

**WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION**

Form #4

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

AGENCY: Division of Motor Vehicles TITLE NUMBER: 91

CITE AUTHORITY W. Va. Code §17A-2-9 and § 17A-6B-13

AMENDMENT TO AN EXISTING RULE: YES X NO

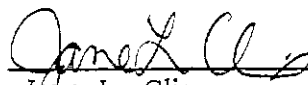
IF YES, SERIES NUMBER OF RULE BEING AMENDED: 91 CSR 6

TITLE OF RULE BEING AMENDED: Motor Vehicle Dealers, Wrecker/Dismantler/
Rebuilders and License Service

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED:

TITLE OF RULE BEING PROPOSED:

THE ABOVE PROPOSED LEGISLATIVE RULE, FOLLOWING REVIEW BY THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE IS HEREBY MODIFIED AS A RESULT OF REVIEW AND COMMENT BY THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE. THE ATTACHED MODIFICATIONS ARE FILED WITH THE SECRETARY OF STATE.



Jane L. Cline
Commissioner

7.40



GASTON CAPERTON
Governor
ARTHUR L. GLEASON, JR.
Secretary


DEPARTMENT OF TRANSPORTATION
DIVISION OF MOTOR VEHICLES
CAPITOL COMPLEX, BUILDING 3
CHARLESTON, WEST VIRGINIA
25317

JANE L. CLINE
Commissioner

91 CSR 6
1992 - 1993 Review

Summary of Modifications as a result of review by the
Legislative Rule Making Review Committee.

1. Technical modifications suggested by the Legislative Rule
Making Review Committee clarifying tense and subject are
incorporated and are indicated by strike and insert.



Jane L. Cline
Commissioner

(PROPOSED)
WEST VIRGINIA LEGISLATIVE RULES
DIVISION OF MOTOR VEHICLES
91CSR6

Title: Motor Vehicle Dealers, Wrecker/Dismantler/Rebuilders and License Services

§91-6-1 General

1.1. Scope - ~~These~~ This legislative rules establishes requirements for licensing of motor vehicle dealers, wrecker/dismantler/ rebuilders and License Services.

1.2. Authority - West Virginia Code §17A-2-9 and West Virginia Code §17A-6B-13 related to West Virginia Code §17A-6-1 et. seq. and West Virginia §17A-6B-1 et. seq.

1.3. Filing Date -

1.4. Effective Date -

1.5. Repeal of Former Rule - ~~These~~ This legislative rules repeals ~~West Virginia Legislative Rules Title 91, Series 6 Title 91 CSR 6, Motor Vehicle Dealers, filed April 25, 1969; Legislative Rules, Title 91, Series 10 Title 91 CSR 10, Bonding Requirements for License Service Agencies effective June 18, 1965; West Virginia Procedural Rules Title 91 CSR 17 Dealer and Financial Institutions Applicant or Licensee Administrative Hearings, effective July 8, 1984, West Virginia Interpretative Rules, Title 91, Series 18 Title 91 CSR 18, Dealer Issuance of Temporary Registration Plates, effective September 23, 1988, and Interpretive Rules, Title 91, Series 22 Title 91 CSR 22. Approval of Dealer Temporary Additional Locations, effective July 25, 1986.~~

1.6. Application and Enforcement - ~~These~~ This legislative rules ~~apply~~ applies to applicants and licensees of businesses subject to the provisions of West Virginia Code §17A-6A-1 et. seq. and West Virginia Code §17A-6B-1 et. seq. Enforcement of ~~these~~ this legislative rules is vested with the Commissioner of Motor Vehicles or the Commissioner's lawful designee.

§91-6-2 REQUIREMENTS FOR LICENSE - GENERAL

2.1. Application for License

2.1.1. All applications for license shall be typewritten or printed legibly. The applicant shall answer all

questions in detail. If the applicant fails to complete the application in full, the Division may return the application to the applicant without further processing.

2.1.2. The applicant shall attach photographs of the dealer office interior and exterior, display lot and sign to the application for dealer license in the space provided. This requirement does not apply to manufacturers, transporters or financial institutions.

2.1.3. A licensee shall file any application for renewal of a license with the Division at least thirty days prior to the expiration of the current license.

2.1.4. An applicant shall complete a detailed application form upon initial application for license. In the case of a Class D and DUC dealer, the licensee may use an abbreviated application form for license renewal.

2.1.5. The Dealer License Application Forms are as follows:

- a. DMV-126-A-DS Application for New or Used Motor Vehicle Dealer License Certificate.
- b. DMV-126-B-DS Application for Trailer , Semi-Trailer or House Trailer Dealer License Certificate
- c. DMV-126-C-DS Application for Motorcycle or Motor Scooter Dealer License Certificate
- d. DMV-126-D-DS Application for Wrecker/Dismantler /Rebuilder Dealer License Certificate
- e. DMV-126-E-DS Application for renewal of New of Used Motor Vehicle Dealer License Certificate
- f. DMV-126-F-DS Application for Financial Institution License Certificate and Special Plate or Plates.
- g. DMV-126-G-DS Application for Manufacturer or Transporter of License Certificate and Special Plate or Plates.
- h. DMV-126-H-DS Application for Recreational Vehicle Dealer License Certificate

2.1.6. The term "applicant" as defined in all dealer applications has the following meaning; a person operating in his

or her own name or under a trade name; or two or more partners operating under a co-partnership name or under a trade name, or the officers and directors of a corporation operating under the corporation name.

2.2. Established Place of Business

2.2.1. Each dealer location shall meet the "Established Place of Business" requirements of West Virginia Code §17A-6-1 et seq.

2.2.2. Businesses not related to the furtherance of the licensee's vehicle business may not operate from the location of the dealership.

2.2.3. A place of residence does not qualify as an established place of business.

2.2.4. Additional locations for a dealership are subject to the following criteria:

- a. A licensee shall display and offer for sale only vehicles owned by him or her at only those locations designated on the dealer license certificate.
- b. Each additional location shall have an office and display lot which meet the same minimum standards required of the primary location.
- c. A licensee may use dealer special plates issued to the primary location at additional locations licensed by the Division. The trade name and ownership of the dealership shall be identical to that of the primary location.

2.5. Off Premises Sales

2.5.1. Prior Approval - A licensee shall not display or sell motor vehicles, motorcycles, trailers, house trailers or recreational vehicles at a location other than the licensed location or locations unless the Commissioner grants prior approval. The licensee shall request approval at least ten (10) days prior to the date the temporary location is to be established.

2.5.2. Term of Approval - The Commissioner shall not approve a temporary additional location for more than a ten (10) day period of time, subject to renewal at his or her discretion.

2.5.3. Display of Approval Certificate - The licensee shall display the certificate of approval for the temporary

additional dealer location in a conspicuous place at the temporary additional dealer location.

2.6. Dealership Office

2.6.1. The licensee shall locate the business office at the dealership location. The office shall have inside dimensions of at least 144 square feet and be a permanent structure suitable for the purpose of operating the business of the dealership.

2.6.2. Trailer type structures shall have a foundation and be fully underpinned and be suitable for the purpose of operating the business of the dealership.

2.6.3. The licensee shall equip the office with adequate heating and electric service and the office shall not contain any items which would constitute a danger to the public.

2.6.4. The licensee shall equip the office with the equipment required to conduct a business including a desk, chairs and filing facilities.

2.6.5. A Class D or Class DUC licensee shall have a telephone listed in the name of the dealership at the dealership office.

2.6.6. The licensee shall maintain and keep all records for the dealership on the premises and have all records available during regular posted business hours for inspection by authorized representatives of the Division and all law enforcement officers.

2.6.7. The licensee shall maintain office hours open to the public a minimum of twenty (20) hours per week with ten (10) of those hours being between 9:30 A.M. & 8:30 P.M., Monday through Saturday. The dealership shall be open a minimum of forty (40) weeks per year. The dealership shall notify the Division in advance of the dates they intend to be closed. The licensee shall post the business hours in a conspicuous place at the dealership office.

2.7. Dealership Sign

2.7.1. The licensee shall permanently affix a sign on the premises of the dealership which shall clearly and specifically identify the business which is being conducted at the location.

2.7.2. The sign shall contain letters at least four inches in height and of such size as to be reasonably legible from the nearest public road.

2.8 Display Area

2.8.1. The display area shall have a minimum of 1200 square feet located immediately adjacent to the dealership office. This requirement does not apply to manufacturer, reposessor, or transporter licensees.

2.8.2. The licensee shall keep the display area free of junk, junk vehicles, scrap iron and trash of all types.

2.8.3. The display area shall have a covering of concrete, blacktop, gravel or other type material making it suitable for vehicle display under all weather conditions.

2.8.4. The licensee shall keep the display area free of any hazardous condition which would endanger the public.

2.9. Service Facilities

2.9.1. Each licensee with a Class D or Class DUC dealer license shall have facilities and space adequate to carry out servicing and repairs necessary to keep and carry out all representations, warranties and agreements made with respect to vehicles sold by the dealership in accordance with the provisions of West Virginia Code §17A-6-1(a)(17) and (19).

2.9.2. A Class DUC dealer licensee may provide service and repair facilities through written agreement with another person or persons. The licensee shall submit a copy of the agreement with the application for a dealer license. The person providing the contracted services shall maintain regular business hours, and be located within a reasonable distance from the dealership location. The execution of a service and repair agreement shall serve to make these service facilities an extension of the dealership location and subject to inspection by representatives of the Division during regular business hours.

2.10. State and Other Political Subdivision Requirements.

2.10.1. Each dealership location shall possess all current State and local tax licenses applicable to the type of business being conducted.

2.10.2. Each dealership location shall meet all local zoning requirements for the business location.

2.10.3. The licensee shall display all tax licenses in the dealership office.

2.10.4. The licensee shall as a condition of licensing pay any and all taxes or fees due the State or any political

subdivision of the State.

2.11. Miscellaneous

2.11.1. Recreational vehicle, utility trailer, or motorcycle dealer ~~license~~ licensees conducting business at a location such as a department store, sporting goods store, marine goods store or a similar type business, are exempt from the requirements of Section 2.6.1 and 2.6.2 of this legislative rule. Applicants are subject to the "Established Place of Business" requirements of West Virginia Code §17A-6-1(a)(20).

2.11.2. A licensee who sells vehicles on consignment in conjunction with the dealership business shall not use dealer special plates on any consignment vehicle being offered for sale. All consignment vehicles shall be so designated, properly insured, titled and registered.

2.11.3. ~~The Commissioner shall not issue a dealer license for a location where retail sale of gasoline in fuel takes place~~ In accordance with the provisions of West Virginia Code §17A-6-1(a)(17)(19), the Commissioner shall not issue a dealer license for a location where retail sale of gasoline or fuel takes place.

2.12. Bonding Requirements

2.12.1. The licensee, with the exception of a manufacturer, transporter or reposessor licensee, shall post a surety bond of ten thousand dollars prior to licensing pursuant to West Virginia Code §17A-6-4(f) on form DMV-126-DS-P. The licensee shall complete this form in full upon the original application for license and each subsequent renewal. A licensee shall post a separate bond for each dealer license.

2.12.2. The bond shall be conditioned on the premise that the licensee will not, in the conduct of business, practice any fraud, or make any fraudulent representation which causes a financial loss to any purchaser, seller, or financial institution or agency, or the State of West Virginia.

2.12.3. The licensee shall obtain the surety bond with corporate surety from a bonding company licensed to do business in the State of West Virginia.

2.12.4. The licensee shall obtain the surety bond in the trade name under which the dealership is being operated.

2.12.5. The surety bond shall run concurrently from the date the license is issued or renewed to the expiration of the

license.

2.12.6. The surety bonding company shall give the Division thirty (30) days notice, by certified mail, of the cancellation of a bond. The Division shall consider the surety bond as being in effect until notice is received by the Division from the bonding company.

2.12.7. The Commissioner shall immediately revoke the dealer license upon cancellation of bond and without proper replacement.

2.12.8. The licensee shall notify the Division and the bonding company of any change in any information contained in the application for the surety bond.

2.12.9. The Division may notify the bonding company of any audit discrepancies or of revocation or suspension proceedings against the licensee.

2.13. Insurance Requirements

2.13.1. The licensee shall secure dealer liability insurance pursuant to West Virginia Code §17A-6-4(a) from an insurance company licensed to do business in the State of West Virginia.

2.13.2. The licensee shall provide proof of liability insurance on form DMV-126-DS-J. An authorized representative of the insurance company shall execute the completed insurance certificate, in the trade name of the dealership whether it be an individual, co-partnership or corporation. The certificate shall show that insurance coverage is in force and in effect when the application for a dealer license is made, and that insurance coverage remains in effect throughout the effective period of the dealer license.

2.13.3. The licensee shall file a new certificate of insurance with each renewal application.

2.13.4. The insurance company shall give the Division thirty (30) days notice of cancellation of dealer liability coverage on form DMV-126-DS-K. The Commissioner shall immediately revoke the dealer license upon notice of cancellation of insurance coverage, and without proper replacement.

2.13.5. The licensee shall require the purchaser of a motor vehicle with a dealer transfer of a license plate to complete an owner's statement of insurance (WV-4A) at the time of application for transfer of plates. The licensee shall advise the purchaser that completion of the owner's statement of insurance

means the purchaser is swearing under penalty of false swearing that there is liability insurance in effect on the vehicle and that the statement is subject to the random sample verification procedure provided for in West Virginia Code §17A-3-3(a)(5) and ~~Legislative Rule~~ Title 91 CSR 13.

2.13.6. The licensee shall require that the purchaser of a motor vehicle with dealer issuance of a temporary registration plate complete insurance information on DMV Form 40. The licensee shall submit the DMV Form 40 to the Division within five (5) working days of the issuance of the temporary registration plate. The licensee shall advise the purchaser that completion of the owner's statement of insurance means the purchaser is swearing under penalty of false swearing that there is insurance coverage in effect on the vehicle and that the statement is subject to the random sample verification procedure provided for in West Virginia Code §17A-3-39(a)(5)a and ~~Legislative Rules~~ Title 91 CSR 13.

2.14 Issuance of Temporary Registration Plates

2.14.1. The licensee shall make application for temporary registration plates on form DMV-126-F-DS.

2.14.2. ~~An application for temporary plates is limited to~~ A licensee may apply for a maximum of two hundred plates at one time.

2.14.3. The licensee shall account for all temporary registration plates previously issued by the dealership before the Commissioner will approve any application for additional temporary registration plates will be approved.

2.14.4. The Division shall not issue any additional temporary registration plates to the licensee if the licensee's application shows fifty (50) or more temporary registration plates on hand from the previous allotment assigned to the licensee.

2.14.5. The licensee shall issue temporary registration plates in numerical order.

2.14.6. The licensee shall punch out the date of issuance and expiration date and shall also insert clearly and legibly on the face of each temporary registration plate the name, year, make and vehicle identification number (VIN) of the vehicle to which the temporary registration is assigned.

2.14.7. The licensee shall complete the temporary registration certificate (WV Form 40) in triplicate. Each copy shall be clear and legible. The licensee shall give the original certificate to the customer, and forward the second copy to the Division within five (5) working days from the date of issuance and

~~the licensee shall~~ retain the third copy.

2.14.8. The licensee shall maintain a numerical log of all plates assigned to the dealership. The licensee shall keep a record of all temporary registration plates issued by the dealership for a period of three (3) years from the date of issuance.

2.14.9. The licensee shall not issue, assign, transfer or deliver a temporary registration plate to anyone other than the bonafide purchaser of the vehicle sold or delivered by the dealership.

2.14.10. The licensee shall not issue a temporary registration plate for a vehicle which has been purchased from another dealer.

2.14.11. The licensee shall not issue a second temporary registration plate on a vehicle previously assigned a West Virginia temporary registration plate. A licensee shall not extend the period of time on a temporary plate.

2.14.12. The licensee shall not issue a temporary registration plate containing any misstatement of fact.

2.14.13. If it is determined by the Division that a licensee is not in compliance with the provisions of law and ~~these~~ this legislative rules relative to temporary registration plates, the Commissioner may suspend the right of the licensee to issue temporary registration plates pursuant to West Virginia Code §17A-6-15 F (f).

2.15. Dealer Franchise Agreement

2.15.1. Each licensee conducting business in new motor vehicles or house trailers must obtain a franchise from manufacturer to sell particular brand of motor vehicle or house trailer.

2.15.2. The licensee shall submit on any original or renewal application, or upon the request of the Division, a copy of the franchise or sales agreement the licensee has with the manufacturer.

2.16. Dealer License Certificate

2.16.1. The licensee shall conspicuously display the dealer license certificate in the office of the dealer's place of business.

2.16.2. The licensee shall conspicuously display a

certified copy of the dealer license certificate issued pursuant to West Virginia Code §17A-6-8(b) for approved additional locations in the office of each additional location.

2.16.3. The licensee shall make immediate application to the Division for a duplicate certificate if a dealer license certificate becomes lost or mutilated.

2.16.4. The licensee shall use the assigned dealer license number on all forms forwarded to the Division.

2.16.5. The licensee shall immediately return all license certificates, temporary registration certificates and dealer special plates to the Division upon suspension or revocation of the dealer license, or upon exhaustion of an administrative appeal of the licensee's suspension or revocation.

2.17. Change in Dealership

2.17.1. Pursuant to West Virginia Code §17A-6-9, if any of the following changes in the dealership occur, the licensee shall, within sixty (60) days, file a new application:

- a. A change of the location of any place of business.
- b. A change in the name or trade name under which the licensee engages or will engage in business.
- c. The death of the licensee or any partner or partners ~~thereof~~ of the licensee.
- d. A change in any partners, officers or directors of the business.
- e. A change in ownership of the business.
- f. A change in the type of legal entity by which the licensee engages or will engage in the business.
- g. The appointment of any trustee in bankruptcy, trustee under an assignment of the benefit of creditors, master or receiver.

2.18. Dealer Special Plates

2.18.1. The licensee may use dealer special plates issued in accordance with West Virginia Code §17A-6-10 pursuant to the provisions of West Virginia Code §17A-6-13 on a vehicle owned

by the ~~dealer~~ licensee which is operated with the ~~dealers~~ licensee's knowledge and consent.

2.18.2. The licensee shall not use a dealer special plate on any work or service vehicle, or on any vehicle offered for hire or lease, or on any vehicle sold by a dealer to a customer, or on any vehicle not registrable for highway use.

2.18.3. The licensee may use a Class D or Class DUC dealer special plate on one courtesy vehicle per dealership. For the purposes of the rule, a courtesy vehicle means a vehicle used to transport customers to and from the dealership while the customers vehicle is being serviced.

2.18.4. A licensee shall not use a Class D-T/R special plate for the purpose of operating a motor vehicle upon the streets and highways of this State, or on any house trailer or other trailer owned by the licensee and offered for hire or lease, or on any house trailer or other trailer which has been sold by the licensee to a customer. A Class D-T/R special plate may be used in moving a house trailer sold by a house trailer dealer to a customer for one trip only from the dealer's established place of business to a place designated by the customer.

2.18.5. The licensee shall not use a Class F special plate for the purpose of operating any type of motor vehicle other than a motorcycle on the streets and highways of this State, or on any motorcycle offered for hire or lease, or on any motorcycle which has been sold by a dealer to a customer.

2.18.6. A manufacturer or transporter licensee may operate a motor vehicle displaying special dealer plates issued pursuant to West Virginia §17A-6-10(a) on the streets or highways of this State solely for the purpose of transporting or testing such vehicle. Such plates shall not be used on any work or service vehicles.

2.18.7. The A financial institution licensee may use special dealer plates only when operating a vehicle in conjunction with the repossession or sale of a vehicle pursuant to the provisions of West Virginia Code §17A-6-10(b).

§91-6-3 WRECKER/DISMANTLER/REBUILDER DEALER LICENSE

3.1. Application for License

3.1.1. All applications for a license shall be typewritten or printed legibly. The applicant shall complete all questions in detail. If the applicant fails to complete the application, the Division may return the application to the applicant without further processing.

3.1.2. The applicant shall attach photographs of the dealer's office interior and exterior, to the application for dealer license in the space provided. This requirement does not apply to manufacturers, transporters or financial institutions.

3.2. Established Place of Business

3.2.1. The licensee shall locate the place of business for a wrecker/dismantler/rebuilder in a permanent structure suitable for the purpose of dismantling and/or rebuilding motor vehicles.

3.2.2. The licensee shall equip the place of business with adequate heating and lighting.

3.2.3. The place of business shall have adequate facilities for the storage of records and to conduct business.

3.2.4. The wrecker/dismantler/rebuilder licensee shall maintain ~~and keep~~ all records on the premises and keep them available during regular business hours for inspection by authorized representatives of the Division and all law enforcement officers.

3.2.5. A place of residence does not qualify as an established place of business.

3.3. Dealership Sign

3.3.1. The licensee shall permanently affix a sign on the premises of the wrecker/dismantler/rebuilder which clearly and specifically identifies the business which is being conducted at the location.

3.3.2. The sign shall contain letters which are at least four (4) inches high and of such size as to be reasonably legible from the nearest public road.

3.4. Display Area

3.4.1. The licensee shall have a display area if the wrecker/dismantler/rebuilder has vehicles in inventory for sale.

3.4.2. The licensee shall locate the display area immediately adjacent to the wrecker/dismantler/rebuilder's place of business.

3.4.3. The licensee shall keep the display area free of junk vehicles, miscellaneous junk and trash of all types.

3.4.4. The display area, if required, shall have some

type of all weather surface making it suitable for vehicle display under all weather conditions.

3.4.5. The licensee shall keep the display area, if a display area is required, free of any hazardous condition which would endanger the public.

3.4.6. The display area, if a display area is required, shall not be located at a place of residence.

3.5. Bonding Requirements

3.5.1. The applicant for a wrecker/dismantler/rebuilder licensee shall post a surety bond in the amount of ten thousand dollars prior to licensing pursuant to West Virginia §17A-6-4(f) on form DMV-126-DS-P. The wrecker/dismantler/rebuilder shall complete this form in full upon the original application for license and each subsequent renewal. A separate bond shall be posted for each ~~dealer~~ license.

3.5.2. The bond shall be conditioned on the premise that the ~~applicant~~ licensee will not, in the conduct of business, practice any fraud, or make any fraudulent representation which shall cause a financial loss to any purchaser, seller, or financial institution or agency, or the State of West Virginia.

3.5.3. The wrecker/dismantler/rebuilder licensee shall obtain the surety bond with corporate surety from a bonding company licensed to do business in the State of West Virginia.

3.5.4. The wrecker/dismantler/rebuilder licensee shall obtain the surety bond in the trade name under which the dealership business is being operated.

3.5.5. The surety bond shall run concurrently from the date the license is issued or renewed to the expiration of the license.

3.5.6. The surety bonding company shall give the Division thirty (30) days notice, by certified mail, of the cancellation of the bond. The Division shall consider the surety bond as being in effect until notice of cancellation is received by the Division.

3.5.7. The Commissioner shall immediately revoke the wrecker/dismantler/rebuilder license upon cancellation of bond and without proper replacement.

3.5.8. The licensee shall notify the Division and the bonding company of any change in any information contained in the

application for the surety bond.

3.5.9. The Division may notify the bonding company of any audit discrepancies or of revocation or suspension proceedings against the wrecker/dismantler/rebuilder licensee.

3.6 Insurance Requirements

3.6.1. A wrecker/dismantler/rebuilder licensee shall secure dealer liability insurance pursuant to West Virginia Code §17A-6-4(a) from an insurance company licensed to do business in the State of West Virginia.

3.6.2. The wrecker/dismantler/rebuilder licensee shall provide proof of liability insurance on form DMV-126-DS-J. The completed certificate shall be properly executed by an authorized representative of the insurance company. The certificate shall be issued in the trade name of the dealership, whether it be an individual, co-partnership or corporation. The certificate shall be in force and in effect when the application is made and shall remain in effect throughout the effective period of the dealer license.

3.6.3. The dealer shall file a new certificate of insurance with each renewal application.

3.6.4. The insurance company shall give the Division thirty (30) days notice of cancellation of dealer liability coverage on form DMV-126-DS-K. The Commissioner shall immediately revoke the wrecker/dismantler/rebuilder license upon notice of cancellation of coverage and without proper replacement.

3.6.5. The wrecker/dismantler/rebuilder licensee shall require the purchaser of a motor vehicle with dealer transfer of a license plate to complete an owner's statement of insurance (WV-4A) at the time of application for transfer of plates. The licensee shall advise the purchaser that completion of the owner's statement of insurance means the purchaser is swearing under penalty of false swearing that there is liability insurance in effect on the vehicle and that the statement is subject to the random sample verification procedure provided for in West Virginia Code §17A-3-3(a)(5) and Legislative Rules Title 91 CSR 13.

3.6.6. The wrecker/dismantler/rebuilder licensee shall require the purchaser of a motor vehicle with dealer issuance of a temporary registration plate to complete insurance information on DMV Form 40. The dealer shall submit the DMV Form 40 to the Division within five (5) days of the issuance of the temporary registration plate. The dealer shall advise the purchaser that completion of the owner's statement of insurance means the purchaser is swearing under penalty of false swearing that there is insurance

coverage in effect on the vehicle and that the statement is subject to the random sample verification procedure provided for in West Virginia Code §17A-3-3(a)(5) and ~~Legislative Rules~~ Title 91 CSR 13.

3.7. License Certificate

3.7.1. The licensee shall conspicuously display the wrecker/dismantler/rebuilder's license certificate at the wrecker/dismantler/rebuilder's place of business.

3.7.2. The licensee shall display a certified copy of the license certificate issued pursuant to West Virginia Code §17A-6-8(b) for approved additional locations at each additional location.

3.7.3. The wrecker/dismantler/rebuilder shall make immediate application to the Division for a duplicate certificate if the license certificate is lost or mutilated.

3.7.4. The wrecker/dismantler/rebuilder licensee shall use the assigned wrecker/dismantler/rebuilder's license number on all forms forwarded to the Division.

3.7.5. The wrecker/dismantler/rebuilder licensee shall immediately return all license certificates, temporary registration plates and dealer special plates to the Division upon suspension or revocation, of his or her license or upon exhaustion of an administrative appeal.

3.8. Change in Business

3.8.1 Pursuant to West Virginia Code §17A-6-9, a ~~wrecker/dismantler/rebuilder shall~~, if any of the following changes occur the ~~dealer wrecker/dismantler/rebuilder~~ shall, within sixty (60) days, file a new application:

- a. A change of the location of any place of business.
- b. A change in the name or trade name under which the licensee engages or will engage in business.
- c. The death of the licensee or any partner or partners thereof of the licensee.
- d. A change in any partners, officers or directors of the business.
- e. A change in ownership of the business.
- f. A change in the type of legal entity by which the licensee engages or will engage in the business.

- g. The appointment of any trustee in bankruptcy, trustee under an assignment for the benefit of creditors, master or receiver.

3.9. Dealer Special Plates

3.9.1. In accordance with West Virginia Code §17A-6-10(g) the wrecker/dismantler/rebuilder licensee is entitled to a maximum of four (4) "Towing Only" special plates and one (1) "Demo" special plate.

3.9.2. The wrecker/dismantler/rebuilder licensee may use the "Towing Only" special plate on a vehicle being towed by a vehicle which is properly licensed and which is owned by the wrecker/dismantler/rebuilder.

3.9.3. The wrecker/dismantler/rebuilder licensee may use the "Towing Only" special plate only on a vehicle which is owned by the wrecker/dismantler/rebuilder or upon which the salvage certificate has been properly assigned to the wrecker/dismantler/rebuilder in accordance with West Virginia Code §17A-4-10.

3.9.4. The wrecker/dismantler/rebuilder licensee may use the "Demo" special plate only on a vehicle which is owned by the wrecker/dismantler/rebuilder or upon which the salvage certificate has been properly assigned to the wrecker/dismantler/rebuilder in accordance with West Virginia Code §17A-4-10.

3.9.5. The wrecker/dismantler/rebuilder licensee may use the "Demo" special plate only under the following circumstances:

- a. To allow a prospective purchaser to test drive a vehicle.
- b. To drive a vehicle to a Division of Motor Vehicles examination location or to an authorized state inspection station.
- c. To drive a vehicle to an auction.

3.9.6. The wrecker/dismantler/rebuilder licensee shall keep a written record of the use of a "Demo" special plate. The record shall include, 1) The name and address of the person driving the vehicle, 2) the date and time the vehicle was driven, 3) the odometer reading before and after the vehicle was driven, and 4) the reason the vehicle was driven.

3.9.7. The wrecker/dismantler/rebuilder licensee shall follow the provisions set forth by West Virginia Code §17A-4-10 and procedures established by the Division when titling a reconstructed vehicle.

3.9.8. The wrecker/dismantler/rebuilder licensee may deal only with a salvage vehicle upon which a salvage certificate has been issued, or in a salvage vehicle which the wrecker/dismantler/rebuilder has rebuilt.

3.9.9. A wrecker/dismantler/rebuilder licensee shall follow the provisions of West Virginia Code §17A-6-15 when issuing temporary registration plates.

3.9.10. The wrecker/dismantler/rebuilder licensee shall follow the provisions of section 2.14 of this rule when issuing temporary registration plates.

§91-6-4 LICENSE SERVICES - GENERAL

4.1. Application for License

4.1.1. In accordance with the provisions of West Virginia Code §17A-6B-1, any person processing Division of Motor Vehicles documents for compensation when ~~such~~ the service is offered to the general public shall first obtain a license certificate to operate a License Service business. For the purposes of this rule the term, "persons processing documents for compensation" does not include bonafide full time employees of a licensed motor vehicle dealer processing documents related to a vehicle sold by the dealer. ~~Such~~ The employee cannot be employed by more than one dealership to be exempted from the licensing requirements of this rule.

4.1.2. All applications for a license shall be typewritten or printed legibly. The applicant shall complete the application in full. If the applicant fails to complete the application in full, the Division may return the application to the applicant without further processing.

4.1.3. The licensee shall file an application for renewal of a license with the Division at least thirty days prior to the expiration of the current license. The licensing period is January 1 to December 31.

4.1.4. The term applicant, has the following meaning; a person operating in his or her own name or under a trade name, two or more partners operating in his or her own name or under a trade name, two or more partners operating under a co-partnership name or under a trade name, or the officers and directors of a corporation operating under the corporation name.

4.2. Establish Place of Business

4.2.1. The License Service office shall contain the equipment required to conduct a business including a desk, chairs and filing facilities for the maintenance of records.

4.2.2. The office location may be self-standing or in a residence. The office must have a telephone listed in the name of the License Service.

4.2.3. The License Service licensee shall keep all records on the premises.

4.2.4. The License Service may set any office hours it chooses. However, the hours shall be based on a regular schedule and be posted in a conspicuous place in order to facilitate the availability of records for review by the Division. An employee of the License Service must be present during posted business hours.

4.2.5. State and other political subdivision requirements.

- a) Each office location shall possess all current State and local licenses applicable to a business of the type being conducted.
- b) Each office location shall meet all local zoning requirements for the business location.
- c) The licensee shall display all tax licenses in the office.
- d) The licensee shall pay any and all taxes due the State or any political subdivision of the State.

4.3. Bonding Requirements

4.3.1. In accordance with the provisions of the West Virginia Code §17A-6B-2 a bond in the penal sum of twenty-five thousand dollars is required. The licensee shall have the bond completed on form DMV-126-DS-P. ~~Such~~ The bond shall be conditioned on the premise that the applicant will not, in the conduct of business, practice any fraud, or make any fraudulent representation which causes a financial loss to any purchaser, seller, financial institution, agency, or the State of West Virginia.

4.3.2. The licensee shall secure the surety bond with corporate surety from a bonding company licensed to do business in the State of West Virginia.

4.3.3. The licensee shall obtain the surety bond in the trade name under which the License Service is being operated.

4.3.4. The surety bond shall run concurrently from the date the license is issued or renewed to the expiration of the license.

4.3.5. The surety bonding company shall give the Division thirty (30) days notice by certified mail, of the cancellation of the bond. The Division shall consider the surety bond as being in effect until notice of cancellation is received by the Division.

4.3.6. The Commissioner shall immediately revoke the License Service license upon cancellation of the bond and without proper replacement.

4.3.7. The licensee shall notify the Division and the bonding company of any change in any information contained in the application for the surety bond.

4.3.8. The Division may notify the bonding company of audit discrepancies or revocation or suspension proceedings against the licensee.

4.4. License Service License Certificate

4.4.1. The licensee shall conspicuously display the License Service license certificate in the office of the License Service's place of business.

4.4.2. The licensee shall conspicuously display a certified copy of the license certificate issued pursuant to West Virginia Code §17A-6B-7 for approved additional locations in the office of each additional location.

4.4.3. The licensee shall make immediate application to the Division for a duplicate certificate if a license certificate becomes lost or mutilated.

4.4.4. The licensee shall use the assigned license number on all forms forwarded to the Division.

4.4.5. Upon exhaustion of an administrative appeal of a license suspension or revocation, or upon revocation for failure to maintain the bond pursuant to West Virginia Code §17A-6B-9(c), or upon voluntary cancellation of the dealer license, the licensee shall immediately return all license certificates, and/or temporary registration certificates to the Division.

4.5. Change in License Service

4.5.1. Pursuant to West Virginia Code §17A-6B-8, if any of the following changes occur, the licensee shall, within sixty (60) days, file a new application for license:

- a) Change of the location of any place of business.
- b) A change in the name or trade name under which the licensee engages or will engage in business.
- c) The death of the licensee or any partner or partners thereof.
- d) A change in any partners, officers or directors.
- e) A change in ownership of the business.
- f) A change in the type of legal entity by which the licensee engages or will engage in the business.
- g) The appointment of any trustee in bankruptcy, trustee under an assignment for the benefit of creditors, master or receiver.

4.6. Issuance of Temporary Registration Plates

4.6.1. The licensee shall make application for temporary registration plates on form DMV-126-F-DS.

4.6.2. ~~An application for temporary plates is limited to~~ A licensee may apply for a maximum of two hundred plates at one time.

4.6.3. The licensee shall account for all temporary registration plates previously issued by the License Service before the Commissioner will approve any application for additional temporary registration plates will be approved.

4.6.4. The Division shall not issue any additional temporary registration plates to the licensee if the licensee's application shows fifty (50) or more temporary registration plates on hand from the previous allotment assigned to the licensee.

4.6.5. The licensee shall issue temporary registration plates in numerical order.

4.6.6. The licensee shall punch out the date of issuance and the expiration date and shall also insert clearly and

legibly on the face of each temporary registration plate the name, year, make and vehicle identification number (VIN) of the vehicle to which the temporary registration is assigned.

4.6.7. The licensee shall complete the temporary registration certificate (WV Form 40) in triplicate. Each copy shall be clear and legible. The licensee shall give the original certificate to the customer, and forward the second copy to the Division and shall retain the third copy.

4.6.8. The licensee shall maintain a numerical log of all plates assigned to the License Service. The licensee shall keep a record of all temporary registration plates issued by the License Service for a period of three (3) years from the date of issuance.

4.6.9. The licensee shall not issue, assign, transfer or deliver a temporary registration plate to anyone other than the bonafide applicant for a West Virginia title and registration to the vehicle to which the temporary registration plate is assigned, and not until the applicant has submitted all documents with the fees and taxes necessary to obtain a West Virginia title and registration.

4.6.10. The licensee shall not issue a temporary registration plate for a vehicle which has been purchased from a licensed West Virginia dealer. However, a licensee may issue a temporary registration plate for vehicles entering West Virginia from another state or jurisdiction irrespective of place of purchase.

4.6.11. The licensee shall not issue a second temporary registration plate on a vehicle previously assigned a West Virginia temporary registration plate. A license shall not extend the period of time on a temporary plate.

4.6.12. The licensee shall not issue a temporary registration plate containing any misstatement of fact.

4.6.13. The fee charged by the licensee for a temporary registration plate shall not exceed \$5.00 as prescribed by West Virginia Code §17A-6B-10(h).

4.6.14. If it is determined by the Division that a licensee is not in compliance with the provisions of law and ~~these~~ this legislative rules relative to temporary registration plates, the Commissioner may suspend the right of the licensee to issue temporary registration plates pursuant to West Virginia Code §17A-6B-10(f).

4.7. License Service Record Keeping and Document Processing

4.7.1. In addition to the records as required by West Virginia Code §17A-6B-10 and these ~~these~~ this rules, the licensee shall maintain a record/log of all work accepted by the License Service for a period of three (3) years from the date of the transaction. ~~Such~~ The record shall include the name and address of the customer, the vehicle identification information, the type of transaction, the date of transaction and/or any activity relating to the transaction. The licensee shall provide each customer with an itemized receipt and retain a duplicate copy for the licensee's records.

~~4.7.2. In accordance with West Virginia §17A-6B-10 the licensee shall not issue a temporary registration plate without having in hand all title documents and fees and taxes for submission to the Division within forty-eight (48) hours. The postmark on the envelope or work mailed to the Division serves as the measure of compliance.~~ In accordance with the provisions of West Virginia Code §17A-6B-10, the licensee shall not issue a temporary registration plate for a vehicle unless the applicant has provided all necessary titling documents, fees and taxes. The licensee shall forward all title documents, fees and taxes to the division within forty-eight (48) hours of issuance of the temporary registration plate. The postmark on the envelope containing the submitted title documents serves as the measure of compliance.

4.7.3. If an investigation of the licensee's financial records shows that any tax or fee is due the State, the Commissioner shall immediately suspend the License Service's license.

4.7.4. In addition to any administrative license suspension or revocation the Division may pursue criminal or civil action to collect any taxes or fees due the Division.

4.7.5. The licensee shall keep all records open for inspection by authorized representatives of the Division and all law enforcement officers during the regular posted business hours of the License Service.

4.7.6. When the licensee does not issue a temporary registration plate, the licensee shall submit to the Division all title work or other transactions received from a customer within five (5) days. The licensee shall attempt to notify the customer within five (5) days of all transactions returned for correction.

4.8. Noncompliance with Statute, Rule or Policy

4.8.1. The licensee, as a condition of licensing, agrees to abide by all statutes, rules, policies and procedures established by the Division in order to provide for the most efficient processing of work.

4.8.2. The Commissioner may suspend the processing of a License Service's documents due to noncompliance with any statute, rule, policy or procedure.

4.8.3. The Commissioner shall suspend or revoke ~~the~~ a License Service's license to offer document processing services to the general public for continued noncompliance with any statute, rule, policy, or procedure.

§91-6-5 ADMINISTRATIVE APPEALS OF COMMISSIONER'S ORDERS OR DECISIONS

5.1. Any applicant or licensee, adversely affected by an order made and entered by the Commissioner in accordance with the provisions of West Virginia Code §17A-6-1, or West Virginia Code §17A-6B-1 et seq., and/or this legislative rule, may request a hearing by filing a written notice with the Commissioner in person, or by certified mail, return receipt requested. The applicant or licensee must request a hearing within thirty (30) days from the date on which the order of revocation's registered or certified mail receipt was signed. However, in cases when the registered or certified mail is not signed for, the provisions of West Virginia Code §17A-2-19 ~~shall~~ apply which provides that the giving of notice is complete upon expiration of four (4) days after deposit of the notice in the United States mail.

5.2. The notice requesting a hearing shall contain a description of the order upon which a hearing is requested, and the grounds upon which it is asserted that the order should be vacated or modified.

5.3. Within ten (10) days after receipt of a notice requesting a hearing, the Commissioner shall cause a notice of hearing to be served upon the party requesting the hearing by registered or certified mail, return receipt requested. The notice shall specify the time, date and place of the hearing and shall contain a statement of the issues to be considered at the hearing. All parties shall be afforded at least ten (10) days notice of the hearing. The Commissioner may postpone or continue a hearing on his or her own motion. The Commissioner may also grant a continuance on less than five (5) days notice in the event of unexpected personal emergencies. The Commissioner shall hold the hearing in Charleston, Kanawha County, unless another place is agreed upon by all parties.

5.4. The person requesting a hearing may be granted a continuance of a scheduled hearing. The request for continuance shall be in writing, and must be received by the Commissioner at least five (5) days prior to the scheduled hearing date. The request will be granted if good cause is shown. Good cause ~~shall~~ includes ~~reasons~~ as but is not be limited to reasons such as

serious illness, medical appointments, court appearances, or religious holidays of either the person requesting a hearing or his or her attorney.

5.5. The failure of a person requesting a hearing to appear without first obtaining a continuance pursuant to Sections 5.3 or 5.4 of this rule shall result in an automatic reinstatement of the Commissioner's order.

5.6. Any party may request the issuance of subpoenas or subpoenas duces tecum by the Commissioner. The authority for the issuance of subpoenas or subpoenas duces tecum is contained in West Virginia Code §17A-2-18. ~~All of All parties shall follow the provisions relating to subpoenas and subpoenas duces tecum set forth in paragraph (b) of West Virginia Code §29A-5-1 shall be followed.~~

5.7. The filing of a notice requesting a hearing ~~shall operate~~ to automatically stay or suspend execution of any order which is the subject matter of the hearing except for an order suspending a license certificate in accordance with the provisions of subsection (b) of West Virginia Code §17A-6-18 which provides for immediate suspension for failure to maintain the required bond or liability insurance.

5.8. The Commissioner may appoint a hearing examiner to conduct hearings under West Virginia Code §17A-6-1 et seq. or West Virginia Code §17A-6B-1 et seq. and/or this legislative rule and to recommend findings of fact and conclusions of the law to the Commissioner. Hearing examiners may exercise all the powers granted by West Virginia Code §29A-5-1(d).

5.9. The party who has requested a hearing may represent himself or herself or be represented by an attorney licensed to practice law in the State of West Virginia. The Division shall be represented by a person designated by the Commissioner. ~~All witnesses offering testimony shall be sworn. The hearing examiner shall swear in all witnesses offering testimony.~~

5.10. The rules of evidence as applied in civil cases in the circuit courts of this State shall be followed.

5.10.1. When necessary to ascertain facts not reasonably susceptible to proof under the rules of evidence, evidence not admissible thereunder shall be admitted, except where precluded by statute, if it is of a type commonly relied upon by reasonably prudent men in the conduct of their affairs.

5.10.2. The rules of privilege recognized by law shall be followed.

5.10.3. Documentary evidence may be received in the form of copies or excerpts or by incorporation by reference.

5.10.4. Evidentiary depositions may be taken and admitted into evidence as in civil actions in the circuit courts of this State.

5.11. The Division has the burden of sustaining the Commissioner's order, and therefore, shall make the initial presentation of evidence. At the conclusion of the Division's presentation, the party requesting the hearing shall have an opportunity to present evidence. The Division ~~shall have~~ has the right of rebuttal. All parties have the right to cross-examine witnesses.

5.12. Hearings in progress may be continued from one day to another or adjourned to a later date or a different place by the hearing examiner by making an announcement at the hearing or by appropriate notice to all parties.

5.13. All testimony, evidence, arguments, and rulings on the admissibility of testimony and evidence shall be reported by stenographic notes and characters, sound recording devices or other mechanical means.

5.14. ~~Upon the request to the Division by any party to the hearing,~~ All reported materials shall be transcribed and a copy furnished to ~~such party~~ any party to the hearing at their expense. The Division shall collect a fee of one dollar and fifty cents (\$1.50) for each page transcribed.

5.15. The Division has the responsibility for making arrangements for the transcription of the reported testimony and for the preparation of the record made before the Division. In the event transcription is required, it shall be accomplished within a reasonable time.

5.16. Upon the motion of the Division or any party assigning error or omission in any part of the transcript, the Division through the Commissioner or the duly appointed hearing examiner, shall settle all differences arising as to whether the transcript truly disclosed what occurred at the hearing and if the Commissioner considers it appropriate, he or she shall direct that the transcript be corrected and revised.

5.17. Every final order entered by the Commissioner, following a hearing conducted pursuant to this rule, shall be made in accordance with the provisions of West Virginia Code §29A-5-3. Any party adversely affected by the final order entered by the Commissioner may petition the appropriate circuit court for judicial review in accordance with West Virginia Code §29A-5-4.

§91-6-6 SEVERABILITY

In the event any portion of this legislative rule is held invalid or unconstitutional, ~~such~~ the invalidity or unconstitutionality shall not affect the validity or constitutionality of the remaining portions of this legislative rule.



WEST VIRGINIA LEGISLATURE
LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

Room M-152, State Capitol
Charleston, West Virginia 25305
(304) 340-3286

FILED

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

Senator William R. Wooton, Co-Chair
Delegate David Grubb, Co-Chair

Debra A. Graham, Counsel
~~Michael McThomas, Associate Counsel~~
Marie Nickerson, Adm. Assistant

NOTICE OF ACTION TAKEN BY LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

November 8, 1992

TO: Ken Hechler, Secretary of State, State Register

TO: Ms. Jane O. Cline, Commissioner
Division of Motor Vehicles
Building 3, Capitol Complex
Charleston, WV 25305

FROM: Legislative Rule-Making Review Committee

PROPOSED RULE: Motor Vehicle Dealers, Wreckers/Dismantlers/
Rebuilders and License Services

The Legislative Rule-Making Review Committee recommends that the West Virginia Legislature:

1. Authorize the agency to promulgate the Legislative Rule
 - (a) as originally filed _____
 - (b) as modified by the agency X
2. Authorize the agency to promulgate part of the Legislative rule; a statement of reasons for such recommendation is attached. _____
3. Authorize the agency to promulgate the Legislative rule with certain amendments; amendments and a statement of reasons for such recommendation is attached. _____
4. Authorize the agency to promulgate the Legislative rule as modified with certain amendments; amendments and a statement of reasons for such recommendation is attached. _____
5. Recommends that the rule be withdrawn; a statement of reasons for such recommendation is attached. _____

Pursuant to Code 29A-3-11(c), this notice has been filed in the State Register and with the agency proposing the rule.

cc: Steven O. Dale