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(Plus all the volunteer
help we can get)

March 12, 1996

Cordie Hudkins
Natural Resources
Park & Recreation
State Capitol Bldg 6 Rm B-451
Charleston, WV 25305

HB 4268 authorizing, **Title 58, Series 33, Public Use of Swimming Areas in WV State Parks, State Forest & State Wildlife Mgmt Areas Under the DNR** passed the Legislature on **March 8, 1996**. It is now awaiting the Governor's signature.

You have sixty (60) days after the Governor signs **HB 4268** to final file the legislative rule with the Secretary of State's office. To final file your legislative rule, fill in the blanks on the enclosed form #6, the "Final Filing" form and file the form with our office with a promulgation history of the rule. Authorization for your legislative rule is cited in **HB 4268 Section 64-10-2(k)**. The agency may set the effective date of the legislative rule up to ninety (90) days from the date the legislative rule is final filed with the Secretary of State's office. Please have an authorized signature on the bottom line.

*****IMPORTANT: IF YOUR AGENCY HAS COMPLETED THE LEGISLATIVE RULE ON A WORD PERFECT OR WORD PERFECT COMPATIBLE COMPUTER SYSTEM THAT USES A 3 1/2" DISK, YOU MUST SUBMIT A CLEAN COPY WITH ALL UNDERLINING AND STRIKE-THROUGHS, HEADERS OR FOOTERS REMOVED, TO OUR OFFICE WHEN FINAL FILING THE RULE. REMEMBER, THE TEXT OF THE COMPUTER FILED RULE MUST BE IDENTICAL - WORD FOR WORD, COMMA FOR COMMA, WITH ALL UNDERLINING, STRIKE-THROUGHS, HEADERS OR FOOTERS REMOVED, AS THE HARD COPY AUTHORIZED BY THE LEGISLATURE. NOTICE: ALL ELECTRONIC FILINGS NOT COMPLYING WITH THIS WILL BE REJECTED AND SENT BACK TO THE AGENCY TO BE RESUBMITTED!**

After the final rule is entered into the data base, the rule will be sent back to the agency for review and proofing. The agency has ten (10) working days to send a confirmation or corrections to the Secretary of States. If the agency fails to return this within ten (10) working days, the rule will be filed in the data base with a disclaimer attached stating that the agency failed to review the rule. Following confirmation, corrections or failure to review, as the case may be, the Secretary of State shall submit to the agency a final version of the rule for their records.

If you have any questions or need any assistance, please do not hesitate to contact our office.

Thank you,
Administrative Law Division

TITLE 58
LEGISLATIVE RULE
DIVISION OF NATURAL RESOURCES

SERIES 33
PUBLIC USE OF SWIMMING AREAS IN WEST VIRGINIA STATE PARKS,
STATE FORESTS, AND STATE WILDLIFE MANAGEMENT AREAS
UNDER THE DIVISION OF NATURAL RESOURCES

58-33-1. General.

1.1 Scope. -- This legislative rule governs the public use of swimming areas in West Virginia state parks, state forests, and recreation areas in state wildlife management areas under the jurisdiction and management of the Division of Natural Resources. This rule shall not be construed to include the state forests or state wildlife management areas, or any areas or facilities in the state forests or state wildlife management areas, under the jurisdiction and management of the Department of Agriculture or other sections of the Division of Natural Resources, respectively. This rule is necessary to provide for public health, safety and welfare; to protect state property; and to assure state recreational area guests of a safe, beneficial and enjoyable experience.

1.2. Authority. -- W.Va. Code 20-5-2

1.3. Filing Date - May 16, 1996

1.4. Effective Date - July 1, 1996

1.5. This rule repeals and replaces Division of Natural Resources' Rule Governing Public Use of West Virginia State Parks, State Forests, and State Wildlife Management Areas, 58 CSR 5.

58-33-2. Rules Governing Public Use of Swimming Areas in State Parks, State Forests, and State Wildlife Management Areas under the Division of Natural Resources.

2.1. Swimming is prohibited in state parks, state forests, and state wildlife management areas, except in places designated for that purpose. Each person entering a designated swimming area shall pay the admission fee, except cabin and lodge guests are exempt from paying the admission fee. Children who have not reached their tenth (10th) birthday shall be accompanied at all times they are in the swimming area by a responsible person at least twelve (12) years of age. Persons who have reached their twelfth (12th) birthday are required to purchase an adult ticket for admission to the swimming area.

2.2. Any person may be denied admission to the swimming area who has a skin abrasion, cold, cough, inflamed eye, infection, rash, bandage or cast. Admission shall be denied by the area superintendent to any person who is under the influence of alcohol, a controlled substance or medication.

2.3. Glass, food, ice chests, picnic supplies, beer, wine, alcoholic beverages, controlled substances and pets are prohibited in swimming areas. Food and drink purchased from the concession stand may be consumed only in the area designated for that purpose.

2.4. Plastic or rubber rafts, inner tubes, balls, inflatable water wings, and similar paraphernalia, toys and manmade objects of any kind are prohibited within the swimming area, except that exceptions may be made for the handicapped and for organized activities at the discretion of the lifeguard in charge.

2.5. No person is permitted in a swimming pool unless he or she is dressed in recognized swimming apparel. No street wear, cutoffs or similar apparel may be worn in a swimming pool. Parents and guardians who purchase an adult ticket may enter the swimming area in street clothes to accompany and supervise their children who have not reached their twelfth (12th) birthday and who have purchased a children's ticket. Parents and guardians who enter the swimming area and are not dressed in recognized swimming apparel are prohibited from entering the water. This subsection does not apply to swimming areas which are natural bodies of water.

2.6. The wearing of indecent swimming or other apparel, the commission of any indecent act, and the commission of any act of indecent exposure are prohibited in the swimming area. Commission of any such act is cause for immediate eviction from the swimming area.

2.7. Only one (1) person is permitted on a diving board at a time. Running, pushing, wrestling, roughhousing or causing undue disturbance, noise or commotion is prohibited in the swimming area.

2.8. Only state employees or other authorized personnel are permitted behind counters where cash registers are located, behind concession stand counters, or in concession stand food storage areas, basket rooms, swimming area storage supply rooms, filtration rooms or chlorine rooms.

2.9. Every person entering a swimming area shall comply with all swimming rules and every instruction or directive of the lifeguards. Any person who fails to comply may be evicted immediately from the swimming area by a lifeguard or other state employee. Any person evicted forfeits the fee he or she paid to enter the swimming area.

2.10. No refunds may be given for any reason to any person who leaves the swimming area.

58-33-3. Enforcement of Rules Governing Public Use of Swimming Areas in State Parks, State Forests, and Recreation Areas in State Wildlife Management Areas under the Division of Natural Resources and Penalties.

3.1. Responsibility for enforcing the rules.

It is the duty and responsibility of Conservation Officers, Special Conservation Officers, and the superintendents, assistant superintendents and managers of state parks, state forests, and state wildlife management areas to enforce all of the provisions of this rule.

3.2. Violation of rules and penalties.

Any person violating any of the provisions of this rule is guilty of a misdemeanor, and, upon conviction thereof, shall be punished in accordance with W. Va. Code §20-7-9.

SENATE BILL NO. 212

(By Senators Ross, Anderson, Boley,
Buckalew, Grubb and Macnaughtan)

[Introduced January 29, 1996; referred
to the Committee on

Natural Resources;
Judiciary

58-33

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10 A BILL to amend and reenact section two, article ten,
11 chapter sixty-four of the code of West Virginia, one
12 thousand nine hundred thirty-one, as amended, relating
13 to authorizing the division of natural resources to
14 promulgate legislative rules relating to the public
15 use of swimming areas in West Virginia state parks,
16 state forests and state wildlife management areas
17 under the division of natural resources.

18 Be it enacted by the Legislature of West Virginia:

19 That section two, article ten, chapter sixty-four of
20 the code of West Virginia, one thousand nine hundred
21 thirty-one, as amended, be amended and reenacted, to read
22 as follows:

23 **ARTICLE 10. AUTHORIZATION FOR BUREAU OF COMMERCE TO**

24 **PROMULGATE LEGISLATIVE RULES.**

1 §64-10-2. Division of natural resources.

2 (a) The legislative rules filed in the state register
3 on the fourteenth day of July, one thousand nine hundred
4 ninety-four, authorized under the authority of section
5 five-a, article eleven, chapter twenty, of this code,
6 modified by the division of natural resources to meet the
7 objections of the legislative rule-making review committee
8 and refiled in the state register on the eighth day of
9 September, one thousand nine hundred ninety-four, relating
10 to the division of natural resources (recycling assistance
11 fund grant program, 58 CSR 43 5), are authorized.

12 (b) The legislative rules filed in the state register
13 on the twelfth day of August, one thousand nine hundred
14 ninety-four, authorized under the authority of section
15 seven, article one, chapter twenty, of this code, modified
16 by the division of natural resources to meet the objections
17 of the legislative rule-making review committee and refiled
18 in the state register on the fourteenth day of October, one
19 thousand nine hundred ninety-four, relating to the division
20 of natural resources (West Virginia wildlife management
21 areas, 58 CSR 6 43), are authorized with the following
22 amendments:

23 On page four, section 6.4.3, before the word "No" by
24 inserting "Except for persons who are under sixteen years

1 of age and who have a valid West Virginia hunting
2 license,";

3 And,

4 On page four, section 6.4.3, by deleting the capital
5 letter "N" and substituting in lieu thereof the lower case
6 "n."

7 (c) The legislative rules filed in the state register
8 on the twelfth day of August, one thousand nine hundred
9 ninety-four, authorized under the authority of section
10 seven, article one, chapter twenty, of this code, modified
11 by the division of natural resources to meet the objections
12 of the legislative rule-making review committee and refiled
13 in the state register on the fourteenth day of October, one
14 thousand nine hundred ninety-four, relating to the division
15 of natural resources (special bear hunting regulations, 58
16 CSR ~~44~~ 48), are authorized.

17 (d) The legislative rules filed in the state register
18 on the twelfth day of August, one thousand nine hundred
19 ninety-four, authorized under the authority of section
20 seven, article one, chapter twenty, of this code, modified
21 by the division of natural resources to meet the objections
22 of the legislative rule-making review committee and refiled
23 in the state register on the fourteenth day of October, one
24 thousand nine hundred ninety-four, relating to the division

1 of natural resources (wild boar hunting regulations, 58 CSR
2 ~~46~~ 52), are authorized.

3 (e) The legislative rules filed in the state register
4 on the fifteenth day of August, one thousand nine hundred
5 ninety-four, authorized under the authority of section
6 seven, article one, chapter twenty, of this code, modified
7 by the division of natural resources to meet the objections
8 of the legislative rule-making review committee and refiled
9 in the state register on the fourteenth day of October, one
10 thousand nine hundred ninety-four, relating to the division
11 of natural resources (special fishing rule, 58 CSR ~~24~~ 61),
12 are authorized with the following amendment:

13 On page four, section 58-21-5, paragraph 5.1.1, by
14 deleting the numeral "15" and inserting in lieu thereof the
15 numeral "13".

16 (f) The legislative rules filed in the state register
17 on the second day of December, one thousand nine hundred
18 ninety-four, authorized under the authority of section
19 seven, article one, chapter twenty, of this code, modified
20 by the division of natural resources to meet the objections
21 of the legislative rule-making review committee and refiled
22 in the state register on the sixteenth day of December, one
23 thousand nine hundred ninety-four, relating to the division
24 of natural resources (rules governing public use of West

1 Virginia state parks, state forests and state wildlife
2 management areas under the division of natural resources,
3 58 CSR ~~58~~ 31), are authorized with the following amendment:

4 On page five, section 2.23, line four, before the word
5 "chartered" by inserting the word "A" and by deleting the
6 letter "s" at the end of the word "foundations".

7 (g) The legislative rules filed in the state register
8 on the twelfth day of August, one thousand nine hundred
9 ninety-four, authorized under the authority of section
10 seven, article one, chapter twenty, of this code, modified
11 by the division of natural resources to meet the objections
12 of the legislative rule-making review committee and refiled
13 in the state register on the fourteenth day of October, one
14 thousand nine hundred ninety-four, relating to the division
15 of natural resources (prohibitions when hunting and
16 trapping, 58 CSR ~~44B~~ 47) are authorized with the following
17 amendments:

18 On page two, by striking out section 3.5 and
19 renumbering the remaining sections;

20 In section 3.7, after the word "net" by inserting the
21 word "bait" and after the word "any" by inserting the word
22 "deer";

23 And,

24 By striking out subsection 3.7.1 and renumbering the

1 remaining sections.

2 (h) The legislative rules filed in the state register
3 on the thirty-first day of July, one thousand nine hundred
4 ninety-five, authorized under the authority of section
5 seven, article one, chapter twenty, of this code, modified
6 by the division of natural resources to meet the objections
7 of the legislative rule-making review committee and refiled
8 in the state register on the twenty-fifth day of October,
9 one thousand nine hundred ninety-five, relating to the
10 division of natural resources (rules governing public use
11 of swimming areas in West Virginia state parks, state
12 forests and state wildlife management areas under the
13 division of natural resources, 58 CSR 33), are authorized.

14

15 NOTE: The purpose of this bill is to authorize the
16 Division of Natural Resources to promulgate legislative
17 rules relating to the public use of swimming areas in West
18 Virginia state parks, state forests and state wildlife
19 management areas under the Division of Natural Resources.

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21 Strike-throughs indicate language that would be
22 stricken from the present law, and underscoring indicates
23 new language that would be added.

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H. B. 4283

(By Delegates Douglas, Gallagher, Faircloth, Compton,
Linch and Riggs)

(Introduced January 29, 1996 ; referred to the
Committee on the Judiciary)

58-33

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