

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

Committee Substitute

for

House Bill 4079

BY DELEGATES SOBONYA AND FRICH

[Reported from the Committee on the Judiciary;

February 16, 2018.]

1 A BILL to amend and reenact §64-9-1, §64-9-2, §64-9-3, §64-9-4, §64-9-5, §64-9-6, §64-9-7, §64-
2 9-8, §64-9-9, §64-9-10, §64-9-11, §64-9-12, §64-9-13 and §64-9-14 of the Code of West
3 Virginia, 1931, as amended, all relating generally to the promulgation of administrative
4 rules by various executive or administrative agencies of the state; authorizing certain
5 agencies to promulgate certain legislative rules in the form that the rules were filed in the
6 State Register; authorizing certain agencies to promulgate certain legislative rules with
7 various modifications presented to and recommended by the Legislative Rule-Making
8 Review Committee; authorizing certain agencies to promulgate certain legislative rules
9 with amendments recommended by the Legislative Rule-Making Review Committee;
10 authorizing certain agencies to promulgate certain legislative rules with amendments
11 recommended by the Legislature; directing various agencies to amend and promulgate
12 certain legislative rules; authorizing the Board of Accountancy to promulgate a legislative
13 rule relating to board rules and rules of professional conduct; authorizing the
14 Commissioner of Agriculture to promulgate a legislative rule relating to animal disease
15 control; authorizing the Commissioner of Agriculture to promulgate a legislative rule
16 relating to auctioneers; authorizing the Commissioner of Agriculture to promulgate a
17 legislative rule relating to noxious weeds; authorizing the Commissioner of Agriculture to
18 promulgate a legislative rule relating to inspection of meat and poultry; authorizing the
19 Commissioner of Agriculture to promulgate a legislative rule relating to West Virginia
20 apiary law; authorizing the Commissioner of Agriculture to promulgate a legislative rule
21 relating to inspection of nontraditional, domesticated animals; authorizing the
22 Commissioner of Agriculture to promulgate a legislative rule relating to schedule of
23 charges for inspection services; fruit; authorizing the Athletic Commission to promulgate
24 a legislative rule relating to administrative rules of the West Virginia State Athletic
25 Commission; authorizing the Athletic Commission to promulgate a legislative rule relating
26 to regulation of mixed martial arts; authorizing the Board of Hearing Aid Dealers to

27 promulgate a legislative rule relating to licensure and renewal requirements; authorizing
28 the Board of Hearing Aid Dealers to promulgate a legislative rule relating to rules
29 governing the West Virginia Board of Hearing Aid Dealers; authorizing the Board of
30 Medicine to promulgate a legislative rule relating to licensure, disciplinary and complaint
31 procedures, continuing education and physician assistants; authorizing the Board of
32 Medicine to promulgate a legislative rule relating to continuing education for physicians
33 and podiatric physicians; authorizing the Board of Optometry to promulgate a legislative
34 rule relating to rules of the West Virginia Board of Optometry; authorizing the Board of
35 Osteopathic Medicine to promulgate a legislative rule relating to osteopathic physician
36 assistants; authorizing the Board of Pharmacy to promulgate a legislative rule relating to
37 licensure and practice of pharmacy; authorizing the Board of Pharmacy to promulgate a
38 legislative rule relating to pharmacist recovery networks; authorizing the Board of
39 Pharmacy to promulgate a legislative rule relating to immunizations administered by
40 pharmacists and pharmacy interns; authorizing the Board of Pharmacy to promulgate a
41 legislative rule relating to centralized prescription processing; authorizing the Board of
42 Pharmacy to promulgate a legislative rule relating to uniform controlled substances act;
43 authorizing the Board of Pharmacy to promulgate a legislative rule relating to registration
44 of pharmacy technicians; authorizing the Board of Pharmacy to promulgate a legislative
45 rule relating to the controlled substances monitoring program; authorizing the Board of
46 Psychologists to promulgate a legislative rule relating to fees; authorizing the Board of
47 Psychologists to promulgate a legislative rule relating to requirements for real licensure as
48 a psychologist and/or a school psychologist; authorizing the Board of Psychologists to
49 promulgate a legislative rule relating to code of conduct; authorizing the Board of Real
50 Estate Appraiser Licensing and Certification to promulgate a legislative rule relating to
51 requirements for licensure and certification; authorizing the Real Estate Commission to
52 promulgate a legislative rule relating to licensing real estate brokers, associate brokers,

53 and salespersons and the conduct of brokerage business; authorizing the Real Estate
54 Commission to promulgate a legislative rule relating to schedule of fees; authorizing the
55 Real Estate Commission to promulgate a legislative rule relating to requirements for real
56 estate courses, course providers and instructors; authorizing the Secretary of State to
57 promulgate a legislative rule relating to procedures for canvassing elections; authorizing
58 the Board of Psychologists to promulgate a legislative rule relating to procedures for
59 handling ballots and counting write-in votes in counties using optical scan ballots;
60 authorizing the Secretary of State to promulgate a legislative rule relating to vote by mail
61 pilot project phase 2: Voting by Mail; authorizing the Board of Veterinary Medicine to
62 promulgate a legislative rule relating to organization and operation and licensing of
63 veterinarians; authorizing the Board of Veterinary Medicine to promulgate a legislative rule
64 relating to certified animal euthanasia technicians; and authorizing the Board of Veterinary
65 Medicine to promulgate a legislative rule relating to schedule of fees.
66 *Be it enacted by the Legislature of West Virginia:*

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

§64-9-1. Board of Accountancy.

1 The legislative rule filed in the State Register on July 28, 2017, authorized under the
2 authority of §30-9-5 of this code, modified by the Board of Accountancy to meet the objections of
3 the Legislative Rule-Making Review Committee and refiled in the State Register on September
4 29, 2017, relating to the Board of Accountancy (board rules and rules of professional conduct, 1
5 CSR 1), is authorized.

§64-9-2. Commissioner of Agriculture.

1 (a) The legislative rule filed in the State Register on July 28, 2017, authorized under
2 the authority of §19-9-2 of this code, modified by the Commissioner of Agriculture to meet the

3 objections of the Legislative Rule-Making Review Committee and refiled in the State Register
4 on December 19, 2017, relating to the Commissioner of Agriculture (animal disease control,
5 61 CSR 1), is authorized.

6 (b) The legislative rule filed in the State Register on July 28, 2017, authorized under
7 the authority of §19-2C-3(a) of this code, modified by the Commissioner of Agriculture to meet
8 the objections of the Legislative Rule-Making Review Committee and refiled in the State
9 Register on December 19, 2017, relating to the Commissioner of Agriculture (auctioneers, 61
10 CSR 11B), is authorized with the following amendment:

11 On page one, subdivision 4.1, striking out “ten thousand dollars (\$10,000)” and inserting
12 in lieu thereof “twenty five thousand dollars (\$25,000)”.

13 (c) The legislative rule filed in the State Register on July 28, 2017, authorized under
14 the authority of §19-12D-4 of this code, modified by the Commissioner of Agriculture to meet
15 the objections of the Legislative Rule-Making Review Committee and refiled in the State
16 Register on December 19, 2017, relating to the Commissioner of Agriculture (noxious weeds,
17 61 CSR 14A), is authorized.

18 (d) The legislative rule filed in the State Register on July 17, 2017, authorized under
19 the authority of §19-2B-3 of this code, modified by the Commissioner of Agriculture to meet
20 the objections of the Legislative Rule-Making Review Committee and refiled in the State
21 Register on September 18, 2017, relating to the Commissioner of Agriculture (inspection of
22 meat and poultry, 61 CSR 16), is authorized.

23 (e) The legislative rule filed in the State Register on July 18, 2017, authorized under
24 the authority of §19-13-3 of this code, modified by the Commissioner of Agriculture to meet
25 the objections of the Legislative Rule-Making Review Committee and refiled in the State
26 Register on September 18, 2017, relating to the Commissioner of Agriculture (West Virginia
27 apiary law, 61 CSR 2), is authorized.

28 (f) The legislative rule filed in the State Register on July 17, 2017, authorized under
29 the authority of §19-29-4 of this code, modified by the Commissioner of Agriculture to meet
30 the objections of the Legislative Rule-Making Review Committee and refiled in the State
31 Register on September 29, 2017, relating to the Commissioner of Agriculture (inspection of
32 nontraditional, domesticated animals, 61 CSR 23D), is authorized.

33 (g) The legislative rule filed in the State Register on December 1, 2017, authorized
34 under the authority of §19-2-5 of this code, modified by the Commissioner of Agriculture to
35 meet the objections of the Legislative Rule-Making Review Committee and refiled in the State
36 Register on December 19, 2017, relating to the Commissioner of Agriculture (schedule of
37 charges for inspection services: fruit, 61 CSR 8B), is authorized.

§64-9-3. Athletic Commission.

1 (a) The legislative rule filed in the State Register on July 27, 2017, authorized under
2 the authority of §29-5A-24 of this code, modified by the Athletic Commission to meet the
3 objections of the Legislative Rule-Making Review Committee and refiled in the State Register
4 on October 3, 2017, relating to the Athletic Commission (administrative rules of the West
5 Virginia State Athletic Commission, 177 CSR 1), is authorized.

6 (b) The legislative rule filed in the State Register on July 27, 2017, authorized under
7 the authority of §29-5A-24 of this code, modified by the Athletic Commission to meet the
8 objections of the Legislative Rule-Making Review Committee and refiled in the State Register
9 on October 3, 2017, relating to the Athletic Commission (regulation of mixed martial arts, 177
10 CSR 2), is authorized.

§64-9-4. Board of Licensed Dietitians.

1 The legislative rule filed in the State Register on July 24, 2017, authorized under the
2 authority of §30-35-4 of this code, modified by the Board of Licensed Dietitians to meet the
3 objections of the Legislative Rule-Making Review Committee and refiled in the State Register on

4 December 4, 2017, relating to the Board of Licensed Dietitians (licensure and renewal
5 requirements, 31 CSR 1), is authorized with the following amendments:

6 On page two, subdivision 6.3 following the words “provisional permit renewal fee” by
7 striking the words “as stated in 4.1.2.3.” and inserting in lieu thereof the words “\$50.00.”;

8 And,

9 On page three, subdivision 7.5 following the words “professional license reinstatement
10 fee” by striking the words “as stated in 4.1.2.5.” and inserting in lieu thereof the words “as stated
11 in 4.1.2.3.”;

12 And,

13 On page three, subdivision 8.1.1.3, following the words “professional license
14 reinstatement fee” by striking thw words “as stated in 4.1.2.5.” and inserting in lieu thereof the
15 words “as stated in 4.1.2.3.”;

16 And,

17 On page three, subdivision 8.1.2, by renumbering the incorrectly numbered subsections
18 of that section to 8.1.2.1, 8.1.2.2, and 8.1.2.3, respectively;

19 And,

20 On page three, in the incorrectly numbered section 8.1.1.3, following the words
21 “reinstatement fee as stated” by striking the words “in 4.1.2.5.” and inserting in lieu thereof the
22 words “in 4.1.2.3.”

§64-9-5. Board of Hearing Aid Dealers.

1 The legislative rule filed in the State Register on July 26, 2017, authorized under the
2 authority of §30-26-3 of this code, relating to the Board of Hearing Aid Dealers (rules governing
3 the West Virginia Board of Hearing Aid Dealers, 8 CSR 1), is authorized.

§64-9-6. Board of Medicine.

1 (a) The legislative rule filed in the State Register on August 29, 2017, authorized under the
2 authority of §30-3E-3 of this code, modified by the Board of Medicine to meet the objections of

3 the Legislative Rule-Making Review Committee and refiled in the State Register on December 6,
4 2017, relating to the Board of Medicine (licensure, disciplinary and complaint procedures,
5 continuing education, physician assistants, 11 CSR 1B), is authorized.

6 (b) The legislative rule filed in the State Register on July 26, 2017, authorized under the
7 authority of §30-3-7 of this code, relating to the Board of Medicine (continuing education for
8 physicians and podiatric physicians, 11 CSR 6), is authorized with the amendment set forth below:

9 On page 1, section 1.2 by striking out the words, “§30-3-12 and §30-1-7a” and inserting in lieu
10 thereof “§30-3-7”.

§64-9-7. Board of Optometry.

1 The legislative rule filed in the State Register on July 28, 2017, authorized under the
2 authority of §30-8-6 of this code, relating to the Board of Optometry (rules of the West Virginia
3 Board of Optometry, 14 CSR 1), is authorized.

§64-9-8. Board of Osteopathic Medicine.

1 The legislative rule filed in the State Register on October 17, 2017, authorized under the
2 authority of §30-3E-3 of this code, modified by the Board of Osteopathic Medicine to meet the
3 objections of the Legislative Rule-Making Review Committee and refiled in the State Register on
4 December 6, 2017, relating to the Board of Osteopathic Medicine (osteopathic physician
5 assistants, 24 CSR 2), is authorized.

§64-9-9. Board of Pharmacy.

1 (a) The legislative rule filed in the State Register on July 28, 2017, authorized under
2 the authority of §30-5-7 of this code, relating to the Board of Pharmacy (licensure and practice of
3 pharmacy, 15 CSR 1), is authorized with the following amendments:

4 On page 15, subsection 6.5.1 after the words, “submit a fee of” by striking “\$125.00” and
5 inserting, “\$250.00” and removing the end parentheses.

6 (b) The legislative rule filed in the State Register on July 28, 2017, authorized under
7 the authority of §30-5-7 of this code, modified by the Board of Pharmacy to meet the objections

8 of the Legislative Rule-Making Review Committee and refiled in the State Register on November
9 7, 2017, relating to the Board of Pharmacy (pharmacist recovery networks, 15 CSR 10), is
10 authorized.

11 (c) The legislative rule filed in the State Register on July 28, 2017, authorized under
12 the authority of §30-5-7 of this code, modified by the Board of Pharmacy to meet the objections
13 of the Legislative Rule-Making Review Committee and refiled in the State Register on November
14 6, 2017, relating to the Board of Pharmacy (immunizations administered by pharmacists and
15 pharmacy interns, 15 CSR 12), is authorized.

16 (d) The legislative rule filed in the State Register on July 28, 2017, authorized under
17 the authority of §30-5-7 of this code, modified by the Board of Pharmacy to meet the objections
18 of the Legislative Rule-Making Review Committee and refiled in the State Register on December
19 18, 2017, relating to the Board of Pharmacy (centralized prescription processing, 15 CSR 14), is
20 authorized.

21 (e) The legislative rule filed in the State Register on July 28, 2017, authorized under
22 the authority of §60A-3-301 of this code, modified by the Board of Pharmacy to meet the
23 objections of the Legislative Rule-Making Review Committee and refiled in the State Register on
24 November 6, 2017, relating to the Board of Pharmacy (uniform controlled substances act, 15 CSR
25 2), is authorized.

26 (f) The legislative rule filed in the State Register on July 28, 2017, authorized under
27 the authority of §30-5-7 of this code, modified by the Board of Pharmacy to meet the objections
28 of the Legislative Rule-Making Review Committee and refiled in the State Register on
29 December 18, 2017, relating to the Board of Pharmacy (registration of pharmacy technicians, 15
30 CSR 7), is authorized.

31 (g) The legislative rule filed in the State Register on September 19, 2017, authorized
32 under the authority of §60A-9-6 of this code, modified by the Board of Pharmacy to meet the
33 objections of the Legislative Rule-Making Review Committee and refiled in the State Register on

34 November 7, 2017, relating to the Board of Pharmacy (controlled substances monitoring program,
35 15 CSR 8), is authorized.

§64-9-10. Board of Examiners of Psychologists.

1 (a) The legislative rule filed in the State Register on July 28, 2017, authorized under
2 the authority of §30-21-6 of this code, modified by the Board of Examiners of Psychologists to
3 meet the objections of the Legislative Rule-Making Review Committee and refiled in the State
4 Register on December 13, 2017, relating to the Board of Psychologists (fees, 17 CSR 1), is
5 authorized.

6 (b) The legislative rule filed in the State Register on July 28, 2017, authorized under
7 the authority of §30-21-6 of this code, modified by the Board of Examiners of Psychologists to
8 meet the objections of the Legislative Rule-Making Review Committee and refiled in the State
9 Register on December 15, 2017, relating to the Board of Examiners of Psychologists
10 (requirements for licensure as a psychologist and/or a school psychologist, 17 CSR 3), is
11 authorized.

12 (c) The legislative rule filed in the State Register on July 28, 2017, authorized under
13 the authority of §30-21-6 of this code, relating to the Board of Examiners of Psychologists (code
14 of conduct, 17 CSR 6), is authorized.

§64-9-11. Real Estate Appraiser Licensing and Certification Board.

1 The legislative rule filed in the State Register on July 28, 2017, authorized under the
2 authority of §30-38-9 of this code, relating to the Real Estate Appraiser Licensing and Certification
3 Board (requirements for licensure and certification, 190 CSR 2), is authorized.

§64-9-12. Real Estate Commission.

1 (a) The legislative rule filed in the State Register on July 27, 2017, authorized under
2 the authority of §30-40-8 of this code, modified by the Real Estate Commission to meet the
3 objections of the Legislative Rule-Making Review Committee and refiled in the State Register on
4 December 6, 2017, relating to the Real Estate Commission (licensing real estate brokers,

5 associate brokers and salespersons and the conduct of brokerage business, 174 CSR 1), is
6 authorized.

7 (b) The legislative rule filed in the State Register on July 27, 2017, authorized under
8 the authority of §30-40-8 of this code, relating to the Real Estate Commission (schedule of fees,
9 174 CSR 2), is authorized.

10 (c) The legislative rule filed in the State Register on July 27, 2017, authorized under
11 the authority of §30-40-8 of this code, modified by the Real Estate Commission to meet the
12 objections of the Legislative Rule-Making Review Committee and refiled in the State Register on
13 December 6, 2017, relating to the Real Estate Commission (requirements for real estate courses,
14 course providers and instructors, 174 CSR 3), is authorized with the amendments set forth below:

15 On page 6, subsection 3.9. to read as follows:

16 3.9. All approved pre-license and continuing education instructors shall complete annual
17 instructor development workshops when offered by the Commission, unless the attendance is
18 waived by the Commission or the individual is an out-of-state instructor who a) is approved by the
19 National Association of Realtors (NAR) or b) holds a Distinguished Real Estate Instructor (DREI)
20 designation.

§64-9-13. Secretary of State.

1 (a) The legislative rule filed in the State Register on July 28, 2017, authorized under
2 the authority of §3-1A-6 of this code, modified by the Secretary of State to meet the objections of
3 the Legislative Rule-Making Review Committee and refiled in the State Register on December
4 12, 2017, relating to the Secretary of State (procedures for canvassing elections, 153 CSR 18),
5 is authorized.

6 (b) The legislative rule filed in the State Register on July 28, 2017, authorized under
7 the authority of §3-1A-6 of this code, modified by the Secretary of State to meet the objections of
8 the Legislative Rule-Making Review Committee and refiled in the State Register on December

9 12, 2017, relating to the Secretary of State (procedures for handling ballots and counting write-in
10 votes in counties using optical scan ballots, 153 CSR 27), is authorized.

11 (c) The legislative rule filed in the State Register on July 28, 2017, authorized under
12 the authority of §3-3A-3 of this code, relating to the Secretary of State (vote by mail pilot project
13 phase 2: voting by mail, 153 CSR 39), is authorized.

§64-9-14. Board of Veterinary Medicine.

1 (a) The legislative rule filed in the State Register on July 18, 2017, authorized under
2 the authority of §30-10-6 of this code, modified by the Board of Veterinary Medicine to meet the
3 objections of the Legislative Rule-Making Review Committee and refiled in the State Register on
4 August 29, 2017, relating to the Board of Veterinary Medicine (organization and operation and
5 licensing of veterinarians, 26 CSR 1), is authorized.

6 (b) The legislative rule filed in the State Register on July 18, 2017, authorized under
7 the authority of §30-10-6 of this code, modified by the Board of Veterinary Medicine to meet the
8 objections of the Legislative Rule-Making Review Committee and refiled in the State Register on
9 September 20, 2017, relating to the Board of Veterinary Medicine (certified animal euthanasia
10 technicians, 26 CSR 5), is authorized.

11 (c) The legislative rule filed in the State Register on July 18, 2017, authorized under
12 the authority of §30-10-6 of this code, modified by the Board of Veterinary Medicine to meet the
13 objections of the Legislative Rule-Making Review Committee and refiled in the State Register on
14 August 29, 2017, relating to the Board of Veterinary Medicine (schedule of fees, 26 CSR 6), is
15 authorized.