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OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

SECOND REGULAR SESSION, 2004



ENROLLED

COMMITTEE SUBSTITUTE
FOR

House Bill No. 4211

(By Delegates Mahan, R. Thompson, Cann,
Kominar, Armstead and Faircloth)



Passed March 12, 2004

In Effect from Passage

FILED

2004 APR -7 P 2:24

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SECRETARY OF STATE

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COMMITTEE SUBSTITUTE

FOR

H. B. 4211

(BY DELEGATES MAHAN, R. THOMPSON, CANN,
KOMINAR, ARMSTEAD AND FAIRCLOTH)

[Passed March 12, 2004; in effect from passage.]

AN ACT to amend and reenact article 8, chapter 64 of the code of West Virginia, 1931, as amended, all relating generally to the promulgation of administrative rules by the various executive or administrative agencies and the procedures relating thereto; 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 in the form that the rules were filed in the state register; 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 as amended by the Legislature; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recom-

mended by the legislative rule-making review committee and as amended by the Legislature; authorizing the division of highways to promulgate a legislative rule relating to the use of state road rights-of-way and adjacent areas; authorizing the division of highways to promulgate a legislative rule relating to the transportation of hazardous wastes upon the roads and highways; and authorizing the division of motor vehicles to promulgate a legislative rule relating to administrative due process.

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 highways.

1 (a) The legislative rule filed in the state register on the first
2 day of August, two thousand three, authorized under the
3 authority of section eleven, article twenty-two, chapter seven-
4 teen of this code, modified by the division of highways to meet
5 the objections of the legislative rule-making review committee
6 and refiled in the state register on the twenty-seventh day of
7 January, two thousand four, relating to the division of highways
8 (use of state road rights-of-way and adjacent areas, 157 CSR 6),
9 is authorized.

10 (b) The legislative rule filed in the state register on the
11 eighteenth day of July, two thousand three, authorized under the
12 authority of section seven, article eighteen, chapter twenty-two
13 of this code, relating to the division of highways (transportation
14 of hazardous wastes upon the roads and highways, 157 CSR 7),
15 is authorized, with the following amendment:

16 On page four, subdivision 6.3.2, on the third line, by
17 striking out the words "Division of Water and" and inserting in
18 lieu thereof the words "Office of".

§64-8-2. Division of motor vehicles.

1 The legislative rule filed in the state register on the nine-
2 tenth day of November, two thousand three, authorized under
3 the authority of section nine, article two, chapter seventeen-a of
4 this code, relating to the division of motor vehicles (administra-
5 tive due process, 91 CSR 1), is authorized, with the following
6 amendment:

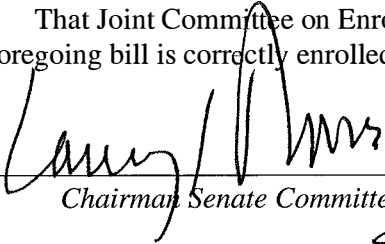
7 On page five, subdivision 3.7.2., after the period, by
8 inserting the following: "*Provided*, That, where the arresting
9 officer fails to appear at the hearing, but the licensee appears,
10 the revocation or suspension of license may not be based solely
11 on the arresting officer's affidavit or other documentary
12 evidence submitted by the arresting officer.";

13 On page six, paragraph 3.9.4.a., by striking out the subdivi-
14 sion in its entirety and inserting in lieu thereof the following:

15 "a. The party carrying the burden of proof has the initial
16 opportunity to present evidence.";

17 On page six, paragraph 3.9.4.b, after the words "and accept
18 as", by striking out the word "evidence" and inserting in lieu
19 thereof the words "part of the record".

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



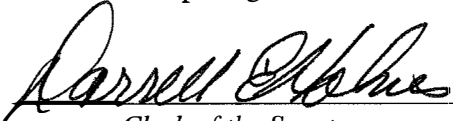
Chairman Senate Committee



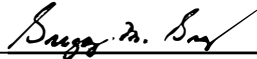
Chairman House Committee

Originating in the House.

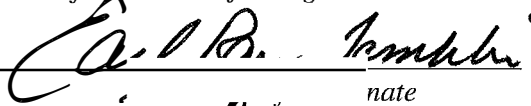
In effect from passage.



Clerk of the Senate



Clerk of the House of Delegates



Senate



Speaker of the House of Delegates

The within is approved this the 17th
day of April, 2004.



Governor

PRESENTED TO THE

GOVERNOR

DATE

3/22/04

TIME

10:00a