

FILING OF ADMINISTRATIVE REGULATIONS

References are to sections in W. Va. Adm. Reg. 17A-2, Series VI

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DRIVER IMPROVEMENT DIVISION - POINT SYSTEM

Applying for Reinstatement, Unrestricted License, or

Relief of Probation, Sec. 6:15

Effective Starting Time for Period of Suspension, Sec. 6:12

Forfeiture of Bail or Deposited Collateral, Sec. 6:05

Hearings, Sec. 6:14

Interviews, Sec. 6:08

Length of Time Points Maintained on Driving Record, Sec. 6:11

Offenses, Point Total, Sec. 6:02

Proposed Driver Improvement Clinics, Sec. 6:09

Records, Sec. 6:01

Review of Driver Record after Interview, Sec. 6:10

Revocations, Sec. 6:06

Rules & Regulations Pertaining to this Division, Sec. 6:00

Subsequent Warning Letters and Interviews, Sec. 6:13

Traffic Accidents Not Involving Convictions, Sec. 6:03

Warning Letters, Sec. 6:07

West Virginia Drivers Convicted in Other States, Sec. 6:04

Write of Certiorari, Sec. 6:16

WEST VIRGINIA ADMINISTRATIVE REGULATIONS
Department of Motor Vehicles

Chapter 17A-2
Series VI
(1964)

Subject: Driver Improvement Division - Point System

Section 6. Rules and Regulations Pertaining to this Division.

Traffic accidents resulting in death, personal injuries and loss or damage to property are increasing at an alarming rate. Unfortunately, experience has proved that all too often those in charge of motor vehicles are strangely indifferent to the safety and welfare of others. In recognition of this fact and in the interest of saving lives and property, the Legislature of the State of West Virginia in 1951 enacted Section 14, Article 2, Chapter 17B and Section 6, Article 3, Chapter 17B of the Code of West Virginia, 1931, as amended, as follows:

"Records to Be Kept by the Department. - ***

"The department shall also file all accident reports and abstracts of court records of convictions received by it under the laws of this state and in connection therewith maintain convenient records or make suitable notations in order that an individual record of each licensee showing the convictions of such licensee and the traffic accidents in which he has been involved shall be readily ascertainable and available for the consideration of the department upon any application for renewal of license and at other suitable times." W.Va. Code, c. 17B, art. 2, Sect.14.

"Authority of Department to Suspend or Revoke License. - The department is hereby authorized to suspend the license of an operator or chauffeur without preliminary hearing upon a showing by its records or other sufficient evidence that the licensee:

"(1) Has committed an offense for which mandatory revocation of license is required upon conviction;

"(2) Has by reckless or unlawful operation of a motor vehicle, caused or contributed to an accident resulting in the death or personal injury of another or property damage;

"(3) 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;

"(4) Is an habitually reckless or negligent driver of a motor vehicle;

"(5) Is incompetent to drive a motor vehicle;

"(6) Has permitted an unlawful or fraudulent use of such license; or

"(7) Has committed an offense in another state which if committed in this state would be a ground for suspension or revocation.

Upon suspending the license of any person as hereinbefore in this section authorized, the department shall

immediately notify the licensee in writing, sent by registered mail to the address given by the licensee in applying for license, and upon his request shall afford him an opportunity for a hearing as early as practical within not to exceed twenty days after receipt of such 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. Upon such hearing the commissioner or his duly authorized agent may administer oaths and may issue subpoenas for the attendance of witnesses and the production of relevant books and papers and may require a reexamination of the licensee. 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." W. VA. Code, c. 17B, art. 3, Sect. 6

6:01. Records

Although all of the reasons listed in said Section 6 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 said Section 14 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.

6:02. 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

<u>Statute Violated</u>	<u>General Description of Offenses</u>	<u>Point Value</u>
(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

<u>Statute Violated</u>	<u>General Description of Offenses</u>	<u>Point Value</u>
(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-15-4, 17C-18-1)	Operation of a vehicle with improper headlights or headlamps	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

<u>Statute Violated</u>	<u>General Description of Offenses</u>	<u>Point Value</u>
(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).

6:03. Traffic Accidents Not Involving Convictions

Although said Section 14 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. 6:08, records on file in the Department of any accident not involving a conviction may be considered, as outlined in Sec. 6:10, in determining the action, if any, to be taken following such interview.

6:04. West Virginia Drivers Convicted in Other States

The appropriate number of points indicated in Section 6:02 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 6:02 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 6:02 opposite the description of such offense.

6:05. Forfeiture of Bail or Deposited Collateral

Consistent with the 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.

6:06 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 above 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.

6:07. 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.

6:08. 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.

6:09. Proposed Driver-Improvement Clinics

It is hoped that in the not too distant future it will be possible to establish Driver-Improvement Clinics throughout the State. The purpose of such clinics would be to offer instruction in highway and traffic safety and to impress upon those attending such clinics that only by a conscientious effort on the part of every driver can the slaughter on our highways be decreased. Although an interviewing officer may suggest attendance at a Driver-Improvement Clinic (when established) once a week for four weeks, attendance at any such clinics shall be purely voluntary. However, successful completion of a clinic will result in the subtraction of 3 points from the total points shown on the driver record of the licensee concerned. Although 3 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.

6:10. 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 meet 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 need special attention.

In determining the course to pursue following any interview, as outlined above, the Department shall in each individual instance con-

sider 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 6:11 hereof (and Section 6:09 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.

6:11. 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 or is revoked following hearing, in accordance with the provisions of Section 6:14 hereof, shall be eliminated at the expiration of the period of probation, restriction or suspension, or upon reinstatement during such period, and immediately upon revocation. However, the record of convictions shall remain so that if at any future time (assuming in the case of revocation that a new license is previously issued) 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.

6:12. 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 eight 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 17B, Article 3, Section 9 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.

6:13. Subsequent Warning Letters and Interviews

Any person who, after accumulating 9 to 12 points resulting in an interview as outlined in Section 6:08, 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 6:10.

6:14. 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 2:06, Series II, and the hearing shall be conducted as provided in said Section 2:06. When a hearing is requested or demanded, the Department shall, in accordance with the provisions of Section 2:07, Series II, 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 Section 6, 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.

6:15. 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 unrestricted 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 Section 8, make such investigation as is deemed appropriate and in the exercise of sound discretion shall take whatever action appears to be meet and proper.

6:16. 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 2:06, Series II, or whose Operator's or Chauffeur's License is revoked after such a hearing, 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.