

COMMITTEE SUBSTITUTE

FOR

**Senate Bill No. 281**

(By Senator Snyder)

---

[Originating in the Committee on the Judiciary;  
reported March 27, 2013.]

---

A BILL to amend and reenact article 8, chapter 64 of the Code of West Virginia, 1931, as amended, relating generally to the promulgation of administrative rules by the Department of Transportation; 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 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 certain of the agencies to promulgate certain legislative rules in the form that the rules were filed in the State Register and as amended by the Legislature; authorizing the Division of Motor Vehicles to promulgate a legislative rule relating to the denial, suspension, revocation, disqualification, restriction, nonrenewal, cancellation, administrative appeals and reinstatement of motor vehicle operating privileges; authorizing the Commissioner of Highways to promulgate a legislative rule relating to the transportation of hazardous wastes upon the roads and highways; and authorizing the Office of Administrative Hearings to promulgate a legislative rule relating to appeal procedures.

*Be it enacted by the Legislature of West Virginia:*

That article 8, chapter 64 of the Code of West Virginia, 1931, 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 Motor Vehicles.**

1 The legislative rule filed in the State Register on August  
2 30, 2012, authorized under the authority of section nine,

3 article two, chapter seventeen-a, of this code, modified by the  
4 Division of Motor Vehicles to meet the objections of the  
5 Legislative Rule-Making Review Committee and refiled in  
6 the State Register on December 21, 2012, relating to the  
7 Division of Motor Vehicles (denial, suspension, revocation,  
8 disqualification, restriction, nonrenewal, cancellation,  
9 administrative appeals and reinstatement of motor vehicle  
10 operating privileges, 91 CSR 5), is authorized with the  
11 following amendments:

12 On page one, in the title, by striking out the word  
13 “PROPOSED”;

14 On page two, paragraph 3.2.c.1., after the words “under  
15 consideration;” by adding the word “or”;

16 On page three, subdivision 3.2.e., by striking out the  
17 words “subdivisions 3.2.a, 3.2.b or 3.2.c” and inserting in  
18 lieu thereof the word “subsection 3.2.”;

19 On page three, subsection 3.3., by striking out the words  
20 “notice submitted pursuant” and inserting in lieu thereof the  
21 words “opinion submitted pursuant”;

22 On page three, subsection 3.3., by striking out the words  
23 “notice submitted by” and inserting in lieu thereof the words  
24 “professional opinion submitted by”;

25 On page three, subsection 3.3., by striking out the word  
26 “subsection 9.2.b.” and inserting in lieu thereof the word  
27 “subdivision 9.2.b.”;

28 On page four, paragraph 3.3.a.1., by striking out the word  
29 “States;” and inserting in lieu thereof the words “States and  
30 who practices in the specialty field of the medical condition  
31 under consideration; or”;

32 On page four, by striking out all of paragraph 3.3.a.2.;  
33 And renumbering the remaining paragraph;

34 On page four, paragraph 3.3.a.3., after the word “States”  
35 by inserting the words “who practices in the specialty field of  
36 the vision condition under consideration.”;

37 On page six, subdivision 3.5.c., after the word  
38 “Rehabilitation” by inserting the word “Services”;

39 On page ten, subsection 7.1., by striking out “§17B-3-  
40 6(3)” and inserting in lieu thereof “§17B-3-6(a)”;

41 On page sixteen, subsection 7.9., by inserting a period  
42 after “7.9”;

43 On page seventeen, subsection 7.13., by striking out the  
44 following: The Office of Administrative Hearings shall use  
45 the Division’s record to determine whether the point totals  
46 are correct and whether the person suspended is the person  
47 named in the citations. The burden of proof is on the driver.;

48 On page nineteen, subsection 8.2., by striking out “§17B-  
49 2-3a(j)(2)(G)” and inserting in lieu thereof “§17B-2-3a”;

50 On page nineteen, subdivision 8.2.a., by striking out  
51 “§17B-2-3a(j)(2)(H)” and inserting in lieu thereof “§17B-2-  
52 3a”;

53 On page nineteen, subdivision 8.2.b., by striking out  
54 “§17B-2-3a(k)(1)(B)” and inserting in lieu thereof “§17B-2-  
55 3a”;

56 On page twenty-five, subsection 11.6., by striking out the  
57 following: The Office of Administrative Hearings shall use  
58 the Division’s record to determine timely compliance with  
59 the citations and whether the person suspended is the person  
60 named in the citations. The burden of proof is on the driver.;

61 On page twenty-seven, subsection 12.3., by striking out  
62 the following: The Office of Administrative Hearings shall  
63 use the Division’s record to determine identity and age of the  
64 licensee. The burden of proof is on the driver.;

65 On page twenty-eight, subsection 13.1., by striking out  
66 the following: The Division may not act on any failure to pay  
67 report transmitted to the Division more than one year from  
68 the date of the conviction.;

69 On page twenty-nine, subsection 13.5., by striking out the  
70 following: The Office of Administrative Hearings shall use

71 the Division's record to determine timely compliance with  
72 the citations and whether the person suspended is the person  
73 named in the citations. The burden of proof is on the driver.;

74 On page thirty-one, subsection 15.5., by striking out the  
75 following: The Office of Administrative Hearings shall use  
76 the Division's record to determine whether the person  
77 suspended is the person named in the court order. The  
78 burden of proof is on the driver.;

79 On page thirty-four, subdivision 16.3.a., by striking out  
80 the words "for licensees of his her state or jurisdiction";

81 On page thirty-seven, paragraph 16.3.d.11, by striking  
82 out the word "Subdivision 13.6.d.8" and inserting in lieu  
83 thereof the word "Paragraph 16.3.d.8";

84 On page thirty-seven, paragraph 16.3.d.12, by striking  
85 out the word "Subdivision 13.6.d.8" and inserting in lieu  
86 thereof the word "Paragraph 16.3.d.8";

87 On page thirty-seven, paragraph 16.3.d.13, by striking  
88 out the word "Subdivision 13.6.d.8" and inserting in lieu  
89 thereof the word "Paragraph 16.3.d.8";

90 And,

91 On page thirty-nine, subdivision 16.5.b, after the words  
92 "with a valid registration" by inserting a period.

**§64-8-2. Division of Highways.**

1 The legislative rule filed in the State Register on July 30,  
2 2012, authorized under the authority of section seven, article  
3 eighteen, chapter twenty-two, of this code, modified by the  
4 Commissioner of Highways to meet the objections of the  
5 Legislative Rule-Making Review Committee and refiled in  
6 the State Register on September 30, 2012, relating to the  
7 Commissioner of Highways (transportation of hazardous  
8 wastes upon the roads and highways, 157 CSR 7), is  
9 authorized.

**§64-8-3. Office of Administrative Hearings.**

1 The legislative rule filed in the State Register on August  
2 30, 2012, authorized under the authority of section four-a,  
3 article five-c, chapter seventeen-c of this code, relating to the  
4 Office of Administrative Hearings (appeal procedures, 105  
5 CSR 1), is authorized with the following amendments:

6 On page two, subsection 4.2., by striking out the words  
7 “an address” and inserting in lieu thereof the words “the most  
8 recent address”;

9 On page three, subsection 5.5., by striking out the word  
10 “proceedings” and inserting in lieu thereof the word “action”;

11 On page four, subsection 7.1., after the words “within  
12 thirty (30)” by inserting the word “calendar”;

13 On page four, subsection 7.1., after the words “necessary  
14 for proof of” by inserting the words “the filing of”;

15 On page five, subsection 7.7., after the words “DUI case”  
16 by inserting the words “or any other contested case”;

17 On page five, subsection 8.5., by striking out the word  
18 “on” and inserting in lieu thereof the word “to”;

19 On page seven, subsection 10.6., by striking out the  
20 words “anticipated plea,”;

21 On page eight, subsection 10.6., by striking out the word  
22 “received” and inserting in lieu thereof the word “receive”;

23 On page eight, subsection 10.6., by striking out the words  
24 “cancelled or continued” and inserting in lieu thereof the  
25 words “cancels or continues”;

26 On page eight, subsection 11.1., by striking out the word  
27 “submission” and inserting in lieu thereof the word  
28 “production”;

29 On page eleven, subsection 15.8., by striking out the  
30 word “seven (7)” and inserting in lieu thereof the word “ten  
31 (10)”;

32 And,



33 On page twelve, subsection 17.5., by striking out  
34 “appeals a final order, the appealing” and inserting in lieu  
35 thereof “petitions a court for judicial review of a final order,  
36 the petitioning”.