



**WEST VIRGINIA SECRETARY OF STATE**

**MAC WARNER**

**ADMINISTRATIVE LAW DIVISION**

**eFILED**

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Office of West Virginia  
Secretary Of State

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE AND FILING WITH THE LEGISLATIVE RULE-  
MAKING REVIEW COMMITTEE**

AGENCY: Motor Vehicles TITLE-SERIES: 91-05

RULE TYPE: Legislative Amendment to Existing Rule: Yes Repeal of existing rule: No

RULE NAME: 91-05 Denial, Suspension, Revocation, Disqualification, Restriction, Non-Renewal,  
Cancellation, Administrative Appeals and Reinstatement of Driving Privileges

**PRIMARY CONTACT**

NAME: Adam Holly DMV

ADDRESS: PO Box 17200  
Charleston, WestVirginia 25317

EMAIL: adam.holley@wv.gov

PHONE NUMBER: 304-926-0784

CITE STATUTORY AUTHORITY: W. Va. Code §§17A-2-9, 17B-2B-10, 17C-5A-2 and 17C-5A-3a

EXPLANATION OF THE STATUTORY AUTHORITY FOR THE LEGISLATIVE RULE, INCLUDING A DETAILED SUMMARY OF THE EFFECT OF EACH PROVISION OF THE LEGISLATIVE RULE WITH CITATION TO THE SPECIFIC STATUTORY PROVISION WHICH EMPOWERS THE AGENCY TO ENACT SUCH RULE PROVISION:

The changes are amendments to hearing and appeal procedures to be consistent with Senate Bill 130 from the 2020 legislative session.

IS THIS FILING SOLELY FOR THE SUNSET PROVISION REQUIREMENTS IN W. VA. CODE §29A-3-19(e)? No

IF YES, DO YOU CERTIFY THAT THE ONLY CHANGES TO THE RULE ARE THE FILING DATE, EFFECTIVE DATE AND AN EXTENSION OF THE SUNSET DATE? No

DATE eFiled FOR NOTICE OF HEARING OR PUBLIC COMMENT PERIOD: 7/15/2020

DATE OF PUBLIC HEARING(S) OR PUBLIC COMMENT PERIOD ENDED: 8/17/2020

COMMENTS RECEIVED: No

(IF YES, PLEASE UPLOAD IN THE COMMENTS RECEIVED FIELD COMMENTS RECEIVED AND RESPONSES TO COMMENTS)

PUBLIC HEARING: No

(IF YES, PLEASE UPLOAD IN THE PUBLIC HEARING FIELD PERSONS WHO APPEARED AT THE HEARING(S) AND TRANSCRIPTS)

RELEVANT FEDERAL STATUTES OR REGULATIONS: No

WHAT OTHER NOTICE, INCLUDING ADVERTISING, DID YOU GIVE OF THE HEARING?

None.

SUMMARY OF THE CONTENT OF THE LEGISLATIVE RULE, AND A DETAILED DESCRIPTION OF THE RULE'S PURPOSE AND ALL PROPOSED CHANGES TO THE RULE:

This rule establishes procedures for denial, suspension, revocation, disqualification, restriction, non renewal, cancellation, administrative appeals and reinstatement of motor vehicle operating privileges.

STATEMENT OF CIRCUMSTANCES WHICH REQUIRE THE RULE:

The changes are amendments to hearing and appeal procedures to be consistent with Senate Bill 130 from the 2020 legislative session. This rule establishes procedures for denial, suspension, revocation, disqualification, restriction, non renewal, cancellation, administrative appeals and reinstatement of motor vehicle operating privileges.

SUMMARIZE IN A CLEAR AND CONCISE MANNER THE OVERALL ECONOMIC IMPACT OF THE PROPOSED LEGISLATIVE RULE:

A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:

None.

B. ECONOMIC IMPACT ON SPECIAL REVENUE ACCOUNTS:

None.

C. ECONOMIC IMPACT OF THE LEGISLATIVE RULE ON THE STATE OR ITS RESIDENTS:

None.

D. FISCAL NOTE DETAIL:

Effect of Proposal	Fiscal Year		
	2020 Increase/Decrease (use "-")	2021 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	0	0	0
Personal Services	0	0	0
Current Expenses	0	0	0
Repairs and Alterations	0	0	0
Assets	0	0	0
Other	0	0	0
2. Estimated Total Revenues	0	0	0

E. EXPLANATION OF ABOVE ESTIMATES (INCLUDING LONG-RANGE EFFECT):

None.

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENT IS TRUE AND CORRECT.

Yes

Ronald David Johnson Jr Mba -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.



TITLE 91  
LEGISLATIVE RULE  
DIVISION OF MOTOR VEHICLES

SERIES 5  
DENIAL, SUSPENSION, REVOCATION, DISQUALIFICATION, RESTRICTION, NON-  
RENEWAL, CANCELLATION, ADMINISTRATIVE APPEALS AND REINSTATEMENT OF  
DRIVING PRIVILEGES

**§91-5-1. General.**

1.1. Scope. -- This rule establishes procedures for the denial, suspension, revocation, disqualification, restriction, nonrenewal, cancellation, administrative appeals and reinstatement of motor vehicle operating privileges.

1.2. Authority. -- W. Va. Code §§17A-2-9, 17B-2B-10, 17C-5A-2 and 17C-5A-3a.

1.3. Filing Date. -- ~~May 30, 2013.~~

1.4. Effective Date. -- ~~July 1, 2013.~~

1.5. Sunset Provision. -- This rule shall terminate and have no further force or effect upon five years from its effective date.

**§91-5-2. Application and Enforcement.**

2.1. Application. -- This rule applies to motor vehicle operators licensed by the Commissioner of Motor Vehicles.

2.2. Enforcement. -- Enforcement of this rule is vested with the Commissioner of Motor Vehicles or the Commissioner's lawful designee.

**§91-5-3. Denial, Cancellation or Suspension of Driving Privileges for Medical Reasons.**

3.1. Statutory Provisions. -- W. Va. Code §17B-2-3 provides that the Division of Motor Vehicles shall not issue or renew a driver's license to any applicant or may cancel the driver's license of any licensee when the Commissioner of Motor Vehicles has good cause to believe that the operation of a motor vehicle on the highways of this State by the applicant or licensee would be inimical to public safety or welfare. Good cause includes, but is not limited to, receipt of an application for license or a written notice submitted pursuant to subsection 9.2. of this rule that indicates the applicant has a medical condition that may affect his or her ability to drive.

3.2. Procedures for Original, Renewal, or Duplicate Applications for License. -- Any application for a license which indicates that the applicant has a medical condition that may affect his or her ability to safely operate a motor vehicle must be accompanied by a letter of explanation in as much detail as the Commissioner requires concerning the mental or physical condition of the applicant at the time of application. If a Medical Report Form is required under this section, it must be completed by a Licensed Medical Practitioner. A Licensed Medical Practitioner includes, but is not limited to doctors of medicine, (MD), doctors of osteopathy (DO), physician assistants (PA), advanced practice nurses (APN), and

doctors of chiropractics (DC).

The Commissioner, after reviewing the letter of explanation, may:

3.2.a. Approve the application for license;

3.2.b. Approve the application for license, and impose appropriate restrictions as the applicant's physical or mental condition may require; or

3.2.c. Delay the application decision and require the applicant to submit the following:

3.2.c.1. A Medical Report Form completed by a licensed medical practitioner of the applicant's choice who is licensed in the United States who practices in the specialty field of the medical condition under consideration or;

3.2.c.2. A Vision Examination Report Form completed by an optometrist or ophthalmologist of the applicant's choice who is licensed in the United States and who practices in the specialty field of the vision condition under consideration; and

3.2.c.3. Any other record or other information concerning the applicant or licensee's medical condition or competency to operate a motor vehicle for the Commissioner to consider.

3.2.d. After review of the records submitted under subdivision 3.2.c of this rule, the Commissioner may approve the application, approve the application with restrictions, deny the application, order the suspension of the license, order the cancellation of the license or submit the records to the Driver License Advisory Board for further review.

3.2.e. The Commissioner, based on standards recommended by the Driver's License Advisory Board, or upon individual review in instances where no standard applies, may take the action indicated in subsection 3.2 of this rule, refuse the application, or order the suspension or cancellation of the license.

3.2.f. If an application for driver's license, or application for renewal of driver's license is refused by the Commissioner because of a physical or mental condition, the Commissioner shall notify the applicant within seventy (70) calendar days from the date of application or renewal by certified or registered mail, return receipt requested. The applicant is entitled to a hearing in accordance with subsection 3.6 of this rule on the refusal by the Commissioner to issue or renew a driver's license after a review and recommendation by the Driver's License Advisory Board.

3.3. Procedures for Medical or Vision Review. -- Upon receipt of a written opinion submitted pursuant to subsection 9.2 of this rule or other sufficient evidence of a medical condition which may affect a licensee's ability to safely operate a motor vehicle, the Division may require the licensee to submit to a medical or vision review. Upon receipt of a written professional opinion submitted by a licensed medical practitioner pursuant to subdivision 9.2.b of this rule, the Division shall immediately cancel the licensee's driver's license and the licensee may request to proceed with a medical or vision review.

3.3.a. The Division may upon written notice of five days require the licensee to present on a form prescribed by the Division of Motor Vehicles to the Commissioner or the Driver's License Advisory Board a:

3.3.a.1. Medical Report Form completed by a licensed medical practitioner of the licensee's choice who is licensed in the United States and who practices in the specialty field of the medical condition under consideration; or 3.3.a.2. Vision Examination Report Form completed by an optometrist or ophthalmologist of the licensee's choice who is licensed in the United States and who practices in the specialty field of the vision condition under consideration.

3.3.b. The licensee may, in addition to the medical and or vision report forms, submit any other record or documentation concerning his or her medical condition, vision or competency to drive for consideration of the Driver License Advisory Board and the Commissioner.

3.3.c. The Commissioner, after reviewing the Medical Report or Vision Examination Report and the recommendation of the Driver's License Advisory Board if applicable, may:

3.3.c.1. Determine that the licensee is competent to drive a motor vehicle;

3.3.c.2. Determine that the licensee is competent to operate a motor vehicle if certain appropriate restrictions are imposed and impose such restrictions as the licensee's physical or mental condition may require; or

3.3.c.3. Determine that the licensee's operation of a motor vehicle in accordance with W. Va. Code §17B-2-3, is inimical to public safety or welfare, that no appropriate restrictions can be imposed under which the licensee could safely operate a motor vehicle, and order the cancellation of the license until such time as the licensee is permitted to submit further information to determine whether or not he or she is eligible to drive a motor vehicle.

3.3.d. Upon entry of an order of cancellation, the Division shall mail the licensee a copy of the order by registered or certified mail, return receipt requested. The licensee may request a hearing in accordance with subsection 3.6 of this rule.

#### 3.4. Standards for Medical or Vision Review.

3.4.a. Medical. -- The Driver's License Advisory Board shall evaluate each medical case referred to it on an individual basis and make recommendations to the Commissioner for his or her decision.

3.4.b. Vision. -- The Division shall test each applicant for licensing to determine if the applicant has no serious visual defects and a visual acuity of at least 20/40 in one eye with or without conventional corrective lenses. For the purposes of this rule, conventional corrective lenses including surgical intraocular transplants and contact lenses are acceptable for meeting the visual acuity requirements. Special equipment or special lens arrangements are not considered conventional for the purposes of this rule. However, applicants for licensing who require bioptic type lens arrangements may qualify for a restricted Class G driver's license in accordance with W. Va. Code §17B-2B et seq. and subsection 3.5 of this rule.

3.4.b.1. Applicants who do not meet the minimum visual acuity level or who show serious visual defects shall submit a vision examination form to the Division. The form shall be completed by an ophthalmologist or optometrist of the applicant's choice who is licensed in the United States. The Division shall approve the applicant as eligible for licensing if the ophthalmologist or optometrist certifies that the applicant's vision:

3.4.b.1.A. can be corrected with conventional lenses to a visual acuity level of at least

20/60 in one eye;

3.4.b.1.B. that there is no evidence of disease or rapid deterioration of vision; and

3.4.b.1.C. that the applicant can, in the opinion of the ophthalmologist or optometrist, safely operate a motor vehicle with appropriate restrictions.

3.4.b.2. The Driver's License Advisory Board or the Commissioner may consider any applicant who has been evaluated by an ophthalmologist or optometrist as being able to safely operate a motor vehicle. The Board or the Commissioner may consider peripheral vision, depth perception and color recognition in making a driver licensing decision. Additionally, the Commissioner may prescribe a traffic environment vision test be administered to the applicant or licensee by designated employees of the Division of Motor Vehicles and/or the Division of Rehabilitation Services.

### 3.5. Licensing Criteria for Applicants and Licensees with Bioptic Telescopic Devices.

3.5.a. This subsection applies to applicants and licensees who use bioptic telescopic devices and who wish to obtain or maintain a driver's license in accordance with W. Va. Code §17B-2B et seq.

3.5.b. A vision specialist meaning an ophthalmologist or optometrist licensed in the United States shall certify that the applicant's vision can be corrected with the use of a bioptic telescopic device without field expanders to meet the minimum visual acuity and visual field standards established in this subsection and shall certify that the applicant meets the other criteria provided in W. Va. Code §17B-2B-2(b)(1).

3.5.c. An applicant shall present a current certificate of acceptance from the Division of Rehabilitation indicating acceptance into the Low Vision Driving Program and a starting date prior to eligibility to take the knowledge examination.

3.5.d. The minimum standards for vision for persons who require bioptic lenses to operate a motor vehicle are as follows:

3.5.d.1. Visual acuity of 20-40 distance visual acuity or better through a bioptic telescope lens not exceeding a scope of 4X and 20-200 distance visual acuity or better through a carrier lens in one eye;

3.5.d.2. Visual field of vision with horizontal vision of 120 degrees or better and vertical vision of 70 degrees or better which may be met with the use of one or both eyes; and

3.5.d.3. Color vision sufficient to distinguish the traffic light colors red, green and yellow and the colors of turn signals and brake lights;

3.5.e. The Division shall impose and remove an applicant or licensee's Low Vision Driver Training Program restrictions based on the Division of Rehabilitation Services individualized evaluation of each applicant.

3.5.f. The Division may take action in the form of a warning, modification of restriction, suspension for a fixed term, or revocation against any Class G licensee based on:

3.5.f.1. The Division determining that the licensee was operating a motor vehicle in violation of his or her restrictions by receipt of a crash report, ticket, conviction or any other written notification



indicating the unsafe operation of a motor vehicle;

3.5.f.2. Failure of the applicant or licensee to have a vision report submitted in a timely manner when required by law or requested by the Division; 3.5.f.3. Receipt of a crash report indicating the licensee caused a crash that resulted in bodily injury or death; or

3.5.f.3. Determination by the Division of Rehabilitation Services that the licensee no longer meets the minimum requirements to obtain and retain a Class G driver's license.

3.6. Administrative Due Process. -- Any applicant or licensee may appeal the Commissioner's decision of denial, suspension, restriction or non-renewal of driving privileges by requesting a hearing with the ~~Office of Administrative Hearings~~ circuit court of the county in which the event giving rise to the contested decision of the Commissioner of Division of Motor Vehicles occurred within 30 days after they receive the order. Any request for hearing shall not stay the original order. An applicant or licensee who intends to submit new or additional information not previously considered by the Driver's License Advisory Board shall first submit the new or additional information to the Division for review and recommendation by the Driver's License Advisory Board before proceeding with a hearing.

3.6.a. The scope of the hearing is to provide the applicant or licensee the opportunity to show that the Division erred in its decision based upon its records or other evidence previously submitted by the licensee. Only evidence previously submitted by the licensee under the provisions of subsection 3.2, 3.3 and 3.6 of this rule may be considered at the hearing.

3.6.b. After the hearing and consideration of all the testimony and evidence in the case, the ~~Office of Administrative Hearings~~ circuit court shall within seventy (70) calendar days, make and enter an order affirming, rescinding, or modifying the Commissioner's original order. If an order is not issued by the ~~Office of Administrative Hearings~~ circuit court within seventy (70) calendar days, the licensee may file a motion with the ~~Office of Administrative Hearings~~ circuit court to compel issuance of a decision.

#### **§91-5-4. Reinstatement of Suspended Registration.**

4.1. Procedures. --The Division shall destroy any license plate received in accordance with any of the provisions of the West Virginia Motor Vehicle Safety Responsibility Law, Chapter 17D of the Code. Accordingly, upon reinstatement of any registration within the registration period, the registrant shall make application for a duplicate or substitute registration or license plate upon the form prescribed for that purpose and remit the fee required by W. Va. Code §17A-10-11.

#### **§91-5-5. Agency Action Upon Receiving Notice of Driving While License is Suspended or Revoked.**

5.1. Pursuant to W. Va. Code §17B-4-3(c), the Division shall, upon receipt of a second or subsequent conviction for a violation within the last five years for driving while suspended under the provisions of W. Va. Code §17B-4-3(a) or similar municipal ordinance, shall suspend the licensee's license or privilege to operate a motor vehicle for a period of ninety days. This period of suspension shall begin ten (10) days from entry of the conviction on the records of the Division. The determination that the conviction is the second or subsequent conviction shall be based on the records of the Division. In accordance with §17E-1-7, any conviction for driving a commercial motor vehicle (CMV) without a valid commercial driver's license (CDL) requires a sixty (60) day suspension of the driving privilege.

5.2. Pursuant to W. Va. Code §17B-4-3(c), the Division shall, upon receipt of a conviction for driving while his or her license is revoked for a driving under the influence related offense under the provisions of

W. Va. Code §17B-4-3(b) or similar municipal ordinance, shall suspend the licensee's license or privilege to operate a motor vehicle for a period of six months. This period of suspension shall begin ten (10) days from entry of the conviction on the records of the Division. The determination that the conviction is for driving while the licensee's privilege to operate a motor vehicle while revoked for a driving under the influence related offense shall be based on the records of the Division.

**§91-5-6. Suspending a West Virginia Resident's License upon Conviction in another State or Jurisdiction.**

6.1. Statutory Provisions. -- W. Va. Code §17B-3-3 authorizes the Commissioner to suspend a resident's license upon conviction for a traffic offense in another jurisdiction.

6.2. Procedures. -- The Division shall suspend or revoke the driving privileges of any resident of this state upon receiving notice of conviction for a traffic offense in another jurisdiction, which if committed in this state, would be grounds for the mandatory suspension or revocation of driving privileges.

6.3. If the records of the Division disclose that a conviction is the second or subsequent conviction for the same offense in this or any other Jurisdiction, the Division shall suspend or revoke the resident's driving privileges in the same manner as if the traffic offense had occurred in this State.

6.4. The Division shall restore driving privileges only after the licensee has complied with all the provisions of the W. Va. Code and this rule in the same manner that would be required if the licensee had been convicted in this State.

**§91-5-7. The Point System.**

7.1. Records. -- W. Va. Code §17B-2-14 requires that the Division keep records in order that an individual record of the licensee showing the convictions of such licensee is readily ascertainable and available for consideration by the Division upon any application for renewal of license "and at other suitable times" consistent with the provisions of W. Va. Code §17B-3-6(a). Accordingly, a record keeping system to be known as the Point System and to be administered by the Division's Driver Improvement Section is established in this section.

7.2. Offenses. -- Point Total -- When any licensee of the State of West Virginia who has reached the age of eighteen years or older or has obtained a level three full license, is convicted in the State of West Virginia or, pursuant to the provisions of W. Va. Code §17B-3-3, in any other jurisdiction, of any of the following offenses involving a motor vehicle, which conviction has become final, the Division shall enter the offense and the point total shown opposite the offense on the licensee's driver record maintained by the Division of Motor Vehicles. However, the division shall not record any conviction which is received more than one year from the date of conviction unless the nature of the offense by statute requires suspension, revocation, or disqualification or the offense was committed by a licensee with a Commercial Driver's License or committed in a Commercial Vehicle.

Statute Violated	General Description of Offenses	Point Value
§17C-5-3, §17C-18-1	Reckless Driving	6
§17C-4-2, §17C-4-3, §17C-4-4, §17C-4-5,	Hit and run involving property damage	6

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§17C-4-6		
§17C-18-1		
§17C-6-1	Speeding in school zone	6
§61-5-17	Fleeing from an officer in a vehicle	8
§17C-3-4, §17C-12-5,	Failure to obey stop signs and other traffic signs and control devices, except failure to obey traffic control signals	3
§17C-18-1		
§17C-3-5, §17C-3-7, §17C-18-1	Failure to obey traffic control signals or traffic light signals	3
§17C-7-2, §17C-7-6, §17C-18-1	Driving to left side of roadway	3
§17C-6-1, §17C-18-1	Driving too fast for conditions, failure to keep vehicle under control or hazardous driving	3
§17C-6-1, §17C-6-4, §17C-18-1	Speeding in violation of specified or established limits where the speed was twenty (20) m.p.h. or more over the posted speed limit.	6
	Speeding in violation of specified or established limits where the speed was fifteen (15) m.p.h. over the posted speed limit but less than twenty (20) over the posted speed limit.	5
	Speeding in violation of specified or established limits where the speed was eleven (11) m.p.h. or more over the posted speed limit but less than fifteen (15) m.p.h. over the posted speed limit.	3
§17C-9-1, §17C-9-2, §17C-9-3, §17C-9-4, §17C-10-2, §17C-12-6, §17C-18-1	Failure of driver to yield right of way	3
§17C-9-5, §17C-18-1	<u>Failure to yield to an Emergency Vehicle</u>	<u>6</u>
§17C-8-2, §17C-8-3, §17C-8-4, §17C-18-1	Improper right-hand and left-hand turns	2
§17C-7-3, §17C-18-1	Failure of driver of overtaking vehicle to give audible signal, or failure to pass to the left at a safe distance, or driving to the right before safely clear of the overtaken vehicle, or failure of the driver of overtaken vehicle to give way to the right, or driver of overtaken vehicle increasing speed before being completely passed by the overtaking vehicle	3

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§17C-7-5	Passing in face of oncoming traffic	3
§17C-18-1		
§17C-7-7,	Passing in no-passing zone	3
§17C-18-1		
§17C-12-1	Failure to obey signal indicating approaching train	3
§17C-15-1,	Operation of vehicle without lighted lamps	2
§17C-15-2,	or lights when required to be lighted	
§17C-18-1		
§17C-7-10,	Following too closely	2
§17C-18-1		
§17C-14-5,	Operation of a vehicle with more than	2
§17C-18-1	three persons in the front seat	
§17C-14-2,	Improper backing	2
§17C-18-1		
§17C-7-8,	Driving wrong way on one-way street,	3
§17C-18-1	highway or roadway	
§17C-8-6,	Improper turning movements, or improper	2
§17C-8-8,	signals, or no signals	
§17C-8-9,		
§17C-8-10,		
§17C-18-1		
	All other moving violations	2
§17C-14-14	Littering	3
§17B	Operating a vehicle without a proper driver's license or	2
	Endorsement	

(The above statutory references are to Chapters, Articles and Sections of the Code of West Virginia, 1931, as amended.)

7.3. Traffic Convictions with No Point Value. -- The abstracts of traffic convictions outlined in this subsection have no point value in the administration of the Driver Improvement Program:

7.3.a. Convictions for operating vehicles on the highways of this or any other state with defective or improper equipment;

7.3.b. Convictions for operating vehicles on the highways of this or any other state in violation of the weight, height, length and width provisions of W. Va. Code;

7.3.c. Convictions for operating a vehicle on the highways of this or any other state with improper registration;

7.3.d. Convictions for operating a vehicle on the highways of this or any other state with an expired vehicle inspection decal or certificate; and

7.3.e. Convictions for operating a vehicle on a controlled access highway of this or any other state at a speed of ten miles per hour or less above the speed limit in accordance with the provisions of W. Va. Code §17C-6-1 (a), (i) or (j);

7.3.f. Convictions for offenses which are grounds for a driver's license revocation or suspension.

7.3.g. Convictions for speeding 10 mph or less over the posted speed limit except if the driver holds a commercial driver's license or was operating a commercial motor vehicle.

7.3.h. Speeding convictions received from another jurisdiction without speed detail unless licensee has received a conviction while holding a Commercial Driver's license or while operating a Commercial Vehicle.

~~7.4. Traffic Accidents Not Involving Convictions. Although W. Va. Code §17B-2-14 provides the Division to keep records on traffic accidents, the Division will not assign points for any traffic accident not involving a conviction.~~

7.54. Traffic Convictions. -- The Division shall note the appropriate number of points indicated in Subsection 7.2 of this rule on the driver record of any licensee convicted of any of the offenses listed in Subsection 7.2 in West Virginia Circuit, Magistrate or Municipal Court. Consistent with the provisions in W. Va. Code §17B-3-3 the Division shall charge any licensee of the State of West Virginia convicted in any other state, municipality of another state or in the District of Columbia of any offense described in Subsection 7.2 of this rule in violation of any statute or ordinance of such other state, municipality of another state or District of Columbia with the appropriate number of points shown in Subsection 7.2 of this rule opposite the description of the offense. A conviction includes a finding of guilt, a plea of guilty or a plea of nolo contendere.

7.65. Forfeiture of Bail or Deposited Collateral. -- Consistent with the provisions of W. Va. Code §17B-3-4 requiring that all Circuit, Magistrate, and Municipal Courts provide the Division with certified abstracts of judgments on convictions, for the purposes of the point system, a forfeiture of bail or collateral deposited to secure a licensee's appearance in court, which has not been vacated, is equivalent to a conviction.

7.76. Points assigned for Same Occurrence. -- When a licensee is convicted of two or more offenses arising out of the same occurrence, the Division shall assign points for only one of the offenses. When there is a difference in the point values of the offenses, the Division shall assign the greater point value.

7.87. Revocations. -- W. Va. Code §17B-3-5 provides that certain convictions shall result in an automatic revocation, as opposed to suspension, of the driver's license of the person convicted. The Division records these convictions on the licensee's driver record with no assignment of points. The Division assesses points for reckless driving convictions unless three convictions occur within a period of twenty-four months. In these cases, the licensee is subject to the mandatory revocation in accordance with W. Va. Code §17B-3-5(5). When any person is convicted in the State of West Virginia for an offense for which no point value is assigned but for which a certified abstract of judgment on the conviction is required and furnished to the Division under the provisions of W. Va. Code §17B-3-4 the Division shall note the conviction, without point value, on the driver record of the licensee.

~~7.9. Reserved for Future Use.~~

7.408. Accumulation of Twelve or More Points. -- The Division shall suspend a licensee's privilege to operate a motor vehicle upon the accumulation of twelve or more points in accordance with the following schedule:

7.408.a. When a licensee accumulates twelve to thirteen points, the period of suspension is thirty days.

7.408.b. When a licensee accumulates fourteen to fifteen points, the period of suspension is forty-five days.

7.408.c. When a licensee accumulates sixteen to seventeen points, the period of suspension is sixty days.

7.408.d. When a licensee accumulates eighteen to nineteen points, the period of suspension is ninety days.

7.408.e. When a licensee accumulates twenty or more points, the Division shall suspend the licensee's privilege to operate a motor vehicle until his or her driving record reflects less than twelve points; period of suspension is one hundred twenty days.

7.408.f. Any suspension received under the provisions of subdivision 7.408.a., 7.408.b., 7.408.c., or 7.408.d. of this rule shall run consecutively and any suspension under subdivision 7.408.e. of this rule shall run concurrently.

7.419. Length of Time Points Maintained On Driving Record. -- The Division shall remove the points assessed for a conviction two years from the date of the conviction. However, the conviction shall remain a part of the drivers' record.

7.4210. Effective Starting Time for Period of Suspension. -- The suspension of any driver's license under the Driver Improvement Program is effective ten days from the mailing of the notice of suspension.

7.4311. Hearings. -- ~~In accordance with the provisions of W. Va. Code §17B-3-6, any licensee whose license is suspended is entitled to a hearing before the Office of Administrative Hearings.~~ The licensee may appeal an Order of Suspension by requesting a hearing with the circuit court of the county in which the event giving rise to the contested decision of the Commissioner of Division of Motor Vehicles occurred within ten (10) days of receipt of the Order. The scope of the hearing is whether ~~or not~~ the person whose license is suspended is the same person to whom the citations were issued or ~~that~~ whether the point total is incorrect.

7.4412. Prohibition Against Masking -In accordance with the provisions of W. Va. Code §17E-1-13(g), implementing the requirements of 49C.F.R. §384.226, all citations accumulated by a licensee who holds a commercial driver's license shall be recorded and retained as a part of the licensee's driver record. The provisions of W. Va. Code §17C-6-1(i) and (j) which exempt convictions for speeding violation ten miles per hour or less over the speed limit committed on an interstate or other controlled access highway from being reported to the Division do not apply to a licensee who hold a commercial driver's license.

#### **§91-5-8. Driver Improvement Course.**

8.1. Procedures. -- Organizations approved by the Division conduct Driver Improvement courses at various times and locations throughout the State. The Division shall approve the course-which is not to exceed fifteen (15) hours but shall consist of at least seven (7) hours of instruction time. The approved organization shall certify the instructors conducting these courses.

8.1.a. Points to Be Deducted Upon Successful Completion. -- Attendance at any Driver Improvement course is voluntary on the part of the licensee. Upon successful completion of a course, the Division shall deduct three points from the total points shown on the driver record of the licensee who has reached the age of eighteen years or older or obtained a level three full driver's license. The Division shall

deduct points for completing a course once during a one (1) year period. Any suspension placed against a licensee under the provisions of section seven of this rule will not be altered, reduced or expunged by completion of this program.

8.1.b. The Division shall remove three points from the licensee's record after the licensee submits a certificate from the instructor of the course to the Division of Motor Vehicles, showing that the course has been completed by the licensee.

8.1.c. Although the Division shall subtract three points from the driver record, the record of all convictions involving motor vehicles shall remain so that if at any future time sufficient points are accumulated to cause the Division to require another review, the Division may consider the conviction for which the points were eliminated along with all other convictions of record in the Division in determining the action, if any, the Division will take following the review.

8.2. Graduated Driver Improvement Course. - In accordance with the provisions of W. Va. Code §17B-2-3a, any level 2 licensee under the age of eighteen who has been convicted of a moving traffic offense or violation of the terms and conditions of a level two intermediate driver's license shall complete an approved graduated driver improvement course prior to obtaining a level 3 full license. The course shall consist of at least four hours of instruction specifically designed for younger drivers.

8.2.a. Completion of the Graduated Driver Improvement Course shall not remove the record of conviction from a licensee's record. In accordance with the provisions of W. Va. Code §17B-2-3a, the privilege to operate a motor vehicle of any licensee who holds a graduated driver's license shall be revoked until the licensee's eighteenth birthday or longer if applicable, upon the second conviction for a moving traffic violation or violation of the terms and conditions of a level two intermediate license.

8.2.b. Completion of the Graduated Driver Improvement Course shall not affect the provisions of W. Va. Code §17B-2-3a which establishes a prerequisite of conviction free driving for the twelve months immediately preceding the date of application for a level three full license.

8.2.c. Completion of the driver improvement course as provided in subsection 8.1 of this rule may substitute for the requirements of this subdivision if a Graduated Driver Improvement Course is not available. However, a licensee under the age of eighteen who completes the course as substitution may repeat the course for the purposes of point reduction after obtaining a level three full license.

#### **§91-5-9. Procedures for Medical Review and Driving Re-Examination of Licensed Drivers.**

9.1. Statutory Provisions. -- In accordance with W. Va. Code §17B-3-7, the Division of Motor Vehicles may require a re-examination of a licensed driver. The Division, having good cause to believe that a licensed driver is inimical to public safety or welfare or otherwise not qualified to be licensed, may upon written notice of at least five days require the licensee to submit to a medical review, vision, written and driving examination, and may immediately suspend or cancel the licensee's driving privilege upon receipt of a written notice pursuant to subdivision 9.2.b or d of this rule. Upon the conclusion of the examination, the Division shall take action as may be appropriate and may cancel, suspend or revoke the license of that person or may issue a license subject to restrictions as provided under W. Va. Code §17B-2-10. The Division may cancel, suspend or revoke the license of the licensee if he or she refuses or neglects to submit to the examination.

9.2. Good Cause. -- For the purposes of this rule, good cause means:

9.2.a. A written notice from any law enforcement officer stating that he or she observed the licensee operating a motor vehicle in a manner which may cause harm to the licensee or others. However, the Division shall not enter an immediate suspension or revocation of the licensee's driving privilege based solely on notice from a law enforcement officer until a medical review under subsection 3.2 of this rule or driving reexamination has been completed;

9.2.b. A written, professional opinion from a licensed medical practitioner that the licensee has a physical, medical or emotional condition which jeopardizes the licensee's ability to operate a motor vehicle;

9.2.c. A written, reasoned opinion from an adult relative or caregiver with an immediate knowledge of the licensee's driving ability or medical condition that impairs the licensee's ability to operate a motor vehicle. However, the Division shall not enter an immediate suspension or revocation of the licensee's driving privilege based solely on notice from an adult relative or caregiver until a medical review under subdivision 3.2 of this rule or driving reexamination has been completed;

9.2.d. A written notice from an employee of a rehabilitation facility's driver education, driver training or other similar program, that in his or her judgement, the licensee presents a danger to public safety or welfare, or;

9.2.e. A written notice from an officer of the court or a designated employee of the Division that in his or her judgment there is reason to believe that the licensee is incompetent or unable to safely drive a motor vehicle. This judgment may be based upon personal observation and/or a review of Division records or any form of the licensee's accident history. However, the Division shall not enter an immediate suspension or revocation of the licensee's driving privilege based solely on notice from an officer of the court or an employee of the Division until a medical review under subsection 3.2 of this rule or driving reexamination has been completed.

9.3. The Division shall mail the notice of re-examination to the licensee's most recent driver license address on file with the Division by certified or registered letter. The notice shall contain the time and place designated for the re-examination and, also, shall contain a brief explanation that the Division may impose a suspension or revocation if the licensee fails to appear and submit to the re-examination as directed by the notice.

9.4. The re-examination may consist of a maximum of four parts.

9.4.a. The first part consists of completion of a medical report form by a physician in accordance with Section 3 of this rule.

9.4.b. The second part consists of a vision test and an inquiry into any physical disability. In addition to a review of the licensee's physical qualifications, the driver examiner conducts a personal interview with the licensee.

9.4.c. The third part of the re-examination consists of a written test composed of questions of equal value. The licensee shall answer correctly a minimum of 70% of the questions covering motor vehicles laws, rules of the road, highway warnings, traffic signs and signaling devices to pass the re-examination. The examiner may administer the written test verbally if the licensee is determined by the examiner to be illiterate. The reference document for the material on the test is the official Driver's Handbook as prescribed by the Division of Motor Vehicles.



9.4.d. The fourth part of the re-examination is a driver clinic skill to determine the driving skills of the licensee. The examiner may not give the driver clinic skills test if the licensee fails to exhibit the minimum physical ability to safely operate a motor vehicle.

9.5. If the licensee fails any part of the re-examination, the Division shall suspend his or her license and notify the licensee of the suspension. The Division shall send the notice by certified or registered mail and the suspension is effective four days after the date of the suspension order.

9.6. The licensee is not eligible for a second re-examination until the expiration of thirty days from the date of the failed re-examination. The licensee shall make a request, by letter or in person, to the Division of Motor Vehicles, for the opportunity to take subsequent re-examinations.

9.7. If a licensee fails a second re-examination, the licensee is not eligible for a re-examination until sixty days have expired from the date of the previous re-examination. If a licensee fails a third re-examination, the licensee is not eligible for the fourth re-examination until six months have elapsed. Failure of four consecutive re-examinations is grounds for permanent revocation and the licensee is not eligible for additional testing until one year from the last re-examination date.

9.8. If the licensee fails to pass the re-examination because of failure to meet the visual qualifications, the Division shall not grant a further examination until he or she submits adequate evidence of visual improvement.

9.9. If the driver's license is cancelled or suspended because of a physical condition and the licensee subsequently submits a satisfactory medical report, the Division may require the licensee to submit to part three and part four of the examination to determine the licensee's driving ability before the driver's license is reinstated.

9.10. The Division may cancel, suspend or revoke the driver's license of a licensee who refuses or neglects to submit to any part of the examination, or both, requested in accordance with the provisions of W. Va. Code §17B-3-7.

#### **§91-5-10. Suspension or Revocation Following Notice of Returned Check.**

10.1. Statutory Provisions. -- W. Va. Code §17A-2-16 authorizes the Division to suspend or revoke any and all registration cards, permits, driver's licenses and registration plates issued to the person, firm or corporation by whom or on whose account any required fees shall have been determined to remain unpaid after reasonable notice and demand. W. Va. Code §17A-2-23 authorizes the Division to apply a penalty fee in addition to any other penalty imposed by the W. Va. Code. In accordance with the provisions of W. Va. Code §17A-3-14, the Division shall suspend without prior notice, any vehicle registration paid for by a check which is returned for insufficient funds. The notice and demand procedures in this rule does not apply to vehicle registration suspensions.

10.2. Determination of Unpaid Fee or Tax. -- Upon receipt of any check returned to the Division unpaid for any reason, the Division shall consider the required fee unpaid.

10.3. Reasonable Notice and Demand. -- Upon the Division's receipt of a check or checks which are returned unpaid for any reason by the check maker's financial institution, the Division shall mail a proposed notice of suspension or revocation to the maker of the check and the licensee or registrant, if different from the check maker. The notice of proposed suspension or revocation shall give the check maker ten (10) days to redeem the face amount of the check and pay any penalty fees.

10.4. Suspension or Revocation. -- If after ten (10) days, the account remains unpaid, the proposed suspension or revocation of licenses or registrations is effective. The licensee or registrant has ten (10) days to surrender the suspended or revoked licenses or registrations to the Division.

10.5. Failure to Surrender Documents. -- In accordance with the provisions of W. Va. Code §17A-9-7 the Division shall notify the Superintendent of the State Police to secure possession of any registration plate or other document which the licensee has failed to surrender and return them to the Division.

10.6. Administrative Due Process. -- The licensee or registrant is entitled to due process ~~in accordance with the provisions of West Virginia Legislative Rules, Division of Motor Vehicles, Administrative Due Process, 91CSR4.~~ The licensee may appeal a suspension by requesting a hearing in the circuit court of the county in which the event giving rise to the contested decision of the Commissioner of Division of Motor Vehicles occurred within ten (10) days of receipt of the Order.

10.7. Penalty and Reinstatement Fee. -- The licensee or registrant shall pay the fees as set forth in W. Va. Code §§17A-2-23, 17A-9-7 and 17B-3-9. The provisions of W. Va. Code §17A-9-7 also provide for an additional serve order fee if the State Police is ordered to secure the suspended or revoked licenses or registrations.

10.8. Payment. -- A licensee or registrant shall pay all fees required under the provisions of this rule by certified check, money order or cash.

#### **§91-5-11. Suspension under Nonresident Violator Compact.**

11.1. Statutory Provisions. -- W. Va. Code §17B-1C-1 et seq. authorizes this State's entry into the Nonresident Violator Compact. In accordance with the Compact, each compact member state agrees to allow motorists to accept a traffic citation for certain violations and proceed without delay and without the posting of bond or payment of fine regardless of whether the motorist is a resident of the jurisdiction in which the citation was issued.

11.2. Failure to Comply. -- Under the provisions of the Nonresident Violator Compact, the Division shall suspend the operating privileges of West Virginia drivers who fail to comply with the terms of certain citations issued by other compact states. The Division shall not act on any failure to comply report transmitted to the division more than six months from the date of the offense.

11.3. Notification. -- When another state notifies the Division that a West Virginia licensee has not complied with a traffic citation, the Division shall send the licensee a proposed order of suspension by certified mail return receipt requested. The licensee shall submit to the Division proof of compliance with the terms of the citation within forty-five (45) days.

11.4. Proof of Compliance with the Terms of the Citation. - Proof of compliance means certification from the out of state court having jurisdiction that the fine and court costs have been fully satisfied or a certification from the court showing that the citation was dismissed, or the licensee adjudicated not guilty. Proof of compliance does not mean personal representation, or copies of money orders, personal checks, or certified checks.

11.5. Failure to Respond. -- If the Division does not receive proof of compliance within the required forty-five (45) days, it shall suspend the licensee's privilege to operate a motor vehicle until such time as proof of compliance with the terms of the citation is received.

11.6. Administrative hearing. -- ~~Upon the written request of the licensee within ten (10) days of receipt of the proposed order of suspension, the Office of Administrative Hearings shall afford the licensee the opportunity for an administrative hearing.~~ The licensee may appeal a suspension by requesting a hearing with the circuit court of the county in which the event giving rise to the contested decision of the Commissioner of Division of Motor Vehicles occurred within ten (10) days of receipt of the Order. The scope of the hearing is whether or not the person having a license suspended is the person to whom the citation was issued.

11.7. Reinstatement. -- Penalty fees under the provisions of W. Va. Code §17B-3-9 apply to the suspension of driving privileges for failure to comply with the terms of a citation from a compact member state. The reinstatement of a suspended driver's license requires the payment of these fees, in addition to compliance with the terms of the citation in accordance with Section 11.4 of these rules to the satisfaction of the out of state court.

#### **§91-5-12. Suspension or Denial of License under Student Attendance Law.**

12.1. Statutory Provisions. -- In accordance with the provisions of W. Va. Code §§17B-3-6(a)(9) and 18-8-11, the Division of Motor Vehicles shall deny a driver's license or instruction permit or suspend a driver's license or instruction permit previously issued to any person under the age of eighteen who cannot present:

12.1.a. A certificate of graduation issued to the person from a secondary high school or a general education development certificate;

12.1.b. A valid West Virginia Department of Education Driver's Eligibility Certificate showing that the person is enrolled in and making satisfactory progress towards a high school diploma or a general education development certificate;

12.1.c. Certification from the attendance director or chief administrator of the county that the person is excused from the requirements of W. Va. Code §18-8-11; or

12.1.d. Certification of enrollment in an institution of higher education as a full-time student in this state or any other state.

12.1.e. Certification from a parent or legal guardian that the child is being educated and making satisfactory academic progress through home schooling.

12.2. Notification. -- Upon notification that a person under the age of eighteen years has failed to comply with W. Va. Code §18-8-11, the Division of Motor Vehicles shall check to determine if the person has a driver's license or instruction permit. If the person is licensed, the Division shall send a notice of suspension by certified mail to the licensee's address of record, return receipt requested. The notice of suspension shall inform the licensee that his or her license shall be suspended thirty (30) days after the date upon which the letter was mailed, unless the licensee can show documentation of compliance with W. Va. Code §18-8-11 prior to the date of suspension. The notice shall also advise the licensee that he or she is entitled to a hearing before the county superintendent of schools or his or her designee or before the appropriate private school official concerning whether or not the licensee's withdrawal from school was due to circumstances beyond the control of the licensee, making the licensee eligible for a waiver from the provisions of W. Va. Code §18-8-11.

12.3. Administrative Hearing. -- ~~Upon written request of the licensee within ten (10) days of receipt of the notice of suspension, the Office of Administrative Hearings shall afford the licensee the opportunity for an administrative hearing. The licensee may appeal a suspension by requesting a hearing with the circuit court of the county in which the event giving rise to the contested decision of the Commissioner of Division of Motor Vehicles occurred within ten (10) days of receipt of the Order~~ The scope of the hearing is limited to questions of improper identity, incorrect age or some other bookkeeping error made by the Division. ~~The Office of Administrative Hearings circuit court~~ shall use the Division's record to determine identity and age of the licensee. The burden of proof is on the driver.

12.4. Reinstatement. -- The Division shall reinstate any license which has been suspended under W. Va. Code §17B-3-6, pursuant to W. Va. Code §18-8-11, after the licensee pays all applicable fees and shows that he or she has:

12.4.a. Reached the age of eighteen;

12.4.b. A certificate of graduation issued to the person from a secondary high school or general education development certificate;

12.4.c. A completed West Virginia Department of Education Driver's Eligibility Certificate showing that the person is enrolled in and making satisfactory progress towards a high school diploma or a general education development certificate;

12.4.d. Certification from the attendance director or chief administrator of the county that the person is excused from the requirements of W. Va. Code §18-8-11; or

12.4.e. Certification of enrollment in an institution of higher education as a full-time student in this state or any other state.

12.4.f. Certification from a parent or legal guardian that the child is being educated and making satisfactory academic progress through home schooling.

### **§91-5-13. Suspension Under Resident Violator Program.**

13.1. Statutory Provisions. -- The Division is required to suspend the driver's license of any person under the provisions of W. Va. Code §§17B-3-3a and 17B-3-3c upon receipt of notification from a Circuit, Magistrate or Municipal Court of this State that the licensee has either failed to respond or appear in court when charged with a violation of the W. Va. Code ~~or has failed to pay all fines assessed as a result of being convicted of the violation~~. The Division may not act on any failure to respond or appear report transmitted to the Division more than one year from the date of the offense or violation of a probation order.

13.2. Notification. -- Upon notification of noncompliance with the terms of the citation from a Circuit, Magistrate or Municipal Court, the Division shall send the licensee an order of suspension to the address of record by certified mail, return receipt requested. The order of suspension shall indicate that the licensee's privilege to operate a motor vehicle is suspended until proof of compliance with the citation is submitted and all applicable fees are paid.

13.3. Proof of Compliance. -- Proof of compliance means certification from the court in the form of a satisfaction of judgement receipt which shows that ~~the fine and court costs have been satisfied, or a letter from the municipal court which indicates~~ that the requirements of the citation have been met. ~~Proof of~~

~~compliance does not mean personal representation, copies of money orders, personal checks, or certified checks.~~

13.4. Failure to Respond. -- If the Division does not receive proof of compliance, the licensee's privilege to operate a motor vehicle shall remain suspended until such time as the Division receives proof of compliance with the terms of the citation from the licensee, and the appropriate fees are paid.

13.5. Administrative Hearing. -- ~~Upon the written request of the licensee within ten (10) days of receipt of the proposed order of suspension, the Office of Administrative Hearings shall afford the licensee the opportunity for an administrative hearing.~~ The licensee may appeal a suspension by requesting a hearing with the circuit court of the county in which the event giving rise to the contested decision of the Commissioner of Division of Motor Vehicles occurred within ten (10) days of receipt of the Order. The scope of the hearing is whether or not the person having a license suspended is the same person to whom the citation was issued.

13.6. Reinstatement. -- The licensee shall pay the fees provided in W. Va. Code §17B-3-9, in addition to providing proof of compliance with the citation prior to reinstatement of a suspended driver's license.

#### **§91-5-14. Reserved for Future Use.**

#### **§91-5-15. Suspending or Restricting a Licensee for Failure to Maintain Court Ordered Child Support Payments.**

15.1. Statutory Provisions. -- In accordance with the provisions of W. Va. Code §48-15-101 et seq. and §17B-3-6(a), the Division is required to suspend or restrict the driving privileges of any person upon notification from a Circuit Court of this state that the person has failed to pay overdue child support or comply with subpoenas or warrants relating to paternity or child support proceedings. The provisions of W. Va. Code §48-15-101 et seq. prohibit the Division from issuing or renewing a driver's license to any person who fails to certify that he or she does not have a child support obligation or that he or she is not more than six months in arrearage and is not the subject of a child support related subpoena or warrant. This rule is implemented to conform to the mandates of the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996 and in accordance with *Dababhah v. West Virginia Board of Medicine*, 207 W. Va. 621, 535 S.E. 2d 20 (2000).

15.2. Types of Action against License. -- The Division, in accordance with the provisions of W. Va. Code §48-15-101 et seq., shall take the following action against an applicant or licensee:

15.2.a. Nonrenewal or Suspension. -- In accordance with the provisions of W. Va. Code §17B-3-6(a)(10), the Division shall suspend or refuse to renew the driver's license of a licensee upon receipt of:

15.2.a.1. A Court order suspending the license; or

15.2.a.2. Certification from the Child Support Enforcement Division that the licensee has failed to comply with a new or modified Court order that stayed a previous suspension.

15.2.b. Restriction. -- In accordance with the provisions of W. Va. Code §48-15-101 et seq. and §17B-2-10(b), the Division shall, upon receipt of the Court's order restricting the licensee, restrict the licensee to the operation of a motor vehicle for transportation to and from work, work related driving, or to and from a court approved education or training program subject to the following;

15.2.b.1. Within ten (10) days of the effective date of the Division's order of restricted driving privileges, the licensee shall surrender his or her current license to the Division for issuance of a specially marked restricted license. For the purposes of this rule, the Division shall issue the restricted license as a duplicate license under the provisions of W. Va. Code §17B-2-11. The provisions of W. Va. Code §17B-3-9 not requiring surrender of license apply only when a driver's license is suspended or revoked.

15.2.b.2. The Division shall suspend the driver's license of a licensee who fails to surrender the current license and pay the required duplicate license fee until proof of compliance with the child support order is received and the licensee pays the reinstatement fees as provided in Subsection 15.7 of this rule.

15.2.b.3. The Division shall immediately suspend the driver's license of any licensee who violates the terms of the restricted license as provided in Subsection 15.6 of this rule.

15.2.b.4. The Division shall reinstate the licensee's full driving privileges in accordance with Subsection 15.7 of this rule.

15.3. Notification. -- The Division shall send the licensee an order of nonrenewal, suspension or restriction of driving privileges upon notice from a Circuit Court ordering suspension or restriction of driving privileges. The Division shall send the order to the licensee's address of record by certified or registered mail, return receipt requested.

15.4. Term of Denial, Nonrenewal, Suspension or Restriction. -- In accordance with the provisions of W. Va. Code §48-15-302, the license action ordered by the Court continues until the Child Support Enforcement Division provides the Division with either a Court order withdrawing the license action or certification that the licensee is in compliance with the court order for the payment of current child support and arrearage.

15.5. Administrative Appeal. -- A licensee who believes that the license suspension order has been directed to the licensee in error may request an hearing. In accordance with the provisions of W. Va. Code §48-15-301(e), the Division does not have jurisdiction to modify, remand, reverse or stay a court order to take action against a license. Therefore, the scope of any administrative appeal is limited to the sole purpose for the licensee to present evidence that he or she is not the person named in the Court Order.

#### 15.6. Driving While Suspended or in Violation of Restriction.

15.6.a. The provisions of W. Va. Code §17B-4-3 apply to a licensee convicted of driving while his or her license has been suspended for nonpayment of child support. The conviction, if it is the second conviction for driving while suspended or revoked, shall automatically extend the period of suspension for an additional ninety (90) days.

15.6.b. The Division shall suspend the license of any person who violates the terms of the restricted license. The license suspension continues in effect until the Child Support Enforcement Division provides the Division with either a Court order withdrawing the license action or certification that the licensee is in compliance with the court order for the payment of current child support and arrearage and the payment of all fees.

15.6.b.1. The Division shall automatically suspend the license of a licensee who is convicted of violating the terms of a restricted driver's license until the licensee meets the terms of reinstatement. The administrative appeal provisions of Subsection 15.5 of this rule apply.

15.6.b.2. The Division shall automatically suspend the license when the Division receives notice from any law enforcement officer that a licensee has violated the terms of a restricted license until the licensee meets the terms of reinstatement. The administrative appeal provisions of Subsection 15.5 of this rule shall govern any request for hearing.

15.7. Reinstatement of License. -- In accordance with the provisions of W. Va. Code §48-15-302, the suspension or restriction of a license continues until the Court or the Child Support Enforcement Division files with the Division either a court order restoring the license or a Child Support Enforcement Division certification attesting to compliance with court orders for the payment of current child support and arrearage. Proof of compliance shall not mean Court documents which do not contain the signature of the Circuit Court judge or family law master, unsigned notice from the Child Support Division, copies of certified checks, personal checks, money orders or personal representation. A person whose license was suspended shall prior to reinstatement pay all fees assessed as a result of the suspension. A person whose license was restricted shall surrender the restricted license and pay for a duplicate license.

#### **§91-5-16. Alcohol Test and Lock Program.**

16.1. Application and Statutory Reference. -- This section applies to persons applying for restricted driving privileges when the person's license has been revoked for driving under the influence or related offenses under the provisions of W. Va. Code §17C-5A-3a and to providers and manufacturers of alcohol test and lock equipment.

#### **16.2. Definitions.**

16.2.a. Applicant -- Means the person applying for enrollment in the motor vehicle test and lock program as established in accordance with W. Va. Code §17C-5A-3a.

16.2.b. Commissioner -- Means the executive officer of the Division of Motor Vehicles appointed by the Governor pursuant to W. Va. Code §17A-2-2 or his or her lawful designee.

16.2.c. Commercial Motor Vehicle -- Means any motor vehicle designed or used to transport passengers or property as defined in W. Va. Code §17E-1-3.

16.2.d. Division B -- Means the division of motor vehicles of this state acting directly or through its duly authorized officers and agents.

16.2.e. Equipment -- Means a mechanical or computerized system, installed and monitored by an approved Service Provider, which prevents the operation of a motor vehicle when, through the system's assessment of the blood alcohol content of the person operating or attempting to operate the vehicle, that person is determined to be under the influence of alcohol.

16.2.f. Final Revocation -- Means a license suspension or revocation which has run the full course of administrative and or judicial review. In the context of this section, a person may not participate in the program if the person has any action pending on the offense either criminally or administratively. The revocation must be final.

16.2.g. Law Enforcement Officer -- Means a law enforcement officer as defined in W. Va. Code §17C-5-4.

16.2.h. License -- Means any permit or license issued by this State which authorizes a person to drive a motor vehicle, or the privilege to operate a motor vehicle.

16.2.i. Participant -- Means the person accepted for enrollment in the motor vehicle test and lock program as established in accordance with W. Va. Code §17C-5A-3a.

16.2.j. Passenger Vehicle -- Means a Class A vehicle weighing 10,000 pounds or less.

16.2.k. Positive Identification Equipment -- A mechanical or computerized system that positively identifies the user of the Ignition Interlock equipment.

16.2.l. Program -- Means the motor vehicle alcohol test and lock program as established in accordance with W. Va. Code §17C-5A-3a.

16.2.m. Revocation Waiver Program -- Means a procedure that allows an applicant to avoid a revocation by applying for the Test and Lock Program prior to the scheduled revocation date in accordance with W. Va. Code §17C-5A-3a(e). This will result in the revocation period being converted to additional participation time in the program.

16.2.~~m~~.n. Safety and Treatment Program -- Means the Safety and Treatment Program as established in accordance with W. Va. Code §17C-5A-3.

16.2.~~n~~.o. Service Provider -- Means a vendor and its employees authorized by Division of Motor Vehicles to provide services related to the program.

16.2.~~o~~.p. Service Center -- Means the physical location of a vendor where services related to the program are provided.

### 16.3. Eligibility for Program Participation.

16.3.a. An applicant who is a resident of this state must hold a West Virginia license. An applicant who is a resident of another state or jurisdiction must participate in accordance with terms established by the Commissioner.

16.3.b. An applicant must be eighteen (18) years of age or older.

16.3.c. An applicant's license must be revoked for an offense in violation of W. Va. Code §§17C-5-1 et. seq. or 17C-5A-1 et. seq. A person whose license is revoked for driving under the influence of controlled substances is not eligible to participate in the program except as provided in W. Va. Code §17C-5A-3a (f).

16.3.d. An applicant must have served the minimum license revocation period as prescribed by W. Va. Code §17C-5A-3a, and this rule, unless the applicant is applying through the Revocation Waiver Program.

16.3.d.1. If the applicant's license has been revoked for a first offense of driving under the Influence with BAC less than .15 or knowingly permitting driving under the influence as described in W.



Va. Code §§17C-5A-2(j), 17C-5-2(d) or 17C-5-2(g), the applicant must serve a minimum revocation period of fifteen (15) days before he or she is eligible to participate in the program. The applicant must retain the interlock device in his or her vehicle for a minimum period of four (4) months.

16.3.d.2. If an applicant's license has been revoked for a first offense described in W. Va. Code §17C-5-7, refusal to submit to designated secondary chemical test, the applicant must serve a minimum revocation period of forty-five (45) days before he or she is eligible to participate in the program. The applicant must retain the interlock device in his or her vehicle for a minimum period of twelve (12) months.

16.3.d.3. If an applicant's license has been revoked for a first offense of Driving Under the Influence with BAC of .15 or more as described in W. Va. Code §17C-5A-2(k) or 17C-5-2(e), the applicant must serve a minimum revocation period of forty-five (45) days before he or she is eligible to participate in the program. The applicant must retain the interlock device in his or her vehicle for a minimum nine (9) months.

16.3.d.4. If an applicant's license has been revoked for a first offense of driving under the influence involving the death of another person as described in W. Va. Code §§17C-5A-2(g) or (h) or 17C-5-2(a) or (b), the applicant must serve a minimum revocation period of twelve (12) months before he or she is eligible to participate in the program. The applicant must retain the interlock device in his or her vehicle for a minimum of two (2) years.

16.3.d.5. If an applicant's license has been revoked for a first offense of driving under the influence involving the bodily injury of another person as described in W. Va. Code §§17C-5A-2(i) or 17C-5-2(c), the applicant must serve a minimum revocation period of two (2) months before he or she is eligible to participate in the program. The applicant must retain the interlock device in his or her vehicle for a minimum of one (1) year.

16.3.d.6. If an applicant's license has been revoked for a first offense of driving under the influence while having a child under the age of sixteen in the vehicle as described in W. Va. Code §§17C-5A-2 (o) or 17C-5-2(j), the applicant shall serve a minimum revocation period of sixty (60) days before he or she is eligible to participate in the program. The applicant shall retain the interlock device in his or her vehicle for a minimum of ten (10) months.

16.3.d.7. The Division will add one year to the minimum period for the use of the ignition interlock device for each additional previous conviction or revocation within the past ten (10) years.

16.3.d.8. If an applicant's license has been revoked for a second offense described in W. Va. Code §§17C-5A-1 et seq. or 17C-5-1 et. seq., the applicant must serve a minimum revocation period of twelve (12) months before he or she is eligible to participate in the program, except as otherwise defined in this subdivision. The applicant must retain the interlock device in his or her vehicle for a minimum period of two (2) years.

16.3.d.9. If an applicant's license has been suspended for a first offense of underage twenty-one - any measurable alcohol as described in W. Va. Code §§17C-5A-2 (n) or 17C-5-2 (i), the applicant must serve a minimum revocation period of thirty (30) days before he or she is eligible to participate in the program. The applicant must retain the interlock device in his or her vehicle for a minimum of six (6) months.

16.3.d.10. If an applicant's license has been revoked for a second offense of under the age twenty-one - any measurable alcohol as described in W. Va. Code §§17C-5A-2(n) or 17C-5-2(i), the applicant must serve a minimum revocation period of two (2) months before he or she is eligible to participate in the program. The applicant must retain the interlock device in his or her vehicle for a minimum of twelve (12) months for each additional previous conviction or revocation within the past ten (10) years.

16.3.d.11. If an applicant's license has been revoked for a second offense of Driving Under the Influence while having a child under the age of sixteen in the vehicle as described in W. Va. Code §§17C-5A-2(o) or 17C-5-2 (j), the division shall add an additional two (2) months to the minimum period for the use of the interlock device as required in Paragraph 13.6.d.8. of this rule.

16.3.d.12. If an applicant's license has been revoked for a second offense of Driving Under the Influence involving the Bodily Injury of another person as described in W. Va. Code §§17C-5A-2(I) or §17C-5-2(c), the division shall add an additional six (6) months to the minimum period for the use of the interlock device as required in Paragraph 13.6.d.8. of this Rule.

16.3.d.13. If an applicant's license has been revoked for a second offense of driving Under the Influence involving the Death of another person as described in W. Va. Code §§17C-5A-2(g) or (h) or 17C-5-2(a) or (b), the division shall add an additional twenty-four (24) months to the minimum period for the use of the interlock device as required in Paragraph 13.6.d.8 of this rule.

16.3.e. An applicant must within sixty (60) days of acceptance in the program be enrolled in or have completed the Safety and Treatment Program.

16.3.e.1 If the Division finds, during review of any participant's data that the participant continues to exhibit signs of abuse through frequent or significant Blood Alcohol Content (BAC) readings, the Division shall inform the Safety and Treatment Program provider, who shall then determine if further services are indicated.

16.3.e.2. If, subsequent to receipt of a notification of completion of the Safety and Treatment Program, the Division finds, during review of a participant's data that the participant continues to exhibit signs of abuse through frequent or significant Blood Alcohol Content (BAC) readings, the Division shall inform the Safety and Treatment Program provider, who shall then void the notification of completion. The Division shall notify the participant that he/she must return to the Safety and Treatment Program provider for re-evaluation and possible further services.

16.3.f. An applicant is not eligible for participation in the Program if his or her license is revoked or suspended for any other reason or has any other active suspensions or revocations in any jurisdiction unless the applicant provides evidence that the active revocation or suspension in the other jurisdiction is for the same events resulting in application to participate in the Program. The applicant cannot operate a motor vehicle in the other jurisdiction until authorized by the other jurisdiction.

16.3.g. An applicant is not eligible for participation in the program if he or she has been convicted of any violation of W. Va. Code §17B-4-3, for driving while the applicant's driver's license was suspended or revoked within the six (6) months period preceding the date of application.

~~16.3.h. The Division may establish standards whereby the Division will accept or approve participation by driving under the influence offenders in other alcohol test and lock programs which provide the same or substantially similar requirements as the Division's approved alcohol test and lock~~

~~program.~~ Any person who is revoked for a second or subsequent DUI stemming solely from the use of controlled substances or drugs may apply for a revocation reduction in accordance with W. Va. Code §17C-5A-3a(f).

16.3.i. The Division may require random blood and/or urine tests for participants with a combined alcohol/controlled substance DUI, or participants who demonstrate use of a controlled substance.

#### 16.4. Application Procedures.

16.4.a. An applicant shall complete a program application, agree in writing to the conditions of participation and completion and submit a non-refundable fee of one hundred dollars (\$100.00) in the form of a certified check or money order to the Division of Motor Vehicles.

16.4.b. The payment of the application fee shall cause the application to remain valid for a period of six (6) months.

16.4.c. The Commissioner shall either approve the application for participation, subject to the availability of equipment for installation, or shall rule the applicant ineligible for participation based on the criteria prescribed in subsection 16.3 of this rule.

16.4.d. An applicant may reapply no more than two (2) times in a six (6) month period. An applicant initially ruled ineligible and subsequently found to be eligible within six (6) months of the initial application is not required to pay the application fee again.

#### 16.5. Applicant Requirements.

16.5.a. The applicant, upon receipt of program entry approval, is responsible for completing, signing and returning to the Commissioner, the agreement of conditions of participation and completion, and contacting an approved service provider for installation of the equipment.

16.5.b. A licensed driver shall drive the applicant to the service center in the vehicle in which the equipment is to be installed. The vehicle shall be a Class A passenger type vehicle with a valid registration. The applicant shall provide all registration and insurance documents upon request. Insurance information will be subject to random verification. Vehicles must be in such condition as to be capable of passing a safety inspection. Vehicles manufactured before ~~1984~~ 1988 are not eligible for installation of the equipment. An inspection may be required to verify the presence of an OBD I (On-Board Diagnostics Generation One) or newer version. No vehicle of any other vehicle class may be used in the program.

16.5.c. The applicant shall complete the orientation and training program provided by the service provider to the satisfaction of the service provider. Any other person who will operate the vehicle while the equipment is installed shall also complete the orientation and training program to the satisfaction of the service provider.

16.5.d. If the vehicle owner is not present at the time of the installation, the applicant shall provide the service provider with a notarized statement of authorization by the vehicle owner allowing the installation of the equipment.

16.5.e. The service provider shall notify the Commissioner of the applicant's successful completion of the orientation and training program and that the data-logger and positive identification equipment was installed in accordance with the criteria established by the Commissioner.

16.5.f. The Commissioner shall issue the applicant a restricted Class E license upon the Commissioner's receipt of the service provider's notification of equipment installation and successful orientation and training. The license shall restrict the applicant to operating only the vehicle or vehicles in which the equipment is installed.

~~16.5.g. The Commissioner may require the use of positive identification equipment for: participants in the program who have previously been disqualified; participants whose record shows any evidence of major violations of the program as defined in paragraph 16.6.b.4 of this rule; participants who have previously been found to operate an unequipped vehicle; participants who fail to comply with subdivision 16.3.i of this rule or participants who test positive on the random blood and/or urine tests.~~

16.5.h.g. Under no circumstances shall the applicant operate any motor vehicle until the equipment is installed and the applicant has received the specially marked restricted license.

16.5.i.h. The applicant is responsible for any consequences of operation of the vehicle by persons who have not been trained by the service provider, or who fail to operate the equipment in the manner prescribed by the service provider.

16.5.j.i. Any person required to participate in this program must have an approved ignition interlock device installed on every Class A vehicle he or she owns or operates.

#### 16.6. Participant Requirements for Continued Eligibility.

16.6.a. The Commissioner may immediately revoke the restricted driving privileges upon notice of any law enforcement officer, Division employee, or service provider of any participant who:

16.6.a.1. Fails to meet the attendance and participation requirements of the Safety and Treatment Program in which the participant is enrolled, ~~if the participant has not already successfully completed the program;~~ or fails to report for a re-evaluation as required by 16.3.e.2 of this rule;

16.6.a.2. Has received any other suspension or revocation;

16.6.a.3. Has operated or owned a motor vehicle not containing the required equipment, or was operating a vehicle in violation of any restriction imposed by this rule or the program participation agreement;

16.6.a.4. Owns a motor vehicle with equipment that has been altered, tampered with, bypassed or removed without the prior approval of the Commissioner;

16.6.a.5. Has allowed or caused another person to bypass, or attempt to bypass the equipment or to circumvent the device in any manner;

16.6.a.6. Has operated or attempted to operate a motor vehicle under the influence of alcohol or controlled substances;

16.6.a.7. Has been convicted of any motor vehicle offense contained in W. Va. Code §17B-3-5;

16.6.a.8. Fails to abide by the terms and conditions of the lease agreement with the service provider. A service provider shall not remove a participant from the Program without prior approval of the Commissioner; ~~or~~

~~16.6.a.9. Applies for or obtains a driver's license in any other state during the enrollment or participation period in the Program;~~

16.6.a.~~10-9~~. Fails to submit to the random blood and/or urine tests or demonstrates the use of a controlled substance or drug as referenced in subdivision 16.3.i of this rule;

16.6.a.~~11-10~~. Fails to provide an adequate written explanation regarding the lack of use of the equipped vehicle or vehicles when requested by the Division.

16.6.b. The Commissioner, in conjunction with the Service Provider, may assess applicants for re-entry into the Test and Lock Program or may extend the period of time a participant is required to participate in the Program for violations of the terms and conditions of the Program in accordance with the following criteria:

16.6.b.1. An applicant who is disqualified for failure to enroll in or successfully complete the Safety and Treatment Program, but subsequently fully completes the Safety and Treatment Program is eligible for re-entry.

16.6.b.2. An applicant who is disqualified for driver license suspensions of one hundred twenty (120) days duration or less and has subsequently resolved those suspensions in a timely manner is eligible for re-entry.

16.6.b.3. The Commissioner may extend the participant's time in the Program for two (2) months or more, not to exceed a period equal to the original participation time after an evaluation of the frequency and severity of the participant's violations of the terms and conditions of the Program or other offenses. The Commissioner may disqualify the participant for violations occurring during participation in the Program subject to the following:

16.6.b.3.A. The participant will receive no credit for any minimum revocation time period served or participation time period served prior to the disqualification if the participant is disqualified for a combination of frequent or severe violations; and

16.6.b.3.B. The participant shall serve a minimum revocation period of twelve (12) months, pay any prior fees owed to the service provider, re-apply for participation in the Program, and retain the Interlock device in his or her vehicle or vehicles for the minimum period described in W. Va. Code §17C-5A-3a and in Subsection 16.3 of this Rule.

16.6.b.4. The Commissioner shall disqualify the participant for major violations occurring during participation in the Program including, but not be limited to; committing any alcohol-related offenses; driving while his or her driver's license was suspended or revoked, driving a vehicle without the required interlock device; tampering with, bypassing, removing or otherwise circumventing the interlock device or allowing another person to do the same; failing to use the equipped vehicle or vehicles; or

exhibiting abusive or threatening behavior toward an employee of the Service Provider or Division subject to the following:

16.6.b.4.A. The participant will receive no credit for any revocation or participation time served prior to the disqualification if he or she is disqualified for major violations; and

16.6.b.4.B. The participant shall then serve a minimum revocation period of twelve (12) months, pay any prior fees owed to the service provider, re-apply for participation in the Program, remit a security deposit to the service provider of an amount not to exceed the cost of the Interlock device, and retain the Interlock device in his or her vehicle or vehicles for the minimum time period described in W. Va. Code §17C-5A-3a and in Subsection 16.3 of this Rule.

#### 16.7. Eligibility For Reinstatement Of License.

16.7.a. For purposes of this rule eligibility for reinstatement of driving privileges means, completion of the Safety and Treatment Program, expiration of the required period of time in which equipment is required to be installed and payment of all fees including any fees owed to the service provider.

16.7.b. If a participant has failed to complete the Safety and Treatment Program and pay all required fees by the end of the mandatory equipment usage time period, the participant shall either:

16.7.b.1. Continue to use the equipment while actively enrolled in and completing the Safety and Treatment Program; or,

16.7.b.2. Return all equipment to the service provider and return his or her license to the Division and shall not operate any motor vehicle until all requirements are met for license reinstatement.

16.8. Notice of Violation of Terms of Program Received After Completion. -- Upon receipt of sufficient evidence from any law enforcement officer, Division employee, service provider, or by a court document or judgment that the participant has committed a major violation as described in Paragraph 16.6.b.4 of this Rule, the Commissioner shall revoke the licensee's privilege to operate a motor vehicle in accordance with §17B-3-6(a)(1); §17C-5A-3a(h) or §17B-4-3, for a period of not less than six months nor more than one (1) year in accordance with W. Va. Code §17B-3-6(a)(1), §17B-3-8, and §17B-4-3.

#### 16.9. Service Provider Standards.

16.9.a. The service provider shall have a minimum of one (1) year experience providing similar service in another jurisdiction.

16.9.b. The service provider shall install only equipment which has been approved for use in the program by the Commissioner. No equipment shall be approved unless:

16.9.b.1. The equipment has been in actual field use for at least six (6) months; and,

16.9.b.2. The equipment has met minimum specifications established by the Commissioner by submission of test data from an independent alcohol-testing laboratory.

16.9.c. The service provider shall establish service centers with the sole purpose of providing service for the Program and its participants.

16.9.c.1. The service provider may not conduct any other business at the service centers without the express written consent of the Commissioner.

16.9.c.2. The service provider may not assign its responsibilities under the Program to any other entities.

16.9.c.3. The service provider shall establish service centers in locations throughout the state as determined necessary by the Commissioner.

16.9.d. The Commissioner shall prescribe the hours of operation in consultation with the service provider based on the needs of the applicants in the service area, and the needs of the service provider.

16.10. Program Cost.

16.10.a. The program shall operate on a user fee basis with the cost of the program assumed by the applicant.

16.10.b. The fees for instruction or leasing, monitoring, servicing and de-installation of equipment shall be set by the Commissioner and cannot be changed without prior review and approval of the Commissioner and can only be changed a maximum of one (1) time per year.

16.10.c. The established fees shall be based on average costs and shall not vary according to participant or make of vehicle. Fees shall be uniform at each service center. The fee for installation and removal of ignition interlock devices shall be waived for persons determined to be indigent by the ~~Department of Health and Human Resources~~ Division of Motor Vehicles in accordance with W.Va Code §17C-5A-3. All forms, applications, establishment of procedures and mechanisms to provide approved payments are established by the ~~Department of Health and Human Resources~~ Division of Motor Vehicles.

16.10.d. The service provider shall submit on or before the fifth day of January, of each year to the Commissioner of the Division of Motor vehicles a report of the total number of indigent offenders participating in the program during the prior year.

16.10.e. The manufacturer, service provider and or installer through the contract shall indemnify and hold harmless the State of West Virginia and or its employees and agents from any and all claims, demands, actions and costs whatsoever that may arise out of an act or omission by the manufacturer, service provider, installer, and employee or subcontractor of the service provider in the performance of the agreement.

16.10.f. The manufacturer, service provider and/or subcontractor shall maintain comprehensive general liability insurance in the amount of at least one million dollars (\$1,000,000) per occurrence with a three million dollar (\$3,000,000) aggregate total. The liability insurance shall cover defects or problems in or with product design, materials, and workmanship during the manufacture, calibration and installation of the equipment. The insurance shall be obtained through an insurer licensed to do business in the State of West Virginia and the policy shall be designed to provide the Commissioner with at least forty-five (45) days prior to written notice of any cancellation, material change or intent to allow coverage to lapse.