

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 140

(By Senator Snyder)

[Originating in the Committee on the Judiciary;
reported February 19, 2014.]

A BILL 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
3 six, article one, chapter twenty-two-a of this code, relating to
4 the 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 procedure, 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 three, subsection 3.15, after the words “selection
33 of persons for random testing” by inserting the words “shall
34 be performed at the testing facility or testing site and”;

35 On page four, subsection 3.17, by striking out the word
36 “accidents” and inserting in lieu thereof the word “accident”;

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

40 4.7. Any applicant, who is adversely affected by a
41 decision of the Director following a hearing on an application
42 for safety-sensitive certification, may petition for judicial
43 review of the Director’s decision in the Circuit Court of
44 Kanawha County or in the circuit court of the county in
45 which the applicant resides, pursuant to the provisions of W.
46 Va. Code § 29A-5-4.;

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

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

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

54 And by renumbering the remaining subsections;

55 On page ten, subsection 5.16, after the word “facility” by
56 striking out the word “annually”;

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

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

63 On page fourteen, subsection 8.1, by striking out the
64 words “is found, by a preponderance of the evidence, to
65 have: failed” and inserting in lieu thereof the words “has
66 entered into a treatment plan agreement as specified in
67 subsection 9.1 of this rule or who is found, by a
68 preponderance of the evidence, to have failed”;

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

72 8.2. Any person requesting a hearing who intends to
73 challenge the sample collection methods, the laboratory test
74 results, the medical review officer's verification of the
75 laboratory test result or the chemical test of breath, shall
76 notify the Director of his or her intent. The person shall
77 submit the notification in writing, either in person or by mail
78 to the Director, at least fourteen (14) days prior to the hearing
79 date. The notification shall specify, in detail, the challenge
80 the person intends to make.

81 8.3. If the person requesting the hearing submits
82 notification in writing to the Director that he/she intends to
83 challenge the laboratory test results of the medical review
84 officer's verification of the laboratory test result, that person
85 shall have the split sample tested, at his/her expense, at a
86 SAMSHA-certified laboratory and those results verified by
87 a medical review officer. The split sample results and the
88 results of the split sample verification by a medical review
89 officer shall be provided to the Director and the original
90 medical review officer. No other form of evidence shall be

91 admissible to challenge the laboratory test result of the
92 medical review officer's verification of the laboratory test
93 result.

94 8.4. If a person fails to comply with the notification
95 requirements of this section, then the sample collection
96 methods, the laboratory test results, the medical review
97 officer's verification of the laboratory test result, or the
98 chemical test of breath shall be admissible as though the
99 person and the Director had stipulated to their admissibility.;

100 And by renumbering the remaining subsections;

101 On page fifteen, subdivision 9.1.1, by striking out the
102 words "treatment at a facility licensed by the State of West
103 Virginia in substance abuse" and inserting in lieu thereof the
104 words "treatment, counseling and after-care under the
105 supervision of a duly licensed, mental health professional";

106 On page fifteen, subdivision 9.1.2, by striking out the
107 words "treatment at a facility licensed by the State of West
108 Virginia in substance abuse" and inserting in lieu thereof the

109 words “treatment, counseling and after-care under the
110 supervision of a duly licensed, mental health professional”;

111 On page fifteen, subdivision 9.1.3, by striking out the
112 words “treatment at a facility licensed by the State of West
113 Virginia in substance abuse” and inserting in lieu thereof the
114 words “treatment, counseling and after-care under the
115 supervision of a duly licensed, mental health professional”;

116 And,

117 On page sixteen, after subdivision 9.1.4, by adding the
118 following:

119 9.1.5. An admission by the individual that he or she has
120 failed or refused a drug and alcohol test for the first time and
121 that a second failure or refusal shall result in the permanent
122 revocation of all mining certifications issued to him or her.

123 9.2. The Director shall review all Treatment Agreements
124 and shall not approve any Agreement that does not comply
125 with this rule.

§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

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12 Division of Natural Resources (electronic registration of

13 wildlife, 58 CSR 72), is authorized.