WEST VIRGINIA LEGISLATURE
EIGHTY-FIRST LEGISLATURE
REGULAR SESSION, 2014

ENROLLED
COMMITTEE SUBSTITUTE
FOR
Senate Bill No. 140
(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.

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

(b) The legislative rule filed in the State Register on July 26, 2013, authorized under the authority of section four, article one, chapter twenty-two-a of this code, relating to the Office of Miners' Health, Safety and Training (program for the sharing of information between employers, 56 CSR 18), is authorized.
(c) The legislative rule filed in the State Register on March 26, 2013, authorized under the authority of section fourteen, article six, 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 December 20, 2013, relating to the Office of Miners' Health, Safety and Training (substance abuse screening, standards and procedures, 56 CSR 19), is authorized with the following amendments:

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

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

And by renumbering the remaining subsections;

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

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

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

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

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

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

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

And by renumbering the remaining subsections;

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

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

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

5.11.b. The refusal of a certified person to submit a sample;
5.11.c. A certified person possessing a substituted sample or an adulterated sample; or

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

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

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

5.13. A notice pursuant to subdivision 5.11., shall result in the immediate temporary suspension of all certificates held by the certified person who failed the screening, pending a hearing before the board of appeals, except in the case of a certified person who is subject to a collective bargaining agreement, in which case the notification pursuant subsection 5.11., shall not result in the immediate temporary suspension of any certificate held by the certified person who is subject to a collective bargaining agreement unless and until the arbitration is concluded and the discharge is upheld, and no certificate held by a certified person who is subject to a collective bargaining agreement shall be suspended or revoked unless the discharge is upheld in arbitration."

And by renumbering the remaining subsections;

On page eleven, subdivision 6.1.2, by striking out the words "Notify the Board of Appeals" and inserting in lieu thereof the words "Notify the Director";
On page eleven, subsection 6.2, by striking out the words “notify the Board of Appeals” and inserting in lieu thereof the words “notify the Director”;

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

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

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

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

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

And by renumbering the remaining subsections;

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

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

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

And,

On page sixteen, after subdivision 9.1.4, by adding the
following:
“9.1.5. An admission by the individual that he or she has
failed or refused a drug and alcohol test for the first time and
that a second failure or refusal shall result in the permanent
revocation of all mining certifications issued to him or her.

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

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

§64-10-2. Division of Labor.

(a) 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 (Wage Payment and Collection Act, 42 CSR 5), is
authorized with the following amendments:

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

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

On page four, by striking out all of subsection 7.2. and
inserting in lieu thereof a new subsection, designated
subsection 7.2., to read as follows:
7.2. The scheduled payday for a railroad company shall occur within the time periods specified by West Virginia Code §21-5-2. The scheduled payday for every employer other than a railroad company shall occur at least once every 2 weeks, unless otherwise authorized by special agreement as provided in section eight of this rule;

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

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

And by renumbering the remaining subsections;

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

And,

On page seven, subsection 10.6, by striking out the words “established by” and inserting in lieu thereof the words “specified 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.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

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 26th Day of March, 2014.

Governor
PRESENTED TO THE GOVERNOR

MAR 21 2014

Time 11:00 am