

1 **ENROLLED**

2 COMMITTEE SUBSTITUTE

3 FOR

4 **H. B. 4139**

5 (By Delegates Brown, D. Poling, Fleischauer, and Overington)

6
7 [Passed March 10, 2012; in effect from passage.]
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9

10 AN ACT to amend and reenact article 9, chapter 64 of the Code of
11 West Virginia, 1931, as amended, relating generally to the
12 promulgation of administrative rules by the various executive
13 or administrative agencies and the procedures relating
14 thereto; legislative mandate or authorization for the
15 promulgation of certain legislative rules; authorizing certain
16 of the agencies to promulgate certain legislative rules in the
17 form that the rules were filed in the State Register;
18 authorizing certain of the agencies to promulgate certain
19 legislative rules with various modifications presented to and
20 recommended by the Legislative Rule-Making Review Committee;
21 authorizing certain of the agencies to promulgate certain
22 legislative rules as amended by the Legislature; authorizing
23 certain of the agencies to promulgate certain legislative
24 rules with various modifications presented to and recommended
25 by the Legislative Rule-Making Review Committee and as amended
26 by the Legislature; authorizing the Board of Dental Examiners
27 to promulgate a legislative rule relating to fees established
28 by the Board; authorizing the Board of Accountancy to

1 promulgate a legislative rule relating to the Board and rules
2 of professional conduct; authorizing the Massage Therapy
3 Licensure Board to promulgate a legislative rule relating to
4 general provisions; authorizing the Massage Therapy Licensure
5 Board to promulgate a legislative rule relating to a schedule
6 of fees; authorizing the Board of Medicine to promulgate a
7 legislative rule relating to the formation and approval of
8 professional limited liability companies; authorizing the
9 Human Rights Commission to promulgate a legislative rule
10 relating to housing discrimination against persons with
11 disabilities who utilize assistance animals; authorizing the
12 State Auditor to promulgate a legislative rule relating to the
13 transaction fee and rate structure; authorizing the
14 Commissioner of Agriculture to promulgate a legislative rule
15 relating to the inspection of meat and poultry; authorizing
16 the Commissioner of Agriculture to promulgate a legislative
17 rule relating to the labeling of imported honey, honey
18 products or honey bee by-products and adulterated honey, honey
19 products or honey bee by-products; authorizing the
20 Commissioner of Agriculture to promulgate a legislative rule
21 relating to nutrient management certification; authorizing the
22 Board of Barbers and Cosmetologists to promulgate a
23 legislative rule relating to the procedures, criteria and
24 curricula for examinations and licensure of barbers,
25 cosmetologists, manicurists and aestheticians; authorizing the
26 Board of Barbers and Cosmetologists to promulgate a
27 legislative rule relating to licensing schools of barbering
28 and beauty culture; authorizing the Board of Barbers and

1 Cosmetologists to promulgate a legislative rule relating to
2 shampoo assistants; authorizing the Courthouse Facilities
3 Improvement Authority to promulgate a legislative rule
4 relating to the Courthouse Facilities Improvement Fund;
5 authorizing the Secretary of State to promulgate a legislative
6 rule relating to the Vote-by-Mail Pilot Project Phase 2:
7 Voting by Mail; authorizing the Secretary of State to
8 promulgate a legislative rule relating to the general
9 management and preservation of state records; authorizing the
10 Board of Professional Surveyors to promulgate a legislative
11 rule relating to the examination and licensing of professional
12 surveyors in West Virginia; authorizing the Nursing Home
13 Administrators Licensing Board to promulgate a legislative
14 rule relating to nursing home administrators; authorizing the
15 Board of Occupational Therapy to promulgate a legislative rule
16 relating to fees for services rendered by the Board;
17 authorizing the Board of Osteopathy to promulgate a
18 legislative rule relating to licensing procedures for
19 osteopathic physicians; authorizing the Board of Pharmacy to
20 promulgate a legislative rule relating to the Uniform
21 Controlled Substances Act; authorizing the Board of Pharmacy
22 to promulgate a legislative rule relating to continuing
23 education for the licensure of pharmacists; authorizing the
24 Board of Pharmacy to promulgate a legislative rule relating to
25 the licensure of wholesale drug distributors; and authorizing
26 the Board of Pharmacy to promulgate a legislative rule
27 relating to immunizations administered by pharmacists.

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

1 That article nine, chapter 64 of the Code of West Virginia,
2 1931, as amended, be amended and reenacted to read as follows:

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

5 **§64-9-1. Board of Dental Examiners.**

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

15 On page one, subsection 2.1., by striking out all of
16 subsection 2.1. and inserting in lieu thereof a new subsection 2.1.
17 to read as follows:

18 2.1. Dental Licensure Application \$185.00;

19 On page one, subsection 2.8., by striking out all of
20 subsection 2.8. and inserting in lieu thereof a new subsection 2.8.
21 to read as follows:

22 2.8. Annual Information & Renewal fee for a Dentist \$185.00;

23 On page one, subsection 4.1., by striking out all of
24 subsection 4.1. and inserting in lieu thereof a new subsection 4.1.
25 to read as follows:

26 4.1. Dental Hygiene Licensure Application \$75.00;

27 On page two, subsection 4.7., by striking out all of
28 subsection 4.7. and inserting in lieu thereof a new subsection 4.7.

1 to read as follows:

2 4.7. Annual Information & Renewal fee for a Dental Hygienist
3 \$75.00;

4 On page two, subsections 4.8. through 4.15., by striking out
5 all of subsections 4.8. through 4.15. and inserting in lieu thereof
6 new subsections, designated subsections 4.8. through subsection
7 4.16. to read as follows:

8 4.8 Annual Information & Renewal fee for a Dental Hygienist
9 employed by a public health agency \$65.00

10 4.9. Local Anesthesia Certificate Application fee \$50.00

11 4.10. Nitrous Oxide Monitoring Certificate Application fee
12 \$50.00

13 4.11. Bleaching Certificate Application fee \$25.00

14 4.12. General Supervision Application fee \$100.00

15 4.13. Public Health Practice Application fee \$25.00

16 4.14. Annual Renewal fee of Local Anesthesia Certificate
17 \$25.00

18 4.15. Annual Renewal fee of General Supervision Certificate
19 \$50.00

20 4.16. Annual Renewal fee of Public Health Practice Certificate
21 \$25.00;

22 On page two, subsection 7.2., by striking out all of
23 subsection 7.2. and inserting in lieu thereof a new subsection 7.2.
24 to read as follows:

25 7.2. Class Two Certification Renewal Fee \$15.00;

26 And,

27 On page two, subsection 7.6., by striking out all of
28 subsection 7.6. and inserting in lieu thereof a new subsection 7.6.

1 to read as follows:

2 7.6. Qualified Monitor Annual Renewal Fee \$25.00;

3 **§64-9-2. Board of Accountancy.**

4 The legislative rule filed in the State Register on the
5 twenty-eighth day of July, two thousand eleven, authorized under
6 the authority of section five, article nine, chapter thirty of this
7 code, relating to the Board of Accountancy (the Board and rules of
8 professional conduct, 1 CSR 1), is authorized.

9 **§64-9-3. Massage Therapy Licensure Board.**

10 (a) The legislative rule filed in the State Register on the
11 twenty-ninth day of July, two thousand eleven, authorized under the
12 authority of section six, article thirty-seven, chapter thirty, of
13 this code, relating to the Massage Therapy Licensure Board (general
14 provisions, 194 CSR 1), is authorized.

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

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

23 **"§194-4-3. Expiration of fee increases.**

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

26 **§64-9-4. Board of Medicine.**

27 The legislative rule filed in the State Register on the

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

6 **§64-9-5. Human Rights Commission.**

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

13 **§64-9-6. Auditor.**

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

19 On page one, section three, by striking out all of subsection
20 3.1 and inserting in lieu thereof the following:

21 "3.1. The transaction fee structure and rate shall be in
22 compliance with the following federal Office of Management and
23 Budget Circulars and provisions of the Code of Federal Regulations:
24 Circular No. A-21, "Cost Principles for Educational Institutions"
25 as amended May 10, 2004; 2CFR Part 225: Circular No. A-87, "Cost
26 Principles for State, Local, and Indian Tribal Governments" as
27 amended August 31, 2005; and Circular A-110, "Uniform
28 Administrative Requirements for Grants and Agreements with

1 Institutions of Higher Education, Hospitals, and other Non-Profit
2 Organizations" as amended September 30, 1999."

3 **§64-9-7. Department of Agriculture.**

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

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

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

27 **§64-9-8. Board of Barbers & Cosmetologists.**

28 (a) The legislative rule filed in the State Register on the

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

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

16 (c) The legislative rule filed in the State Register on the
17 twenty-ninth day of July, two thousand eleven, authorized under the
18 authority of section eleven-a, article twenty-seven, chapter
19 thirty, of this code, relating to the Board of Barbers and
20 Cosmetologists (shampoo assistants, 3 CSR 8), is authorized.

21 **§64-9-9. Courthouse Facilities Improvement Authority.**

22 The legislative rule filed in the State Register on the first
23 day of September, two thousand eleven, authorized under the
24 authority of section three, article twenty-six, chapter twenty-
25 nine, of this code, modified by the Courthouse Facilities
26 Improvement Authority to meet the objections of the Legislative
27 Rule-Making Review Committee and refiled in the State Register on
28 the eleventh day of January, two thousand twelve, relating to the

1 Courthouse Facilities Improvement Authority (Courthouse Facilities
2 Improvement Fund, 203 CSR 1), is authorized.

3 **§64-9-10. Secretary of State.**

4 (a) The legislative rule filed in the State Register on the
5 twenty-ninth day of July, two thousand eleven, authorized under the
6 authority of section three, article three-a, chapter three, of this
7 code, modified by the Secretary of State to meet the objections of
8 the Legislative Rule-Making Review Committee and refiled in the
9 State Register on the twenty-third day of December, two thousand
10 eleven, relating to the Secretary of State (Vote-by-Mail Pilot
11 Project Phase 2: Voting by Mail, 153 CSR 39), is authorized.

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

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

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

28 On page four, subsection 3.2a, line fourteen, following the

1 words "Culture and History", by inserting a comma and the words
2 "Archives and History section";

3 And

4 On page four, subsection 3.2d, line twenty-five, following the
5 words "Director of Archives", by inserting the words "and History".

6 **§64-9-11. Board of Professional Surveyors.**

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

16 **§64-9-12. Nursing Home Administrators Licensing Board.**

17 The legislative rule filed in the State Register on the
18 twenty-eighth day of March, two thousand eleven, authorized under
19 the authority of section six, article twenty-five, chapter thirty,
20 of this code, modified by the Nursing Home Administrators Licensing
21 Board to meet the objections of the Legislative Rule-Making Review
22 Committee and refiled in the State Register on the eighteenth day
23 of October, two thousand eleven, relating to the Nursing Home
24 Administrators Licensing Board (nursing home administrators, 21 CSR
25 1), is authorized.

26 **§64-9-13. Board of Occupational Therapy.**

27 The legislative rule filed in the State Register on the
28 fourteenth day of July, two thousand eleven, authorized under the

1 authority of section seven, article twenty-eight, chapter thirty,
2 of this code, relating to the Board of Occupational Therapy (fees
3 for services rendered by the Board, 13 CSR 3), is authorized.

4 **§64-9-14. Board of Osteopathy.**

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

10 **§64-9-15. Board of Pharmacy.**

11 (a) The legislative rule filed in the State Register on the
12 twenty-ninth day of July, two thousand eleven, authorized under the
13 authority of section three hundred one, article three, chapter
14 sixty-a, of this code, relating to the Board of Pharmacy (Uniform
15 Controlled Substances Act, 15 CSR 2), is authorized with the
16 following amendment:

17 On page twenty three, subdivision 7.10.1., by striking out the
18 word "full" and inserting in lieu thereof the word "fill".

19 (b) The legislative rule filed in the State Register on the
20 twenty-ninth day of July, two thousand eleven, authorized under the
21 authority of section three-a, article five, chapter thirty, of this
22 code, relating to the Board of Pharmacy (continuing education for
23 licensure of pharmacists, 15 CSR 3), is authorized.

24 (c) The legislative rule filed in the State Register on the
25 twenty-ninth day of July, two thousand eleven, authorized under the
26 authority of section nine, article eight, chapter sixty-a, of this
27 code, relating to the Board of Pharmacy (licensure of wholesale
28 drug distributors, 15 CSR 5), is authorized with the following

1 amendment:

2 On page three, subsection 3.1, after the words "prescription
3 drugs." by adding the following: Notwithstanding the provisions of
4 W. Va. Code §60A-8-7, the fee for a license for the wholesale
5 distribution of drugs is \$750.00.

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