

WEST VIRGINIA LEGISLATURE
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E N R O L L E D

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 140

(SENATOR SNYDER, *ORIGINAL SPONSOR*)

[PASSED MARCH 8, 2014; IN EFFECT FROM PASSAGE.]

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(SENATOR SNYDER, *original sponsor*)

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

AN ACT to amend and reenact article 3, chapter 64 of the Code of West Virginia, 1931, as amended, relating generally to the promulgation of administrative rules by the Department of Commerce; legislative mandate or authorization for the promulgation of certain legislative rules by various executive or administrative agencies of the state; authorizing certain of the agencies to promulgate certain legislative rules in the form that the rules were filed in the State Register; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the Legislative Rule-Making Review Committee; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the Legislative Rule-Making Review Committee and as amended by the Legislature; authorizing the Office of Miners' Health, Safety and Training to promulgate a legislative rule relating to assessing health and safety violation penalties; authorizing the Office of Miners' Health, Safety and Training to promulgate a legislative rule relating to the program for the sharing of information between employers; authorizing the

Office of Miners' Health, Safety and Training to promulgate a legislative rule relating to substance abuse screening, standards and procedure; authorizing the Division of Labor to promulgate a legislative rule relating to the Wage Payment and Collection Act; authorizing the Division of Labor to promulgate a legislative rule relating to employer wage bonds; authorizing the Division of Natural Resources to promulgate a legislative rule relating to special motorboating; and authorizing the Division of Natural Resources to promulgate a legislative rule relating to the electronic registration of wildlife.

Be it enacted by the Legislature of West Virginia:

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

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

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

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

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

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

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

25 3.8. Duly licensed, mental health professional. The term
26 "duly licensed, mental health professional" means a
27 psychiatrist, psychologist, professional counselor or
28 substance abuse counselor in the United States who is
29 licensed by, and in good standing with, the licensing
30 authority of the jurisdiction in which the person practices.;

31 And by renumbering the remaining subsections;

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

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

37 4.7. Any applicant, who is adversely affected by a
38 decision of the Director following a hearing on an application
39 for safety-sensitive certification, may petition for judicial
40 review of the Director's decision in the Circuit Court of

41 Kanawha County or in the circuit court of the county in
42 which the applicant resides, pursuant to the provisions of W.
43 Va. Code § 29A-5-4.;

44 On page six, subsection 4.8, by striking out the word
45 “shall” and inserting in lieu thereof the word “may”;

46 On page six, subsection 5.2, by striking out subsection
47 5.2 in its entirety and inserting in lieu thereof, a new
48 subsection 5.2 to read as follows: ‘Every employer’s program
49 shall at a minimum comply with all state mine laws relevant
50 to substance abuse screening, standards and procedures.’;

51 On page seven, subdivision 5.3.5, by striking out the
52 word “Pphencyclidine” and inserting in lieu thereof the word
53 “Phencyclidine”;

54 On page eight, subsection 5.5, by striking out “5.5” and
55 inserting in lieu thereof “5.6”;

56 And by renumbering the remaining subsections;

57 On page nine, subsection 5.11, by striking out the
58 subsection in its entirety, and inserting in lieu thereof a new
59 subsection 5.11., as follows:

60 “5.11 Every employer shall notify the director, on a form
61 prescribed by the director, within seven (7) days of any of the
62 following:

63 5.11.a A positive drug or alcohol test of a certified
64 person, whether it be a pre-employment test, random test,
65 reasonable suspicion test, or post-accident test;

66 5.11.b. The refusal of a certified person to submit a
67 sample;

68 5.11.c. A certified person possessing a substituted sample
69 or an adulterated sample; or

70 5.11.d. A certified person submitting a substituted sample
71 or an adulterated sample.”

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

75 “5.12. When the employer submits the completed
76 notification form prescribed by the director, the employer
77 shall also submit a copy of the laboratory test results showing
78 the substances tested for and the results of the test.

79 5.13. A notice pursuant to subdivision 5.11., shall result
80 in the immediate temporary suspension of all certificates held
81 by the certified person who failed the screening, pending a
82 hearing before the board of appeals, except in the case of a
83 certified person who is subject to a collective bargaining
84 agreement, in which case the notification pursuant subsection
85 5.11., shall not result in the immediate temporary suspension
86 of any certificate held by the certified person who is subject
87 to a collective bargaining agreement unless and until the
88 arbitration is concluded and the discharge is upheld, and no
89 certificate held by a certified person who is subject to a
90 collective bargaining agreement shall be suspended or
91 revoked unless the discharge is upheld in arbitration.”

92 And by renumbering the remaining subsections;

93 On page eleven, subdivision 6.1.2, by striking out the
94 words “Notify the Board of Appeals” and inserting in lieu
95 thereof the words “Notify the Director”;

96 On page eleven, subsection 6.2, by striking out the words
97 “notify the Board of Appeals” and inserting in lieu thereof the
98 words “notify the Director”;

99 On page fourteen, subsection 8.1, by striking out the
100 words “is found, by a preponderance of the evidence, to have:
101 failed” and inserting in lieu thereof the words “has entered
102 into a treatment plan agreement as specified in subsection 9.1
103 of this rule or who is found, by a preponderance of the
104 evidence, to have failed”;

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

108 8.2. Any person requesting a hearing who intends to
109 challenge the sample collection methods, the laboratory test
110 results, the medical review officer’s verification of the
111 laboratory test result or the chemical test of breath, shall
112 notify the Director of his or her intent. The person shall
113 submit the notification in writing, either in person or by mail
114 to the Director, at least fourteen (14) days prior to the hearing
115 date. The notification shall specify, in detail, the challenge
116 the person intends to make.

117 8.3. If the person requesting the hearing submits
118 notification in writing to the Director that he/she intends to
119 challenge the laboratory test results of the medical review
120 officer’s verification of the laboratory test result, that person
121 shall have the split sample tested, at his/her expense, at a
122 SAMSHA-certified laboratory and those results verified by
123 a medical review officer. The split sample results and the
124 results of the split sample verification by a medical review
125 officer shall be provided to the Director and the original
126 medical review officer. No other form of evidence shall be

127 admissible to challenge the laboratory test result of the
128 medical review officer's verification of the laboratory test
129 result.

130 8.4. If a person fails to comply with the notification
131 requirements of this section, then the sample collection
132 methods, the laboratory test results, the medical review
133 officer's verification of the laboratory test result, or the
134 chemical test of breath shall be admissible as though the
135 person and the Director had stipulated to their admissibility.;

136 And by renumbering the remaining subsections;

137 On page fifteen, subdivision 9.1.1, by striking out the
138 words "treatment at a facility licensed by the State of West
139 Virginia in substance abuse" and inserting in lieu thereof the
140 words "treatment, counseling and after-care under the
141 supervision of a duly licensed, mental health professional";

142 On page fifteen, subdivision 9.1.2, by striking out the
143 words "treatment at a facility licensed by the State of West
144 Virginia in substance abuse" and inserting in lieu thereof the
145 words "treatment, counseling and after-care under the
146 supervision of a duly licensed, mental health professional";

147 On page fifteen, subdivision 9.1.3, by striking out the
148 words "treatment at a facility licensed by the State of West
149 Virginia in substance abuse" and inserting in lieu thereof the
150 words "treatment, counseling and after-care under the
151 supervision of a duly licensed, mental health professional";

152 And,

153 On page sixteen, after subdivision 9.1.4, by adding the
154 following:

155 “9.1.5. An admission by the individual that he or she has
156 failed or refused a drug and alcohol test for the first time and
157 that a second failure or refusal shall result in the permanent
158 revocation of all mining certifications issued to him or her.

159 9.2. The Director shall review all Treatment Agreements
160 and shall not approve any Agreement that does not comply
161 with this rule.

162 9.3. The Director shall insure an individual has satisfied
163 all conditions for reinstatement before reinstating any
164 certificate.”

§64-10-2. Division of Labor.

1 (a) The legislative rule filed in the State Register on July
2 23, 2013, authorized under the authority of section thirteen,
3 article five, chapter twenty-one of this code, modified by the
4 Division of Labor to meet the objections of the Legislative
5 Rule-Making Review Committee and refiled in the State
6 Register on November 5, 2013, relating to the Division of
7 Labor (Wage Payment and Collection Act, 42 CSR 5), is
8 authorized with the following amendments:

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

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

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

18 7.2. The scheduled payday for a railroad company shall
19 occur within the time periods specified by West Virginia
20 Code §21-5-2. The scheduled payday for every employer
21 other than a railroad company shall occur at least once every
22 2 weeks, unless otherwise authorized by special agreement as
23 provided in section eight of this rule.;

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

26 8.3. The Commissioner shall notify all employees
27 identified by the employer and provide each employee with
28 an opportunity to respond to the petition.

29 And by renumbering the remaining subsections;

30 On page five, subsection 8.4, by striking out the words
31 “After the hearing,” and inserting in lieu thereof the words
32 “Following the submission of the petition, the responses of
33 the affected employees, and the holding of the hearing, if
34 any,”;

35 And,

36 On page seven, subsection 10.6, by striking out the words
37 “established by” and inserting in lieu thereof the words
38 “specified in the written demand of”.

39 (b) The legislative rule filed in the State Register on July
40 23, 2013, authorized under the authority of section thirteen,
41 article five, chapter twenty-one of this code, modified by the
42 Division of Labor to meet the objections of the Legislative
43 Rule-Making Review Committee and refiled in the State
44 Register on November 5, 2013, relating to the Division of
45 Labor (employer wage bonds, 42 CSR 33), is authorized.

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

1 (a) The legislative rule filed in the State Register on July
2 25, 2013, authorized under the authority of section twenty-
3 three, article seven, chapter twenty of this code, relating to
4 the Division of Natural Resources (special motorboating, 58
5 CSR 27), is authorized.

6 (b) The legislative rule filed in the State Register on July
7 25, 2013, authorized under the authority of section four,
8 article two, chapter twenty of this code, modified by the
9 Division of Natural Resources to meet the objections of the
10 Legislative Rule-Making Review Committee and refiled in
11 the State Register on October 8, 2013, relating to the Division
12 of Natural Resources (electronic registration of wildlife, 58
13 CSR 72), is authorized.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

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Chairman Senate Committee

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Chairman House Committee

Originated in the Senate.

In effect from passage.

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Clerk of the Senate

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Clerk of the House of Delegates

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President of the Senate

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Speaker of the House of Delegates

The within this
the Day of, 2014.

.....
Governor