



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

JOHN D. ROCKEFELLER IV
Governor

VIRGINIA L. ROBERTS
Commissioner

December 2, 1982

*Process papers
submitted by
1983 Leg.
64-2-17(2)(9)(1)*

The Honorable A. James Manchin
Secretary of State of West Virginia
State Capitol Building, W-157
Charleston, West Virginia 25305

Dear Mr. Manchin:

Attached are two copies of a proposed legislative rule which is being filed pursuant to §29A-3-9. Be advised that this letter constitutes notice that the Department of Motor Vehicles has approved the proposed legislative rule designated Series V, Section 3.00., pages 3, 4, 5, and 5A.

Very truly yours,

Virginia L. Roberts
Commissioner

VLR:jld

attachments

FILED IN THE OFFICE OF
A. JAMES MANCHIN
SECRETARY OF STATE
THIS DATE 12-2-82



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

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;
- 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. 3,4,5,5A

OFFICE OF
 A. JAMES MANCHIN
 SECRETARY OF STATE
 THIS DATE 12-2-82

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

December 2, 1982
 Date Submitted

Virginia L. Roberts
 Signature of Person Authorizing
 this Filing

Section 3. Denial of Driving Privileges for Medical Reasons.

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.