

1 COMMITTEE SUBSTITUTE

2 FOR

3 **Senate Bill No. 281**

4 (By Senator Snyder)

5 \_\_\_\_\_  
6 [Originating in the Committee on the Judiciary;  
7 reported March 27, 2013.]  
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9  
10 A BILL to amend and reenact article 8, chapter 64 of the Code of  
11 West Virginia, 1931, as amended, relating generally to the  
12 promulgation of administrative rules by the Department of  
13 Transportation; legislative mandate or authorization for the  
14 promulgation of certain legislative rules by various executive  
15 or administrative agencies of the state; authorizing certain  
16 of the agencies to promulgate certain legislative rules with  
17 various modifications presented to and recommended by the  
18 Legislative Rule-Making Review Committee; authorizing certain  
19 of the agencies to promulgate certain legislative rules with  
20 various modifications presented to and recommended by the  
21 Legislative Rule-Making Review Committee and as amended by the  
22 Legislature; authorizing certain of the agencies to promulgate  
23 certain legislative rules in the form that the rules were  
24 filed in the State Register and as amended by the Legislature;  
25 authorizing the Division of Motor Vehicles to promulgate a  
26 legislative rule relating to the denial, suspension,

1 revocation, disqualification, restriction, nonrenewal,  
2 cancellation, administrative appeals and reinstatement of  
3 motor vehicle operating privileges; authorizing the  
4 Commissioner of Highways to promulgate a legislative rule  
5 relating to the transportation of hazardous wastes upon the  
6 roads and highways; and authorizing the Office of  
7 Administrative Hearings to promulgate a legislative rule  
8 relating to appeal procedures.

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

10 That article 8, chapter 64 of the Code of West Virginia, 1931,  
11 as amended, be amended and reenacted to read as follows:

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

14 **§64-8-1. Division of Motor Vehicles.**

15 The legislative rule filed in the State Register on August 30,  
16 2012, authorized under the authority of section nine, article two,  
17 chapter seventeen-a, of this code, modified by the Division of  
18 Motor Vehicles to meet the objections of the Legislative Rule-  
19 Making Review Committee and refiled in the State Register on  
20 December 21, 2012, relating to the Division of Motor Vehicles  
21 (denial, suspension, revocation, disqualification, restriction,  
22 nonrenewal, cancellation, administrative appeals and reinstatement  
23 of motor vehicle operating privileges, 91 CSR 5), is authorized  
24 with the following amendments:

25 On page one, in the title, by striking out the word  
26 "PROPOSED";

1           On page two, paragraph 3.2.c.1., after the words "under  
2 consideration;" by adding the word "or";

3           On page three, subdivision 3.2.e., by striking out the words  
4 "subdivisions 3.2.a, 3.2.b or 3.2.c" and inserting in lieu thereof  
5 the word "subsection 3.2.";

6           On page three, subsection 3.3., by striking out the words  
7 "notice submitted pursuant" and inserting in lieu thereof the words  
8 "opinion submitted pursuant";

9           On page three, subsection 3.3., by striking out the words  
10 "notice submitted by" and inserting in lieu thereof the words  
11 "professional opinion submitted by";

12           On page three, subsection 3.3., by striking out the word  
13 "subsection 9.2.b." and inserting in lieu thereof the word  
14 "subdivision 9.2.b.";

15           On page four, paragraph 3.3.a.1., by striking out the word  
16 "States;" and inserting in lieu thereof the words "States and who  
17 practices in the specialty field of the medical condition under  
18 consideration; or";

19           On page four, by striking out all of paragraph 3.3.a.2.;

20           And renumbering the remaining paragraph;

21           On page four, paragraph 3.3.a.3., after the word "States" by  
22 inserting the words "who practices in the specialty field of the  
23 vision condition under consideration.";

24           On page six, subdivision 3.5.c., after the word  
25 "Rehabilitation" by inserting the word "Services";

26           On page ten, subsection 7.1., by striking out "\$17B-3-6(3)" and

1 inserting in lieu thereof "§17B-3-6(a)";

2 On page sixteen, subsection 7.9., by inserting a period after  
3 "7.9";

4 On page seventeen, subsection 7.13., by striking out the  
5 following: The Office of Administrative Hearings shall use the  
6 Division's record to determine whether the point totals are correct  
7 and whether the person suspended is the person named in the  
8 citations. The burden of proof is on the driver.;

9 On page nineteen, subsection 8.2., by striking out "§17B-2-  
10 3a(j)(2)(G)" and inserting in lieu thereof "§17B-2-3a";

11 On page nineteen, subdivision 8.2.a., by striking out "§17B-2-  
12 3a(j)(2)(H)" and inserting in lieu thereof "§17B-2-3a";

13 On page nineteen, subdivision 8.2.b., by striking out "§17B-2-  
14 3a(k)(1)(B)" and inserting in lieu thereof "§17B-2-3a";

15 On page twenty-five, subsection 11.6., by striking out the  
16 following: The Office of Administrative Hearings shall use the  
17 Division's record to determine timely compliance with the citations  
18 and whether the person suspended is the person named in the  
19 citations. The burden of proof is on the driver.;

20 On page twenty-seven, subsection 12.3., by striking out the  
21 following: The Office of Administrative Hearings shall use the  
22 Division's record to determine identity and age of the licensee.  
23 The burden of proof is on the driver.;

24 On page twenty-eight, subsection 13.1., by striking out the  
25 following: The Division may not act on any failure to pay report  
26 transmitted to the Division more than one year from the date of the

1 conviction.;

2 On page twenty-nine, subsection 13.5., by striking out the  
3 following: The Office of Administrative Hearings shall use the  
4 Division's record to determine timely compliance with the citations  
5 and whether the person suspended is the person named in the  
6 citations. The burden of proof is on the driver.;

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

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

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

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

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

23 And,

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

26 **§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 Legislative  
5 Rule-Making Review Committee and refiled in the State Register on  
6 September 30, 2012, relating to the Commissioner of Highways  
7 (transportation of hazardous wastes upon the roads and highways,  
8 157 CSR 7), is authorized.

9 **§64-8-3. Office of Administrative Hearings.**

10 The legislative rule filed in the State Register on August 30,  
11 2012, authorized under the authority of section four-a, article  
12 five-c, chapter seventeen-c of this code, relating to the Office of  
13 Administrative Hearings (appeal procedures, 105 CSR 1), is  
14 authorized with the following amendments:

15 On page two, subsection 4.2., by striking out the words "an  
16 address" and inserting in lieu thereof the words "the most recent  
17 address";

18 On page three, subsection 5.5., by striking out the word  
19 "proceedings" and inserting in lieu thereof the word "action";

20 On page four, subsection 7.1., after the words "within thirty  
21 (30)" by inserting the word "calendar";

22 On page four, subsection 7.1., after the words "necessary for  
23 proof of" by inserting the words "the filing of";

24 On page five, subsection 7.7., after the words "DUI case" by  
25 inserting the words "or any other contested case";

26 On page five, subsection 8.5., by striking out the word "on"

1 and inserting in lieu thereof the word "to";

2 On page seven, subsection 10.6., by striking out the words  
3 "anticipated plea,";

4 On page eight, subsection 10.6., by striking out the word  
5 "received" and inserting in lieu thereof the word "receive";

6 On page eight, subsection 10.6., by striking out the words  
7 "cancelled or continued" and inserting in lieu thereof the words  
8 "cancels or continues";

9 On page eight, subsection 11.1., by striking out the word  
10 "submission" and inserting in lieu thereof the word "production";

11 On page eleven, subsection 15.8., by striking out the word  
12 "seven (7)" and inserting in lieu thereof the word "ten (10) ";

13 And,

14 On page twelve, subsection 17.5., by striking out "appeals a  
15 final order, the appealing" and inserting in lieu thereof  
16 "petitions a court for judicial review of a final order, the  
17 petitioning".