

1 COMMITTEE SUBSTITUTE

2 FOR

3 **Senate Bill No. 140**

4 (By Senator Snyder)

5 \_\_\_\_\_  
6 [Originating in the Committee on the Judiciary;

7 reported February 19, 2014.]

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11 A BILL 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 three, subsection 3.15, after the words "selection of  
5 persons for random testing" by inserting the words "shall be  
6 performed at the testing facility or testing site and";

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

9 On page six, by striking out all of subsection 4.7 and  
10 inserting in lieu thereof a new subsection, designated subsection  
11 4.7, to read as follows:

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

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

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

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

1 And by renumbering the remaining subsections;

2 On page ten, subsection 5.16, after the word "facility" by  
3 striking out the word "annually";

4 On page eleven, subdivision 6.1.2, by striking out the words  
5 "Notify the Board of Appeals" and inserting in lieu thereof the  
6 words "Notify the Director";

7 On page eleven, subsection 6.2, by striking out the words  
8 "notify the Board of Appeals" and inserting in lieu thereof the  
9 words "notify the Director";

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

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

18 8.2. Any person requesting a hearing who intends to challenge  
19 the sample collection methods, the laboratory test results, the  
20 medical review officer's verification of the laboratory test result  
21 or the chemical test of breath, shall notify the Director of his or  
22 her intent. The person shall submit the notification in writing,  
23 either in person or by mail to the Director, at least fourteen (14)  
24 days prior to the hearing date. The notification shall specify, in

1 detail, the challenge the person intends to make.

2       8.3. If the person requesting the hearing submits notification  
3 in writing to the Director that he/she intends to challenge the  
4 laboratory test results of the medical review officer's  
5 verification of the laboratory test result, that person shall have  
6 the split sample tested, at his/her expense, at a SAMSHA-certified  
7 laboratory and those results verified by a medical review officer.  
8 The split sample results and the results of the split sample  
9 verification by a medical review officer shall be provided to the  
10 Director and the original medical review officer. No other form of  
11 evidence shall be admissible to challenge the laboratory test  
12 result of the medical review officer's verification of the  
13 laboratory test result.

14       8.4. If a person fails to comply with the notification  
15 requirements of this section, then the sample collection methods,  
16 the laboratory test results, the medical review officer's  
17 verification of the laboratory test result, or the chemical test of  
18 breath shall be admissible as though the person and the Director  
19 had stipulated to their admissibility.;

20       And by renumbering the remaining subsections;

21       On page fifteen, subdivision 9.1.1, by striking out the words  
22 "treatment at a facility licensed by the State of West Virginia in  
23 substance abuse" and inserting in lieu thereof the words  
24 "treatment, counseling and after-care under the supervision of a

1 duly licensed, mental health professional”;

2 On page fifteen, subdivision 9.1.2, by striking out the words  
3 “treatment at a facility licensed by the State of West Virginia in  
4 substance abuse” and inserting in lieu thereof the words  
5 “treatment, counseling and after-care under the supervision of a  
6 duly licensed, mental health professional”;

7 On page fifteen, subdivision 9.1.3, 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 And,

13 On page sixteen, after subdivision 9.1.4, by adding the  
14 following:

15 9.1.5. An admission by the individual that he or she has  
16 failed or refused a drug and alcohol test for the first time and  
17 that a second failure or refusal shall result in the permanent  
18 revocation of all mining certifications issued to him or her.

19 9.2. The Director shall review all Treatment Agreements and  
20 shall not approve any Agreement that does not comply with this  
21 rule.

22 **§64-10-2. Division of Labor.**

23 (a) The legislative rule filed in the State Register on July  
24 23, 2013, authorized under the authority of section thirteen,

1 article five, chapter twenty-one of this code, modified by the  
2 Division of Labor to meet the objections of the Legislative Rule-  
3 Making Review Committee and refiled in the State Register on  
4 November 5, 2013, relating to the Division of Labor (Wage Payment  
5 and Collection Act, 42 CSR 5), is authorized with the following  
6 amendments:

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

9       4.3. An employer shall keep posted in a place accessible to  
10 all employees an abstract of the West Virginia Wage Payment and  
11 Collection law prepared and provided by the Commissioner.;

12       On page four, by striking out all of subsection 7.2. and  
13 inserting in lieu thereof a new subsection, designated subsection  
14 7.2., to read as follows:

15       7.2. The scheduled payday for a railroad company shall occur  
16 within the time periods specified by West Virginia Code §21-5-2.  
17 The scheduled payday for every employer other than a railroad  
18 company shall occur at least once every 2 weeks, unless otherwise  
19 authorized by special agreement as provided in section eight of  
20 this rule.;

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

23       8.3. The Commissioner shall notify all employees identified by  
24 the employer and provide each employee with an opportunity to



1 respond to the petition.

2 And by renumbering the remaining subsections;

3 On page five, subsection 8.4, by striking out the words "After  
4 the hearing," and inserting in lieu thereof the words "Following  
5 the submission of the petition, the responses of the affected  
6 employees, and the holding of the hearing, if any,";

7 And,

8 On page seven, subsection 10.6, by striking out the words  
9 "established by" and inserting in lieu thereof the words "specified  
10 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.