

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

Committee Substitute

for

Senate Bill 127

BY SENATOR MAYNARD

[Originating in the Committee on the Judiciary;

reported on February 14, 2017]

1 A BILL to amend and reenact §64-7-1, §64-7-2 and §64-7-3 of the Code of West Virginia, 1931,
2 as amended, all relating to authorizing certain department of revenue legislative rules;
3 authorizing the Insurance Commissioner to promulgate a legislative rule relating to
4 adoption of a valuation manual; authorizing the Racing Commission to promulgate a
5 legislative rule relating to thoroughbred racing; authorizing the Racing Commission to
6 promulgate a legislative rule relating to pari-mutuel wagering; and authorizing the Lottery
7 Commission to promulgate a legislative rule relating to limited video lottery.

Be it enacted by the Legislature of West Virginia:

1 That §64-7-1, §64-7-2 and §64-7-3 of the Code of West Virginia, 1931, as amended, be
2 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 The legislative rule filed in the State Register on August 22, 2016, authorized under the
2 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.

§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 ~~D~~ 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 ~~January~~
 12 April 8, 2014 2016), set forth in table 178-1D at the end of this rule, shall be assigned points as
 13 follows:

Penalty Class	Points if Controlled Therapeutic Substance	Points if Non-Controlled Substance
Class A (except for Class 1 and 2 environmental contaminants which shall be determined by the stewards or the Commission based upon the facts of the case)	N/A	6
Class B	2	4
Class C	4 <u>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.</u>	2 <u>1 for first violation with an additional ½ point for each additional violation within 365 days.</u>
Class D	<u>½ 0</u>	4 <u>0</u>

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

17 ~~49.3.m.-4~~ 49.3.m.2. The points assigned to a medication violation by the stewards' or the
18 Commission's ruling shall be included in the Association of Racing Commissioners International
19 official database. ~~and the~~ The Association of Racing Commissioners International shall ~~assign~~
20 record points consistent with the table set forth under subdivision 49.3.m. ~~for advisory purposes~~
21 ~~for medication violations where points have not been assigned by regulatory action~~ including,
22 when appropriate, a designation that the points have been suspended for the medication violation.
23 Points assigned by such regulatory ruling ~~or by the Association of Racing Commissioners~~
24 ~~International~~ shall reflect, in the case of multiple positive tests as described in paragraph 49.3.m.3,
25 whether they shall ~~thereafter~~ constitute a single violation. The stewards' or the Commission's
26 ruling shall be posted on the official website of the Commission and within the official database of
27 the Association of Racing Commissioners International. If an appeal is pending, that fact shall be
28 noted in such ruling. No points shall be applied until a final adjudication of the enforcement of
29 any such violation.

30 ~~49.3.m.2~~ 49.3.m.3. A trainer's cumulative points for violations in all racing jurisdictions
31 shall be maintained by the Association of Racing Commissioners International. Once all appeals
32 are waived or exhausted, the points shall immediately become part of the trainer's official
33 Association of Racing Commissioners International record and shall be considered by the
34 stewards or the Commission in their determination to subject the trainer to the mandatory
35 enhanced penalties as provided in this rule.

36 ~~49.3.m.3.~~ 49.3.m.4. Multiple positive tests for the same medication incurred by a trainer
37 prior to delivery of official notice by the stewards or the Commission may be treated as a single
38 violation. In the case of a positive test indicating multiple substances found in a single post-race
39 sample, the stewards or the Commission may treat each substance found as an individual

40 violation for which points will be assigned, depending upon the facts and circumstances of the
41 case.

42 ~~49.3.m.4.~~ 49.3.m.5. The official Association of Racing Commissioners International record
43 shall be used to advise the stewards or the Commission of a trainer's past record of violations
44 and cumulative points. Nothing in this rule shall be construed to confer upon a trainer the right to
45 appeal a violation for which the remedies have been exhausted or for which the appeal time has
46 expired as provided by West Virginia Code §§ 19-23-16(c) and 19-23-17.

47 ~~49.3.m.5.~~ 49.3.m.6. The stewards or the Commission shall consider all points for
48 violations in all racing jurisdictions as contained in the trainers' official Association of Racing
49 Commissioners International record when determining whether the mandatory enhancements
50 provided in this rule shall be imposed.

51 ~~49.3.m.6.~~ 49.3.m.7. In addition to the penalty for the underlying offense, the following
52 enhancements shall be imposed upon a trainer based upon the cumulative points contained in
53 his or her official Association of Racing Commissioners International record:

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

54 ~~49.3.m.7.~~ 49.3.m.8. The multiple medication violation penalty system is not a substitute
55 for the penalty system otherwise set forth in this rule and is intended to be an additional uniform
56 penalty when a permit holder:

57 ~~49.3.m.7.A.~~ 49.3.m.8.A. Has more than one violation for the relevant time period; and

58 ~~49.3.m.7.B.~~ 49.3.m.8.B. Exceeds the permissible number of points.

59 49.3.m.9. The stewards and the Commission shall consider aggravating and mitigating

60 factors, including the trainer's prior record for medication violations, when determining the
61 appropriate penalty for the underlying offense. The multiple medication violation penalty is
62 intended to be a separate and additional penalty for a pattern of violations.

63 ~~49.3.m.8.~~ 49.3.m.10. The suspension periods as provided in the table set forth under
64 paragraph 49.3.m.6. shall run consecutive to any suspension imposed for the underlying offense.

65 ~~49.3.m.9.~~ 49.3.m.11. The stewards' or the Commission's ruling shall distinguish between
66 the penalty for the underlying offense and any enhancement based upon a stewards' or
67 Commission review of a trainer's cumulative points and regulatory record, which may be
68 considered an aggravating factor in a case.

69 ~~49.3.m.10.~~ 49.3.m.12. ~~Any trainer who has received a medication violation may petition~~
70 ~~the Association of Racing Commissioners International to expunge the points received for the~~
71 ~~violation for the purpose of the multiple medication violation penalty system only. The points shall~~
72 ~~be expunged by the Association of Racing Commissioners International or upon request of the~~
73 ~~trainer.~~ Points shall expire as follows:

Penalty Classification	Time to Expungement
A	Permanent <u>3 years</u>
B	3 <u>2</u> years
C	2 <u>1</u> years
D	1 year

74 49.3.m.-13. In the case of a medication violation that results in a suspension, any points
75 assessed expire on the anniversary date of the date the suspension is completed.

76 (b) The legislative rule filed in the State Register on August 18, 2016, authorized under
77 the authority of section six, article twenty-three, chapter nineteen of this code, modified by the
78 Racing Commission to meet the objections of the Legislative Rule-Making Review Committee
79 and refiled in the State Register on September 19, 2016, relating to the Racing Commission (pari-

80 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, paragraph 2.12.2.a., by striking out the word “with” and inserting in lieu thereof
7 the word “has”;

8 On page 4, paragraph 2.12.2.b., by striking out the words “section 2.12.2.” and inserting
9 in lieu thereof the words “subdivision 2.12.2. of this subsection.”;

10 On page 4, after paragraph 2.12.2.b., before the words “The provisions of any” by inserting
11 “2.12.3.”;

12 And,

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