

HB 184
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WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1994



ENROLLED

Committee Substitute for
SENATE BILL NO. 184

(By Senator Manchin, et al)



PASSED March 10, 1994

In Effect from Passage

E N R O L L E D

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 184

(SENATORS MANCHIN, ANDERSON,
GRUBB AND MINARD, *original sponsors*)

[Passed March 10, 1994; in effect from passage.]

AN ACT to amend and reenact sections one and two, article eight, chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the promulgation of administrative rules and regulations by the governmental agencies within the department of transportation; authorizing the division of highways and the division of motor vehicles to promulgate legislative rules with modifications presented to and recommended by the legislative rule-making review committee; authorizing the division of highways to promulgate legislative rules relating to traffic and safety rules and regulations, as modified; and authorizing the division of motor vehicles to promulgate legislative rules relating to motor vehicle alcohol test and lock program, as modified.

Be it enacted by the Legislature of West Virginia:

That sections one and two, article eight, chapter sixty-four of the code of West Virginia, one thousand nine hundred

thirty-one, as amended, be amended and reenacted to read as follows:

**ARTICLE 8. AUTHORIZATION FOR DEPARTMENT OF TRANSPORTATION
TO PROMULGATE LEGISLATIVE RULES.**

§64-8-1. Division of highways.

1 (a) The legislative rules filed in the state register on the
2 twenty-first day of October, one thousand nine hundred
3 eighty-three, relating to the commissioner of highways
4 (transportation of hazardous waste by highway trans-
5 porters), are authorized with the amendments set forth
6 below:

7 Pages 3 and 7, after "40 CFR part 262" add the words
8 "as amended through March 8, 1986,".

9 Page 7, after "49 CFR parts 171-179" add the words
10 "as amended through March 8, 1986," and,

11 Page 11, after "49 CFR part 171.16" add the words "as
12 amended through March 8, 1986."

13 (b) The legislative rules filed in the state register on the
14 tenth day of August, one thousand nine hundred
15 eighty-four, relating to the commissioner of highways
16 (construction and reconstruction of state roads), are
17 authorized with the amendments set forth below:

18 Page 16, Sec. 8.08, line 21, (unnumbered), by inserting
19 after the word "all" the following language: "reasonable
20 and necessary" and after the word "project" inserting
21 the following language: "by the Railroad."

22 Page 16, Sec. 8.08, line 22, (unnumbered), after the
23 word "the" by striking the words "Railroad's Chief."

24 Page 19, Sec. 8.08, line 25, (unnumbered), by striking
25 "Railroad's Chief" and adding the following new
26 language:

27 "Any approval by the Department of any activity by
28 the Contractor upon the right-of-way or premises of any
29 Railroad which is provided for in this Section (8.08)
30 (including, but not limited to, approval of work,

31 methods, or procedures of work to be done, and the
32 condition of premises after completion of work by the
33 Contractor) shall in no way create any liability by the
34 Department to the Railroad except to the extent
35 provided otherwise by law and the Contractor shall,
36 during all periods of construction and thereafter,
37 indemnify and save harmless the department from any
38 and all liability to the Railroad or any third parties for
39 any damages as a result of the work of the Contractor,
40 the methods and procedures for performing work, the
41 failure of the Contractor to properly remove equipment,
42 surplus material and other debris upon the Railroad
43 premises, or the condition of the premises of the Railroad
44 during construction or after completion of construction
45 by the Contractor as approved by the Department or
46 otherwise.”

47 Page 18, Sec. 8.08, subdivision (a), line 22, (unnum-
48 bered), by striking the words “single limit” and inserting
49 in lieu thereof the following language: “per occurrence.”

50 Page 19, Sec. 8.08, subdivision (b), line 8, (unnum-
51 bered), by striking the words “single limit” and inserting
52 in lieu thereof the following language: “per occurrence.”

53 Page 19, Sec. 8.08, subdivision (c), line 18, (unnum-
54 bered), by inserting after the word “occurrence” the
55 following language: “of”; and after the word “injury”
56 insert a comma and strike the word “or.”

57 (c) The legislative rules filed in the state register on the
58 seventh day of September, one thousand nine hundred
59 eighty-four, modified by the commissioner of highways
60 to meet the objections of the legislative rule-making
61 review committee and refiled in the state register on the
62 fifth day of October, one thousand nine hundred
63 eighty-four, relating to the commissioner of highways
64 (transportation of hazardous waste), are authorized with
65 the amendment set forth below:

66 Page 5, amend §3.01 by adding thereto a new subsec-
67 tion, designated subsection (4), to read as follows: “(4)

68 Before accepting hazardous waste from a rail trans-
69 porter, a highway transporter must sign and date the
70 manifest and provide a copy to the rail transporter.”

71 (d) The legislative rules filed in the state register on the
72 fourteenth day of August, one thousand nine hundred
73 eighty-four, modified by the commissioner of highways
74 to meet the objections of the legislative rule-making
75 review committee and refiled in the state register on the
76 fifth day of October, one thousand nine hundred
77 eighty-four, relating to the commissioner of highways
78 (disqualification and suspension of prequalified
79 contractors), are authorized.

80 (e) The legislative rules filed in the state register on the
81 twelfth day of December, one thousand nine hundred
82 eighty-five, relating to the commissioner of highways
83 (transportation of hazardous wastes by vehicle upon the
84 roads and highways of this state), are authorized with
85 the amendments set forth below:

86 On page 18, the first line of §3.03 shall read as follows:

87 “3.03. Transporters who only accept Hazardous Waste
88 from.”

89 (f) The legislative rules filed in the state register on the
90 first day of December, one thousand nine hundred
91 eighty-seven, modified by the commissioner of highways
92 to meet the objections of the legislative rule-making
93 review committee and refiled in the state register on the
94 fourteenth day of January, one thousand nine hundred
95 eighty-eight, relating to the commissioner of highways
96 (traffic and safety rules and regulations), are authorized
97 with the amendment set forth below:

98 On page 8, section 7.2, line 9, (unnumbered), by
99 striking everything after the word “structures.”

100 (g) The legislative rules filed in the state register on the
101 first day of December, one thousand nine hundred
102 eighty-seven, relating to the commissioner of highways
103 (construction and reconstruction of state roads), are

104 authorized.

105 (h) The legislative rules filed in the state register on the
106 twenty-fifth day of February, one thousand nine
107 hundred eighty-seven, modified by the commissioner of
108 highways to meet the objections of the legislative
109 rule-making review committee and refiled in the state
110 register on the twenty-third day of November, one
111 thousand nine hundred eighty-seven, relating to the
112 commissioner of highways (transportation of hazardous
113 wastes upon the roads and highways), are authorized.

114 (i) The legislative rules filed in the state register on the
115 fourteenth day of August, one thousand nine hundred
116 eighty-nine, modified by the division of highways to
117 meet the objections of the legislative rule-making review
118 committee and refiled in the state register on the seventh
119 day of December, one thousand nine hundred eighty-
120 nine, relating to the division of highways (use of state
121 road rights-of-way and areas adjacent thereto), are
122 authorized with the amendments set forth below:

123 On Pages 14 and 15, Section 7.5, by deleting the
124 following language:

125 "Upon receipt of a permit application an application
126 number shall be assigned by the Division of Highways.
127 The applicant shall be notified of the temporary
128 application number and shall then be required to publish
129 a Class II legal advertisement in the newspaper(s)
130 serving the area where the proposed outdoor advertising
131 sign, display or device is proposed to be located. A copy
132 of the certificate of publication shall be provided to the
133 Department within ten (10) days of the final publication
134 date.

135 As a minimum the advertisement shall include the
136 application number, the location (including ownership of
137 the property upon which the sign is to be placed) and
138 shall notify the public that comments will be received by
139 the Division of Highways, Highway Services Section,
140 until 10 days after the final publication. The advertise-

141 ment shall also state that all comments must include the
142 specific application number to which they refer.

143 Any person who claims to be affected by the proposed
144 sign may submit written comments to the Division of
145 Highways, Highway Services Section, and may request
146 a public hearing within ten days of the final publication.
147 Within ten working days of the close of the comment
148 period the Division shall determine whether to approve,
149 deny, or hold a public hearing for said permit.

150 When the Division determines that a public hearing is
151 required it shall notify the person(s) who requested the
152 hearing and the permit applicant. The Division shall
153 cause notice to be published and hold the hearing in
154 accordance with Administrative Regulations, Commis-
155 sioner of Highways, Chapter 17-2A, Series I (1982),
156 Section 3, Hearing Procedures (hereinafter WV Adm.
157 Reg. 17-2A).

158 The Division Administrator shall assess the Division's
159 costs of the hearing against the permit applicant or
160 against the party requesting the hearing if he finds that
161 either the application for the permit or the request for
162 hearing was filed in bad faith.

163 Any party adversely affected by the final decision of
164 the Division Administrator may apply for judicial review
165 through application for a writ of certiorari to the Circuit
166 Court of Kanawha County in accordance with W. Va.
167 Code §53-3-1 and W. Va. Code §14-2-2.

168 The regulations in the preceding six paragraphs
169 relating to publication of notice of an application,
170 comments on a pending application, notice of hearing,
171 hearing on permit, assessment of costs and judicial
172 review shall not apply to an application for a permit for
173 an advertising sign, display or device to be located
174 within the boundaries of an incorporated municipality or
175 of a county-zoned commercial or industrial area."

176 (j) The legislative rules filed in the state register on the
177 tenth day of August, one thousand nine hundred

178 eighty-nine, modified by the division of highways to
179 meet the objections of the legislative rule-making review
180 committee and refiled in the state register on the seventh
181 day of November, one thousand nine hundred eighty-
182 nine, relating to the division of highways (construction
183 and reconstruction of state roads), are authorized.

184 (k) The legislative rules filed in the state register on the
185 fourteenth day of August, one thousand nine hundred
186 eighty-nine, modified by the division of highways to
187 meet the objections of the legislative rule-making review
188 committee and refiled in the state register on the seventh
189 day of December, one thousand nine hundred eighty-
190 nine, relating to the division of highways (acquisition,
191 disposal, lease and management of real property and
192 appurtenant structures and relocation assistance), are
193 authorized.

194 (l) The legislative rules filed in the state register on the
195 seventh day of September, one thousand nine hundred
196 ninety, modified by the division of highways to meet the
197 objections of the legislative rule-making review
198 committee and refiled in the state register on the
199 eighteenth day of January, one thousand nine hundred
200 ninety-one, relating to the division of highways (traffic
201 and safety rules and regulations), are authorized.

202 (m) The legislative rules filed in the state register on
203 the sixteenth day of August, one thousand nine hundred
204 ninety-three, modified by the division of highways to
205 meet the objections of the legislative rule-making review
206 committee and refiled in the state register on the eighth
207 day of November, one thousand nine hundred ninety-
208 three, relating to the division of highways (traffic and
209 safety rules and regulations), are authorized.

§64-8-2. Division of motor vehicles.

1 (a) The legislative rules filed in the state register on the
2 second day of December, one thousand nine hundred
3 eighty-two, relating to the commissioner of motor
4 vehicles (denial of driving privileges), are authorized

5 with the amendments set forth below:

6 By inserting the words "licensed in the United States"
7 after the phrase "physician of the applicant's choice," on
8 page five, line two, and page seven, line one; and by
9 striking out the words "licensed vision specialist" and
10 inserting in lieu thereof the words "an optometrist or
11 ophthalmologist licensed in the United States," on page
12 five, line three, and on page seven, line two.

13 (b) The legislative rules filed in the state register on the
14 ninth day of November, one thousand nine hundred
15 eighty-three, relating to the commissioner of motor
16 vehicles (driving under the influence, driver's license
17 revocation administrative hearings), are authorized.

18 (c) The legislative rules filed in the state register on the
19 fifteenth day of December, one thousand nine hundred
20 eighty-three, relating to the department of motor
21 vehicles (safety and treatment program), are authorized.

22 (d) The legislative rules filed in the state register on the
23 sixteenth day of June, one thousand nine hundred
24 eighty-three, relating to the commissioner of motor
25 vehicles (compulsory insurance), are authorized.

26 (e) The legislative rules filed in the state register on the
27 twentieth day of November, one thousand nine hundred
28 eighty-four, relating to the commissioner of motor
29 vehicles (titling a vehicle), are authorized.

30 (f) The legislative rules filed in the state register on the
31 tenth day of September, one thousand nine hundred
32 eighty-four, modified by the commissioner of motor
33 vehicles to meet the objections of the legislative
34 rule-making review committee and refiled in the state
35 register on the fifth day of October, one thousand nine
36 hundred eighty-four, relating to the commissioner of
37 motor vehicles (compulsory motor vehicle liability
38 insurance), are authorized.

39 (g) The legislative rules filed in the state register on the
40 fifth day of August, one thousand nine hundred

41 eighty-five, modified by the commissioner of motor
42 vehicles to meet the objections of the legislative
43 rule-making review committee and refiled in the state
44 register on the fourth day of October, one thousand nine
45 hundred eighty-five, relating to the commissioner of
46 motor vehicles (eligibility for reinstatement following
47 suspension or revocation of driving privileges), are
48 authorized.

49 (h) The legislative rules filed in the state register on the
50 fifth day of August, one thousand nine hundred
51 eighty-five, relating to the commissioner of motor
52 vehicles (the administration and enforcement of motor
53 vehicle inspections), are authorized.

54 (i) The legislative rules filed in the state register on the
55 twenty-fifth day of July, one thousand nine hundred
56 eighty-six, modified by the commissioner of motor
57 vehicles to meet the objections of the legislative
58 rule-making review committee and refiled in the state
59 register on the ninth day of October, one thousand nine
60 hundred eighty-six, relating to the commissioner of
61 motor vehicles (seizure of a driver's license and issuance
62 of a temporary driver's license), are authorized.

63 (j) The legislative rules filed in the state register on the
64 twenty-fifth day of July, one thousand nine hundred
65 eighty-six, modified by the commissioner of motor
66 vehicles to meet the objections of the legislative
67 rule-making review committee and refiled in the state
68 register on the ninth day of October, one thousand nine
69 hundred eighty-six, relating to the commissioner of
70 motor vehicles (federal safety standards inspection
71 program), are authorized.

72 (k) The legislative rules filed in the state register on the
73 seventeenth day of August, one thousand nine hundred
74 eighty-seven, modified by the commissioner of motor
75 vehicles to meet the objections of the legislative
76 rule-making review committee and refiled in the state
77 register on the twenty-second day of September, one
78 thousand nine hundred eighty-seven, relating to the

79 commissioner of motor vehicles (denial, suspension,
80 revocation or nonrenewal of driving privileges), are
81 authorized with the amendments set forth below:

82 On page 7, section 7.2 after the words "75 m.p.h.", add
83 the words "except on highways where the established
84 speed limit is 65 m.p.h., and conviction was in excess of
85 80 m.p.h.,"

86 And,

87 On page 14, section 8.1 by inserting the words "not to
88 exceed fifteen hours" after the word "course" and in
89 section 8.2 by inserting the words "not to exceed fifteen
90 hours" after the word "course".

91 (l) The legislative rules filed in the state register on the
92 twenty-second day of November, one thousand nine
93 hundred eighty-eight, modified by the commissioner of
94 motor vehicles to meet the objections of the legislative
95 rule-making review committee and refiled in the state
96 register on the twentieth day of January, one thousand
97 nine hundred eighty-nine, relating to the commissioner
98 of motor vehicles (denial, suspension, revocation or
99 nonrenewal of driving privileges), are authorized.

100 (m) The legislative rules filed in the state register on
101 the thirteenth day of August, one thousand nine hundred
102 ninety-one, modified by the division of motor vehicles to
103 meet the objections of the legislative rule-making review
104 committee and refiled in the state register on the
105 twenty-sixth day of September, one thousand nine
106 hundred ninety-one, relating to the division of motor
107 vehicles (denial, suspension, revocation or nonrenewal of
108 driving privileges), are authorized with the amendment
109 set forth below:

110 On page nine, after the words "Following too closely",
111 by striking out the number "3" and inserting in lieu
112 thereof the number "2".

113 (n) The legislative rules filed in the state register on the
114 fifteenth day of September, one thousand nine hundred

115 ninety-two, modified by the division of motor vehicles to
116 meet the objections of the legislative rule-making review
117 committee and refiled in the state register on the
118 seventeenth day of November, one thousand nine
119 hundred ninety-two, relating to the division of motor
120 vehicles (motor vehicle dealers, wreckers/dismantlers/
121 rebuilders and license services), are authorized.

122 (o) The legislative rules filed in the state register on the
123 twenty-third day of June, one thousand nine hundred
124 ninety-three, modified by the division of motor vehicles
125 to meet the objections of the legislative rule-making
126 review committee and refiled in the state register on the
127 tenth day of August, one thousand nine hundred
128 ninety-three, relating to the division of motor vehicles
129 (motor vehicle alcohol test and lock program), are
130 authorized.

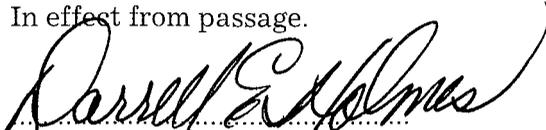
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.


.....
Chairman Senate Committee


.....
Chairman House Committee

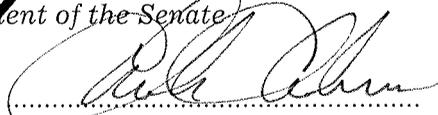
Originated in the Senate.

In effect from passage.

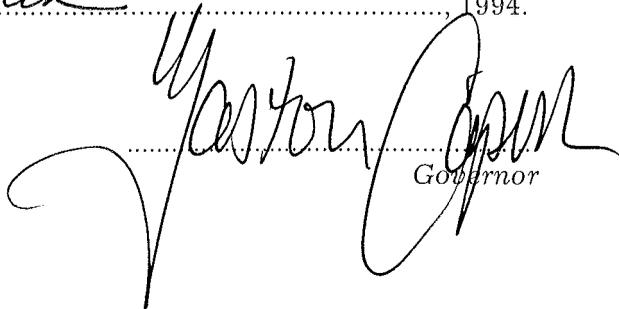

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Clerk of the Senate


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Clerk of the House of Delegates


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President of the Senate


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Speaker House of Delegates

The within re approved this the 25th
day of March, 1994.


.....
Governor

PRESENTED TO THE

GOVERNOR

Date 3/18/94

Time 4:30 pm