



**WEST VIRGINIA
SECRETARY OF STATE**

MAC WARNER

ADMINISTRATIVE LAW DIVISION

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OFFICE OF
WEST VIRGINIA SECRETARY OF STATE

**FORM 1 -- NOTICE OF A PUBLIC HEARING OR COMMENT PERIOD ON A PROPOSED RULE
(Page 1)**

AGENCY **Division of Labor**
RULE TYPE **Legislative** AMENDMENT TO EXISTING RULE **Yes** TITLE-SERIES **42-10**
RULE NAME **Zipline and Canopy Tour Responsibility Act**

CITE AUTHORITY **W. Va. Code §§21-15-6, 21-15-8**

COMMENTS LIMITED TO
Written

DATE OF PUBLIC HEARING

LOCATION OF PUBLIC HEARING

DATE WRITTEN COMMENT PERIOD ENDS
Monday, July 17, 2017 4:00 PM

WRITTEN COMMENTS MAY BE MAILED TO
David W. Mullins, Commissioner
WV Division of Labor
1900 Kanawha Boulevard East, Capitol Complex Building 3, Room 200
Charleston, WV 25305

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENTS ARE TRUE AND CORRECT.

Yes
Elizabeth Farber -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.



Title-Series: 42-10



Rule Id: 16482



Document: 49452



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**FORM 1 -- NOTICE OF A PUBLIC HEARING OR COMMENT PERIOD ON A PROPOSED RULE
(Page 2)**

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RULE TYPE **Legislative** AMENDMENT TO EXISTING RULE **Yes** TITLE-SERIES **42-10**

RULE NAME **Zipline and Canopy Tour Responsibility Act**

CITE AUTHORITY **W. Va. Code §§21-15-6, 21-15-8**

PROVIDE A BRIEF SUMMARY OF YOUR PROPOSAL

The proposed rule incorporates the provisions of HB 2948, passed during the 2017 regular legislative session, which require the Division of Labor to take final action on an uncontested permit application to operate a zipline or canopy tour within 30 days of receipt, or within 90 days if the application is contested.

The proposed rule adds provisions for the issuance of a cease and desist order to any person operating a zipline or canopy tour without a permit.

The proposed rule clarifies the Division's the permit application process, and makes some technical corrections.

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENTS ARE TRUE AND CORRECT.

Yes

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FORM 11 -- FISCAL NOTE FOR PROPOSED RULES (Page 1)

AGENCY **Division of Labor**
RULE TYPE **Legislative** AMENDMENT TO EXISTING RULE **Yes** TITLE-SERIES **42-10**
RULE NAME **Zipline and Canopy Tour Responsibility Act**

CITE AUTHORITY **W. Va. Code §§21-15-6, 21-15-8**

PRIMARY CONTACT

David W. Mullins, Commissioner
Division of Labor, 1900 Kanawha Boulevard East
Capitol Complex, Building 3, Room 200
Charleston, WV 25305

SECONDARY CONTACT

Melissa A. Richardson
Division of Labor, 1900 Kanawha Boulevard East
Capitol Complex, Building 3, Room 200
Charleston, WV 25305

Elizabeth Farber -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.



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CITE AUTHORITY **W. Va. Code §§21-15-6, 21-15-8**

SUMMARIZE IN A CLEAR AND CONCISE MANNER WHAT IMPACT THIS MEASURE WILL HAVE ON COSTS AND REVENUES OF STATE GOVERNMENT.

The proposed rule will have no impact on the costs or revenues of state government.

Elizabeth Farber -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.



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FORM 11 -- FISCAL NOTE FOR PROPOSED RULES (Page 2)

AGENCY **Division of Labor**
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RULE NAME **Zipline and Canopy Tour Responsibility Act**

CITE AUTHORITY **W. Va. Code §§21-15-6, 21-15-8**

FISCAL NOTE DETAIL -- SHOW OVER-ALL EFFECT IN ITEM 1 AND 2 AND, IN ITEM 3, GIVE AN EXPLANATION OF BREAKDOWN BY FISCAL YEAR, INCLUDING LONG-RANGE EFFECT.

Effect Of Proposal	Current Increase/Decrease (use ' - ')	Next Increase/Decrease (use ' - ')	Fiscal Year (Upon Full Implementation)
ESTIMATED TOTAL COST	-	-	-
PERSONAL SERVICES	-	-	-
CURRENT EXPENSES	-	-	-
REPAIRS AND ALTERATIONS	-	-	-
ASSETS	-	-	-
OTHER	-	-	-
ESTIMATED TOTAL REVENUES	-	-	-

Elizabeth Farber -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.



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FORM 11 -- FISCAL NOTE FOR PROPOSED RULES (Page 3)

AGENCY **Division of Labor**
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CITE AUTHORITY **W. Va. Code §§21-15-6, 21-15-8**

3. EXPLANATION OF ABOVE ESTIMATES (INCLUDING LONG-RANGE EFFECT). PLEASE INCLUDE ANY INCREASE OR DECREASE IN FEES IN YOUR ESTIMATED TOTAL REVENUES.

N/A

Elizabeth Farber -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.



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FORM 11 -- FISCAL NOTE FOR PROPOSED RULES (Page 4)

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CITE AUTHORITY **W. Va. Code §§21-15-6, 21-15-8**

PLEASE IDENTIFY ANY AREAS OF VAGUENESS, TECHNICAL DEFECTS, REASONS THE PROPOSED RULE WOULD NOT HAVE A FISCAL IMPACT, AND OR ANY SPECIAL ISSUES NOT CAPTURED ELSEWHERE ON THIS FORM.

N/A

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENTS ARE TRUE AND CORRECT.

Elizabeth Farber -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.



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FORM 12 -- BRIEF SUMMARY AND STATEMENT OF CIRCUMSTANCES (Page 1)

AGENCY **Division of Labor**
RULE TYPE **Legislative** AMENDMENT TO EXISTING RULE **Yes** TITLE-SERIES **42-10**
RULE NAME **Zipline and Canopy Tour Responsibility Act**

CITE AUTHORITY **W. Va. Code §§21-15-6, 21-15-8**

SUMMARIZE IN A CLEAR AND CONCISE MANNER CONTENTS OF CHANGES IN RULE AND STATEMENT OF CIRCUMSTANCES REQUIRING THE RULE.

HB 2948, passed during the 2017 regular legislative session, requires the Division of Labor to take final action on an application for permit to operate a zipline or canopy tour within 30 days of receipt of an uncontested application, or within 90 days of a contested application.

The proposed rule incorporates these new time frames, and defines the terms "complete application," "contested application," and "final action."

W. Va. Code §21-15-13 authorizes the Division to issue an order for the temporary cessation of operation for any zipline or canopy tour that it deems unsafe or hazardous after inspection. The proposed rule includes provisions for the issuance of a cease and desist order to any person found operating a zipline or canopy tour without a permit to operate.

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENTS ARE TRUE AND CORRECT.

Yes
Elizabeth Farber -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.



Title-Series: 42-10



Rule Id: 16482



Document: 49452

TITLE 42
LEGISLATIVE RULE
DIVISION OF LABOR

SERIES 10
ZIPLINE AND CANOPY TOUR RESPONSIBILITY ACT

§42-10-1. General.

1.1. Scope. -- This legislative rule sets the minimum acceptable safety standards for the installation, repair, use, operation, maintenance and inspection of ziplines and canopy tours and establishes procedures for the issuance of permits for ziplines and canopy tours.

1.2. Authority. -- W. Va. Code §§21-15-6, 21-15-8.

1.3. Filing Date. -- ~~March 30, 2012.~~

1.4. Effective Date. -- ~~July 1, 2012.~~

1.5. Sunset Date. This rule shall terminate and have no further force or effect upon the expiration of 10 years from its effective date.

§42-10-2. Application and Enforcement.

2.1. Application. -- This legislative rule applies to the West Virginia Division of Labor and all persons, ziplines and canopy tours governed or otherwise within the purview of the Zipline and Canopy Tour Responsibility Act, ~~W. Va. Code §21-15-1, et seq.~~

2.2. Enforcement. -- The enforcement of this legislative rule is vested with the West Virginia Division of Labor.

§42-10-3. Definitions.

3.1. "ACCT" means and refers to the Association for Challenge Course Technology, P. O. Box 47, Deerfield, IL 60015.

3.2. "Act" means the Zipline and Canopy Tour Responsibility Act, W. Va. Code §21-15-1, et seq.

3.3. "Certificate of inspection" means the permit to operate issued by the Commissioner, stating the name and location of the zipline or canopy tour owner or operator, the zipline or canopy tour device number, the type of device, the date of installation, the name of the installer and the date that operations may begin.

~~3.2.~~ 3.4. "Commissioner" means the Commissioner of the West Virginia Division of Labor or his or her designated representatives.

3.5. "Complete application" means an application that includes all the information required in section 5 of this rule.

3.6. "Contested application" means an application that the Commissioner challenges, which can include, but is not limited to, incomplete information.

3.7. "Device" means a zipline, a canopy tour or a challenge course.

3.8. "Final action" means the issuance or denial of an application for a permit.

~~3.3.~~ 3.9. "Imminent danger" means a practice or condition which could reasonably be expected to cause death or serious injury to participants, operators and/or the general public.

~~3.4.~~ 3.10. "Inspector" means a person employed by the Division who meets the training and experience requirements set forth in the ACCT Challenge Course and Canopy/Zip Line Tour Standards, Seventh Edition, Chapter 5, Section C or substantially equivalent training and experience requirements.

~~3.5.~~ 3.11. "Serious injury" means an injury that is directly related to any mechanical, electrical, operational or structural malfunction of a zipline or canopy tour that results in death, loss of consciousness, or requires medical treatment other than first aid by a physician or other medical professional for which a record is created.

3.12. "Special inspector certification" means the document issued by the Commissioner to a special inspector upon receipt of a complete application, certifying that the individual is qualified to ziplines and canopy tours.

~~3.6.~~ 3.13. "Unscheduled cessation of operation" means an unplanned cessation of operation of a zipline or canopy tour due to any mechanical, electrical, operational or structural malfunction, modification or adjustment or due to any environmental conditions, including weather.

§42-10-4. Adoption of Standards.

The ACCT "Challenge Course and Canopy Zip Line Tour Standards," 7th edition, 2008, are adopted and incorporated by reference.

§42-10-5. Registration and Permit to Operate Required; Permit Application Requirements; Permit Fee; Application Amendments.

~~5.1.~~ 5.1. Before beginning the operation of a zipline or canopy tour in West Virginia for participant use, the owner or operator of the zipline or canopy tour shall apply in writing submit a written application for a permit at least 15 days before the first intended date of use and provide all information to the Commissioner for a permit to operate and shall register each zipline or canopy tour may require on a form supplied by the Division.

~~6.4.~~ 5.2. An owner of a zipline or canopy tour shall include the following information ~~on~~ in the application:

~~6.4.a.~~ 5.2.a. The name, address, telephone number, email address (if applicable) and website address (if applicable) of the zipline or canopy tour operator;

~~6.4.b.~~ 5.2.b. Registration Identification of the zipline or canopy tour each device, including its location, dates of operation, date of installation, and the name and address of the installer of the zipline

or canopy tour equipment;

~~6.4.c.~~ 5.2.c. Documentation of a commercial general liability insurance policy covering claims for personal injury, death and property damages arising from the operation of a zipline or canopy tour in amounts not less than those specified in W. Va. Code §21-15-3(4);

~~6.4.d.~~ 5.2.d. The most recent inspection report prepared by an inspector or special inspector, including a certification that the inspection fee has been paid, or a request for inspection by the Division and a check for the inspection fee, as specified by W. Va. Code §21-15-7(a).

5.3. Unless waived by the Act, the fee for a permit to operate each separate zipline or canopy tour shall be \$100.00.

5.4. The preferred means of paying the application fee is by credit card.

5.5. The Commissioner shall not issue a certificate of inspection to operate until the zipline or canopy tour has been inspected by an inspector or special inspector.

~~5.2.~~ 5.6. A ~~permit to operate a zipline or canopy tour expires~~ certificate of inspection shall expire annually on December 31st.

~~5.3.~~ 5.7. A permit to operate is valid only for the zipline or canopy tour registered with the Commissioner.

~~6.3.~~ 5.8. An owner of a zipline or canopy tour shall submit any amendment to the application or registration to the Commissioner at least 24 hours before the first intended date of use of the zipline or canopy tour.

~~§42-10-6. Permit Application Requirements.~~

~~6.1. An owner of a zipline or canopy tour shall submit an application for a permit to the Commissioner and shall register each zipline or canopy tour at least 15 days before the first intended date of use.~~

~~6.2. An owner of a zipline or canopy tour shall submit the application and registration on forms provided by the Commissioner.~~

~~6.3. An owner of a zipline or canopy tour shall submit any amendment to the application or registration to the Commissioner at least 24 hours before the first intended date of use of the zipline or canopy tour.~~

~~6.4. An owner of a zipline or canopy tour shall include the following information on the application:~~

~~6.4.a. The name, address, telephone number, email address (if applicable) and website address (if applicable) of the zipline or canopy tour operator;~~

~~6.4.b. Registration of the zipline or canopy tour, including its location, dates of operation, date of installation, and the name and address of the installer of the zipline or canopy tour equipment;~~

~~6.4.c. Documentation of a commercial general liability insurance policy covering claims for personal injury, death and property damages arising from the operation of a zipline or canopy tour in amounts not less than those specified in W. Va. Code §21-15-3(4);~~

~~6.4.d. The most recent inspection report prepared by an inspector or special inspector, including a certification that the inspection fee has been paid, or a request for inspection by the Division and a check for the inspection fee, as specified by W. Va. Code §21-15-7(a).~~

~~6.5. An owner of a zipline or canopy tour shall include the permit fee with the permit as specified by W. Va. Code §21-15-7(a).~~

§42-10-7 6. Annual Inspection Required; Issuance of a Permit to Operate; Emergency Contact Protocol.

~~7.1.~~ 6.1. An inspector or special inspector shall inspect a zipline or canopy tour and determine that it complies with the ~~provisions of W. Va. Code §21-15-1, et seq.~~ Act and this rule before a permit to operate may be issued.

~~7.2.~~ 6.2. A permit to operate shall be in the form of a certificate of inspection, which shall include the date or dates of the inspection.

~~7.3.~~ 6.3. A zipline or canopy tour operator shall post a copy of the certificate of inspection in close proximity to the entry to the zipline or canopy tour or other location where it is readily visible to participants.

~~7.4.~~ 6.4. With the issuance of each permit to operate, the Division shall furnish its emergency contact protocol for the reporting of a serious accident, fatality, or other emergency, which shall include 24/7 electronic and telephone access.

§42-10-8 7. Qualifications and Certification of Special Inspectors.

~~8.1.~~ 7.1. A person applying for certification as a special inspector shall make application annually on a form provided by the Commissioner.

~~8.2.~~ 7.2. An applicant shall furnish documentation of the following with the application:

~~8.2.a.~~ 7.2.a. Experience and training that comply with the requirements set forth in the Challenge Course Standards; or

~~8.2.b.~~ 7.2.b. Experience and training that the Commissioner has determined in advance are substantially equivalent to the requirements set forth in the Challenge Course Standards.

§42-10-9 8. Commercial General Liability Insurance.

~~9.1.~~ 8.1. The Commissioner may, in his or her discretion, require the zipline or canopy tour operator to submit the complete insurance policy or contract.

~~9.2.~~ 8.2. A zipline or canopy tour operator shall obtain an insurance policy issued by a carrier licensed or approved to transact business by the WV Offices of the Insurance Commissioner.

~~9-3.~~ 8.3. The Commissioner shall not accept any commercial general liability insurance policy unless it obligates the insurer to give written notice to the Commissioner at least 30 days before any proposed cancellation, suspension or non-renewal of the policy.

§42-10-~~10~~ 9. Unscheduled Cessation of Operation.

~~10-1.~~ 9.1. Following any unscheduled cessation of operation, the operator of a zipline or canopy tour shall immediately have the participants safely removed or unloaded from the zipline or canopy tour.

~~10-2.~~ 9.2. If the operator determines that the zipline or canopy tour can safely resume operation, the qualified person shall first operate the zipline or canopy tour without participants to ensure that the cause of the unscheduled cessation of operation has been corrected.

~~10-3.~~ 9.3. The operator shall document any unscheduled cessation of operation, including the identification of the zipline or canopy tour, the name of the employee operating the zipline or canopy tour during the unscheduled cessation, and a complete description of the incident, including the date, time, weather conditions, location, number of participants, etc.

§42-10-10. Operating a Zipline or Canopy Tour Without a Permit; Cease and Desist Orders.

10.1. Upon a determination that a person is operating or allowing the operation of a zipline or canopy tour without a permit, the Commissioner shall issue a cease and desist order requiring the person to immediately cease operating or allowing the operation of a zipline or canopy tour.

10.2. The owner or operator of zipline shall post the cease and desist order in a location where it is readily visible to participants.

10.3. If the owner or operator continues to operate or permit the operation of a zipline or canopy tour after the issuance of a cease and desist order, the Commissioner may seek a temporary or permanent restraining order or injunction to prohibit the continuing operation of the zipline or canopy tour.

§42-10-11 Imminent Danger.

11.1. If the Commissioner or a special inspector determines that a zipline or canopy tour presents an imminent danger, he or she shall immediately give written notification to the zipline or canopy tour owner or operator, advising him or her that the zipline or canopy tour shall be immediately removed from service.

11.2. If the owner or operator does not immediately remove the zipline or canopy tour from service, the inspector shall immediately report the imminent danger to the Commissioner.

11.3. If the owner or operator does not immediately remove the zipline or canopy tour from service, the Commissioner may seek a temporary or permanent restraining order or injunction to prohibit the continuing operation of the zipline or canopy tour.

§42-10-12. Serious Injury or Fatality.

12.1. If a participant or member of the general public is involved in an accident related to the operation of a zipline or canopy tour that results in a serious injury or a fatality, the owner or operator shall

immediately shut down the operation of the zipline or canopy tour and secure the safety of other participants and the general public.

12.2. An owner or operator shall ensure that the scene of a serious injury or fatality is left intact from the time of the accident and shall ensure that the zipline or canopy tour involved is not removed from the scene of the accident without written authorization from the Commissioner or a law enforcement officer.

12.3. The owner, operator, and any employees who witnessed the accident or who operated the zipline or canopy tour when the accident occurred shall be available to be interviewed by the Commissioner.

12.4. The owner of the zipline or canopy tour shall make a report of the injury or fatality to the Commissioner within 24 hours of its occurrence, using the Division's emergency contact protocol.

12.4.a. After the owner of the zipline or canopy tour notifies the Commissioner of a serious injury or fatality, the Commissioner shall, with reasonable promptness, advise the owner whether the zipline or canopy tour shall remain shut down pending investigation and inspection or whether it can be placed back in service.

12.4.b. In deciding whether the zipline or canopy tour shall remain shut down or whether it can be placed back in service, the Commissioner's sole consideration shall be the safety of participants and the general public.

12.5. The owner shall document the accident, to include the full name, address and telephone number of the injured person, a description of his or her injuries, identification of the zipline or canopy tour involved, the names and addresses of the owner and employees who witnessed the accident, and any other pertinent information describing the events leading up to the accident.

12.6. An owner or operator shall keep a record of every accident or fatality with the certificate of inspection, which shall be readily accessible to the general public. The record shall include the following information:

12.6.a. The date of every accident or fatality;

12.6.b. A description of the type of accident;

12.6.c. The number of people injured or killed; and

12.6.d. A description of the types of injuries.

§42-10-13. Reports and Records.

13.1. The owner of the zipline or canopy tour shall retain all reports, documents, photographs and records required by this rule for not less than three (3) years from the date of the unscheduled cessation, imminent danger notification, or serious injury or fatality.

13.2. If an owner violates any provision of this section of the rule, the Commissioner may permanently revoke the permit to operate.