedural rule relating to West
35 Virginia Board of Banking and Financial Institutions.

Be it enacted by the Legislature of West Virginia:

1 That §64-7-1, §64-7-2, §64-7-3, §64-7-4 and §64-7-5 of the Code of West Virginia, 1931,
2 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.

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

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

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

§64-7-2. Racing Commission.

1 (a) The legislative rule filed in the State Register on August 18, 2016, authorized under
2 the authority of section two, article twenty-three, chapter nineteen of this code, modified by the
3 Racing Commission to meet the objections of the Legislative Rule-Making Review Committee
4 and refiled in the State Register on September 19, 2016, relating to the Racing Commission
5 (thoroughbred racing, 178 CSR 01), is authorized with the following amendment:

6 On pages 91 through 93, by striking out all of subdivision 49.3.m. and inserting in lieu
 7 thereof a new subdivision 49.3.m. to read as follows:

8 49.3.m. Multiple Medication Violations. A trainer who receives a penalty for a medication
 9 violation based upon a horse testing positive for a Class 1-5 medication with a Penalty Class A-
 10 C, as provided in the Uniform Classification Guidelines for Foreign Substances as promulgated
 11 by the Association of Racing Commissioners International (RCI), Version 12.0 (revised April 8,
 12 2016), set forth in table 178-1D at the end of this rule, shall be assigned points as follows:

Penalty Class	Points if Controlled Therapeutic Substance	Points if Non-Controlled Substance
Class A	N/A	6
Class B	2	4
Class C	½ for first violation with an additional ½ point for each additional violation within 365 days. Points for NSAID violations only apply when the primary threshold of the NSAID is exceeded. Points are not to be separately assigned for a stacking violation.	1 for first violation with an additional ½ point for each additional violation within 365 days.
Class D	0	0

13 49.3.m.1. If the stewards or the Commission determine that the violation is due to
14 environmental contamination, they may assign lesser or no points against the trainer based upon
15 the specific facts of the case.

16 49.3.m.2. The points assigned to a medication violation by the stewards' or the
17 Commission's ruling shall be included in the Association of Racing Commissioners International
18 official database. The Association of Racing Commissioners International shall record points
19 consistent with the table set forth under subdivision 49.3.m. including, when appropriate, a
20 designation that the points have been suspended for the medication violation. Points assigned
21 by such regulatory ruling shall reflect, in the case of multiple positive tests as described in
22 paragraph 49.3.m.3, whether they shall constitute a single violation. The stewards' or the
23 Commission's ruling shall be posted on the official website of the Commission and within the
24 official database of the Association of Racing Commissioners International. If an appeal is
25 pending, that fact shall be noted in such ruling. No points shall be applied until a final adjudication
26 of the enforcement of any such violation.

27 49.3.m.3. A trainer's cumulative points for violations in all racing jurisdictions shall be
28 maintained by the Association of Racing Commissioners International. Once all appeals are
29 waived or exhausted, the points shall immediately become part of the trainer's official Association
30 of Racing Commissioners International record and shall be considered by the stewards or the
31 Commission in their determination to subject the trainer to the mandatory enhanced penalties as
32 provided in this rule.

33 49.3.m.4. Multiple positive tests for the same medication incurred by a trainer prior to
34 delivery of official notice by the stewards or the Commission may be treated as a single violation.
35 In the case of a positive test indicating multiple substances found in a single post-race sample,
36 the stewards or the Commission may treat each substance found as an individual violation for
37 which points will be assigned, depending upon the facts and circumstances of the case.

38 49.3.m.5. The official Association of Racing Commissioners International record shall be
39 used to advise the stewards or the Commission of a trainer's past record of violations and
40 cumulative points. Nothing in this rule shall be construed to confer upon a trainer the right to
41 appeal a violation for which the remedies have been exhausted or for which the appeal time has
42 expired as provided by West Virginia Code §§ 19-23-16(c) and 19-23-17.

43 49.3.m.6. The stewards or the Commission shall consider all points for violations in all
44 racing jurisdictions as contained in the trainers' official Association of Racing Commissioners
45 International record when determining whether the mandatory enhancements provided in this rule
46 shall be imposed.

47 49.3.m.7. In addition to the penalty for the underlying offense, the following enhancements
48 shall be imposed upon a trainer based upon the cumulative points contained in his or her official
49 Association of Racing Commissioners International record:

Points	Suspension in days
5-5.5	15 to 30
6-8.5	45 to 60
9-10.5	90 to 180
11 or more	180 to 360

50 49.3.m.8. The multiple medication violation penalty system is not a substitute for the
51 penalty system otherwise set forth in this rule and is intended to be an additional uniform penalty
52 when a permit holder:

53 49.3.m.8.A. Has more than one violation for the relevant time period; and

54 49.3.m.8.B. Exceeds the permissible number of points.

55 49.3.m.9. The stewards and the Commission shall consider aggravating and mitigating
56 factors, including the trainer's prior record for medication violations, when determining the

57 appropriate penalty for the underlying offense. The multiple medication violation penalty is
58 intended to be a separate and additional penalty for a pattern of violations.

59 49.3.m.10. The suspension periods as provided in the table set forth under paragraph
60 49.3.m.6. shall run consecutive to any suspension imposed for the underlying offense.

61 49.3.m.11. The stewards' or the Commission's ruling shall distinguish between the
62 penalty for the underlying offense and any enhancement based upon a stewards' or Commission
63 review of a trainer's cumulative points and regulatory record, which may be considered an
64 aggravating factor in a case.

65 49.3.m.12. Points shall expire as follows:

Penalty Classification	Time to Expungement
A	3 years
B	2 years
C	1 year

66 49.3.m.-13. In the case of a medication violation that results in a suspension, any points
67 assessed expire on the anniversary date of the date the suspension is completed.

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

§64-7-3. Lottery Commission.

1 The legislative rule filed in the State Register on August 22, 2016, authorized under the
2 authority of section four hundred two, article twenty-two-b, chapter twenty-nine of this code,

3 modified by the Lottery Commission to meet the objections of the Legislative Rule-Making Review
4 Committee and refiled in the State Register on December 7, 2016, relating to the Lottery
5 Commission (limited video lottery, 179 CSR 5), is authorized with the following amendments:

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

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

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

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

15 On page 4, after paragraph 2.12.2.b., before the words “The provisions of any” by inserting
16 “2.12.3.”;

17 And,

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

§64-7-4. Tax Division.

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

4 (b) The legislative rule effective on May 13, 1987, authorized under the authority of section
5 twenty-nine-a, article one-a, chapter eleven of this code, relating to the Tax Division (guidelines
6 for assessors to assure fair and uniform nonutility personal property values, 110 CSR 1C), is
7 repealed.

8 (c) The legislative rule effective on June 12, 1987, authorized under the authority of section
9 one, article one-a, chapter eleven of this code, relating to the Tax Division (review by circuit court
10 on certiorari, 110 CSR 1D), is repealed.

11 (d) The legislative rule effective on June 12, 1987, authorized under the authority of
12 section one, article one-a, chapter eleven of this code, relating to the Tax Division (review of
13 appraisals by the county commission sitting as an administrative appraisal review board, 110 CSR
14 1E), is repealed.

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

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

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

24 (h) The legislative rule effective on September 16, 1966, authorized under the authority of
25 article ten, chapter eleven of this code, relating to the Tax Division (inheritance and transfer tax,
26 110 CSR 11), is repealed.

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

30 (j) The legislative rule effective on April 4, 1988, authorized under the authority of section
31 five, article ten, chapter eleven of this code, relating to the Tax Division (telecommunications tax,
32 110 CSR 13B), is repealed.

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

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

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

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

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

§64-7-5. Banking Commissioner.

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

4 (b) The procedural rule effective on January 10, 1975, authorized under the authority of
5 section two, article three, chapter thirty-one-a of this code, relating to the Banking Commissioner
6 (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.

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Chairman, Senate Committee

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Chairman, House Committee

Originated in the Senate.

In effect from passage.

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Clerk of the Senate

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Clerk of the House of Delegates

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President of the Senate

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Speaker of the House of Delegates

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Day of, 2017.

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Governor