

**H. B. 2712**

(By Delegates Swartzmiller, Butcher, Skaff,  
Staggers, Ferro, Hall, R. Phillips, Storch,  
Ferns, Stowers and Jones)

[Introduced January 21, 2011; referred to the  
Committee on the Judiciary.]

A BILL to repeal §29-5A-1, §29-5A-2, §29-5A-3, §29-5A-4, §29-5A-5,  
§29-5A-6, §29-5A-7, §29-5A-8, §29-5A-9, §29-5A-10, §29-5A-11,  
§29-5A-12, §29-5A-13, §29-5A-14, §29-5A-15, §29-5A-16,  
§29-5A-17, §29-5A-18, §29-5A-19, §29-5A-20, §29-5A-21,  
§29-5A-22, §29-5A-23, §29-5A-24, §29-5A-25, §29-5A-25A and  
§29-5A-26 of the Code of West Virginia, 1931, as amended; and  
to amend said code by adding thereto a new article, designated  
§29-5-1, §29-5-2, §29-5-3, §29-5-4, §29-5-5, §29-5-6, §29-5-7,  
§29-5-8, §29-5-9, §29-5-10, §29-5-11, §29-5-12, §29-5-13,  
§29-5-14, §29-5-15, §29-5-16, §29-5-17 and §29-5-18, all  
relating to the State Athletic Commission.

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

That §29-5A-1, §29-5A-2, §29-5A-3, §29-5A-4, §29-5A-5,  
§29-5A-6, §29-5A-7, §29-5A-8, §29-5A-9, §29-5A-10, §29-5A-11,  
§29-5A-12, §29-5A-13, §29-5A-14, §29-5A-15, §29-5A-16, §29-5A-17,  
§29-5A-18, §29-5A-19, §29-5A-20, §29-5A-21, §29-5A-22, §29-5A-23,  
§29-5A-24, §29-5A-25, §29-5A-25A and §29-5A-26 of the Code of West

1 Virginia, 1931, as amended, be repealed; and that said code be  
2 amended by adding thereto a new article, designated §29-5-1,  
3 §29-5-2, §29-5-3, §29-5-4, §29-5-5, §29-5-6, §29-5-7, §29-5-8,  
4 §29-5-9, §29-5-10, §29-5-11, §29-5-12, §29-5-13, §29-5-14,  
5 §29-5-15, §29-5-16, §29-5-17 and §29-5-18, all to read as follows:

6 **ARTICLE 5. STATE ATHLETIC COMMISSION.**

7 **§29-5-1. Commission to have sole control of boxing, semi-**  
8 **professional boxing and mixed marital arts.**

9 (a) A person may not promote a contest unless the person is  
10 licensed under this article and secures a permit to conduct the  
11 contest.

12 (b) A person may not participate in a contest as an official  
13 or contestant, unless the person is licensed under this article.

14 **§29-5-2. Definitions.**

15 As used in this article:

16 (a) "Amateur" means a contestant who does not compete for a  
17 prize, in cash or otherwise.

18 (b) "Boxing" means a contest between contestants who fight  
19 with their fists protected by gloves or mittens fashioned of  
20 leather or similar material, the duration of which is limited to a  
21 stated number of rounds separated by rest periods of equal  
22 duration. "Boxing" includes kickboxing.

23 (c) "Business entity" means any firm, partnership,  
24 association, club, company, corporation, limited partnership,

1 limited liability company or other entity.

2 (d) "Contest" means any public or private competition or  
3 exhibition that involves boxing, mixed martial arts or tough man.

4 (e) "Contestant" means a person participating in a contest or  
5 exhibition including a manager, trainer, or second of a contestant.

6 (f) "Mixed martial arts" means a combative sporting contest,  
7 the rules of which allow two competitors to attempt to achieve  
8 dominance over one another by utilizing a variety of techniques  
9 including, but not limited to, striking, grappling and the  
10 application of submission holds.

11 (g) "Official" means referee, judge, matchmaker, timekeeper  
12 licensed under this article.

13 (h) "Professional" means an individual licensed by the  
14 commission who competes for or has competed for a money prize,  
15 purse or compensation in a contest.

16 (I) "Promote" means to conduct or hold a contest.

17 (j) "Semi-Professional" means a tournament that involves  
18 physical contact between two individuals who attempt to out point  
19 the opponent by using boxing techniques and tactics. The winner of  
20 the tournament receiving a monetary prize or compensation.

21 **§29-5-3. State Athletic Commission.**

22 (a) The West Virginia Athletic Commission is terminated July  
23 1, 2011, and shall be reconstituted on July 1, 2011. The  
24 commission shall consist of the five members appointed by the  
25 Governor, by and with the advice and consent of the Senate:

1       (1) One member who has five years experience in professional  
2 boxing;

3       (2) One member who has five years of experience in  
4 professional mixed martial arts;

5       (3) One member who is a licensed allopathic or osteopathic  
6 physician; and

7       (4) Two citizen members, who are not licensed under the  
8 provisions of this article and who do not perform any services  
9 related to the persons regulated under this article.

10       (b) Each member of the commission must be a resident of this  
11 state during the appointment term.

12       (c) A person may not be appointed to the commission or be an  
13 employee of the commission who is regulated by the commission. A  
14 member may not have any legal or beneficial interest, direct or  
15 indirect, pecuniary or otherwise, in any person who is regulated by  
16 the commission or who participates in a contest.

17       (d) A member may not participate in any contest other than  
18 in the member's official capacity as a member of the commission.

19       (e) A member may not serve more than two consecutive full  
20 terms. A member may continue to serve until a successor has been  
21 appointed and has qualified.

22       (f) A vacancy on the commission shall be filled by appointment  
23 by the Governor for the unexpired term of the member whose office  
24 is vacant and the appointment shall be made within sixty days of  
25 the vacancy.

1       (g) The Governor may remove any member from the commission for  
2 neglect of duty, incompetency or official misconduct.

3       (h) A member of the commission immediately and automatically  
4 forfeits membership to the commission if he or she is convicted of  
5 a felony under the laws of any jurisdiction, or becomes a  
6 nonresident of this state.

7       (I) The commission shall elect annually one of its members as  
8 chairperson who serves at the will of the commission.

9       (j) Each member of the commission is entitled to compensation  
10 and expense reimbursement in accordance with article one, chapter  
11 thirty.

12       (k) A majority of the members of the commission constitutes a  
13 quorum.

14       (l) The commission shall hold at least two annual meetings.  
15 Other meetings may be held at the call of the chairperson or upon  
16 the written request of two members, at the time and place as  
17 designated in the call or request.

18       (m) Prior to commencing his or her duties as a member of the  
19 commission, each member shall take and subscribe to the oath  
20 required by section five, article four of the Constitution of this  
21 state.

22 **§29-5-4. Powers and duties of the commission.**

23       (a) The commission has all the powers and duties set forth in  
24 this article, by rule, and elsewhere in law.

25       (b) The commission shall:

- 1       (1) Have control over professional boxing and mixed martial  
2 arts contests and amateur mixed martial arts contest;
- 3       (2) Have control over semi-professional boxing;
- 4       (3) Hold meetings and conduct hearings;
- 5       (4) Establish requirements for licenses;
- 6       (5) Establish procedures for submitting, approving and  
7 rejecting applications for licenses and permits;
- 8       (6) Determine the qualifications of any applicant for licenses  
9 and permits;
- 10       (7) Hire, discharge, establish the job requirements and fix  
11 the compensation of the executive director;
- 12       (8) Maintain an office, and hire, discharge, establish the job  
13 requirements and fix the compensation of employees, investigators  
14 and contracted employees necessary to enforce the provisions of  
15 this article;
- 16       (9) Investigate alleged violations of the provisions of this  
17 article, legislative rules, orders and final decisions of the  
18 commission;
- 19       (10) Establish the criteria for the training of investigators;
- 20       (11) Set the requirements for investigations;
- 21       (12) Conduct disciplinary hearings of persons regulated by the  
22 commission;
- 23       (13) Determine disciplinary action and issue orders;
- 24       (14) Institute appropriate legal action for the enforcement of  
25 the provisions of this article;

1 (15) Maintain an accurate registry of names and addresses of  
2 all licensees;

3 (16) Keep accurate and complete records of its proceedings,  
4 and certify the same as may be necessary and appropriate;

5 (17) Issue, renew, combine, deny, suspend, revoke or reinstate  
6 licenses and permits;

7 (18) Establish a fee schedule;

8 (19) Have access to the financial records of licensees and  
9 permittees;

10 (20) Propose rules in accordance with the provisions of  
11 article three, chapter twenty-nine-a of this code to implement the  
12 provisions of this article; and

13 (21) Take all other actions necessary and proper to effectuate  
14 the purposes of this article.

15 (c) The commission may:

16 (1) Sue and be sued in its official name as an agency of this  
17 state; and

18 (2) Confer with the Attorney General or his or her assistant  
19 in connection with legal matters and questions.

20 **§29-5-5. Rulemaking.**

21 (a) The commission shall propose rules for legislative  
22 approval, in accordance with the provisions of article three,  
23 chapter twenty-nine-a of this code, to implement the provisions of  
24 this article, including:

25 (1) Standards and requirements for licenses and permits;

1 (2) Adopting the unified rules of mixed martial arts;

2 (3) Adopting the unified rules of boxing;

3 (4) Adopting rules governing semi-professional boxing  
4 contests;

5 (5) Procedures for the issuance and renewal of licenses and  
6 permits;

7 (6) A fee schedule;

8 (7) Increase the surety bond or required insurance above the  
9 statutory minimum;

10 (8) The procedures for denying, suspending, revoking,  
11 reinstating or limiting the practice of licensees and permittees;

12 (9) Requirements for investigations;

13 (10) Requirements for the reinstatement of revoked licenses or  
14 permits; and

15 (11) Any other rules necessary to effectuate the provisions of  
16 this article.

17 (b) All of the commission's rules in effect on July 1, 2011,  
18 shall remain in effect until they are amended or repealed, and  
19 references to provisions of former enactments of this article are  
20 interpreted to mean provisions of this article.

21 **§29-5-6. Fees; special revenue account; administrative fines.**

22 (a) All fees and other moneys, except administrative fines,  
23 received by the commission shall be deposited in a separate special  
24 revenue fund in the State Treasury designated the "West Virginia  
25 State Athletic Commission", which is continued. The fund is used



1 by the commission for the administration of this article. Except  
2 as may be provided in article one of this chapter, the commission  
3 retains the amount in the special revenue account from year to  
4 year. No compensation or expense incurred under this article is a  
5 charge against the General Revenue Fund.

6 (b) Any amount received as fines, imposed pursuant to this  
7 article, shall be deposited into the General Revenue Fund of the  
8 State Treasury.

9 **§29-5-7. Promoter's license requirements.**

10 (a) To be eligible for a license to promote a contest the  
11 applicant must:

12 (1) Apply to the commission on a form prescribed by the  
13 commission;

14 (2) Be of good moral character;

15 (3) Conduct his or her business in the best interest and  
16 welfare of the public and preserving the safety and health of  
17 participants;

18 (4) Pay the prescribed fee; and

19 (5) Adhere to and comply with the rules of the commission.

20 (b) In the case of a corporate applicant, these factors shall  
21 pertain to its officers, directors, principal stockholders and  
22 employees.

23 (c) The inspector and other officials designated by the  
24 commission to be in charge of a contest shall be paid by the  
25 promoter for each weigh-in ceremony and for each day of the

1 contest.

2 (d) A promoter shall, after the determination of a contest,  
3 furnish to the commission a written report detailing the number of  
4 tickets sold, the amount of the gross proceeds and other matters as  
5 the commission may prescribe.

6 (e) A promoter shall execute and file with the commission a  
7 surety bond in an amount not less than \$100,000.

8 (f) A license issued pursuant to this section shall bear the  
9 name of the licensee, the address of the licensee, the date of  
10 expiration, and an identification number designated by the  
11 commission.

12 (g) A promoter's license shall expire twelve months after its  
13 date of issuance and shall become invalid on that date unless  
14 renewed. A promoter's license may be renewed upon application to  
15 the commission and upon payment of the renewal fee.

16 (h) A licensee shall insure each contestant in a contest for  
17 hospital, nursing, and medication expenses and for physicians' and  
18 surgeons' services. The amount of the insurance may not be less  
19 than \$20,000 and shall be paid to or for the use of a contestant  
20 for any injuries sustained in a contest.

21 (I) A licensee shall provide life insurance to each  
22 contestant. The amount of life insurance may not be less than  
23 \$20,000 and it shall be paid to the contestant's estate if the  
24 contestant dies as the result of participation in the contest.

25 **§29-5-8. Contestant license requirements.**

1 (a) To be eligible for a license to be a contestant in a  
2 boxing or mixed martial arts contest, the applicant must:

3 (1) Apply to the commission on a form prescribed by the  
4 commission;

5 (2) Is physically fit and mentally sound;

6 (3) Pay the prescribed fee;

7 (4) Provide two recent photos, passport size;

8 (5) Will adhere to and comply with the rules of the  
9 commission;

10 (6) Has passed a physical by a licensed physician the day of  
11 the scheduled contest;

12 (7) An applicant for a license to be a contestant shall  
13 present documentary evidence, satisfactory to the commission, that:

14 (A) Within the one year, before a contest, the applicant has  
15 been tested for the presence of:

16 (I) Antibodies to the human immunodeficiency virus (HIV);

17 (ii) The antigen of virus hepatitis B;

18 (iii) Antibodies to virus hepatitis C;

19 (iv) A pregnancy test, if applicable;

20 (B) The results of all tests are negative;

21 (C) Report the results of the examination to the commission;

22 and

23 (D) All contestants must sign a medical information release  
24 form to permit the commission to review the contestant's medical  
25 information.

1 **§29-5-9. Semi-professional contestant license requirements.**

2 (a) To be eligible for a license to be a semi-professional  
3 contestant, the applicant must:

4 (1) Apply to the commission on a form prescribed by the  
5 commission;

6 (2) Is physically fit and mentally sound;

7 (3) Pay the prescribed fee;

8 (4) Will adhere to and comply with the rules of the  
9 commission; and

10 (5) Has passed a physical by a licensed physician the day of  
11 the scheduled contest.

12 **§29-5-10. Officials license requirements.**

13 (a) To be eligible for a license to be an official, the  
14 applicant must:

15 (1) Apply to the commission on a form prescribed by the  
16 commission;

17 (2) Be of good moral character;

18 (3) Be physically fit and mentally sound;

19 (4) Pay the prescribed fee;

20 (5) Adhere to and comply with the rules of the commission;

21 (6) Not likely to engage in acts detrimental to the fair and  
22 honest conduct of contests;

23 (7) Be qualified to hold a license by reason of the  
24 applicant's knowledge and experience; and

25 (8) Any other requirements the commission prescribes by

1 legislative.

2 (b) The chief official of the contest is the chief deputy.  
3 The referee is the chief official of the bout. The referee shall  
4 have general supervision and control over the contest and shall be  
5 paid by the promoter.

6 (c) The officials shall be appointed by the commission, and  
7 shall receive from the commission a card authorizing them to act as  
8 such.

9 **§29-5-11. Permit requirements.**

10 (a) To be eligible for a permit to conduct a contest an  
11 applicant must:

12 (1) Be licensed under section seven of this article;

13 (2) Apply to the commission on a form prescribed by the  
14 commission. The form shall require the following information:

15 (A) The date and starting time of the contest;

16 (B) The address of the place where the contest is to be held;

17 (C) The names of the contestants;

18 (D) The seating capacity of the building where the contest is  
19 to be held;

20 (E) The admission charge or any other charges;

21 (F) Provide a copy of the contracts the promoter and the  
22 contestants have signed; and

23 (G) The name and address of the applicant; and

24 (3) Pay the applicable fee.

25 (b) The commission shall determine if the contestants are

1 evenly and fairly matched according to skill, experience and weight  
2 so as to produce a fair and sportsmanlike contest.

3 (c) Each permit issued pursuant to this section shall bear the  
4 name and address of the applicant, the address of the place where  
5 the contest is to be held, and the date and starting time of the  
6 contest.

7 (d) The permit allows the permit holder to conduct only the  
8 contest named in the permit. A permit is not transferable.

9 **§29-5-12. Amateur boxing.**

10 Amateur boxing shall be governed by United States Boxing  
11 Association.

12 **§29-5-13. Deputy chief and inspectors at contests.**

13 (a) The commission shall employ a deputy chief and inspectors  
14 to attend each contest held under a permit.

15 (b) At least one deputy chief and at least two inspectors  
16 shall be assigned to a facility for a contest.

17 (c) The compensation of the deputy chief and the inspectors  
18 for attending a contest, shall be charged and paid by the permittee  
19 at whose facility the inspector serves.

20 (d) The inspectors shall report any violations of this article  
21 and legislative rules to the chief deputy.

22 **§29-5-14. Complaints; investigations; due process procedure;**  
23 **grounds for disciplinary action.**

24 (a) The commission may upon its own motion based on credible

1 information, and shall upon the written complaint of any person,  
2 cause an investigation to be made to determine whether grounds  
3 exist for disciplinary action under this article or the legislative  
4 rules of the commission.

5 (b) Upon initiation or receipt of the complaint, the  
6 commission shall provide a copy of the complaint to the licensee or  
7 permittee.

8 (c) After reviewing any information obtained through an  
9 investigation, the commission shall determine if probable cause  
10 exists that the licensee or permittee has violated subsection (g)  
11 of this section or rules promulgated pursuant to this article.

12 (d) Upon a finding that probable cause exists that the  
13 licensee or permittee has violated subsection (g) of this section  
14 or rules promulgated pursuant to this article, the commission may  
15 enter into a consent decree or hold a hearing for the suspension or  
16 revocation of the license or permit or the imposition of sanctions  
17 against the licensee or permittee. Any hearing shall be held in  
18 accordance with the provisions of this article.

19 (e) Any member of the commission or the executive director of  
20 the commission may issue subpoenas and subpoenas duces tecum to  
21 obtain testimony and documents to aid in the investigation of  
22 allegations against any person regulated by the article.

23 (f) Any member of the commission or its executive director may  
24 sign a consent decree or other legal document on behalf of the  
25 commission.

1       (g) The commission may, after notice and opportunity for  
2 hearing, deny or refuse to renew, suspend or revoke the license or  
3 permit of, impose probationary conditions upon or take disciplinary  
4 action against, any licensee or permittee for any of the following  
5 reasons once a violation has been proven by a preponderance of the  
6 evidence:

7       (1) Obtaining a license or permit by fraud, misrepresentation  
8 or concealment of material facts;

9       (2) Being convicted of a felony or other crime involving moral  
10 turpitude;

11       (3) Being guilty of unprofessional conduct which placed the  
12 public at risk, as defined by legislative rule of the commission;

13       (4) Intentional violation of a lawful order or legislative  
14 rule of the commission;

15       (5) Having had an authorization revoked, suspended, other  
16 disciplinary action taken, by the proper authorities of another  
17 jurisdiction;

18       (6) Having had an application denied by the proper authorities  
19 of another jurisdiction;

20       (7) Aiding or abetting unlicensed practice;

21       (8) Engaging in an act while acting in a professional capacity  
22 which has endangered or is likely to endanger the health, welfare  
23 or safety of the public;

24       (9) Is an habitual drunkard or addicted to the use of a  
25 controlled substance;



1       (10) Is or has become mentally incompetent;

2       (11) Has failed to maintain in force the bond required by this  
3 chapter;

4       (12) Has by act or omission conducted himself or herself in a  
5 manner which would tend to be detrimental to the best interests of  
6 boxing, mixed martial arts and semiprofessional boxing generally,  
7 or to the public interest and general welfare;

8       (13) Has failed to pay a fine or forfeiture imposed by this  
9 chapter;

10       (14) Knowingly permit a person less than eighteen years of age  
11 to participate in a public boxing or wrestling contest;

12       (15) Knowingly permit gambling, betting, or wagering on the  
13 result of a contingency in connection with a contest; or

14       (16) Knowingly conduct or allow to be conducted a sham or fake  
15 contest.

16       (h) For the purposes of subsection (g) of this section  
17 disciplinary action may include:

18       (1) Reprimand;

19       (2) Probation;

20       (3) Administrative fine, not to exceed \$1,000 per day per  
21 violation;

22       (4) Practicing under supervision or other restriction;

23       (5) Requiring the licensee to report to the commission for  
24 periodic interviews for a specified period of time; or

25       (6) Other corrective action considered by the commission to be

1 necessary to protect the public.

2 **§29-5-15. Procedures for hearing; right of appeal.**

3 (a) Hearings shall be governed by the provisions of section  
4 eight, article one of this chapter.

5 (b) The commission may conduct the hearing or elect to have an  
6 administrative law judge conduct the hearing.

7 (c) If the hearing is conducted by an administrative law  
8 judge, at the conclusion of a hearing he or she shall prepare a  
9 proposed written order containing findings of fact and conclusions  
10 of law. The proposed order may contain proposed disciplinary  
11 actions if the commission so directs. The commission may accept,  
12 reject or modify the decision of the administrative law judge.

13 (d) Any member or the executive director of the commission has  
14 the authority to administer oaths, examine any person under oath  
15 and issue subpoenas and subpoenas duces tecum.

16 (e) If, after a hearing, the commission determines the  
17 licensee or permittee has violated subsection (g) of this section  
18 or the commission's rules, a formal written decision shall be  
19 prepared which contains findings of fact, conclusions of law and a  
20 specific description of the disciplinary actions imposed.

21 **§29-5-16. Judicial review.**

22 Any licensee or permittee adversely affected by a decision of  
23 the commission entered after a hearing may obtain judicial review  
24 of the decision in accordance with section four, article five,  
25 chapter twenty-nine-a of this code, and may appeal any ruling

1 resulting from judicial review in accordance with article six,  
2 chapter twenty-nine-a of this code.

3 **§29-5-17. Injunctive relief for violation of chapter.**

4 When there is a violation of any provision of this chapter,  
5 in addition to any other remedy, the commission may apply to any  
6 court of record in the State of West Virginia for relief without  
7 being compelled to allege or prove that any adequate remedy at law  
8 does not exist.

9 **§29-5-18. Criminal proceedings; penalties.**

10 (a) When, as a result of an investigation under this article  
11 or otherwise, the commission has reason to believe that a licensee  
12 or permittee has committed a criminal offense under this article,  
13 the commission may bring its information to the attention of an  
14 appropriate law-enforcement official.

15 (b) A person violating a provision of this article is guilty  
16 of a misdemeanor and, upon conviction thereof, shall be fined not  
17 less than \$1,000 nor more than \$10,000 or confined in jail not more  
18 than six months, or both fined and confined.

NOTE: The purpose of this bill is to reorganize the State Athletic Commission and to require it to authorize mixed martial arts.

This article is new; therefore, it has been completely underscored.