WEST virginia legislature

2022 regular session

Enrolled

Committee Substitute

for

Senate Bill 312

By Senator Sypolt

[Passed March 12, 2022; to take effect July 1, 2022]

AN ACT to amend and reenact §64-7-1 *et. seq*. of the Code of West Virginia, 1931, as amended, all relating generally to authorizing certain agencies of the Department of Revenue to promulgate legislative rules; authorizing the rules as filed and as modified by the Legislative Rule-Making Review Committee and as amended by the Legislature; relating to authorizing the Alcohol Beverage Control Commission to promulgate a legislative rule relating to private club licensing; relating to authorizing the Alcohol Beverage Control Commission to promulgate a legislative rule relating to bailment policies and procedures; relating to authorizing the Alcohol Beverage Control Commission to promulgate a legislative rule relating to nonintoxicating beer licensing and operations procedures; relating to authorizing the Insurance Commission to promulgate a legislative rule relating to continuing education for individual insurance producers and individual insurance providers; relating to authorizing the Insurance Commission to promulgate a legislative rule relating to the adoption of the valuation manual; relating to authorizing the Insurance Commission to promulgate a legislative rule relating to pharmacy auditing entities and pharmacy benefit managers; relating to authorizing the Insurance Commission to promulgate a legislative rule relating to term and universal life insurance reserve financing; relating to authorizing the Insurance Commission to promulgate a legislative rule relating to bail bondsmen in criminal cases; relating to authorizing the Lottery Commission to promulgate a legislative rule relating to the West Virginia Lottery State Lottery Rules; relating to authorizing the Lottery Commission to promulgate a legislative rule relating to West Virginia Lottery Limited Video Lottery Rule; relating to authorizing the Racing Commission to promulgate a legislative rule relating to thoroughbred racing; relating to authorizing the Racing Commission to promulgate a legislative rule relating to pari-mutuel wagering; relating to not authorizing the Tax Department to promulgate a legislative rule relating to the valuation of producing and reserve oil, natural gas liquids, and natural gas for ad valorem property tax purposes; relating to authorizing the Tax Department to promulgate a legislative rule relating to the West Virginia tax credit for Federal Excise Tax imposed upon small arms and ammunition manufacturers; relating to authorizing the Tax Department to promulgate a legislative rule relating to the Sales Tax Holiday; relating to authorizing the Tax Department to promulgate a legislative rule relating to the exemption for repair, remodeling, and maintenance of an aircraft; relating to authorizing the Tax Department to promulgate a legislative rule relating to vendor absorption or assumption of Sales and Use tax; and relating to authorizing the Tax Department to promulgate a legislative rule relating to on-line bingo and raffles; and relating to authorizing the Tax Department to promulgate a legislative rule to the corporation net income tax.

Be it enacted by the Legislature of West Virginia:

**ARTICLE 7. Authorization for Department of Revenue to promulgate legislative rules.**

**§64-7-1. Alcohol Beverage Control Commission.**

1. The legislative rule filed in the State Register on July 27, 2021, authorized under the authority of §60-2-16 of this code, modified by the Alcohol Beverage Control Commission to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 20, 2021, relating to the Alcohol Beverage Control Commission (Private Club Licensing, [175 CSR 02](http://apps.sos.wv.gov/adlaw/csr/rule.aspx?rule=175-02)), is authorized; with the following amendments:

On page six, subsection 2.22.5a after the words “wine that a member purchased” by removing the following new language “from a wine retailer, wine specialty shop, an applicable winery or farm winery when licensed for retail sales, or a licensed wine direct shipper” and,

On page 17, subsection 3.1.7 by striking the language “being a suitable person, being of good morals and character” and inserting in lieu thereof the following:

“not have been convicted of a felony in the previous five years before the date of application, not have been convicted of a crime involving fraud, dishonesty, or deceit in the previous five years before application, and not have been convicted of a felony crime for violating alcohol-related distribution laws in the previous five years” and,

On page 18, subsection 3.2.1.e. by striking the words “suitable persons” and inserting in lieu thereof the following:

“persons that have not been convicted of a felony in the previous five years before the date of application, not have been convicted of a crime involving fraud, dishonesty, or deceit in the previous five years before application, and not have been convicted of a felony crime for violating alcohol-related distribution laws in the previous five years” and,

On page 18, subsection 3.2.2.a, by striking the language “Is not a person of good moral character or repute” and inserting in lieu thereof the following:

“Has not been convicted of a felony in the previous five years before the date of application, has not been convicted of a crime involving fraud, dishonesty, or deceit in the previous five years before application, and has not been convicted of a felony crime for violating alcohol-related distribution laws in the previous five years” and

On page 18, subdivision 3.2.2.d, by striking “has the general reputation of drinking alcoholic beverages or nonintoxicating to excess, or is addicted to the use of controlled substances;” in its entirety and renumbering the remaining subdivisions as appropriate, and

On page 18, subdivision 3.2.3.b, by striking out the words “moral turpitude” and inserting in lieu thereof the following:

“fraud, dishonesty, or deceit” and,

On page 20, subsection 3.2.6, by striking the words “or its officers and directors who have been convicted of a felony or a crime involving moral turpitude” and,

On page 23, subdivision 3.4.6.c.1, by striking the following: “(which does not include a metal crowler that is canned)” and,

On page 23, subdivision 3.4.6.c.2.B, by striking the new language “110%” and inserting in lieu thereof the “the required” and,

On page 26, subdivision 3.4.6.e.5, by adding after the word “requirements” the following:

“ – The delivery person must permit only the person who placed the delivery order through telephone order, mobile ordering application, or web-based software to accept the prepared food or meal and a craft cocktail growler delivery. The delivery person must verify the person’s age using the person’s legal identification. The delivery must otherwise comply with W. Va. Code §60-7-8f(f).” And,

On page 26, by striking out subdivision 3.4.6.e.5.A in its entirety, and,

On page 26, by striking out subdivision 3.4.6.e.5.A.i in its entirety, and,

On page 26, by striking out subdivision 3.4.6.e.5.A.ii in its entirety, and,

On page 26 and continuing through page 27, by striking out subdivision 3.4.6.e.5.A.iii in its entirety, and,

On page 27, by striking out subdivision 3.4.6.e.5.B in its entirety, and,

On page 27, subdivision 3.4.6.e.6.B, after the words “transportation permit” by striking out “and pay the transportation permit fee, $10 for the first transporting vehicle and a one dollar for every transporting vehicle thereafter,” and

On page 28, subdivision 3.4.11.a, by striking out the word “limited” and striking out the words “(ex. Recorded music or limited live music, such as a solo musician, for ambiance)” and

On page 28, subdivision 3.4.11.a, by striking out after the words “outdoor dining area” the comma and “however, in the Commissioner’s determination, any entertainment or alcohol beverage service that has the appearance or function as a festival, event, concert, or in any other manner exceeds what is necessary for private outdoor dining, then such entertainment or alcoholic beverage service shall be denied” and inserting in lieu thereof the following:

“The Commissioner may determine not to authorize entertainment but must provide a written statement indicating why such entertainment is not authorized” and,

On page 28, subdivision 3.4.11.b, by striking out the word “limited” and striking out the words “(ex. Recorded music or limited live music, such as a solo musician, for ambiance)” and,

On page 28, subdivision 3.4.11.b, by striking out after the words “outdoor street dining area” the comma and “however, in the Commissioner’s determination, any entertainment or alcohol beverage service that has the appearance or function as a festival, event, concert, or in any other manner exceeds what is necessary for private outdoor dining, then such entertainment or alcoholic beverage service shall be denied” and inserting in lieu thereof the following:

“The Commissioner may determine not to authorize entertainment but must provide a written statement indicating why such entertainment is not authorized.”

1. The Legislature directs the Alcohol Beverage Control Commission to amend the legislative rule filed in the State Register on June 23, 2008, authorized under the authority of §60-2-16 of this code, relating to the Alcohol Beverage Control Commission (Bailment Policies and Procedures, 175 CSR 06) with the amendment set forth below:

On page nine, subsection 11.1, by striking “The amount of such charges will be imposed by administrative notices filed in the State Register.”; and inserting in lieu thereof the following:

“The amount of such charges will be approved by the Legislature, pursuant to W. Va. Code §29A-3-1 *et seq*., then filed in the State Register. The Commission is authorized to promulgate an emergency rule in the event of price changes from vendors affecting the routine warehousing charges.”

1. The legislative rule filed in the State Register on July 28, 2021, authorized under the authority of §11-16-22 of this code, modified by the Alcohol Beverage Control Commission to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 20, 2021, relating to the Alcohol Beverage Control Commission (Nonintoxicating Beer Licensing and Operations Procedures, [176 CSR 01](http://apps.sos.wv.gov/adlaw/csr/rule.aspx?rule=176-01)), is authorized with the following amendments:

 On page 8, subdivision 3.1.b, by striking out the word “credit” and

 On page 8, subdivision 3.1.e, by striking out the words “being a suitable person, being of good morals and character” and inserting in lieu thereof:

 “not have been convicted of a felony in the previous five years before application, not have been convicted of a crime involving fraud, dishonesty, and deceit in the previous five years before application, not have been convicted of a felony crime for violating alcohol-related distribution laws in the previous five years before application” and

 On page 12, section 3.4, by striking the section heading “3.4.a” and the section headings for “3.4.b” and “3.4.c” and renumbering those section accordingly, and

 On page 13 and continuing to page 14, subdivision 3.6.b.1, after the word “citizen”, by striking, “and a person of good moral character” and inserting in lieu thereof:

 “and has not been convicted of a felony in the previous five years before application, has not been convicted of a crime involving fraud, dishonesty, and deceit in the previous five years before application, and has not been convicted of a felony crime for violating alcohol-related distribution laws in the previous five years before application.” And

 On page 14, subdivision 3.6.3.e.3.B by adding the word “and” at the end of the sentence and entering down to create a new subdivision as follows:

 “3.6.e.3.C. that this requirement does not apply to a school or church that has notified the Commissioner, in writing, that it has not objection to the location of a proposed business;” and,

 On page 15, subsection 3.6.j, by striking out the words “are suitable persons of good reputation and morals to be licensed” and inserting in lieu thereof:

 “have not been convicted of a felony in the previous five years before application, have not been convicted of a crime involving fraud, dishonesty, or deceit in the previous five years before application, and have not been convicted of a felony crime violating alcohol-related distribution laws in the previous five years before application to be licensed;” and,

 On page 15, subdivision 3.8.c by striking out the words “is an unsuitable person to be licensed” and inserting in lieu thereof the following:

 “has not been convicted of a felony in the previous five years before application, has not been convicted of a crime involving fraud, dishonesty, or deceit in the previous five years before application, and has not been convicted of a felony crime violating alcohol-related distribution laws in the previous five years before application to be licensed” and

 On page 19, subdivision 3.11.f.6, by adding after the colon the following:

 “The delivery person may only permit the person who placed the order through a telephone, mobile ordering application, or web-based software to accept the delivery of food and nonintoxicating beer or nonintoxicating craft beer and the delivery driver must verify the person’s legal identification to ensure the person accepting the delivery is at least 21 years of age. A record of the delivery and of verifying the person’s identification must be created and retained for at least 3 years.” And,

 On page 19 by deleting subdivision 3.11.f.6.A in its entirety, and

 On page 19 by deleting subdivision 3.11.f.6.A.i in its entirety, and

 On page 19 by deleting subdivision 3.11.f.6.A.ii in its entirety, and

 On page 19 by deleting subdivision 3.11.f.6.A.iii in its entirety, and

 On page 19, by deleting subdivision 3.11.f.6.B in its entirety, and

 On page 19, by deleting subdivision 3.11.f.6.C in its entirety, and

 On page 19 and page 20 by renumbering subdivision 3.11.f.6.D and subdivision 3.11.f.6.E, to 3.11.f.6.A and 3.11.f.6.B respectively.

 On page 21, subdivision 3.11.g.6. by adding after the colon the following:

 “The delivery person may only permit the person who placed the order through a telephone, mobile ordering application, or web-based software to accept the delivery of food and nonintoxicating beer or nonintoxicating craft beer and the delivery driver must verify the person’s legal identification to ensure the person accepting the delivery is at least 21 years of age. A record of the delivery and of verifying the person’s identification must be created and retained for at least 3 years.” And,

 On page 21, by deleting subdivision 3.11.g.6.A in its entirety, and

 On page 21, by deleting subdivision 3.11.g.6.A.i in its entirety, and

 On page 21, by deleting subdivision 3.11.g.6.A.ii in its entirety, and

 On page 21, by deleting subdivision 3.11.g.6.A.iii in its entirety, and

 On page 21, by renumbering subdivision 3.11.g.6.B and 3.11.g.6.C to 3.11.g.6.A and 3.11.g.6.B, respectively, and

 On page 22, subdivision 3.11.h.3, by striking the word “limited” and striking, after the comma “like recorded music for ambiance” and inserting, after the comma, in lieu thereof the following:

 “however, if the Commissioner denies entertainment the Commissioner must provide an explanation for denying such entertainment.” And

 On page 22, subdivision 3.11.i.3, by striking the word “limited” and striking, after the comma, “like recorded music for ambiance” and inserting, after the comma, in lieu thereof the following:

 “however, if the Commissioner denies entertainment the Commissioner must provide an explanation for denying such entertainment.” And

 On page 23, subdivision 3.11.k.3.B, by adding after the words “or home brewer’s license” a comma and the following “if applicable” and,

 On page 24, subdivision 3.11.k.4.C by adding after the word Commissioner a comma and the following: “except that if an unlicensed brewer is licensed in its domicile state and is in good standing, no criminal background checks may be required for the temporary one-day license.”

 On page 24, subdivision 3.12.d, by striking the word “suitable” and,

 On page 25, subdivision 3.12.d.6 by striking everything and inserting in lieu thereof:

 “has not been convicted of a felony in the previous five years before application, has not been convicted of a crime involving fraud, dishonesty, or deceit in the previous five years before application, and has not been convicted of a felony crime violating alcohol-related distribution laws in the previous five years before application;” and,

 On page 26, subdivision 3.14.b by adding, after the words “bond forfeiture” a comma and the words “if applicable,” and

 On page 31, subdivision 6.1.b, by striking the words “known to be insane or known to be a habitual drunkard” and inserting in lieu thereof: “known to be mentally incompetent”

**§64-7-2. Insurance Commission.**

1. The legislative rule filed in the State Register on July 8, 2021, authorized under the authority of §33-12B-12 of this code, relating to the Insurance Commission (Continuing Education for Individual Insurance Producers and Individual Insurance Adjusters, [114 CSR 42](http://apps.sos.wv.gov/adlaw/csr/rule.aspx?rule=114-42)), is authorized.
2. The legislative rule filed in the State Register on March 31, 2021, authorized under the authority of §33-7-9 of this code, relating to the Insurance Commission (Adoption of Valuation Manual, [114 CSR 98](http://apps.sos.wv.gov/adlaw/csr/rule.aspx?rule=114-98)), is authorized.
3. The legislative rule filed in the State Register on July 27, 2021, authorized under the authority of §33-51-8 of this code, relating to the Insurance Commission (Pharmacy Auditing Entities and Pharmacy Benefit Managers, [114 CSR 99](http://apps.sos.wv.gov/adlaw/csr/rule.aspx?rule=114-99)), is authorized.
4. The legislative rule filed in the State Register on July 8, 2021, authorized under the authority of §33-4-15a of this code, relating to the Insurance Commission (Term and Universal Life Insurance Reserve Financing, [114 CSR 102](http://apps.sos.wv.gov/adlaw/csr/rule.aspx?rule=114-102)), is authorized.
5. The legislative rule filed in the State Register on July 9, 2021, authorized under the authority of §51-10-8 of this code, modified by the Insurance Commission to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on August 24, 2021, relating to the Insurance Commission (Bail Bondsmen in Criminal Cases, [114 CSR 103](http://apps.sos.wv.gov/adlaw/csr/rule.aspx?rule=114-103)), is authorized.

**§64-7-3. Lottery Commission**

1. The legislative rule filed in the State Register on July 7, 2021, authorized under the authority of §29-22-5 of this code, modified by the Lottery Commission to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 27, 2021, relating to the Lottery Commission (West Virginia Lottery State Lottery Rules, [179 CSR 01](http://apps.sos.wv.gov/adlaw/csr/rule.aspx?rule=179-01)), is authorized.
2. The legislative rule filed in the State Register on July 8, 2021, authorized under the authority of §29-22B-402 of this code, modified by the Lottery Commission to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 27, 2021, relating to the Lottery Commission (West Virginia Lottery Limited Video Lottery Rule, [179 CSR 05](http://apps.sos.wv.gov/adlaw/csr/rule.aspx?rule=179-05)), is authorized.

**§64-7-4. Racing Commission.**

1. The legislative rule filed in the State Register on July 28, 2021, authorized under the authority of §19-23-6 of this code, modified by the Racing Commission to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 8, 2021, relating to the Racing Commission (Thoroughbred Racing, [178 CSR 01](http://apps.sos.wv.gov/adlaw/csr/rule.aspx?rule=178-01)), is authorized.
2. The legislative rule filed in the State Register on April 30, 2021, authorized under the authority of §19-23-6 of this code, relating to the Racing Commission (Pari-Mutuel Wagering, [178 CSR 05](http://apps.sos.wv.gov/adlaw/csr/rule.aspx?rule=178-05)), is authorized.

**§64-7-5. Tax Department.**

1. The legislative rule filed in the State Register on July 30, 2021, authorized under the authority of §11-1C-10 of this code, relating to the Tax Department (Valuation of Producing and Reserve Oil, Natural Gas Liquids, and Natural Gas for Ad Valorem Property Tax Purposes, 110 CSR 01J), is not authorized.
2. The legislative rule filed in the State Register on July 8, 2021 authorized under the authority of §11-13KK-13 of this code, modified by the State Tax Department to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 7, 2021 relating to the State Tax Department (West Virginia Tax Credit for Federal Excise Tax Imposed Upon Small Arms and Ammunition Manufacturers, [110 CSR 13KK](http://apps.sos.wv.gov/adlaw/csr/rule.aspx?rule=110-13KK)), is authorized.
3. The legislative rule filed in the State Register on June 30, 2021, authorized under the authority of §11-15-9s of this code, modified by the Tax Department to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 21, 2021, relating to the Tax Department (Sales Tax Holiday, [110 CSR 15F](http://apps.sos.wv.gov/adlaw/csr/rule.aspx?rule=110-15F)), is authorized.
4. The legislative rule filed in the State Register on July 8, 2021, authorized under the authority of §11-15-9t of this code, modified by the State Tax Department to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 7, 2021, relating to the State Tax Department (Exemption for Repair, Remodeling, and Maintenance of Aircraft, [110 CSR 15L](http://apps.sos.wv.gov/adlaw/csr/rule.aspx?rule=110-15L)), is authorized.
5. The legislative rule filed in the State Register on July 8, 2021, authorized under the authority of §11-15A-8 of this code, relating to the Tax Department (Vendor Absorption or Assumption of Sales and Use Tax, [110 CSR 15M](http://apps.sos.wv.gov/adlaw/csr/rule.aspx?rule=110-15M)), is authorized.
6. The legislative rule filed in the State Register on July 8, 2021, authorized under the authority of §11-15A-8 of this code, relating to the Tax Department (On-line Bingo and Raffles, [110 CSR 16A](http://apps.sos.wv.gov/adlaw/csr/rule.aspx?rule=110-16A)), is authorized with the following amendments:

On page four, subsection 8.1, by striking out the words “A licensee may only use bingo equipment or raffle equipment,” and inserting in lieu thereof the words “A bingo licensee may use only bingo equipment,”;

On page four, after subsection 8.1, by adding a new subsection 8.2 to read as follows:

8.2. A raffle licensee may use only raffle equipment, including software or programming for conducting raffles on-line over the Internet, which the licensee owns or which it borrows without compensation, or leases for a reasonable and customary amount from a wholesaler or distributor of raffle boards and games licensed under W. Va. Code §47-23-3.

 And,

 By renumbering the remaining subsections.

(g) The legislative rule filed in the State Register on July 27, 2021, authorized under the authority of §11-24-6b of this code, modified by the Tax Department to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 21, 2021, relating to the Tax Department (Corporation Net Income Tax, [110 CSR 24](http://apps.sos.wv.gov/adlaw/csr/rule.aspx?rule=110-24)), is authorized.