



STATE OF WEST VIRGINIA
OFFICE OF THE SECRETARY OF STATE
CHARLESTON 25305

FILED IN THE OFFICE OF
JAMES MANCHIN
SECRETARY OF STATE

FILED DATE 8/26/82
Administrative Law Division

A. JAMES MANCHIN
SECRETARY OF STATE

STATE REGISTER FILING

I, Virginia L. Roberts, Commissioner,
Title or Position

Department of Motor Vehicles, hereby submit to record in
Department or Division

the State Register on 8 1/2 x 11" paper two (2) copies of

- proposed rules and regulations concerning topics of material not covered by existing rules and regulations;
- proposed rules and regulations superseding rules and regulations already on file;
- notice of hearing;
- findings and determinations;
- Emergency Legislative Rule rules and regulations; or
- other - specify (LEGISLATIVE () PROCEDURAL () INTERPRETIVE () RULE

This filing pertains to

Chapter 17A
Article 2
Series V
Section 3.00
Page No. 3-5A

- proposed rules and regulations are required to go to Legislative Rule Making Committee;
- proposed rules and regulations are excluded from Legislative Rule Making Committee;

August 26, 1982
Date Submitted

Virginia L. Roberts
Signature of Person Authorizing
this Filing



DEPARTMENT OF MOTOR VEHICLES
STATE OFFICE BUILDING
CHARLESTON, W. VA.
25305

August 26, 1982

FILED IN THE OFFICE OF
A. JAMES MANCHIN
SECRETARY OF STATE
THIS DATE 8/26/82
Administrative Law/Division

The Honorable A. James Manchin
Secretary of State
State Capitol Building
Charleston, WV 25305

Dear Mr. Manchin:

Attached are two copies of an Emergency Legislative Rule being filed pursuant to Chapter 29A, Article 3, Section 15 of the Code of West Virginia, 1931, as amended. The rule has been designated Series V, Section 3, pages 3, 4, 5, and 5A of the Administrative Regulations of the Department of Motor Vehicles. The rule is entitled "Denial of Driving Privileges Due to Mental or Physical Conditions". This rule replaces Legislative Rule Series V, Section 3, pages 3, 4, 5 entitled "Mental Incapacity, Epilepsy, Etc."

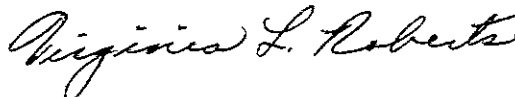
The promulgation of an emergency rule is necessary for the immediate preservation of public safety. The Supreme Court of Appeals has required the Department of Motor Vehicles in State ex rel. Frances Jones v. Joseph P. Condry to promulgate a rule which allows for an administrative hearing prior to the revocation of a drivers license for medical reasons. The promulgation of this Emergency Rule will allow this department to exercise our responsibilities under §17B-23 of the Code.

obsolete
void Aug 26, 1982
to Feb 23, 1983 (180 days)

The Honorable A. James Manchin
August 26, 1982
Page Two

I certify that the attached rule constitutes the official Emergency Rule promulgated and filed pursuant to law on August 26, 1982.

Very truly yours,



Virginia L. Roberts
Commissioner

VLR/cmw

Attachments

DENIAL, SUSPENSION, REVOCATION OR NONRENEWAL OF DRIVING PRIVILEGES

Chapter 17A-2
Series V
1964

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WEST VIRGINIA LEGISLATIVE RULES
DEPARTMENT OF MOTOR VEHICLES

Chapter 17A-2
Series V
1964

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

Section 1. General

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

1.02. Authority - These regulations are issued under the authority of Chapter 17A, Article 2, Section 9, of the Code of West Virginia, of 1931, as amended.

1.03. Filing Date - These regulations were promulgated on the 19th day of May, 1965, and filed on the 19th day of May, 1965, in the Office of the Secretary of State. Regulation 6.00 was amended and refiled on August 18, 1972; Regulation 7.00 was amended and refiled on August 3, 1970; Regulation 8.00 was amended and refiled on April 11, 1967; and Regulation 9.00 was amended and refiled on March 7, 1973.

1.04. Effective Date - These regulations became effective thirty days after filing with the Secretary of State.

Section 2. Application and Enforcement

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

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

Department of Motor Vehicles
Legislative Rule 17A-2-9
Series V

FILED IN THE OFFICE OF
A. JAMES MANCHIN
SECRETARY OF STATE

THIS DATE 8/26/92 Sec. 3.00.

EMERGENCY LEGISLATIVE ~~RULE~~ Administrative Law Division

Section 3. Denial of Driving Privileges Due to Mental or Physical Conditions

3.01. Statutory Provisions - Chapter 17B, Article 2, Section 3, of the Code of West Virginia 1931, as amended, 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. Chapter 17B, Article 3, Section 6, of the Code of West Virginia 1931, as amended, 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.

3.02. Procedures - 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, or a Vision Examination Report Form, completed by a licensed vision specialist 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 day 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 Chapter 29, Article 5, of the Code, shall apply to the hearing except that in the case of a resident of this State, 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 within twenty days after the date upon which the Commissioner received the written request. The Commissioner may

postpone or continue any hearing upon his own motion 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 §17B-3-6 of the Code to issue subpoenas and subpoenas duces tecum which shall be issued in accordance with the provisions of §29A-5-1 of the Code.

The purpose 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, evidence, 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 suspension, the person shall be entitled to judicial review as set forth in Chapter 29A of the Code.

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

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 an examination and present a Medical Report Form, completed by a physician

of the applicant's choice or a Vision Examination Report Form completed by a licensed vision specialist 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, 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;
- (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 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.

Section 4. Reinstatement of Suspended Registration

4.01. 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 of West Virginia, 1931, as amended, 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 Chapter 17A, Article 10, Section 11 of the Code of West Virginia, 1931, as amended. 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.

Section 5. Reinstatement of Driving Privileges of Persons Whose Operator's and Chauffeur's Licenses Were Revoked

5.01. Procedures - Any person whose operator's or chauffeur's license has been revoked may apply for restoration of his or her 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 Chapter 17C, Article 5, Section 2 of the Code of West Virginia, 1931, as amended, must execute and file with the Department, on the form prescribed therefor, a duly notarized petition seeking to have such person's driving privileges restored. In addition to filing proof of financial responsibility as required by Chapter 17D, Article 4 of the Code of West Virginia, 1931, as amended, any such person convicted for a second or subsequent offense under said Section 2 within a period of five (5) years must also, in light of the provisions of said Chapter 17C, Article 5, Section 2, of the Code of West Virginia, 1931, as amended, obtain and file with the petition four letters from reputable business men in the applicant's community, on their printed letterhead, as well as a letter from a member of the Department of Public Safety, sheriff or municipal police officer. 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 again to repeat the offense for which the license was revoked; that the public good 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 petition deemed necessary by the Department, if any, shall be held in accordance with the provisions of Series I, Section 3.00.

Section 6. Suspending a West Virginia Resident's License Upon Conviction
in Another State

6.01. Statutory Provisions - Chapter Seventeen B, Article Three, Section Three of the Motor Vehicle Code, relative to suspending a resident's license upon conviction in another state reads as follows:

"The Department is authorized to suspend or revoke the license of any resident of this state or the privilege of a non-resident to drive a motor vehicle in this state upon receiving notice of the conviction of such person in another state of an offense therein which, if committed in this state, would be grounds for the suspension or revocation of the license of an operator or chauffeur."

The provisions of this section of the Code are such that it requires the Commissioner to adopt administrative regulations outlining the Department's policy in handling such convictions.

6.02. Procedures - The Department shall suspend or revoke the driving privileges and/or registration privileges of any resident of this state upon receiving notice of his first conviction of an offense in another jurisdiction, which if committed in this state, would be grounds for the mandatory suspension or revocation of his driving privileges and/or registration 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 would suspend or revoke the resident's

driving privileges and/or registration privileges in the same manner as if the offense had occurred in this state.

The provisions of this Administrative Regulation would not apply to traffic convictions that are assigned point values as provided in Department Administrative Regulation, Series V, Section 7.02.

The reinstatement of the resident's driving privilege and/or registration privilege can only be restored after the resident has complied with all the provisions of the Motor Vehicle Code and Administrative Regulations in the same manner that would be required if such resident had been convicted in this state.

Entered as a Department Revised Administrative Regulation, Series V, Section 6.00, this Third Day of May, 1972.

DENIAL, SUSPENSION, REVOCATION AND NONRENEWAL OF DRIVING PRIVILEGES

Section 7 - The Point System
Series V

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Section 7. The Point System

7.01. Records - Although all of the reasons listed in §17B-3-6 of the Code for which the Department may suspend an operator's or chauffeur's license without preliminary hearing are extremely serious, it is imperative that those individuals who fall within Subsections (3) and (4) be identified for special attention, because experience has proved that it is these individuals who cause many of the traffic accidents. In this connection §17B-2-14 of the Code requires that convenient records be kept or suitable notations made so that an individual record of each licensee showing the convictions of such licensee shall be readily ascertainable and available for consideration by the Department upon any application for renewal of license "and at other suitable times". Accordingly, a record keeping system to be known as the Point System and to be administered by the Driver Improvement Division is herein established.

7.02. Offenses - Point Total - When any licensee of the State of West Virginia is convicted in the State of West Virginia 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 |

| | | |
|--|--|---|
| (17C-4-2, 17C-18-1) | Hit and run involving property damage only | 4 |
| (17C-6-1) | Speeding in excess of 15 m.p.h. in school zone | 6 |
| (17C-12-7, 17C-18-1) | Passing stopped school bus | 4 |
| (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 70 m.p.h. and conviction was in excess of 85 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 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 |
| (17C-7-7, 17C-18-1) | Passing in no-passing zone | 3 |
| (17C-15-1, 17C-15-31, 17C-18-1) | Defective or improper brakes | 2 |
| (17C-15-1, 17C-18-1) | Operation of vehicle in unsafe condition | 2 |
| (17C-15-1, 17C-15-2, 17C-18-1) | Operation of vehicle without lighted lamps or lights when required to be lighted | 2 |
| (17C-15-1, 17C-15-5, 17C-15-7, 17C-15-18, 17C-18-1) | Operation of a vehicle with improper tail lamps or lights, or stop lamps or lights, or signal lamps or lights | 2 |
| (17C-7-10, 17C-18-1) | Following too closely | 2 |
| (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 |
| (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.)

7.03. Traffic Convictions That Would Have No Point Value -

The abstracts of traffic convictions outlined herein would not be considered a moving violation 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 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.

The above type of convictions would be recorded on the operator's record but no points would be assessed the operator for the convictions. However, if any abstract is received for the convictions outlined above while the operator's driving privileges were suspended, such conviction would be the basis for an extension of the suspension period.

Convictions of this type would not be the basis for revoking a Junior Operator's License as provided in Chapter Seventeen B, Article Two, Section Three of the Code.

7.04. Traffic Accidents Not Involving Convictions - Although §17B-2-14 of the Code also provides that convenient records be kept or suitable notations made with respect to 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 an interview as outlined in Sec. 7.09, records on file in the Department of any accident not involving a conviction may be considered, as outlined in Sec. 7.10 in determining the action, if any, to be taken following such interview.

7.05. West Virginia Drivers Convicted In Other States - The appropriate number of points indicated in Section 7.02 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 Chapter 17B, Article 3, Section 3 of the Code of West Virginia, 1931, as amended, 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 7.02 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 7.02 opposite the description of such offense.

7.06. Forfeiture Of Bail Or Deposited Collateral - Consistent provisions of Chapter 17B, Article 3, Section 4 of the Code of West Virginia, 1931, as amended, 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. 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.

7.07. Revocations - Chapter 17B, Article 3, Section 5 of the Code of West Virginia, 1931, as amended, 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. Inasmuch 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 twelve 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 Chapter 17B, Article 3, Section 4 of the Code of West Virginia, 1931, as amended, such conviction shall be noted, without point value, on the driver record of the individual concerned.

7.08. 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 driver of the convictions recorded on his or her 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.

7.09. Interviews - Any licensee whose record shows a total of 9 to 12 points will be ordered to appear for an interview with a representative of the Department. These interviews will be held throughout the State, and due regard will be given to the convenience of the licensee in selecting the time and place of the interview. At such interview, the entire driving record of the licensee will be reviewed with special attention being devoted to an analysis of the driving weaknesses of the licensee and possible corrective measures to improve the driving of such licensee. The emphasis at the interview, as in the administration of the entire point system, will be driver improvement. The interviewing officer may recommend no action; that the licensee be warned that continued violation of traffic laws may result in suspension of his or her privilege to drive a motor vehicle on the streets and highways of this State; that the driver be placed on probation under certain conditions; that the operator's or chauffeur's license of such licensee be restricted; or that the operator's or chauffeur's license of such licensee be suspended. Refusal, neglect or failure to appear, without good cause, for an interview at the time and place directed by the Department shall be ground for suspension of the operator's or chauffeur's license of the person so ordered to appear.

7.10. Review Of Driver Record After Interview - After the interview and completion of the interviewing officer's report and recommendations, the Department shall make a conscientious, impartial and exhaustive review of

the driver record concerned, and, in the exercise of sound discretion, shall either take no action, or warn the licensee involved that continued violation of traffic laws may result in suspension of his or her privilege to operate a motor vehicle, or place such licensee on probation under reasonable conditions established by the Department for a period not to exceed one year, or restrict the operator's or chauffeur's license of such licensee for a period not to exceed one year, or suspend the operator's or chauffeur's license of such licensee for such period not to exceed one year as to the Department seems right and proper. If it is determined that some action shall be taken, it shall be because, as specified in Chapter 17B, Article 3, Section 6 of the Code of West Virginia, 1931, as amended, the Department has determined that the licensee has been convicted with such frequency of serious offenses against traffic regulations governing the movement of vehicles as to indicate a disrespect for traffic laws and a disregard for the safety of other persons on the highways or is an habitually reckless or negligent driver of a motor vehicle, and not because of the number of points accumulated. In accordance with Chapter 17B, Article 2, Section 14 of the Code of West Virginia, 1931, as amended, the point system is solely for the purpose of spotting those licensees whose driver records disclose a need for special attention.

In determining the course to pursue following any interview, as outlined above, the Department shall in each individual instance consider all of the facts and circumstances at hand, including without limitation, the driver record of the licensee involved, the interviewing officer's report and

recommendations pertaining to such licensee, police reports concerning such licensee on file in the Department, driver re-examination records, if any, pertaining to such licensee, accident reports concerning such licensee on file in the Department, the record of convictions for which the point values were eliminated as specified in Section 7.12 hereof (and Section 8.00 when the Driver Improvement Clinics are established), and any and all other official forms or records pertaining to such licensee on file in the Department.

7.11. Subsequent Warning Letters And Interviews - Any person who, after accumulating 9 to 12 points resulting in an interview as outlined in Section 7.09, accumulates 4 additional points within two years from the date of the last conviction involved in the 9 to 12 point total, shall receive another warning letter, and any such person who accumulates 6 points in such period shall be ordered to appear for another interview. After such interview, the Department shall proceed as set forth in Section 7.10.

7.12. Length Of Time Points Maintained On Driving Record - The total number of points, if any, accumulated by any licensee shall be maintained with respect to such licensee for a period of two years, from and after 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 order such licensee to appear for an interview, such convictions may be considered in determining the action, if any, to be taken following such interview. The point totals accumulated by any licensee who, after interview, is placed on probation under reasonable conditions, or whose

operator's or chauffeur's license is restricted or suspended following interview, or who is placed or remains on probation following hearing, or whose license is or remains restricted, or is or remains suspended following hearing, in accordance with the provisions of Section 7.14 hereof, shall be eliminated at the expiration of the period. However, the record of convictions shall remain so that if at any future time sufficient points are accumulated to cause the Department to order such licensee to appear for another interview, such convictions may be considered in determining the action, if any, to be taken following such interview.

7.13. 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 four days from mailing of the notice of suspension. The period of suspension shall begin to run from that date provided the license is voluntarily returned to and received by the Department within ten days from such mailing of the notice of suspension.

If it is necessary to have the Department of Public Safety secure such license in accordance with Chapter Seventeen-B, Article Three, Section Nine of the Code of West Virginia, 1931, as amended, the period of suspension shall begin to run from the date such license is actually obtained by the Department of Public Safety. When it is determined that a restricted license shall be issued for a period not to exceed one year, such period shall begin to run from the date such restricted license is issued.

(Revised this 20th day of April, 1968.)

7.14. Hearings - In accordance with the provisions of Chapter 17B, Article 3, Section 6 of the Code of West Virginia, 1931, as amended, any licensee whose license is suspended following interview shall be entitled to a hearing as a matter of right. Furthermore, the same is true for any licensee whose license after interview is restricted, or who, after interview, is placed on probation under reasonable conditions established by the Department. The request or demand for any such hearing shall be made in accordance with the provisions of Section 3.00, Series I, and the hearing shall be conducted as provided in said Section 3.00. When a hearing is requested or demanded, the Department shall, in accordance with the provisions of Section 4.00, Series I, give the licensee notice of the time and place of hearing. The hearing shall be held as early as practical within not to exceed 20 days after receipt of such demand or request in the county wherein the licensee resides unless the Department and the licensee agree that such hearing may be held in some other county. The notice of hearing shall advise the licensee of the matters to be considered at such hearing. When an operator's or chauffeur's license is suspended following interview, and a hearing is requested or demanded, as provided in §17B-3-6 of the Code, upon such hearing the Department shall either rescind its order of suspension or, good cause appearing therefor, may extend the suspension of such license or revoke such license. If the suspension is rescinded, but the Department feels that some lesser action is nevertheless appropriate, the Department may place such licensee on probation under reasonable conditions established by the Department for a period not to exceed one year from the date of

rescission of such suspension or may issue a restricted license for a period not to exceed one year from the date of rescission of the suspension. When the action concerning which such hearing is requested or demanded is restriction of the licensee's operator's or chauffeur's license, upon such hearing the Department may rescind its action and take no action, or place such licensee on probation under reasonable conditions, or suspend such license. When the action concerning which such hearing is requested or demanded is probation under reasonable conditions, upon such hearing the Department may rescind its action and take no action, or restrict the license of such licensee or suspend such license.

7.15. Writ Of Certiorari - 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 Section 3.00, Series I, or whose operator's or chauffeur's license is, or remains, restricted after such a hearing, or who after such a hearing is placed, or remains, on probation under reasonable conditions established by the Department, shall, of course, be entitled to seek a writ of certiorari in accordance with the provisions of Chapter 53, Article 3 of the Code of West Virginia, 1931, as amended, and any other remedies provided by law for the review of the action taken by the Department.

7.16. Applying For Reinstatement, Unrestricted License, Or Relief Of Probation - Any licensee whose license is suspended, or who is issued a restricted license, or who is placed on probation under conditions may at any time during the period of suspension, restriction or probation apply for reinstatement of such suspended license, or for the issuance of any un-

restricted license, or to be relieved from such probation as the case may be. (Of course, no action is required to have one's driving privileges fully restored at the expiration of the period of suspension, restriction or probation.) Such application shall be on the form prescribed for such purpose by the Department. Upon receipt of any such application, the Department may make such investigation as is deemed appropriate and in the exercise of sound discretion shall take whatever action appears to be just and proper. Any licensee whose license is revoked after hearing in accordance with the provisions of Chapter 17B, Article 3, Section 6 of the Code of West Virginia, 1931, as amended, may after the expiration of one year from the date on which the revoked license was surrendered to and received by the Department make application for restoration of his or her driving privileges under the provisions of Chapter 17B, Article 3, Section 8 of the Code of West Virginia, 1931, as amended. Such application shall be on the form prescribed for such purpose by the Department. Upon receipt of any such application, the Department shall, as required by said §17B-3-8 of the Code, make such investigation as is deemed appropriate and in the exercise of sound discretion shall take whatever action appears to be just and proper.

Section 8. Driver Improvement Clinics

8.01. Procedures - The purpose of Driver Improvement Clinics is to offer instruction in highway and traffic safety and to impress upon those attending such clinics that only a conscientious effort on the part of every driver can decrease the slaughter on our highways.

Driver Improvement Clinics are conducted at various times and locations throughout the State and are available to the motoring public. The instructors conducting these clinics are certified by the National Safety Council as being qualified to teach the course. The eight-hour course complies with standards established by the National Safety Council, the West Virginia Safety Council, and the West Virginia Department of Public Safety. Teaching manuals and films used in the clinics are also approved.

8.02. Points To Be Deducted Upon Successful Completion - Since the clinics meet the required standards for Driver Improvement courses, the Department of Motor Vehicles believes the program can be used successfully and to a good advantage in its Driver Improvement Program. Persons who have accumulated points under the Driver Improvement Program should be given an incentive to attend the clinics. Attendance at any such clinic must be voluntary on the part of the licensee; however, on successful completion of the eight-hour course, three points will be deducted from the total points shown on the record of the licensee. The privilege of deducting points for completing the course will be permitted one time only. No points will be deducted for any licensee's record who may have attended and received a certificate from the clinic prior to accumulating any points on the licensee's driving record.

When interviewing a person who has accumulated nine points under the Driver Improvement Program, the reviewing officer should advise the licensee of the program and suggest that the licensee attend a local clinic.

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. The certificate must be approved by the Department of Public Safety.

Although three points will be so 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 interview, the convictions 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 interview.

Section 9. Procedures For Medical And Driving Re-Examination Of Licensed Drivers

9.01. Statutory Provisions - In accordance with Chapter Seventeen B, Article Three, Section Seven of the West Virginia Code, 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 to the licensee require him to submit to an examination. Upon the conclusion of such examination, the Department shall take such 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 Chapter Seventeen B, Article Two, Section Ten of the Code. Refusal or neglect of the licensee to submit to such examination shall be grounds for suspension or revocation of his license.

9.02. Procedures - The notice of re-examination to the licensee shall be mailed to the licensee's most recent address on file with the Department of Motor Vehicles and shall be mailed by certified or registered letter. Such notice shall contain the time and place designated for the re-examination and, also, shall contain a brief explanation to the effect that a suspension may be imposed for a refusal or neglect 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 so that other important data can be obtained.

The second part of the re-examination shall consist of a written test composed of questions equally weighed. A minimum of 70% of said questions covering motor vehicle laws, rules of the road, highway warnings, traffic signs and signalling devices would be required to pass the re-examination. The written test may be taken orally 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 and shall be the same test that is given to new applicants applying for driver's licenses in this state. A passing score shall also 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 Department of Public Safety General Order 31.

If the licensee fails his first driver's license re-examination, his license is thereby suspended indefinitely upon notice from the Department of Motor Vehicles. Such notice shall be sent by registered mail and the suspension shall be effective four days after the date of the suspension order.

Example: If the order were dated January 1, 1971, the suspension would be effective January 5, 1971.

The licensee shall not be eligible for his second re-examination until the expiration of thirty days from the date his 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 the re-examination.

If a licensee fails his second re-examination, he will not be eligible for the re-examination until sixty days have expired from the date of the previous re-examination. However, in the event the third re-examination is not successfully passed, 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 has expired 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 sufficient visual improvement has been submitted.

The Department may request any licensee to submit a medical report of a recent medical examination. Such report must be submitted on forms prescribed by the Commissioner of the Department of Motor Vehicles.

If the licensee is required to submit a medical report, and such report does not constitute adequate medical clearance, his license

shall be suspended under the provisions of Chapter Seventeen B, Article Three, Section Seven of the West Virginia Code.

After the licensee's driver's license has been suspended because of a physical condition and a satisfactory medical report is then submitted, the Commissioner may require the licensee to submit to a re-examination of his driving ability before such licensee's driver's license is reinstated.

If the licensee is required to submit a medical report, the report submitted must be accepted as constituting adequate medical clearance. If the licensee is otherwise qualified for driving privileges, in respect to the provisions of the West Virginia Motor Vehicle Code and the Administrative Regulations of the Department of Motor Vehicles, the Commissioner may permit the licensee to retain his license or he may impose such restrictions or conditions applicable to the licensee as he determines to be necessary. Where a restricted license is required by law, the Commissioner shall cause such restricted license to be issued, except that a driver's license re-examination shall be required if the licensee's driving ability is questionable.

Refusal or neglect of the licensee to submit to such driver re-examination or physical examination, or both, requested in accordance with the provision of Chapter Seventeen B, Article Three, Section Seven is grounds for suspension or revocation of the licensee's driver's license. Such suspension or revocation shall remain in effect until such time as the licensee is in complete compliance with the Code, the Department's Administrative

Regulations, and the Commissioner is satisfied that the licensee is qualified to operate a motor vehicle.

Entered as a Department Administrative Regulation Series V, Section 9.00, this 15th day of October, 1971.