

WEST VIRGINIA

SECRETARY OF STATE

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

Form #2

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1988 SEP 21 PM 2:23

SECRETARY OF STATE

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: Department of Motor Vehicles TITLE NUMBER: 91

RULE TYPE: Legislative; CITE AUTHORITY §17A-2-9

AMENDMENT TO AN EXISTING RULE: YES X NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED:

TITLE OF RULE BEING AMENDED: Series 5, Section 3

Denial of Driving Privileges for Medical Reasons

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED:

TITLE OF RULE BEING PROPOSED:

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON October 26, 1988 AT 12:00 Noon ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS.

Department of Motor Vehicles

1800 Washington Street East, Room 80

Charleston, WV 25317

Attention: Steven O. Dale

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THIS PROPOSED RULE.

X R. L. Bechtold

Commissioner

ATTACH A BRIEF SUMMARY OF YOUR PROPOSAL

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

FILED

Rule Title: Denial, Suspension, Revocation or Non Renewal of Driver's License Privileges 1097 SDR 2:24

Type of Rule: Legislative x Interpretive Procedural SECRETARY OF STATE

Agency Department of Motor Vehicles Address 1800 Washington St., E
Charleston, WV 25317

1. Effect of Proposed Rule	ANNUAL		FISCAL YEAR		
	Increase	Decrease	Current	Next	Thereafter
Estimated Total Cost	\$	\$	\$	\$	\$
Personal Services					
Current Expenses					
Repairs and Alterations		N/A		N/A	
Equipment					
Other					

2. Explanation of above estimate:

Promulgation of this rule will not effect the expenses of revenue of this Department.

3. Objectives of these rules:

The objective of this rule is to provide for pre-suspension administrative hearing in certain cases involving the review of the competence of licensed drivers. The amendments to this rule are a result of a Circuit Court Order. This rule will also establish more specific medical review criteria as recommended by the Driver License Advisory Board established in accordance with West Virginia Code 17B-2-7a.

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

None

B. Economic Impact on Political Subdivisions; Specific Industries; Specific groups of citizens.

Potentially, this rule may provide additional opportunities for certain persons to obtain restricted driving privileges.

C. Economic Impact on Citizens/Public at Large.

None

Date: September 21, 1988

Signature of Agency Head or Authorized Representative

X L. J. Buchwald
Commissioner

(Proposed)
TITLE 91
WEST VIRGINIA LEGISLATIVE RULES
DEPARTMENT OF MOTOR VEHICLES
SERIES 5

FILED
1988 SEP 21 PM 2:24
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 and reinstatement of motor vehicle operating privileges.

1.2 Authority - West Virginia Code §17A-2-9, §17B-2-7.

1.3 Filing Date - April 6, 1988

1.4 Effective Date - April 7, 1988

§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 lawful designee.

§91-5-3. Denial of Driving Privileges for Medical Reasons

(Proposed Amendment filed September 21, 1988)

3.1 Statutory Provisions - West Virginia Code §17B-2-3 provides that the Department of Motor Vehicles shall not issue any operator's license, chauffeur's license, or junior probationary 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 to suspend the license of an operator, chauffeur, or junior probationary operator 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 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.

(Proposed)
Department of Motor Vehicles
Legislative Rule 17A-2
Series 5, Sec. 3

3.2 Procedures for Original, Renewal, or Duplicate Applications for License - The Commissioner, after reviewing the letter of explanation, may:

- (1) Approve the application for license;
- (2) Approve the application for license, and impose appropriate restrictions as the applicant's physical or mental condition may require; or
- (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 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 Board, may take the action as indicated in number (1) or (2) above, or may refuse the application and 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 entitled to a hearing on the refusal by the Commissioner.

Upon receipt, by the applicant, 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 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, shall apply to the hearing. The hearing shall be held ~~within twenty days~~ as early as practical after held 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. 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 ~~upon his own motion~~ 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 provision 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 person would be inimical to public safety or welfare.

After the hearing and consideration of all the testimony and evidence

(Proposed)
Department of Motor Vehicles
Legislative Rule 17A-2
Series 5, Sec. 3

and record 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 earlier order of denial, suspension or non renewal, the person shall be 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 may suspend the license of an operator or chauffeur without a preliminary hearing pursuant to West Virginia Code §17B-3-6.

3.3 Procedure for medical examination of licensee - The Department, having good cause to believe that a licensed operator or chauffeur 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 and 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 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:

- (1) Determine that the licensee is competent to drive a motor vehicle;
- (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) 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 person's license to operate a motor vehicle in this State. The Department, upon suspending a license, shall may require that the license be surrendered to and be retained by the Department 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 person by registered or certified mail, return receipt requested. Upon receipt by the applicant of the

(Proposed)
Department of Motor Vehicles
Legislative Rule 17A-2
Series 5, Sec. 3

Order of Suspension, the driver shall have ten (10) days to request, in writing, from the Commissioner a hearing upon the suspension by the Commissioner. Such 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 apply to the hearing. The hearing shall be held 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. 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 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 provision of West Virginia Code §29A-5-1.

The scope of the hearing shall be whether the person 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 person shall be entitled to judicial review as set forth in West Virginia Code Chapter 29A.

3.4 Standards for Medical or Vision Review

(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 decision.

(2) Vision - Conventional corrective lenses, including surgical intra-ocular implants and contact lenses, will be acceptable for meeting the visual acuity requirements for any learner's permit, driver's license, chauffeur's license, or junior probationary license. Special equipment or special lens arrangements will not be considered conventional for the purposes of this rule.

(Proposed)
Department of Motor Vehicles
Legislative Rule 17A-2
Series 5, Sec. 3

Those persons 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 person by designated officers of the Department 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. This procedure is necessary because of the limited storage facilities available to the Department 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 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 Licenses Were Revoked under Prior Enactment of §17C-5-2.

5.1 Procedures - Any person whose operator's or chauffeur's license has been revoked may apply for restoration of driving privileges 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, 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 letters from 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

Department of Motor Vehicles
Legislative Rule 17A-2
Series 5, Sec. 5

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 of Motor Vehicles Rule Series 1, Section 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 in another state.

6.2 Procedures - The Department shall suspend or revoke the driving privileges of any resident of this state upon receiving notice of conviction of 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 disclose that a conviction is the second or subsequent conviction of the same offense in this or any other jurisdiction, the Department 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 licensee had been convicted in this State.

§91-5-7. The Point System

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 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.

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, 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 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

Department of Motor Vehicles
 Legislative Rule 17A-2
 Series 5, Sec. 7

§17C-4-2, §17C-18-1	Hit and run involving property damage only	4
§17C-6-1 §17C-12-7, §17C-18-1	Speeding in school zone Passing stopped school bus	6 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 light 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 righthand and lefthand 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	3

Department of Motor Vehicles
 Legislative Rule 17A-2
 Series 5, Sec. 7

	passed by the overtaking vehicle	
§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-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,	2
§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		
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

Department of Motor Vehicles
Legislative Rule 17A-2
Series 5, Sec. 7

of a driver's record as outlined in Sec. 7.12, records on file in the Department of any accident not involving a conviction may be considered.

7.5 West Virginia Drivers Convicted In Other States - The appropriate number of points indicated in Section 7.2 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, 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 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 opposite the description of such 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 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 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 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 unless there are three such convictions within a period of twenty-four months. 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 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 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 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

Department of Motor Vehicles
Legislative Rule 17A-2
Series 5, Sec. 7

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 Accumulation of Twelve or More Points - will result in the Department undertaking a review of the licensee's driving record. This review shall be based on a consideration of all facts and circumstances including the driving 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. After an evaluation of the licensee's driving record, the Department 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 under such conditions as the Department 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 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 Length Of Time Points Maintained On Driving Record - The total number of points, if any, accumulated by any licensee shall be maintained 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 to review the licensee's driving 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 suspended following review, or who is placed or remains on probation following a hearing, or is or remains suspended following a hearing, in accordance with the provisions of Section 7.15 hereof, 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 to review the licensee's driving record, such convictions may be

considered in determining any action, which may be taken.

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

7.15 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 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, Administrative Due Process, and the hearing shall be conducted as provided in said rule. When a hearing is requested, the Department 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 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 feels that some lesser action is appropriate, the Department may place the licensee on probation under conditions established by the Department for a period not to exceed one year from the date of rescission of the suspension.

7.16 Judicial Review - Any licensee whose operator's or chauffeur'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, or who after such a hearing is placed, or remains, on probation under conditions established by the Department, shall, be 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.

7.17 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 suspended license, or to be relieved from such probation.

Upon receipt of any request, the Department may make an investigation as deemed 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 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 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 record of the licensee. The privilege of deducting points for completing a course will be permitted one time only 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 attended and received a certificate from a clinic prior to accumulating any points on the licensee's driving record.

A certificate must be presented from the instructor of the clinic to the Department 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, 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 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 in determining the action, if any, to be taken following such review.

§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 of Motor Vehicles may require a re-examination of a licensed operator or chauffeur.

The Department, having good cause to believe that a licensed operator or chauffeur 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 examination. Upon the conclusion of the examination, the Department 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 notice of re-examination to the licensee shall be mailed to the licensee's most recent driver license address on file with the Department 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 may be imposed for failure to appear and submit to the re-examination as directed by said notice.

The re-examination shall consist 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 conduct a personal interview with the licensee.

The second part of the re-examination shall consist 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 will be required to pass the re-examination. The

Department of Motor Vehicles
Legislative Rule 17A-2
Series 5, Sec. 9

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 the official Driver's Handbook as prescribed by the Commissioner of the Department of Motor Vehicles.

The third part of the re-examination shall be 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 of Motor Vehicles.

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

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

If a licensee fails a second re-examination, the licensee will not be 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 not be eligible for the fourth re-examination until six months have elapsed. Failure of four consecutive re-examinations shall be 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 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 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 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 driver re-examination or physical examination, or both, requested in accordance with the provisions of West Virginia Code §17B-3-7, shall be 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 to suspend or revoke any and all registration cards, permits, operators, and chauffeur licenses and registration plates issued to the

Department of Motor Vehicles
Legislative Rule 17A-2
Series 5, Sec. 10

person, firm or corporation by whom or on whose account any such fee or tax shall have been determined to remain unpaid after such reasonable notice and demand. West Virginia Code §17A-2-23 authorizes the Department to apply a penalty fee in addition to any other penalty imposed by the West Virginia Code.

10.2 Determination of Unpaid Fee or Tax - Upon receipt of any check returned to the Department unpaid for any reason, the Department shall deem such fee or tax unpaid. If after reasonable notice the fee or tax remains unpaid, the Department 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.

10.3 Reasonable Notice and Demand - Upon the Department's receipt of a check or checks which are returned unpaid for any reason by the maker's financial institution, 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 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 effective. The licensee or registrant has ten (10) days to surrender the suspended or revoked licenses or registrations to the Department.

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

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 the opportunity for an administrative hearing. The scope of the hearing shall be limited to whether or not the fee or tax in question has been paid to the Department. 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 fee if the Department 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, 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 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 must receive proof of compliance with the terms of the citation within forty-five (45) days.

11.4 Proof of Compliance - Proof of compliance shall mean 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 adjudicated not guilty. Proof of compliance shall not mean personal representation, copies of money orders, personal checks, or certified checks.

11.5 Failure to Respond - If the department 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 not surrender the license to the Department of Motor Vehicles within ten (10) days of the effective date of suspension, the Department shall order the Department of Public Safety to secure such 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 opportunity for an administrative hearing. The scope of the hearing shall be 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 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.