

1 **ENROLLED**

2 COMMITTEE SUBSTITUTE

3 FOR

4 **Senate Bill No. 140**

5 (SENATOR SNYDER, *original sponsor*)

6 _____
7 [Passed March 8, 2014; in effect from passage.]
8 _____

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10
11 AN ACT to amend and reenact article 3, chapter 64 of the Code of
12 West Virginia, 1931, as amended, relating generally to the
13 promulgation of administrative rules by the Department of
14 Commerce; legislative mandate or authorization for the
15 promulgation of certain legislative rules by various executive
16 or administrative agencies of the state; authorizing certain
17 of the agencies to promulgate certain legislative rules in the
18 form that the rules were filed in the State Register;
19 authorizing certain of the agencies to promulgate certain
20 legislative rules with various modifications presented to and
21 recommended by the Legislative Rule-Making Review Committee;
22 authorizing certain of the agencies to promulgate certain
23 legislative rules with various modifications presented to and
24 recommended by the Legislative Rule-Making Review Committee

1 and as amended by the Legislature; authorizing the Office of
2 Miners' Health, Safety and Training to promulgate a
3 legislative rule relating to assessing health and safety
4 violation penalties; authorizing the Office of Miners' Health,
5 Safety and Training to promulgate a legislative rule relating
6 to the program for the sharing of information between
7 employers; authorizing the Office of Miners' Health, Safety
8 and Training to promulgate a legislative rule relating to
9 substance abuse screening, standards and procedure;
10 authorizing the Division of Labor to promulgate a legislative
11 rule relating to the Wage Payment and Collection Act;
12 authorizing the Division of Labor to promulgate a legislative
13 rule relating to employer wage bonds; authorizing the Division
14 of Natural Resources to promulgate a legislative rule relating
15 to special motorboating; and authorizing the Division of
16 Natural Resources to promulgate a legislative rule relating to
17 the electronic registration of wildlife.

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

19 That article 3, chapter 64 of the Code of West Virginia, 1931,
20 as amended, be amended and reenacted to read as follows:

21 **ARTICLE 10. AUTHORIZATION FOR BUREAU OF COMMERCE TO PROMULGATE**
22 **LEGISLATIVE RULES.**

23 **§64-10-1. Office of Miners' Health, Safety and Training.**

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

1 26, 2013, authorized under the authority of section six, article
2 one, chapter twenty-two-a of this code, relating to the Office of
3 Miners' Health, Safety and Training (assessing health and safety
4 violation penalties, 56 CSR 12), is authorized.

5 (b) The legislative rule filed in the State Register on July
6 26, 2013, authorized under the authority of section four, article
7 one, chapter twenty-two-a of this code, relating to the Office of
8 Miners' Health, Safety and Training (program for the sharing of
9 information between employers, 56 CSR 18), is authorized.

10 (c) The legislative rule filed in the State Register on March
11 26, 2013, authorized under the authority of section fourteen,
12 article six, chapter twenty-two-a of this code, modified by the
13 Office of Miners' Health, Safety and Training to meet the
14 objections of the Legislative Rule-Making Review Committee and
15 refiled in the State Register on December 20, 2013, relating to the
16 Office of Miners' Health, Safety and Training (substance abuse
17 screening, standards and procedure, 56 CSR 19), is authorized with
18 the following amendments:

19 On page two, after subsection 3.7, by inserting a new
20 subsection, designated subsection 3.8, to read as follows:

21 3.8. Duly licensed, mental health professional. The term
22 "duly licensed, mental health professional" means a psychiatrist,
23 psychologist, professional counselor or substance abuse counselor
24 in the United States who is licensed by, and in good standing with,

1 the licensing authority of the jurisdiction in which the person
2 practices.;

3 And by renumbering the remaining subsections;

4 On page four, subsection 3.17, by striking out the word
5 "accidents" and inserting in lieu thereof the word "accident";

6 On page six, by striking out all of subsection 4.7 and
7 inserting in lieu thereof a new subsection, designated subsection
8 4.7, to read as follows:

9 4.7. Any applicant, who is adversely affected by a decision of
10 the Director following a hearing on an application for safety-
11 sensitive certification, may petition for judicial review of the
12 Director's decision in the Circuit Court of Kanawha County or in
13 the circuit court of the county in which the applicant resides,
14 pursuant to the provisions of W. Va. Code § 29A-5-4.;

15 On page six, subsection 4.8, by striking out the word "shall"
16 and inserting in lieu thereof the word "may";

17 On page six, subsection 5.2, by striking out subsection 5.2 in
18 its entirety and inserting in lieu thereof, a new subsection 5.2 to
19 read as follows: 'Every employer's program shall at a minimum comply
20 with all state mine laws relevant to substance abuse screening,
21 standards and procedures.';

22 On page seven, subdivision 5.3.5, by striking out the word
23 "Pphencyclidine" and inserting in lieu thereof the word
24 "Phencyclidine";

1 On page eight, subsection 5.5, by striking out "5.5" and
2 inserting in lieu thereof "5.6";

3 And by renumbering the remaining subsections;

4 On page nine, subsection 5.11, by striking out the subsection
5 in its entirety, and inserting in lieu thereof a new subsection
6 5.11., as follows:

7 "5.11 Every employer shall notify the director, on a form
8 prescribed by the director, within seven (7) days of any of the
9 following:

10 5.11.a A positive drug or alcohol test of a certified person,
11 whether it be a pre-employment test, random test, reasonable
12 suspicion test, or post-accident test;

13 5.11.b. The refusal of a certified person to submit a sample;

14 5.11.c. A certified person possessing a substituted sample or
15 an adulterated sample; or

16 5.11.d. A certified person submitting a substituted sample or
17 an adulterated sample."

18 On page nine, after subdivision 5.11.d. by inserting two new
19 subsections designated 5.12. and 5.13., to read as follows:

20 "5.12. When the employer submits the completed notification
21 form prescribed by the director, the employer shall also submit a
22 copy of the laboratory test results showing the substances tested
23 for and the results of the test.

24 5.13. A notice pursuant to subdivision 5.11., shall result in

1 the immediate temporary suspension of all certificates held by the
2 certified person who failed the screening, pending a hearing before
3 the board of appeals, except in the case of a certified person who
4 is subject to a collective bargaining agreement, in which case the
5 notification pursuant subsection 5.11., shall not result in the
6 immediate temporary suspension of any certificate held by the
7 certified person who is subject to a collective bargaining
8 agreement unless and until the arbitration is concluded and the
9 discharge is upheld, and no certificate held by a certified person
10 who is subject to a collective bargaining agreement shall be
11 suspended or revoked unless the discharge is upheld in
12 arbitration."

13 And by renumbering the remaining subsections;

14 On page eleven, subdivision 6.1.2, by striking out the words
15 "Notify the Board of Appeals" and inserting in lieu thereof the
16 words "Notify the Director";

17 On page eleven, subsection 6.2, by striking out the words
18 "notify the Board of Appeals" and inserting in lieu thereof the
19 words "notify the Director";

20 On page fourteen, subsection 8.1, by striking out the words
21 "is found, by a preponderance of the evidence, to have: failed" and
22 inserting in lieu thereof the words "has entered into a treatment
23 plan agreement as specified in subsection 9.1 of this rule or who
24 is found, by a preponderance of the evidence, to have failed";

1 On page fourteen, by striking out all of subsection 8.2 and
2 inserting in lieu thereof three new subsections, designated
3 subsections 8.2, 8.3 and 8.4, to read as follows:

4 8.2. Any person requesting a hearing who intends to challenge
5 the sample collection methods, the laboratory test results, the
6 medical review officer's verification of the laboratory test result
7 or the chemical test of breath, shall notify the Director of his or
8 her intent. The person shall submit the notification in writing,
9 either in person or by mail to the Director, at least fourteen (14)
10 days prior to the hearing date. The notification shall specify, in
11 detail, the challenge the person intends to make.

12 8.3. If the person requesting the hearing submits notification
13 in writing to the Director that he/she intends to challenge the
14 laboratory test results of the medical review officer's
15 verification of the laboratory test result, that person shall have
16 the split sample tested, at his/her expense, at a SAMSHA-certified
17 laboratory and those results verified by a medical review officer.
18 The split sample results and the results of the split sample
19 verification by a medical review officer shall be provided to the
20 Director and the original medical review officer. No other form of
21 evidence shall be admissible to challenge the laboratory test
22 result of the medical review officer's verification of the
23 laboratory test result.

24 8.4. If a person fails to comply with the notification

1 requirements of this section, then the sample collection methods,
2 the laboratory test results, the medical review officer's
3 verification of the laboratory test result, or the chemical test of
4 breath shall be admissible as though the person and the Director
5 had stipulated to their admissibility.;

6 And by renumbering the remaining subsections;

7 On page fifteen, subdivision 9.1.1, by striking out the words
8 "treatment at a facility licensed by the State of West Virginia in
9 substance abuse" and inserting in lieu thereof the words
10 "treatment, counseling and after-care under the supervision of a
11 duly licensed, mental health professional";

12 On page fifteen, subdivision 9.1.2, by striking out the words
13 "treatment at a facility licensed by the State of West Virginia in
14 substance abuse" and inserting in lieu thereof the words
15 "treatment, counseling and after-care under the supervision of a
16 duly licensed, mental health professional";

17 On page fifteen, subdivision 9.1.3, by striking out the words
18 "treatment at a facility licensed by the State of West Virginia in
19 substance abuse" and inserting in lieu thereof the words
20 "treatment, counseling and after-care under the supervision of a
21 duly licensed, mental health professional";

22 And,

23 On page sixteen, after subdivision 9.1.4, by adding the
24 following:

1 "9.1.5. An admission by the individual that he or she has
2 failed or refused a drug and alcohol test for the first time and
3 that a second failure or refusal shall result in the permanent
4 revocation of all mining certifications issued to him or her.

5 9.2. The Director shall review all Treatment Agreements and
6 shall not approve any Agreement that does not comply with this
7 rule.

8 9.3. The Director shall insure an individual has satisfied all
9 conditions for reinstatement before reinstating any certificate."

10 **§64-10-2. Division of Labor.**

11 (a) The legislative rule filed in the State Register on July
12 23, 2013, authorized under the authority of section thirteen,
13 article five, chapter twenty-one of this code, modified by the
14 Division of Labor to meet the objections of the Legislative Rule-
15 Making Review Committee and refiled in the State Register on
16 November 5, 2013, relating to the Division of Labor (Wage Payment
17 and Collection Act, 42 CSR 5), is authorized with the following
18 amendments:

19 On page three, after subsection 4.2., by inserting a new
20 subsection, designated subsection 4.3., to read as follows:

21 4.3. An employer shall keep posted in a place accessible to
22 all employees an abstract of the West Virginia Wage Payment and
23 Collection law prepared and provided by the Commissioner.;

24 On page four, by striking out all of subsection 7.2. and

1 inserting in lieu thereof a new subsection, designated subsection
2 7.2., to read as follows:

3 7.2. The scheduled payday for a railroad company shall occur
4 within the time periods specified by West Virginia Code §21-5-2.
5 The scheduled payday for every employer other than a railroad
6 company shall occur at least once every 2 weeks, unless otherwise
7 authorized by special agreement as provided in section eight of
8 this rule.;

9 On page five, after subsection 8.2., by inserting a new
10 subsection, designated subsection 8.3. to read as follows:

11 8.3. The Commissioner shall notify all employees identified by
12 the employer and provide each employee with an opportunity to
13 respond to the petition.

14 And by renumbering the remaining subsections;

15 On page five, subsection 8.4, by striking out the words "After
16 the hearing," and inserting in lieu thereof the words "Following
17 the submission of the petition, the responses of the affected
18 employees, and the holding of the hearing, if any,";

19 And,

20 On page seven, subsection 10.6, by striking out the words
21 "established by" and inserting in lieu thereof the words "specified
22 in the written demand of".

(b) The legislative rule filed in the State Register on July
23, 2013, authorized under the authority of section thirteen,

article five, chapter twenty-one of this code, modified by the Division of Labor to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on November 5, 2013, relating to the Division of Labor (employer wage bonds, 42 CSR 33), is authorized.

§64-10-3. Division of Natural Resources.

(a) The legislative rule filed in the State Register on July 25, 2013, authorized under the authority of section twenty-three, article seven, chapter twenty of this code, relating to the Division of Natural Resources (special motorboating, 58 CSR 27), is authorized.

(b) The legislative rule filed in the State Register on July 25, 2013, authorized under the authority of section four, article two, chapter twenty of this code, modified by the Division of Natural Resources to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on October 8, 2013, relating to the Division of Natural Resources (electronic registration of wildlife, 58 CSR 72), is authorized.