WEST VIRGINIA LEGISLATURE
SECOND REGULAR SESSION, 2008

ENROLLED

COMMITTEE SUBSTITUTE
FOR
House Bill No. 4255

(By Delegates Brown, Miley, Burdiss, Talbott and Overington)

Passed March 6, 2008

In Effect from Passage
AN ACT to amend and reenact article 10, chapter 64 of the code of West Virginia, 1931, as amended, all relating generally to the promulgation of administrative rules by the Department of Commerce and the procedures relating thereto; 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 as amended by the Legislature; 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; relating to authorizing the Division of Labor to promulgate a legislative rule relating to steam boiler inspection; authorizing the
Division of Labor to promulgate a legislative rule relating to verifying the legal employment status of workers; authorizing the Division of Labor to promulgate a legislative rule relating to the supervision of plumbing work; authorizing the Office of Miners’ Health, Safety and Training to promulgate a legislative rule relating to the criteria and standards for alternative training programs for apprentice coal mine electricians; authorizing the Division of Natural Resources to promulgate a legislative rule relating to commercial whitewater outfitters; authorizing the Division of Natural Resources to promulgate a legislative rule relating to the revocation of hunting and fishing licenses; authorizing the Division of Natural Resources to promulgate a legislative rule relating to special boating rules; authorizing the Division of Natural Resources to promulgate a legislative rule relating to conditions upon which oil and gas operators may access state forests; and authorizing the Division of Natural Resources to promulgate a legislative rule relating to wildlife scientific collection permits.

Be it enacted by the Legislature of West Virginia:

That article 10, 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. Division of Labor.

(a) The legislative rule filed in the State Register on the twenty-seventh day of July, two thousand seven, authorized under the authority of section seven, article three, 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 the seventh day of December, two thousand seven, relating to the
Division of Labor (steam boiler inspection, 42 CSR 3), is authorized.

(b) The legislative rule filed in the State Register on the twenty-seventh day of July, two thousand seven, authorized under the authority of section three, article one-b, 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 the seventh day of December, two thousand seven, relating to the Division of Labor (verifying the legal employment status of workers, 42 CSR 31), is authorized with the following amendment:

On page one, subsection 3.8., after the word “employer”, by striking out the words “as defined in this rule”;

On page two, section 4, by striking out the subsection designation “4.1.”;

On page two, section 4 by striking out subsection 4.2 in its entirety;

On page two, subsection 5.1., by striking out the word “have” and inserting in lieu thereof the word “maintain”;

On page three, subsection 6.5., by striking out subdivision 6.5.a. in its entirety and by striking out the subdivision designation “b.”;

On page three, subsection 6.6. by striking out the subdivision designation “a.” and by striking out subdivision 6.6.b. in its entirety;

On pages three and four, by striking out subsection 7.1. in its entirety and inserting in lieu thereof the following:
"7.1. The Commissioner may ask the Bureau of Employment programs, the Division of Motor Vehicles or any other state agency for assistance in confirming the validity of an employee’s legal status or authorization to work."

And,

On page four, by striking out section 8 in its entirety.

(c) The legislative rule filed in the State Register on the twenty-seventh day of July, two thousand seven, authorized under the authority of section four, article fourteen, 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 the seventh day of December, two thousand seven, relating to the Division of Labor (supervision of plumbing work, 42 CSR 32), is authorized with the following amendment:

On page two, subsection 7.2, at the beginning of the first sentence in the subsection, by inserting the words "Subject to the provisions of subsection 6.2 of this rule,";

On page three, subsection 8.1, at the end of the subsection, by inserting the words: "The Commissioner may, on his or her own motion, conduct an investigation to determine whether there are any grounds for disciplinary action against a licensee. The Commissioner shall, upon the written complaint of any person, conduct an investigation to determine whether there are any grounds for disciplinary action against a licensee. The Commissioner may provide a form for this purpose, but a complaint may be filed in any form. The Commissioner shall provide a copy of the complaint to the licensee.";
On page four, section 9, by striking out the subsection in its entirety and inserting in lieu thereof a new section 9, to read as follows:

"§42-32-9. Cease and desist orders; penalties; appeals.

  9.1 The Commissioner may issue a cease and desist order to any person performing or offering to perform plumbing work without a license issued by the Commissioner. Any person continuing to engage in plumbing work after the issuance of a cease and desist order is subject to the penalties set forth in W. Va. Code §21-14-7.

  9.2 Any person adversely affected by an action of the Commissioner may appeal the action pursuant to the provisions of W. Va. Code §29A-5."; and

On page four, by renumbering section 12 as section 11.


The legislative rule filed in the State Register on the twenty-seventh day of July, two thousand seven, authorized under the authority of section five, article seven, chapter twenty-two-a, of this code, modified by the Office of Miners' Health, Safety and Training to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on the fourteenth day of December, two thousand seven, relating to the Office of Miners' Health, Safety and Training (criteria and standards for alternative training programs for apprentice coal mine electricians, 48 CSR 8), is authorized.

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

(a) The legislative rule filed in the State Register on the twenty-seventh day of July, two thousand seven, authorized
under the authority of section twenty-three-a, 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 the fifth day of November, two thousand seven, relating to the Division of Natural Resources (commercial whitewater outfitters, 58 CSR 12), is authorized with the following amendments:

On page six, subsection 5.2, by striking out the subsection in its entirety and inserting lieu there of the following language:

"5.2 Fee Amount.

5.2.1. The study and improvement fee is thirty-five cents ($0.35) for each customer transported on a commercial whitewater trip in study zones on the Cheat, New, Shenandoah and Tygart Valley Rivers.

5.2.2. The study and improvement fee is seventy cents ($0.70) for each customer transported on a commercial whitewater trip in study zones on the Gauley River.

5.2.3. If a commercial whitewater trip exceeds one day in duration, the appropriate fee shall be collected for each day, or part of a day, of the trip."

On page six, by striking out subsection 5.4, including subdivisions 5.41 and 5.4.2, in their entirety, and inserting in lieu thereof the following language:

"5.4. Gauley River Study and Improvement Fee:

5.4.1. For the purpose of improving and promoting the whitewater industry on the Gauley River, one-half of all study and improvement fees collected pursuant to subdivision
5.2.2 of this rule shall be used to stock the Gauley River with trout during the spring and fall seasons of each year to mitigate the loss of fishing opportunities resulting from the additional water volume on the Gauley River. The Whitewater Commission may hire a private contractor to administer the trout stocking program.

5.4.2. The Whitewater Commission shall review the amount of the study and improvement fee collected pursuant to subdivision 5.2.2 of this rule every four years to determine whether the fee is sufficient to assure adequate funding for the trout stocking program."

(b) The legislative rule filed in the State Register on the twenty-seventh day of July, two thousand seven, authorized under the authority of section seven, article one, 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 the fifth day of November, two thousand seven, relating to the Division of Natural Resources (revocation of hunting and fishing licenses, 58 CSR 23), is authorized.

(c) The legislative rule filed in the State Register on the twenty-seventh day of July, two thousand seven, authorized under the authority of section seven, article one, chapter twenty, of this code, relating to the Division of Natural Resources (special boating rules, 58 CSR 26), is authorized.

(d) The legislative rule filed in the State Register on the twenty-seventh day of July, two thousand seven, authorized under the authority of section seven, article one, 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 the fifteenth day of January, two thousand eight, relating to the Division of Natural Resources (conditions upon which
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65 oil and gas operators may access state forests, 58 CSR 35), is
66 authorized.

67 (e) The legislative rule filed in the State Register on the
68 nineteenth day of July, two thousand seven, authorized under
69 the authority of section seven, article one, chapter twenty, of
70 this code, modified by the Division of Natural Resources to
71 meet the objections of the Legislative Rule-Making Review
72 Committee and refiled in the State Register on the fifth day
73 of November, two thousand seven, relating to the Division of
74 Natural Resources (wildlife scientific collection permits, 58
75 CSR 42), is authorized.
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originating in the House.

In effect from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within is approved this the 27th day of March, 2008.

Governor