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STATE OF WEST VIRGINIA
SECRETARY OF STATE
Charleston 25305

August 25, 1987

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: Department of Motor Vehicles

RULE: Amendment to Series 5, Denial, Suspension, Revocation or
Nonrenewal of Driving Privileges

DATE FILED AS AN EMERGENCY RULE: July 14, 1987

DECISION NO. 20-87

Following review under WV Code 29A-3-15a, it is the decision of the Secretary of State that the above emergency rule be approved. A copy of the complete decision with required findings is available from this office.

KEN HECHLER
Secretary of State

FILED IN THE OFFICE OF
THE SECRETARY OF STATE
THIS DATE Aug 25, 1987
ADMINISTRATIVE LAW DIVISION

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DECISION

Emergency Rule Decision (ERD 20-87)

AGENCY: Department of Motor Vehicles
RULE: Amendments to Series 5; Denial, Suspension, Revocation
or Nonrenewal of Driving Privileges
DATE FILED AS AN EMERGENCY RULE: July 14, 1987

- par. 1 The Department of Motor Vehicles (DMV) has filed as an emergency amendments to the above Series 5.
- par. 2 West Virginia Code 29A-3-15A requires the Secretary of State to review all emergency rules filed after March 8, 1986. This review requires the Secretary of State to determine if the agency filing such emergency rule 1) has complied with the procedures for adopting an emergency rule; 2) exceeded the scope of its statutory authority in promulgating the emergency rule; or 3) can show that an emergency exists justifying the promulgation of an emergency rule.
- par. 3 Following review, the Secretary of State shall issue a decision as to whether or not such an emergency rule should be disapproved [29A-3-15a(a)].
- par. 4 (A) Procedural Compliance: WV Code 29A-3-15 permits an agency to adopt, amend or repeal, without hearing, any legislative rule by filing such rule, along with a statement of the circumstances constituting the emergency, with the Secretary of State and forthwith with the Legislative Rule-Making Review Committee (LRMRC).
- par. 5 If an agency has accomplished the above two required filings with the appropriate supporting documents by the time the ERD is issued or the expiration of the forty-two day review period, whichever is sooner, the Secretary of State shall rule in favor of procedural compliance.

par. 6 The DMV has filed this emergency rule with supporting documents with the Secretary of State on July 14, 1987, and with the LRMRC on July 15, 1987.

par. 7 It is the determination of the Secretary of State that the DMV has complied with the procedural requirements of WV Code §29A-3-15.

par. 8 (B) Statutory Authority -- WV Code §17A-2-9 reads in part:

§17A-2-9. Same - Powers and duties; rules and regulations; seal.

(b) The commissioner is hereby authorized to adopt and enforce such rules and regulations as may be necessary to carry out the provisions of this chapter and any other laws the enforcement and administration of which are vested in the department.

par. 9 The proposal removes the interview requirement following several moving violations over a short period of time. This requirement is established by rule and not by statute.

par. 10 It is the determination of the Secretary of State that the DMV has not exceeded its statutory authority in the promulgation of these emergency rules.

par. 11 (C) Emergency: WV Code 29A-3-15(g) defines "emergency" as follows:

(g) For the purposes of this section, an emergency exists when the promulgation of a rule is necessary for the immediate preservation of the public peace, health, safety or welfare or is necessary to comply with a time limitation established by this code or by a federal statute or regulation or to prevent substantial harm to the public interest.

par. 12 There are essentially three classes of emergency broadly presented with the above provision: 1) immediate preservation; 2) time limitation; and 3) substantial harm. An agency need only document to the satisfaction of the Secretary of State that there exists a nexus between the proposal and the circumstances creating at least one of the above three emergency categories.

par. 13 The facts and circumstances as presented by the DMV are as follows:

This rule change eliminates the requirement that a licensee attend an interview with a representative of the Department after receiving several moving violations over a short period of time. This change is being promulgated on an emergency basis in the belief that delay in removing the burdensome requirement will result in substantial harm to the public interest. Immediate implementation will result in:

1. Reduced Departmental expenditures without sacrificing driver improvement efforts.

2. Redirection of Departmental resources to the adjudication of driving under the influence revocation orders which will result in swifter removal of DUI offenders from the roads of this state.

3. Substantial reduction of lost income and time to the 4000 licensees who currently must take time off to attend a Driver Improvement Interview or suffer suspension of their driving privileges.

par. 14 As stated in previous ERD's, this office will tend to defer to an agency rule designed to insure safety.

par. 15 It is the decision of the Secretary of State that this proposal by the DMV is in procedural compliance with WV Code 29A-3-15; does not exceed the statutory authority of the DMV; and that the facts and circumstances presented constitute an emergency. Therefore, the Secretary of State decides that this emergency rule should be approved.

par. 16 This decision shall be cited as Emergency Rule Decision 20-87 or ERD 20-87 and may be cited as precedent. This decision is available from the Secretary of State's office and has been filed with the DMV, the Attorney General and the Legislative Rule Making Review Committee.



KEN HECHLER
SECRETARY OF STATE

FILED IN THE OFFICE OF
THE SECRETARY OF STATE

THIS DATE Aug 25, 1987

Entered _____

ADMINISTRATIVE LAW DIVISION