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
ENROLLED

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.

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

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

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

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

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

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

Page 16, Sec. 8.08, line 22, (unnumbered), after the word “the” by striking the words “Railroad’s Chief.”

Page 19, Sec. 8.08, line 25, (unnumbered), by striking “Railroad’s Chief” and adding the following new language:

“Any approval by the Department of any activity by the Contractor upon the right-of-way or premises of any Railroad which is provided for in this Section (8.08) (including, but not limited to, approval of work,
methods, or procedures of work to be done, and the condition of premises after completion of work by the Contractor shall in no way create any liability by the Department to the Railroad except to the extent provided otherwise by law and the Contractor shall, during all periods of construction and thereafter, indemnify and save harmless the department from any and all liability to the Railroad or any third parties for any damages as a result of the work of the Contractor, the methods and procedures for performing work, the failure of the Contractor to properly remove equipment, surplus material and other debris upon the Railroad premises, or the condition of the premises of the Railroad during construction or after completion of construction by the Contractor as approved by the Department or otherwise.”

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

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

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

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

Page 5, amend §3.01 by adding thereto a new subsection, designated subsection (4), to read as follows: “(4)
Before accepting hazardous waste from a rail transporter, a highway transporter must sign and date the manifest and provide a copy to the rail transporter."

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

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

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

"3.03. Transporters who only accept Hazardous Waste from."

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

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

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

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

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

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

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

As a minimum the advertisement shall include the application number, the location (including ownership of the property upon which the sign is to be placed) and shall notify the public that comments will be received by the Division of Highways, Highway Services Section, until 10 days after the final publication. The advertise-
ment shall also state that all comments must include the specific application number to which they refer.

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

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

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

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

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

(j) The legislative rules filed in the state register on the tenth day of August, one thousand nine hundred
eighty-nine, modified by the division of highways to meet the objections of the legislative rule-making review committee and refiled in the state register on the seventh day of November, one thousand nine hundred eighty-nine, relating to the division of highways (construction and reconstruction of state roads), are authorized.

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

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

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

§64-8-2. Division of motor vehicles.

(a) The legislative rules filed in the state register on the second day of December, one thousand eight hundred eighty-two, relating to the commissioner of motor vehicles (denial of driving privileges), are authorized
with the amendments set forth below:

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

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

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

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

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

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

(g) The legislative rules filed in the state register on the fifth day of August, one thousand nine hundred
eighty-five, modified by the commissioner of motor
vehicles to meet the objections of the legislative
rule-making review committee and refiled in the state
register on the fourth day of October, one thousand nine
hundred eighty-five, relating to the commissioner of
motor vehicles (eligibility for reinstatement following
suspension or revocation of driving privileges), are
authorized.

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

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

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

(k) The legislative rules filed in the state register on the
seventeenth day of August, one thousand nine hundred
eighty-seven, modified by the commissioner of motor
vehicles to meet the objections of the legislative
rule-making review committee and refiled in the state
register on the twenty-second day of September, one
thousand nine hundred eighty-seven, relating to the
commissioner of motor vehicles (denial, suspension, revocation or nonrenewal of driving privileges), are authorized with the amendments set forth below:

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

And,

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

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

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

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

(n) The legislative rules filed in the state register on the fifteenth day of September, one thousand nine hundred
ninety-two, modified by the division of motor vehicles to meet the objections of the legislative rule-making review committee and refiled in the state register on the seventeenth day of November, one thousand nine hundred ninety-two, relating to the division of motor vehicles (motor vehicle dealers, wreckers/dismantlers/rebuilders and license services), are authorized.

(c) The legislative rules filed in the state register on the twenty-third day of June, one thousand nine hundred ninety-three, modified by the division of motor vehicles to meet the objections of the legislative rule-making review committee and refiled in the state register on the tenth day of August, one thousand nine hundred ninety-three, relating to the division of motor vehicles (motor vehicle alcohol test and lock program), are authorized.
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Ernest C. Moore
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 House of Delegates

The within bill approved this the 23rd day of [legible name] 1994.

Governor
PRESENTED TO THE
GOVERNOR
Date 3/8/44
Time 4:30 pm