

WEST VIRGINIA
SECRETARY OF STATE

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

Form #3

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1991 AUG 13 PM 3:38

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: Division of Motor Vehicles TITLE NUMBER: 91

CITE AUTHORITY §17A-2-9

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 91CSR5

TITLE OF RULE BEING AMENDED: _____

Denial, Suspension, Revocation or Nonrenewal of Driving Privileges

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE FOR THEIR REVIEW.



Jane L. Cline, Commissioner
Division of Motor Vehicles

FILED

DATE: August 12, 1991

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TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

FROM: Jane L. Cline, Commissioner, Division of Motor Vehicles

LEGISLATIVE RULE TITLE: 91CSR5 (1991-92 Revisions)

1. Authorizing statute(s) citation §17A-2-9, §17C-5A-2

2. a. Date filed in State Register with Notice of Hearing: July 11, 1991
b. What other notice, including advertising, did you give of the hearing?
Please see attached list of persons/organizations notified of public
comment period.

- c. Date of hearing(s): Comment period July 11, 1991 to August 12, 1991.

- d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.
Attached X No comments received
- e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (Be exact.)
August 13, 1991

- f. Name and phone number(s) of agency person(s) to contact for additional information:
Steven O. Dale, 348-2723

3. If the statute under which you promulgated the submitted rules required certain findings and determinations to be made as a condition precedent to their promulgation:

a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

N/A

b. Date of hearing: N/A

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefore?

N/A

d. Attach findings and determinations and reasons:

Attached N/A


Jane L. Cline
Commissioner

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(PROPOSED)
WEST VIRGINIA LEGISLATIVE RULES
DIVISION OF MOTOR VEHICLES
91CSR5

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

Title: Denial, Suspension, Revocation, or Nonrenewal of Driving Privileges

§91-5-1. General

1.1 Scope - These regulations establish procedures for the denial, suspension, revocation, nonrenewal, administrative appeals and reinstatement of motor vehicle operating privileges.

1.2 Authority - West Virginia Code §17A-2-9, ~~§17B-2-7~~ and §17C-5A-2.

1.3 Filing Date -

1.4 Effective Date -

1.5 Repeal of Former Rule - These legislative rules repeal West Virginia Legislative Rules Series 9, Check Tendering Policy, filed January 15, 1968 and Series 14, Driving Under the Influence Driver License Revocation Administrative Hearings, filed April 4, 1984.

§91-5-2. Application and Enforcement

2.1 Application - These regulations apply to motor vehicle operators licensed by the Commissioner of Motor Vehicles.

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

§91-5-3. Denial of Driving Privileges for Medical Reasons (Revised 1990)

3.1 Statutory Provisions - West Virginia Code §17B-2-3 provides that the Department Division of Motor Vehicles shall not issue any operator's license, chauffeur's license, or junior probationary driver's license to any person 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 such person would be inimical to public safety or welfare. West Virginia Code §17B-3-6 authorizes the department division to suspend the driver's license of an operator, chauffeur, or junior probationary operator any person without preliminary hearing upon a showing by its records or other sufficient evidence that the licensee is incompetent to drive a motor vehicle.

In view of these statutory provisions, an operator's, chauffeur's, or junior probationary a driver's license will not be issued to or renewed for any person when the Commissioner determines that the person is incompetent to drive a motor

vehicle, or when the Commissioner has good cause to believe that the operation of a motor vehicle on the highways of this State by the person would be inimical to public safety or welfare, unless the application for the license is accompanied by a letter of explanation in such detail as the Commissioner may require concerning the mental or physical condition of the applicant at the time application for license is made.

3.2 Procedures for Original, Renewal, or Duplicate Applications for License
- The Commissioner, after reviewing the letter of explanation provided for in subsection 3.1 of this rule, may:

3.2.1 Approve the application for license;

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

3.2.3 Require the applicant to present a Medical Report Form, completed by a physician of the applicant's choice, licensed in the United States, or require a report by a Board Certified Physician in the appropriate medical specialty for the condition under consideration, or require a Vision Examination Report Form, completed by an optometrist or ophthalmologist, licensed in the United States, of the applicant's choice, to the Commissioner for presentation to the Driver's License Advisory Board. The Medical Report Form and Vision Examination Report Form shall be as provided by the Commissioner. The Commissioner, upon receipt of the advice of the Driver's License Advisory Board, may take the action as indicated in ~~number (1) or (2) above~~ subdivisions 3.2.1 or 3.2.2 of this rule, or may refuse the application or order the suspension of the license.

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 applicant shall be notified by certified or registered mail, return receipt requested and ~~shall be~~ is entitled to a hearing on the refusal by the Commissioner.

Upon receipt, by the applicant or licensee, of the refusal to issue or renew a driver's license, the applicant shall have ten (10) calendar days to request, in writing, from the Commissioner a hearing upon the refusal of the Commissioner to either issue or renew a license. ~~Such~~ The written request must be filed with the Commissioner in person or by registered or certified mail, within ten days after receipt of a copy of the order of refusal or suspension. The hearing shall be before the Commissioner or an authorized deputy or agent of the Commissioner. All of the pertinent provisions of West Virginia Code ~~Chapter 29A, Article 5~~ §29A-5-1 et seq., shall apply to the hearing. The hearing shall be held as early as practical in the county where the person resides unless the Commissioner or the Hearing Examiner and such person agree that the hearing may be held in some other county. The Commissioner may postpone or continue any hearing at his discretion or upon application of the licensee for good cause shown.

For the purpose of conducting such hearing, the Commissioner has the power and authority pursuant to West Virginia Code §17B-3-6 to issue subpoenas and subpoenas duces tecum which shall be issued in accordance with the provisions of West Virginia Code §29A-5-1.

The scope of the hearing shall be whether the operation of a motor vehicle on the public streets and highways of this State by the applicant would be inimical to public safety or welfare.

After the hearing and consideration of all the testimony and evidence in the case, the Commissioner shall make and enter an order affirming, rescinding, or modifying the earlier order of the Commissioner.

A copy of the order made and entered following the hearing shall be served upon the licensee or applicant by registered or certified mail, return receipt requested.

If the Commissioner, after the hearing, does make and enter an order affirming his or her earlier order of denial, suspension or non renewal, the licensee or applicant shall be is entitled to judicial review as set forth in West Virginia Code Chapter 29A.

Upon a showing by its records or other sufficient evidence that the licensee is incompetent to drive a motor vehicle, the Department Division may suspend the license of an operator or chauffeur licensee without a preliminary hearing pursuant to West Virginia Code §17B-3-6.

3.3 Procedure for medical examination of licensee - The Department Division, having good cause to believe that a licensed operator or chauffeur licensee is incompetent, or otherwise not qualified to be licensed, may upon written notice of at least five days to the licensee require him to submit to a medical examination by a physician of the licensee's choice licensed in the United States and present a Medical Report Form, completed by a the physician of the applicant's choice, licensed in the United States, or require a report by a Board Certified Physician in the appropriate medical specialty for the condition under consideration, or require a Vision Examination Report Form completed by an optometrist or ophthalmologist, licensed in the United States, of the applicant's choice, to the Commissioner for presentation to the Driver's License Advisory Board established in accordance with West Virginia Code §17B-2-7a. The Medical Report Form and Vision Examination Report Form shall be ~~as~~ provided by the Commissioner.

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

3.3.1 Determine that the licensee is competent to drive a motor vehicle;

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

3.3.3 Determine that the licensee is incompetent to drive a motor vehicle, that no appropriate restrictions can be imposed under which the licensee could competently operate a motor vehicle, and order the suspension of the license until such time as the licensee is required to submit further information to determine whether or not he is competent to drive a motor vehicle.

Upon making a determination that the licensee is incompetent to drive a motor vehicle, the Commissioner shall immediately make and enter an order suspending the license. The Department Division, upon suspending a license,

may, in the event the Commissioner determines that the continued operation of a motor vehicle by the licensee presents a clear and immediate danger to the licensee and others, require that the license be surrendered to and be retained by the Department Division until the outcome of any hearing requested or until the end of the period of the suspension. A copy of the order shall be immediately forwarded to the licensee by registered or certified mail, return receipt requested. Upon receipt by the applicant licensee of the Order of Suspension, the licensee shall have ten (10) days to request, in writing, from the Commissioner a hearing upon the suspension by the Commissioner. Such The written request must be filed with the Commissioner in person or by registered or certified mail, within ten (10) days after receipt of a copy of the order of suspension. The hearing shall be before the Commissioner or an authorized deputy or agent of the Commissioner. All of the pertinent provisions of West Virginia Code ~~Chapter 29A, Article 5, shall~~ §29A-5-1 et seq. apply to the hearing. The hearing shall be held in the county where the licensee resides unless the Commissioner or the Hearing Examiner and such the licensee agree that the hearing may be held in some other county. Any such hearing shall be held as early as practical after the date upon which the Commissioner received the written request. The Commissioner may postpone or continue any hearing at his discretion or upon application of the licensee for good cause shown.

A timely request for a hearing may at the discretion of the Commissioner stay the Order of Suspension.

For the purpose of conducting such a hearing, the Commissioner has the power and authority pursuant to West Virginia Code §17B-3-6 to issue subpoenas and subpoenas duces tecum which shall be issued in accordance with the provisions of West Virginia Code §29A-5-1.

The scope of the hearing shall be whether the licensee is competent to operate a motor vehicle on the public streets and highways of this State.

After the hearing and consideration of all the testimony and evidence in the case, the Commissioner shall make and enter an Order affirming, rescinding, or modifying the earlier Order of the Commissioner.

A copy of the Order made and entered following the hearing shall be served upon the licensee by registered or certified mail, return receipt requested.

If the Commissioner, after the hearing, does make and enter an order affirming his earlier Order of Suspension, the licensee shall be entitled to judicial review as set forth in West Virginia Code Chapter 29A.

3.4 Standards for Medical or Vision Review

3.4.1 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.

3.4.2 Vision - Conventional corrective lenses, including surgical intraocular implants and contact lenses, ~~will be~~ are acceptable for meeting the visual acuity requirements for any learner's permit or driver's license, ~~chauffeur's~~

~~license, or junior probationary license.~~ Special equipment or special lens arrangements ~~will not be~~ are not considered conventional for the purposes of this rule.

Those applicants or licensees who do not satisfy the visual acuity standard of 20/40 may be required to submit a Vision Examination Report Form, completed by an optometrist or ophthalmologist, licensed in the United States, of the applicant's choice, to the Commissioner for presentation to the Driver's License Advisory Board. The Board may consider peripheral vision, depth perception and color recognition in their recommendation to the Commissioner. Additionally, the Commissioner may prescribe a traffic environment vision test be administered to the applicant or licensee by designated officers of the Department Division of Public Safety.

§91-5-4. Reinstatement of Suspended Registration

4.1 Procedures - Upon suspension of any registration in accordance with any of the provisions of the West Virginia Motor Vehicle Safety Responsibility Law, Chapter 17D of the Code, the license or registration plate involved shall be ~~forthwith~~ destroyed upon receipt of same by the Department Division. This procedure is necessary because of the limited storage facilities available to the Department Division and by virtue of the cost which would be involved in attempting to store such plates. Accordingly, upon reinstatement of any such registration within the registration period, application must be made for a duplicate or substitute registration or license plate upon the form prescribed for such purpose, and the fee required ~~shall be that established~~ by West Virginia Code §17A-10-11. ~~If the registration card pertaining to the registration which was suspended was not returned to the Department Division during the period of suspension, and such applicant does not possess such card at the time of reinstatement of the suspended registration, the fee established by said Section 11 for obtaining a duplicate or substitute registration card shall also be required.~~

§91-5-5. Reinstatement of Driving Privileges of Persons Whose ~~Operator's and Chauffeur's~~ Driver's Licenses Were Revoked under Prior Enactment of §17C-5-2.

5.1 Procedures - Any person whose ~~operator's or chauffeur's~~ driver's license has been revoked may apply for restoration of driving privileges at at the end of the period of revocation or minimum period of revocation as the case may be. Any such person whose driving privileges were revoked for a conviction under West Virginia Code §17C-5-2 prior to its reenactment in 1981 may request in writing to have such person's driving privileges restored. In addition to filing proof of financial responsibility as required by West Virginia Code ~~Chapter 17D; Article 4~~ §17D-4-1 et seq., any such person convicted for a subsequent offense under said West Virginia Code §17C-5-2 within a period of five (5) years must also, in light of the former provisions of said West Virginia Code §17C-5-2 obtain and file with the written request, ~~five~~ five letters from five persons in the applicant's community. Each of these letters must state that the writer has known the applicant personally for more than five years; that the applicant has not driven a motor vehicle during the period of revocation; that in the writer's opinion the applicant is not likely to repeat the offense for which the license was revoked; that the public safety does not require that the applicant's license be revoked any longer; and that the applicant has not, to the knowledge of the writer, been

addicted to the use of intoxicating beverages or narcotic drugs or used the same during the preceding five years. All hearings upon the written request for restoration of driving privileges shall be held in accordance with the provisions of Department Division of Motor Vehicles Rule Series-1, Section-3 91CSR1.3.

§91-5-6. Suspending a West Virginia Resident's License Upon Conviction in Another State

6.1 Statutory Provisions - West Virginia Code §17B-3-3 authorizes the Commissioner to suspend a resident's license upon conviction of a traffic offense in another state jurisdiction.

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

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

Driving privileges can only be restored after the licensee has complied with all the provisions of the Motor Vehicle Code and Administrative Regulations in the same manner that would be required if such the licensee had been convicted in this State.

§91-5-7. The Point System (Revised 1988)

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

7.2 Offenses - Point Total - When any licensee of the State of West Virginia is convicted in the State of West Virginia or, pursuant to the provisions of West Virginia Code §17B-3-3, in any other state jurisdiction, of any of the following offenses involving a motor vehicle, which conviction has become final, the offense and the point total shown opposite such offense will be entered on such licensee's driver record maintained by the Department Division of Motor Vehicles.

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

(Proposed)
Division of Motor Vehicles
Legislative Rule §91-5-7

§17C-6-1	Speeding in school zone	6
§17C-12-7, §17C-18-1	Passing stopped school bus	6
§17C-3-4, §17C-12-5, §17C-18-1	Failure to obey stop signs and other traffic signs and control devices, except failure to obey traffic <u>light control</u> signals	3
§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 in excess of 75 m.p.h., except on highways where established speed limit is 65 m.p.h. and conviction was in excess of 80 m.p.h.	6
§17C-6-1, §17C-6-4, §17C-18-1	Speeding in violation of specified or established limits where the speed was not in excess of 75 m.p.h.	3
§17C-9-1, §17C-9-2, §17C-9-3, §17C-9-4, §17C-9-5, §17C-10-2, §17C-12-6, §17C-18-1	Failure of driver to yield right of way	3
§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
§17C-7-5 §17C-18-1	Passing in face of oncoming traffic	3

(Proposed)
 Division of Motor Vehicles
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§17C-7-7, §17C-18-1	Passing in no-passing zone	3
§17C-15-1, §17C-15-2, §17C-18-1	Operation of vehicle without lighted lamps or lights when required to be lighted	2
§17C-7-10, §17C-18-1	Following too closely	2 3
§17C-14-5, §17C-18-1	Operation of a vehicle with more than three persons in the front seat	2
§17C-14-2, §17C-18-1	Improper backing	2
§17C-7-8, §17C-18-1	Driving wrong way on one-way street, highway or roadway	2 3
§17C-8-6, §17C-8-8, §17C-8-9, §17C-8-10, §17C-18-1	Improper turning movements, or improper signals, or no signals	2

17C All other moving violations 2
 (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 below would not be considered a moving violation and consequently have no point value in the administration of the Driver Improvement Program:

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

Convictions for operating vehicles on the highways of this or any other state in violation of the weight, height, length and width provisions of the West Virginia Code.

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

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

7.4 Traffic Accidents Not Involving Convictions - Although West Virginia Code §17B-2-14 provides that records be kept on traffic accidents, no points will be assigned for any traffic accident not involving a conviction; however, when sufficient points have been accumulated to result in a review of a driver's record as outlined in Sec. 7.12 of this rule, records on file in the Department Division of any accident not involving a conviction may be considered.

7.5 ~~West Virginia Drivers Convicted In Other States~~ Traffic Convictions - The appropriate number of points indicated in Section 7.2 of this rule will be noted on the driver record of any licensee convicted of any of the above offenses ~~in violation of any municipal charter, bylaw or ordinance of any municipality~~ in West Virginia Circuit, Magistrate or Municipal Court. Consistent with the provisions in West Virginia Code §17B-3-3 any licensee of the State of West Virginia convicted in any other state or municipality therein, or in the District of Columbia, of any offense described in Section 7.2 of this rule in violation of any statute or ordinance of such other state, municipality or District of Columbia shall be charged with the appropriate number of points shown in said Section 7.2 of this rule opposite the description of such the offense.

7.6 Forfeiture of Bail Or Deposited Collateral - Consistent with the provisions of West Virginia Code §17B-3-4 requiring the furnishing to the Department Division of 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 forfeiture has not been vacated, shall be is equivalent to a conviction.

7.7 Points Assigned for Same Occurrence - When a licensee is convicted of two or more offenses arising out of the same occurrence, points will be assigned for only one such offense and when there is a difference in the point values of the offenses, the greater point value will be assigned.

7.8 Revocations - West Virginia Code §17B-3-5 provides that certain convictions result in an automatic revocation, as opposed to suspension, of the ~~operator's or chauffeur's~~ driver license of the person so convicted. ~~In as much as revocation is mandatory, such offenses will be noted by the Department on the driver record involved, but no points will be assigned for such convictions, except for reckless driving convictions where revocation is not mandatory~~ These convictions are recorded on the licensee's driver record with no assignment of points. Reckless driving convictions are assessed points unless there are three such convictions occur within a period of twenty-four months. In these cases, the licensee shall be subject to the mandatory revocation in accordance with West Virginia 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 such conviction is required and furnished to the Department Division under the provisions of West Virginia Code §17B-3-4 such conviction shall be noted, without point value, on the driver record of the individual licensee concerned.

~~7.9 Warning Letters - The Department shall send a warning letter to any licensee whose record shows a total of 6 points. The letter will advise the licensee of the convictions recorded on the licensee's driver record, will remind the licensee of the Department's power of suspension and will urge the licensee to make every effort to drive safely at all times.~~

~~7.10~~ 7.9 Driver Improvement Questionnaire - Any licensee whose record shows a total of nine (9) to eleven (11) points will be requested to complete a Driver Improvement Questionnaire. ~~This questionnaire will be mailed to the licensees most recent drivers license address on file with the Department and pursuant to the provisions of West Virginia Code §17A-2-19, the licensee shall~~

~~be considered as having been given notice upon expiration of four days from mailing. The questionnaire shall be completed in full by the licensee and submitted to the Department within twenty days from the date of the letter. For the purposes of this section, the postmark on the envelope of the mailed questionnaire shall serve as the measure of compliance with the twenty-day requirement.~~

~~7.11 Failure to Submit or Complete Questionnaire — within the required time period will result in an order being directed to the licensee to appear for an interview with a representative of the Department in the licensee's county of residence. At the interview, the driving record of the licensee will be reviewed. Failure of the licensee to appear at this interview, without good cause shall be grounds for suspension of the licensee's privilege to operate a motor vehicle for a period of thirty days.~~

~~7.12 7.10 Accumulation of Twelve or More Points - will result in the Department Division undertaking a review of the licensee's driving driver record. This review shall be based on a consideration of all facts and circumstances including the driving driver record, police reports, accident reports, and convictions for which no point values were recorded as well as any other information pertaining to the licensee on file with the Department Division. After an evaluation of the licensee's driving driver record, the Department Division may: 1) advise the licensee that continued violation of traffic laws will result in suspension of the licensee's privilege to operate a motor vehicle, or 2) place the licensee on probation for a period not to exceed one (1) year under such conditions as the Department Division feels is necessary for a period not to exceed one (1) year, or 3) suspend and/or place on probation the licensee's privilege to operate a motor vehicle for a combined period not to exceed one (1) year. If it is determined that some action is to be taken, it shall be because, as specified in West Virginia Code §17B-3-6, the Department Division has determined that the licensee has been convicted with such frequency of serious offenses against traffic regulations governing the movement of motor vehicles as to indicate a disrespect for traffic laws and a disregard for the safety of other persons on the highways or is a habitually reckless or negligent driver of a motor vehicle.~~

~~7.13 7.11 Length Of Time Points Maintained On Driving Record - The total number of points, if any, accumulated by any licensee shall be maintained on the licensee's driver record for a period of two years from the date of the conviction noted on such licensee's driver record. Thereafter, the points shall be eliminated but the record of convictions shall remain so that if at any future time sufficient points are accumulated to cause the Department Division to review the licensee's driving driver record, such convictions may be considered in determining the action, if any, to be taken following such review. The point totals accumulated by any licensee who, after review, is placed on probation or whose license is suspended following review, or who whose license is placed or remains on probation following a hearing, or whose license is or remains suspended following a hearing, in accordance with the provisions of Section 7.15 7.13 hereof of this rule, shall be eliminated at the expiration of the suspension and/or probation period. However, the record of convictions shall remain so that if at any future time sufficient points are accumulated to cause the Department Division to review the licensee's driving driver record, such convictions may be considered in determining any action which may be taken.~~

(Proposed)
Division of Motor Vehicles
Legislative Rule §91-5-7

~~7-14~~ 7.12 Effective Starting Time For Period Of Suspension - The suspension of ~~any operator's or chauffeur's~~ driver's license under the Driver Improvement Program ~~shall be~~ is effective ten days from the mailing of the notice of suspension. Eligibility for reinstatement ~~shall will~~ be calculated in accordance with ~~Department of Motor Vehicles Rule Series-16~~ Rule 91CSR16, Eligibility for Reinstatement Following Suspension or Revocation.

~~7-15~~ 7.13 Hearings - In accordance with the provisions of West Virginia Code §17B-3-6, any licensee whose license is suspended or placed on probation ~~shall be~~ is entitled to a hearing. The request for any such hearing shall be made in accordance with the provisions of ~~Department of Motor Vehicles Rule, Series-1~~ 91CSR1, Administrative Due Process, and the hearing shall be conducted as provided in ~~said~~ the rule. When a hearing is requested, the ~~Department~~ Division shall give the licensee notice of the time and place of hearing. The hearing shall be held as early as practical. The Commissioner may postpone or continue any hearing on his own motion or upon the application of the licensee for good cause shown. The notice of hearing shall advise the licensee of the matters to be considered at such hearing. Upon such hearing the ~~Department~~ Division shall either rescind its order of suspension or probation or, affirm the suspension or probation of such license. If the suspension is rescinded, but the ~~Department~~ Division feels that some lesser action is appropriate, the ~~Department~~ Division may place the licensee on probation under conditions established by the ~~Department~~ Division for a period not to exceed one year from the date of rescission of the suspension.

~~7-16~~ 7.14 Judicial Review - Any licensee whose ~~operator's or chauffeur's~~ driver's license is, or remains, suspended after a hearing held in accordance with the provisions of this Section or ~~Department of Motor Vehicles Rule, Series-1~~ 91CSR1, or who after such a hearing is placed, or remains, on probation under conditions established by the ~~Department~~ Division, ~~shall be~~ is entitled to seek judicial review in accordance with the provisions of West Virginia Code §29A-5-4 and any other remedies provided by law for the review of the action taken by the ~~Department~~ Division.

~~7-17~~ 7.15 Applying For Reinstatement, Or Relief Of Probation - Any licensee whose license is suspended, or who is placed on probation may at any time during the period of suspension, or probation request reinstatement of ~~such~~ the suspended license, or to be relieved from such probation.

Upon receipt of any request, the ~~Department~~ Division may make any investigation ~~as deemed~~ it considers appropriate and may amend the previous action.

§91-5-8. Driver Improvement Clinics

8.1 Procedures - Driver Improvement Clinics are conducted at various times and locations throughout the State. The course, not to exceed fifteen hours, must be approved by the West Virginia ~~Department~~ Division of Motor Vehicles. The instructors conducting these clinics must be certified by the approved organization.

8.2 Points To Be Deducted Upon Successful Completion - Attendance at any Driver Improvement Clinic ~~must be~~ is voluntary on the part of the licensee; however, on successful completion of a course, not to exceed fifteen hours,

three points will be deducted from the total points shown on the driver record of the licensee. The privilege of deducting points for completing a course will be permitted one-time-only once during any five year period, and only if the licensee has eleven (11) points or less, and has no outstanding violations which would place the licensee over the eleven (11) point level. No points will be deducted from any licensee's record who-may-have when the licensee has attended and received a certificate from a clinic prior to accumulating any points on the-licensee's his or her driving driver record.

A certificate must be presented from the instructor of the clinic to the Department Division of Motor Vehicles, showing that the course has been completed by the licensee before the points can be removed from the record.

Although three points will be subtracted from the driver record, the record of all convictions involving motor vehicles will remain so that if at any future time sufficient points are accumulated to cause the Department Division to require another review, the conviction for which the points were eliminated may be considered along with all other convictions of record in the Department Division in determining the action, if any, to be taken following such review.

8.3 Professional Truck Driver Course - In order to remove points that have been assessed against a licensee who holds a valid commercial driver's license, the licensee must successfully complete the Professional Truck Driver Course. All requirements outlined in Sections 8.1 and 8.2 of this rule will apply to the Professional Truck Driver Course.

§91-5-9. Procedures For Medical And Driving Re-Examination Of Licensed Drivers

9.1 Statutory Provisions - In accordance with West Virginia Code §17B-3-7, the Department Division of Motor Vehicles may require a re-examination of a licensed operator-or-chauffeur driver.

The Department Division, having good cause to believe that a licensed operator-or-chauffeur driver is incompetent or otherwise not qualified to be licensed, may upon written notice of at least five days require the licensee to submit to an vision, written and driving examination by the Division of Public Safety. Upon the conclusion of the examination, the Department Division shall take action as may be appropriate and may suspend or revoke the license of such person or may issue a license subject to restrictions as provided under West Virginia Code §17B-2-10. Refusal or neglect of the licensee to submit to the examination shall be grounds for suspension or revocation of the license.

9.2 Procedures - The Division of Motor Vehicles shall mail the notice of re-examination to-the-licensee-shall-be-mailed to the licensee's most recent driver license address on file with the Department Division of Motor Vehicles and shall be mailed 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 a suspension or revocation may be imposed for failure to appear and submit to the re-examination as directed by said the notice.

The re-examination shall administered by the Division of Public Safety consists of three parts. The first part covering physical qualifications shall consist of a vision test and color blindness test and an inquiry into any

physical disability. In addition to the physical qualifications, the examining officer ~~shall be required to~~ conducts a personal interview with the licensee.

The second part of the re-examination ~~shall~~ consists of a written test composed of questions of equal value. A minimum of 70% of the questions covering motor vehicles laws, rules of the road, highway warnings, traffic signs and signally devices correctly answered ~~will be~~ is required to pass the re-examination. The written test may be administered verbally if the licensee is determined by the examiner to be illiterate.

The reference document for the material on the test ~~shall come from~~ is the official Driver's Handbook as prescribed by the Commissioner of the Department Division of Motor Vehicles.

The third part of the re-examination ~~shall be~~ is the driving test that is given to new applicants applying for driver's licenses in this state. A passing score shall be the same as required for new applicants. The driving test shall not be given if the licensee fails to meet the minimum physical standards as set forth by the Commissioner of the Department Division of Motor Vehicles.

If the licensee fails the re-examination, the license will be suspended indefinitely upon notice from the Department Division of Motor Vehicles. The notice shall be sent by certified or registered mail and the suspension ~~shall be~~ is effective four days after the date of the suspension order.

The licensee ~~shall not be~~ is not eligible for a second re-examination until the expiration of thirty days from the date the license was surrendered to this the Department Division. The licensee must make a request, by letter or in person, to the Department Division of Motor Vehicles, for the opportunity to take subsequent re-examinations.

If a licensee fails a second re-examination, the licensee ~~will not be~~ 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 ~~will~~ is not be eligible for the fourth re-examination until six months have elapsed. Failure of four consecutive re-examinations ~~shall be~~ is grounds for permanent revocation and the licensee will not be eligible for additional testing until one year from the last re-examination date.

If the licensee fails to pass the re-examination because of failure to meet the visual qualifications, no further examination shall be granted until adequate evidence of visual improvement has been submitted.

Upon showing of good cause the Department Division may request any licensee to submit a medical report of a recent medical examination. The report must be submitted on forms prescribed by the Commissioner of the Division of Motor Vehicles in accordance with Section 3 of this rule.

After review of the submitted medical report, the Commissioner shall determine whether or not the license should be suspended in accordance with the provisions West Virginia Code §17B-3-7.

If the driver's license is suspended because of a physical condition and a satisfactory medical report is subsequently submitted, the Commissioner may

require the licensee to submit to a re-examination of the licensee's driving ability before the driver's license is reinstated.

Refusal or neglect of the licensee to submit to such a driver re-examination or physical examination, or both, requested in accordance with the provisions of West Virginia Code §17B-3-7, shall be is grounds for suspension or revocation of the driver's license.

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

10.1 Statutory Provisions - West Virginia Code §17A-2-16 authorizes the Department Division to suspend or revoke any and all registration cards, permits, operators, ~~and chauffeur~~ driver's licenses and registration plates issued to the person, firm or corporation by whom or on whose account any such fee or tax required fees shall have been determined to remain unpaid after such reasonable notice and demand. West Virginia Code §17A-2-23 authorizes the Department Division to apply a penalty fee in addition to any other penalty imposed by the West Virginia Code. In accordance with the provisions of West Virginia Code §17A-3-4, any registration paid for by a check which is returned for insufficient funds shall be suspended without prior notice. The notice and demand procedures in these rules do not apply to vehicle registration suspensions.

10.2 Determination of Unpaid Fee or Tax - Upon receipt of any check returned to the Department Division unpaid for any reason, the Department Division shall deem consider such fee or tax the required fee unpaid. If after reasonable notice the fee or tax remains unpaid, the Department Division shall suspend and/or revoke any and all registration cards, permits, operators and chauffeurs license and registration plates issued to the person, firm or corporation in accordance with West Virginia Code §17A-2-16 the document paid for with such check.

10.3 Reasonable Notice and Demand - Upon the Department's Division's receipt of a check or checks which are returned unpaid for any reason by the maker's check writer'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, shall be mailed a notice of proposed suspension or revocation. Said 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 any and all licenses or registrations shall become is effective. The licensee or registrant has ten (10) days to surrender the suspended or revoked licenses or registrations to the Department Division.

10.5 Failure to Surrender Documents - In accordance with the provisions of West Virginia Code §17A-9-7 and §17B-3-9, the Department Division shall notify the Superintendent of Public Safety to secure possession of such documents any license or registration which the licensee has failed to surrender and return same to the Department Division.

(Proposed)

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10.6 Administrative Hearing - Upon the written request of the licensee or registrant within ten (10) days of the date of mailing of the notice of proposed suspension, or revocation the Commissioner will afford the licensee or registrant the opportunity for an administrative hearing. The scope of the hearing shall be limited to whether or not the fee-or-tax required fees in question have been paid to the Department Division. The Commissioner may postpone or continue any hearing on his own motion or upon the application of the licensee for good cause shown.

10.7 Penalty and Reinstatement Fee - The provisions of West Virginia Code §17A-2-23 provides for a penalty fee for any returned checks. The provisions of West Virginia Code §17A-9-7 and §17B-3-9 provide for a reinstatement fee of suspended or revoked licenses and registrations. The provisions of West Virginia Code §17A-9-7 and §17B-3-9 also provide for an additional serve order fee if the Department Division of Public Safety is ordered to secure the suspended or revoked licenses or registrations.

10.8 Payment - Payment of all fees required under the provisions of these rules shall be by certified check, money order or cash.

§91-5-11 Suspension Under Nonresident Violator Compact

11.1 Statutory Provisions - West Virginia Code §17B-1C-1 authorizes this State's entry into the Nonresident Violator Compact. In accordance with these provisions 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, each member state is required to suspend the operating privileges of its drivers who fail to comply with the terms of certain citations issued by other compact states.

11.3 Notification - Upon notification of noncompliance with a traffic citation from another compact state, the licensee is sent a proposed order of suspension to the licensee's address of record by certified mail, return receipt requested. ~~The proposed order of suspension shall indicate that the~~ Department Division must receive 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 shall 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 the citation was dismissed, or the licensee adjudicated not guilty. Proof of compliance shall does not mean personal representation, or copies of money orders, personal checks, or certified checks.

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

(Proposed)
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not surrender the license to the Department Division of Motor Vehicles within ten (10) days of the effective date of suspension, the Department Division shall order the Department Division of Public Safety to secure such the license in accordance with West Virginia Code §17B-3-9.

11.6 Administrative Hearing - Upon the written request of the licensee within ten (10) days of receipt of the proposed order of suspension, the Commissioner will afford the licensee the opportunity for an administrative hearing. The scope of the hearing ~~shall be~~ is whether or not the person having a license suspended is the person to whom the citation was issued.

11.7 Reinstatement - Subsequent to the suspension of driving privileges for failure to comply with the terms of a citation from a compact member state, penalty fees under the provisions of West Virginia Code §17A-3-9 shall apply. 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 is required prior to reinstatement of a suspended driver's license.

91-5-12 Suspension or Denial of License Under Student Attendance Law

12.1 Statutory Provisions - In accordance with the provisions of West Virginia Code §17B-3-6(10) and §18-8-11, the Division of Motor Vehicles shall deny a driver's license or instruction permit or suspend a driver license previously issued to any person under the age of eighteen who cannot present:

12.1.1 Certificate of graduation issued to the person from a secondary high school or a general education development certificate.

12.1.2 Documents that the person is enrolled and making satisfactory progress towards a high school diploma or a general education development certificate.

12.1.3 Certification from the attendance director or chief administrator of the county that the person is excused from the requirements of §18-8-11.

12.2 Notification - Upon notification that a person under the age of eighteen years has failed to comply with West Virginia Code §18-8-11, the Division of Motor Vehicles will check to determine if the person is licensed. 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 will be suspended thirty (30) days after the date upon which the letter was mailed unless the licensee can show documentation of compliance with West Virginia 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 designate, or before the appropriate private school official concerning whether or not the licensees withdrawal from school was due to circumstances beyond the control of the licensee making the licensee eligible for a waiver from the provisions of West Virginia 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 commissioner will

afford the licensee the opportunity of an administrative hearing. The scope of the hearing is to determine if the licensee is under the age of eighteen and has been properly reported to the Division of Motor Vehicles.

12.4 Reinstatement - A licensee whose license has been suspended under West Virginia Code §17B-3-5, pursuant to West Virginia Code §18-8-11, shall have his or her license reinstated after paying all applicable fees and upon showing that he or she has

12.4.1 Reached the age of eighteen.

12.4.2 Certificate of graduation issued to the person from a secondary high school or a general education development certificate.

12.4.3 Documents that the person is enrolled and making satisfactory progress towards a high school diploma or a general education development certificate.

12.4.4 Certification from the attendance director or chief administrator of the county that the person is excused from the requirements of §18-8-11.

12.5 Issuance of a license to applicants under eighteen - Any applicant for a driver's license or learner's permit who is under the age of eighteen years shall provide documentation of compliance with West Virginia Code §18-8-11 to the Division of Motor Vehicles in order to obtain a license or permit. Documentation includes verification of enrollment from the public or private school in the form of written notice from the head of the school. During those months when school is not in session, a copy of the licensee's latest report card is proof of compliance if such report card was the last one issued for the previous school year.

§91-5-13 Suspension Under Resident Violator Program

13.1 Statutory Provisions - West Virginia Code §17B-3-3(a) authorizes the Division to suspend the driver's license of any person upon receipt of notification from a Magistrate or Municipal Court of this State that the licensee has either failed to appear in court when charged with a motor vehicle violation originating from Chapters 17A, 17B, 17C, 17D, or 17E of the West Virginia Code or has failed to pay all fines assessed as a result of being convicted.

13.2 Notification - Upon notification of noncompliance with the terms of the citation from a 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 is shown and all applicable fees are paid.

13.3 Proof of Compliance - Proof of compliance means certification from the court in the form of a receipt which shows that the fine and court costs have been satisfied, or a letter from the magistrate or 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 will remain suspended until such time as proof of compliance with the terms of the citation is received from the licensee, and the appropriate fees are paid. If the licensee does not surrender the license to the Division within ten (10) days of the effective date of suspension, the Division shall order the Division of Public Safety to secure such license in accordance with West Virginia Code §17B-3-9.

13.5 Administrative Hearing - Upon the written request of the licensee within ten (10) days of receipt of the proposed order of suspension, the Commissioner will afford the licensee the opportunity for an administrative hearing. 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 - Subsequent to the suspension of a driver's license for failure to comply with the terms of the citation, penalty fees under the provisions of West Virginia Code §17A-3-19 apply. Payment of these fees, in addition to proof of compliance with the citation is required prior to reinstatement of a suspended driver's license.

§91-5-14 Driving Under the Influence; Administrative Hearings (Effective 1984)

14.1 Application and Enforcement

14.1.1 Application - ~~These legislative rules apply~~ This section applies to hearings requested by persons whose license or privilege to operate a motor vehicle has been revoked pursuant to an offense described in Chapter 17C, ~~Article 5, and 5A of the Code~~ West Virginia §17C-5-1 et seq. and §17C-5A-1 et seq.

14.1.2 Enforcement - Enforcement of these legislative rules is vested with the Commissioner of the Division of Motor Vehicles or the Commissioner's lawful designee.

14.2 Definitions - The following definitions shall apply in the interpretation and enforcement of ~~these legislative rules~~ this section.

14.2.1 Arresting Officer - Means any law enforcement officer as described in West Virginia Code §17C-5-4.

14.2.2 Code - Means the Code of West Virginia of 1931, as amended.

14.2.3 Commissioner - Means the executive officer of the Department Division of Motor Vehicles appointed by the Governor pursuant to West Virginia Code §17A-2-2, or the Commissioner's lawful designee.

14.2.4 Hearing - Means the administrative procedures conducted by the Commissioner pursuant to ~~Chapter 17C and Chapter 29A of the Code~~ West Virginia Code §17C-5A-1 et seq. and §29A-5-1 et seq. and these legislative rules this section as applied to contested cases arising out of the enforcement of

administrative revocations imposed under the provisions of ~~Chapter 17C of the~~
Code West Virginia Code 17C-5A-1 et seq.

14.3 Challenge of the Secondary Chemical Test

14.3.1 Notification - Any person requesting a hearing under the provisions of West Virginia Code §17C-5A-2 and who intends to challenge the results of any secondary chemical test of blood, breath or urine, or intends to cross-examine the individual or individuals who administered the test or performed the chemical analysis, shall notify the Commissioner of his or her intent. ~~Such~~ The notification must be submitted in writing, either in person or by mail to the Commissioner in Charleston, West Virginia, at least ten days prior to the hearing date.

14.3.2 Admissibility - Failure to comply with the notice requirements of Section ~~4-01~~ 14.3.1 of this rule shall mean that the results of the secondary test, if any, will be admissible as though the person and the Commissioner had stipulated the admissibility of such evidence the results of the test.

14.3.3 Exceptions - The provisions of ~~4-02~~ Section 14.3.2 of this rule shall not be invoked in the case of a person who is not represented by counsel unless the communication from the Commissioner to the person establishing a time and place for hearing also informed the person of the consequences of his failure to timely notify the Commissioner pursuant to Section ~~4-01~~ 14.3.1 of this rule.

14.4 Request for Hearing

14.4.1 Initial Notice of Procedures - The order of revocation shall also include:

a. A statement of the issues involved. In accordance with the provisions of West Virginia Code §17C-5A-1a upon receipt of a notice of conviction the only issue to be considered if a hearing is requested is whether or not the person named in the order of revocation is the same person named in the transcript of the conviction.

b. A statement that a request for hearing must be made as prescribed in Section ~~5-02~~ 14.4.2 of this rule.

c. A statement that the Commissioner must be notified if there is an intent to challenge the results or operation of the secondary chemical test as prescribed in Section ~~4~~ 14.3.1 of this rule.

d. A statement of the costs associated with the hearing which may be incurred, as prescribed in Section ~~8~~ 14.7 of this rule.

14.4.2 Request For Hearing - A request for hearing must be submitted in writing to the Commissioner in Charleston, West Virginia, either in person or by registered or certified mail, return receipt requested. The request must be made within ten days from the date on which the order of revocation's mail receipt was signed. However, in cases where the registered

or certified mail is not signed for, the provisions of West Virginia Code §17A-2-19 shall apply. If the person requesting the hearing intends to challenge the results or operation of the secondary chemical test, notice of such action must be made as prescribed in Section 4 14.7 of this rule.

14.4.3 Notice of Hearing - The notice of hearing shall be sent to the person requesting the hearing by registered or certified mail, return receipt requested.

The notice shall contain:

- a. A statement of the date, time, and location of the hearing.
- b. A statement of the issues involved.
- c. A statement as to the consequences of failing to appear at the prescribed date, time and place of the hearing.
- d. A statement as to the consequences of failing to timely notify the Commissioner of his the licensee's intention to challenge the results or operation of the secondary chemical test pursuant the notice requirements of Section 4 14.3 of this rule.

14.4.4 Failure of Person Requesting Hearing to Appear - The failure of a person requesting a hearing to appear without first obtaining a continuance pursuant to Sections ~~5-06-or-5-07~~ 14.4.6 or 14.4.7 of this rule shall result in an automatic reinstatement of the revocation and assessment of the costs outlined in Section 8 14.7 of this rule.

14.4.5 Failure of Arresting Officer to Appear - The failure of the arresting officer to appear without first obtaining a continuance pursuant to Sections ~~5-06-or-5-07~~ 14.4.6 or 14.4.7 of this rule shall result in an immediate dismissal of the administrative revocation imposed under the provisions of ~~Chapter 17C of the Code~~ West Virginia Code 17C-5A-1 et seq. Provided, that if the arresting officer encounters an emergency situation requiring his or her services enroute to a hearing, the nonappearance shall not result in a dismissal if the arresting officer or his agency notifies the hearing examiner no later than 15 minutes after the scheduled start of the hearing. Upon his notification, the hearing examiner shall either delay the start of the hearing or postpone the hearing.

14.4.6 Request for Continuance - The arresting officer or the person requesting a hearing may be granted a continuance of a scheduled hearing. The request for continuance shall be in writing, and must be received by the Director of the Safety and Enforcement Division of the Department Division of Motor Vehicles at least five days prior to the scheduled hearing date. Such Requests will be granted if good cause is shown. Good cause shall include such reasons as serious illness, medical appointments, court appearances, or religious holidays of either party. In no case may either party be granted more than two continuances.

14.4.7 Continuance on the Motion of the Commissioner - The Commissioner may postpone or continue a hearing on his or her own motion.

The motion shall be for good cause including, but not limited to docket management, availability of hearing examiners or other essential personnel, or mechanical failure of essential equipment, ie recording equipment, file storage equipment etc. The Commissioner may also grant a continuance on less than five days notice to either party in the circumstances of unexpected personal emergencies of the attorney, licensee, arresting officer or key witnesses. A continuance for a personal emergency is not a continuance under the provisions of Section 14.4.6 of this rule.

14.5 Hearing Procedures

14.5.1 Representatives - A person requesting a hearing as well as the arresting officer may be represented by an attorney, licensed to practice law in the United States.

14.5.2 Evidence - The provisions of West Virginia Code §29A-5-2 shall apply to questions concerning evidence.

14.5.3 Hearing Officer - The hearing officer ~~shall have~~ has the powers enumerated in West Virginia Code §29A-5-1 as well as those granted in these legislative rules.

14.5.4 Presentation of Evidence and Cross Examination -

a. The arresting officer carries the burden of proof and therefore, has the initial opportunity to present evidence.

b. The person requesting the hearing ~~shall have~~ has the right to cross examine the arresting officer or any additional witness presented by the arresting officer, unless such cross examination is precluded by the Code or these Legislative Rules.

c. Following the submission of evidence and cross examination, if any, of the arresting officer or witnesses presented by the arresting officer, the person requesting the hearing shall then be given an opportunity to present evidence.

d. The arresting officer shall have the right to cross examine any person who gives testimony.

e. Following the presentation of all evidence, each party shall have the right to offer closing arguments.

14.5.5 Continuation and Adjournment - A hearing in progress may be continued from one day to another or adjourned to a later date by the hearing officer.

14.6 Transcription of Reported Testimony and Evidence

14.6.1 Content of Transcript - All testimony, evidence, arguments, and rulings on the admissibility of testimony and evidence shall be reported by stenographic notes and characters or by mechanized means.

14.6.2 Request for Transcript - Upon written request, all materials

shall be transcribed, and a copy furnished to the person requesting the hearing at his or her own expense. The Commissioner shall collect a fee of One Dollar and Fifty Cents for each page transcribed.

14.7 Assessment of Costs

14.7.1 Docket Fee - A docket fee of Ten Dollars shall be assessed against the person requesting a hearing.

14.7.2 Witness Fees - A fee of Fifteen Dollars per witness and Fifteen Cents per mile for each mile necessarily traveled to and from the place of the hearing shall be assessed against the person requesting the hearing for each witness.

14.7.3 Payment of Fees - Any person filing a request for a hearing who fails to have the Commissioner's order of revocation rescinded or modified to a lesser period of revocation shall be assessed the fees prescribed in ~~8-01 and 8-02~~ Section 14.7.1 or 14.7.2 of this rule. Payment of these fees if applicable shall be one of the criteria to be met before reinstatement of a license or privilege to operate a motor vehicle can be completed.

14.8 Subpoenas

In accordance with the provisions of West Virginia Code §17C-5A-2 and §17A-2-18 which authorize the Commissioner to issue subpoenas or subpoenas duces tecum, the Commissioner ~~shall have~~ has the authority to issue subpoenas or subpoenas duces tecum pursuant to West Virginia Code §29A-5-1b.

14.9 Orders or Decisions

14.9.1 Findings of Fact and Conclusions of Law - shall be made pursuant to ~~Chapter 29A and Chapter 17C of the Code~~ West Virginia Code §17C-5A-1 et seq. and §29A-5-1 et seq.

14.9.2 Final Order - Every final order entered by the Commissioner shall be made pursuant to ~~Chapter 29A and Chapter 17C of the Code~~ West Virginia Code §17C-5A-1 et seq. and §29A-5-1 et seq.



GASTON CAPERTON
Governor
ARTHUR L. GLEASON, JR.
Secretary

DEPARTMENT OF TRANSPORTATION
DIVISION OF MOTOR VEHICLES
CAPITOL COMPLEX, BUILDING 3
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JANE L. CLINE
Commissioner

91CSR5 (1991-92 Revisions)

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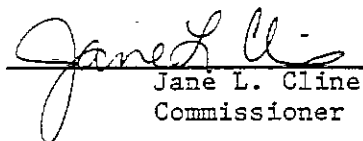
91CSR5 (1991-92 Revisions)

CHANGES TO RULE PRIOR TO FILING OF AGENCY APPROVED RULE

1. Page 1, Section 1.2, strike ~~§17B-2-7~~, incorrect code reference.
2. Page 6, Section 7.2, strike ~~4~~ insert 6 (Hit and Run).
3. Page 8, Section 7.2, strike ~~2~~ insert 3 (Following too closely).
4. Page 8, Section 7.2, strike ~~2~~ insert 3 (Driving Wrong Way).
5. Page 20, Section 14.4.5, add language related to arresting officer missing a hearing as a result of encountering an emergency situation enroute to a hearing.

GRAMMATICAL CORRECTIONS

1. Page 6, Section 7.2, strike ~~state~~ insert jurisdiction.
2. Page 10, Section 7.11, strike ~~hereof~~ insert of this rule.
3. Page 11, Section 7.12, strike ~~shall-be~~ insert is.
4. Page 11, Section 7.12, strike ~~shall~~ insert will.
5. Page 11, Section 7.12, insert the.
6. Page 12, Section 8.2, insert driver.
7. Page 12, Section 9.2, strike ~~of-Motor-Vehicles~~.
8. Page 13, Section 9.2, strike ~~this~~ insert the.
9. Page 14, Section 10.2, strike ~~deem~~ insert consider.
10. Page 15, Section 10.7, strike the s in provides.
11. Page 17, Section 12.5, insert or permit.
12. Page 17, Section 12.5, strike ~~will-suffice-as~~ insert is.
13. Page 18, Section 13.5, substitute is for shall be.
14. Page 19, Section 14.3.2, strike ~~shall~~ insert an s on means.


Jane L. Cline
Commissioner



FILED

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CHARLESTON, WEST VIRGINIA
25317

1991 AUG 13 PM 3: 38 JANE L. CLINE
Commissioner
OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

91CSR5

Summary of Public Comments Received and Response
(1991-92 Revisions)

1. Norma and Lester Levy
 - A. Expressed opinion that there were too many continuances granted in DUI hearings. No suggested changes.
2. Mothers Against Drunk Driving - WY State Offices
 - A. Supports limiting the number of continuances granted in DUI hearings.
 - B. Expressed opinion that DMV use Nolo Contendre pleas for automatic license revocation for DUI.

RESPONSE - West Virginia Code §17C-5A-1a(e) states "For the purposes of this section, a person is convicted when such person enters a plea of guilty or is found guilty by a court or jury." The House passed versions of the bill (HB2349) included the nolo contendere pleas as a basis for automatic license revocation without hearing. The nolo contendere plea was deleted from the final legislation. The Division cannot supersede the Code or legislative intent by a rule.

3. West Virginia Safety Council - Jack Bennet
 - A. Supports change to Driver Improvement Clinic procedures which allows the course to be taken more than once for point reduction purposes and establishes a separate course for commercial drivers. No suggested changes.
4. Division of Public Safety - Colonel J. R. Buckalew, Superintendent, West Virginia State Police.
 - A. Suggested changing the point value assessed for three violations.
 1. Hit and run; from 4 points to 6 points.
 2. Following too closely; from 2 points to 3 points.
 3. Driving wrong way on one way street; from 2 points to 3 points.

RESPONSE - The Division agrees with the recommendations of the State Police. Hit and Run is a serious offense which deserves more than 4 points. The other two violations are moving violations which should have the same point value as other moving violations. These changes have been made to the rule. (Section 7.2, pages 6 and 8.)

B. Suggested deleting 14.3.3 and adopting a form letter advising of consequences of failure to notify Commissioner of intent to challenge the breathalyzer.

RESPONSE - DMV already notifies each person in writing of the consequences. The section should remain as a part of the rule.

C. Suggested amending 14.4.5 and 14.4.6 to provide for emergencies which may arise enroute to hearing which prevents the arresting officer from attending the hearing.

RESPONSE - The Division agrees that language should be inserted to provide for continuance in emergency situations. An arresting officer on the road to appear for a hearing has a responsibility to stop and render aid or investigate accidents or situations which may occur in his presence. This suggestion has been implemented on page 20, Section 14.4.5. Such "in line of duty emergency" would not have to be included in 14.4.6 as the change is being made to Section 14.4.5.

D. Questioned Section 14.4.7 as being too vague.

RESPONSE - The Division of Public Safety withdrew this comment after reviewing the rules with the Commissioner.



Jane L. Cline
Commissioner

/mjb

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1991 AUG 13 PM 3:38

Division of Motor Vehicles
Attention: Steven O. Dale
Bldg 3, Room 113, Capitol Complex
Charleston, WV 25317

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

Reference: Title Number 91CSR5
DUI Hearing Procedures

Date : August 1, 1991

Please, I beg you, crack down on the DUI in every way possible!

For over a year now my husband and I have listened to DUI cases -- both at the Department of Motor Vehicles several times and almost all day every Friday at the Magistrate level monitoring DUI cases.

THERE ARE DEFINITELY TOO MANY CONTINUANCES USED UNDER THE CURRENT DMV LAW.

I am sure there must be exceptions but I am also positive the continuances are used by the lawyers waiting for a time the arresting officer cannot appear.

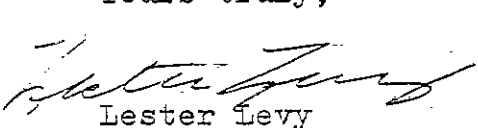
Working with Mothers Against Drunk Driving has opened our eyes to the system with which West Virginia handles the DUI driver and believe you me, everything is slanted to favor the driver.

We are gathering records and one day these will be made public.

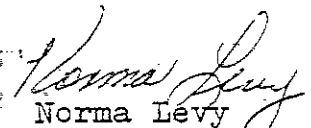
The DMV must act to get these drivers from our roads in a faster manner than what is now happening.

Ofcourse I am speaking only for ourselves in this letter, not for MADD, but I am speaking from experience! If you want additional input, we will be at your service.

Yours truly,



Lester Levy
1600-A Loudon Heights Road, Charleston, WV 25314



Norma Levy
1600-A Loudon Heights Road, Charleston, WV 25314

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MADD

Mothers Against Drunk Driving

605 9th Street, Suite 321 • P.O. Box 2102 • Huntington, WV 25721-2102 • 1 (800) 729-6233 • (304) 523-6277

WEST VIRGINIA STATE OFFICE

August 8, 1991

Mr. Steven D. Dale
Division of Motor Vehicles
Building 3, Room 113, Capitol Complex
Charleston, WV 25317

Dear Mr. Dale:

The State Office of Mothers Against Drunk Driving wishes to comment on proposed changes to the DUI laws.

The first proposed change concerns DUI hearing regulations and is cited as Title Number 91CSR5; Cite Authority - Section 17A-2-9: Denial, Suspension, Revocation or Nonrenewal of Driving Privileges.

The second proposed change is H.B. 2349 (By Delegate Louissos) to include nolo contendere as a definition of guilt relating to license revocation.

We will address these proposed changes separately.

Section 14.4.6 - Request for Continuance:

At the present time, it is our understanding that these Administrative Hearings can be continued as long as may be necessary due to various reasons. It is our opinion that by limiting the continuances to two by either party, it would result in better and much faster resolution of these hearings. It is also our opinion that when these hearings are continued on an unlimited basis, evidence given by the arresting officer may not be remembered exactly, the officer retires, moves to another state or just simply forgets the entire matter.

H.B. 2349:

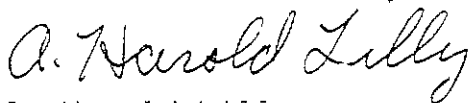
In Section 17C-5A-1a(e), it states that "(f)or the purposes of this section, a person is convicted when such person enters a plea of

guilty or "is found guilty by a court or jury".

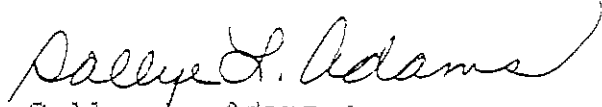
It is our opinion that when a person enters a plea of nolo contendere, this is a plea of guilty and should be allowed as such and thus to require license revocation.

Thank you for allowing us the opportunity to comment on these proposed changes.

Sincerely,



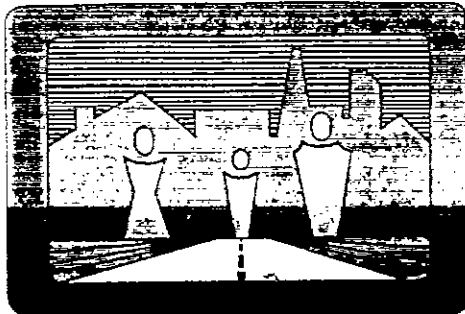
A. Harold Lilly
State Coordinating Committee
Chairperson
MADD, West Virginia



Sallye L. Adams
Office Manager
MADD, West Virginia

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1550 FOURTH AVENUE
ROOM 217
CHARLESTON, WV 25312
Phone (304) 343-3171



JOHN F. "JACK" BENNETT
EXECUTIVE DIRECTOR

WEST VIRGINIA SAFETY COUNCIL, INC.
Chapter of the National Safety Council

August 8, 1991

Department of Transportation
Division of Motor Vehicles
Capitol Complex, Building 3
Charleston, WV 25317
Attn: Steve Dale

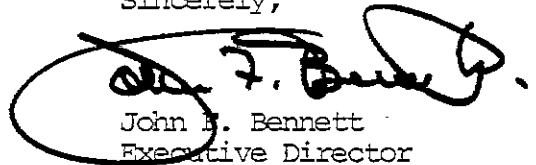
Dear Mr. Dale:

The proposed rule changes appertaining the Point System, Driver Improvement Clinics, etc. have been reviewed by the West Virginia Safety Council.

We have been an advocate of these recommended changes within the Driver Improvement Clinic area for over ten (10) years. We feel that these are justifiable changes and heartily concur for their adoption.

If further comments are needed please do not hesitate to contact me.

Sincerely,


John F. Bennett
Executive Director

JFB:th

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Department of Public Safety
(West Virginia State Police)
725 Jefferson Road
South Charleston, West Virginia 25309
Executive Office

Gaston Caperton
Governor

Colonel J. R. Buckalew
Superintendent

August 12, 1991

Jane L. Cline, Commissioner
Division of Motor Vehicles
Building 3, Room 113
Charleston, West Virginia 25317

Dear Commissioner Cline:

On behalf of the West Virginia State Police, please accept this letter in response to the written comment period as it pertains to Legislative Rule 91CSR5.

Section B. Driver Improvement Clinics

Subsection 2

The West Virginia State Police would inquire as to what agency will administer this program and how it is to be administered.

Section 91-5-7

Subsection 7.2

The West Virginia State Police recommends the following changes:

17C-4-2 from 4 points to 6 points
17C-7-10 from 2 points to 3 points
17C-7-8 from 2 points to 3 points

Jane L. Cline, Commissioner
Page 2
August 12, 1991

Section 91-5-14

Subsection 14.3.3

This subsection should be deleted. To ensure the person is always informed of the consequences for his failure to give timely notification, a form letter style correspondence from the Commissioner should be designed.

Subsection 14.4.5

This subsection must be changed. It makes no allowance for the arresting officer should he encounter an emergency situation enroute to the administrative hearing.

Subsection 14.4.6

Once again, this subsection does not allow for last minute emergencies which may be encountered by the arresting officer.

Subsection 14.4.7

This subsection is too vague. It allows a continuance for "good cause," however, it does not define good cause.

If I or my staff may be of further assistance in this matter, please do not hesitate to contact me.

Sincerely yours,



COLONEL J. R. BUCKALEW
SUPERINTENDENT

JRB/ab