

**WEST VIRGINIA
SECRETARY OF STATE
BETTY IRELAND
ADMINISTRATIVE LAW DIVISION**

Form #2

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WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: Division of Motor Vehicles TITLE NUMBER: 91

RULE TYPE: Legislative CITE AUTHORITY: WV Code §17A-2-9, §17A-2A-12

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 8

TITLE OF RULE BEING AMENDED: Disclosure of Information from the Files of the Division of Motor Vehicles

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON October 22, 2007 AT 12:00 Noon ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS:

Division of Motor Vehicles
Office of the Commissioner
Attn: Steven O. Dale
Docket Number 2007 91CSR8
Building 3, Room 319
Capitol Complex
Charleston, WV 25317

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THIS PROPOSED RULE.


Authorized Signature

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

#4.40



WEST VIRGINIA DEPARTMENT OF TRANSPORTATION

Division of Motor Vehicles

1800 Kanawha Boulevard East • Building Three
Charleston, West Virginia 25317-0010 • 304/558-3900
TDD 1-800-742-6991 • 1-800-642-9066

Joe Manchin III
Governor

91 CSR 8

Disclosure of Information from the Files of the Division of Motor Vehicles

Circumstances Requiring the Filing of a Proposed Rule

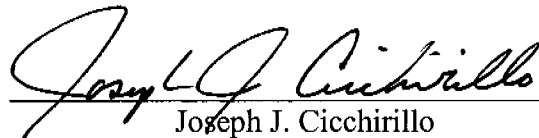
The proposed amendment to this rule repeals a provision added in the legislation authorizing the Division of Motor Vehicles to promulgate updates to this rule. Specifically, the amendment requires DMV to notify any person who is the subject of an inquiry regarding their personal information (name, address etc). For example, if an attorney, law enforcement officer or a private investigator requested vehicle ownership information on a person (for a purpose authorized under WV Code §17A-2A-6), DMV would be required to send a notice to that person indicating who had requested their information. The notice requirement exempted information obtained through bulk sales (insurance companies obtaining driving records for example) court subpoenas, court orders and information obtained through the various law enforcement electronic inquiry systems that hit the DMV data banks.

The notice requirement has raised considerable concern from private investigators and law enforcement officers who rely on DMV information to further investigations concerning pending criminal cases, insurance fraud cases on behalf of insurance companies, workers compensation cases and back ground investigations on behalf of attorneys researching civil and criminal cases. Many times, government agencies subcontract with private investigators to research cases.

The well placed concern is based on the fact that subjects of investigation are now alerted that they are under scrutiny, endangering the safety of the private investigator and other law enforcement officials as well as compromising the ongoing investigation.

Of lesser importance is the sheer volume of notifications that may result from particular types of inquiries. A request for one vehicle's title history file for a purpose authorized under W. Va. Code §17A-2A-6 may result in the Division of Motor Vehicles generating twenty or more letters to previous vehicle owners, insurers, lien holders or other persons.

The rule also makes one technical cleanup to the rule to reconcile a conflicting reference to the five year driving record.



Joseph J. Cicchirillo
Commissioner of Motor Vehicles



WEST VIRGINIA DEPARTMENT OF TRANSPORTATION

Division of Motor Vehicles

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91 CSR 8

Disclosure of Information from the Files of the Division of Motor Vehicles

Summary of Rule Change

The proposed amendment to this rule repeals a provision added in the legislation authorizing the Division of Motor Vehicles to promulgate updates to this rule. Specifically, the amendment requires DMV to notify any person who is the subject of an inquiry regarding their personal information (name, address etc). For example, if an attorney, law enforcement officer or a private investigator requested vehicle ownership information on a person (for a purpose authorized under WV Code §17A-2A-6), DMV would be required to send a notice to that person indicating who had requested their information. The notice requirement in the current rule exempted information obtained through bulk sales (insurance companies obtaining driving records for example) court subpoenas, court orders and information obtained through the various law enforcement electronic inquiry systems that hit the DMV data banks.

The rule also makes one technical cleanup to the rule to reconcile a conflicting reference to the five year driving record.

A handwritten signature in cursive script, reading "Joseph J. Cicchirillo", written over a horizontal line.

Joseph J. Cicchirillo
Commissioner of Motor Vehicles

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Disclosure of Information from the Files of the Division of Motor Vehicles

Type of Rule: Legislative Interpretive Procedural

Agency: Division of Motor Vehicles

Address: Building 3, Capitol Complex
Charleston, WV 25317

Phone Number: 304 558-2723 Email: sdale@dot.state.wv.us

Fiscal Note Summary

Summarize in a clear and concise manner what impact this measure will have on costs and revenues of state government.

This fiscal note reflects the annual cost of providing the individual notification requirement that is proposed to be repealed by this rule change.

Fiscal Note Detail

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

FISCAL YEAR			
Effect of Proposal	Current Increase/Decrease (use "-")	Next Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	92,830.00	92,830.00	92,830.00
Personal Services	63,500.00	63,500.00	63,500.00
Current Expenses	29,330.00	29,330.00	29,330.00
Repairs & Alterations			
Assets			
Other			
2. Estimated Total Revenues	0.00	0.00	0.00

Rule Title:

Joseph C. Cichillo

Rule Title: Disclosure of Information from the Files of the Division of Motor Vehicles

3. Explanation of above estimates (including long-range effect):

Please include any increase or decrease in fees in your estimated total revenues.

MEMORANDUM

Please identify any areas of vagueness, technical defects, reasons the proposed rule **would not** have a fiscal impact, and/or any special issues **not** captured elsewhere on this form.

Date: September 17, 2006

Signature of Agency Head or Authorized Representative

Joseph C. ...

FILED

2007 SEP 19 PM 2:02

OFFICE OF THE
SECRETARY OF STATE

PROPOSED
TITLE 91
WEST VIRGINIA LEGISLATIVE RULE
DIVISION OF MOTOR VEHICLES

SERIES 8
DISCLOSURE OF INFORMATION
FROM THE FILES OF THE DIVISION OF MOTOR VEHICLES

§91-8-1. General.

1.1. Scope – This legislative rule establishes procedures for the Division’s disclosures of information and other requests for information made to the Division.

1.2. Authority – W. Va. Code §§17A-2-9, 17A-2A-12, 17D-2-2, 29A-1-1 et seq.

1.3. Filing Date –

1.4. Effective Date –

1.5. Repeal of Former Rule. – This legislative rule repeals and replaces West Virginia Legislative Rules, Division of Motor Vehicles 91 CSR 8 Policies Pertaining to the Collection, Filing, and Distribution of Information from the Files of the Department of Motor Vehicles as filed August 14, 1974 and effective September 13, 1974.

§91-8-2. Application and Enforcement.

2.1. Application. – This legislative rule applies to persons requesting information from the Division of Motor Vehicles.

2.2. Enforcement. – Enforcement of this legislative rule is vested with the Commissioner of Motor Vehicles or his or her lawful designee.

§ 91-8-3. Statutory Background.

3.1. The Uniform Motor Vehicle Records Disclosure Act requires the Division of Motor Vehicles to disclose information, including personal information, maintained in its motor vehicle records. The Act mandates disclosure dependent on who is making the request, the type of information requested, and the proposed use of the information.

3.2. Personal information disclosure may be further restricted by the Health and Insurance Portability Accountability Act, 42 U.S.C. §1301 et seq.

3.3. W. Va. Code §17A-6-4 prohibits the disclosure of information contained in a motor vehicle dealership file. If the information requested is not personal information as defined by the Act, the information may be released if permitted by the Freedom of Information Act, W. Va. Code §29B-1-1 et seq. and §17A-2A-1 et seq.

3.4. The Act is based on a federal government requirement to regulate the disclosure of personal information from motor vehicle agencies.

3.5. The purpose of the Act is to implement the federal Drivers Privacy Protection Act of 1994, 18 U.S.C. § 2721 et seq. in order to protect the interest of individuals in their personal privacy by prohibiting the disclosure and use of personal information contained in their motor vehicle record, except as authorized by an individual or by law.

3.6. The Act allows the Division to promulgate rules in accordance with chapter twenty-nine-a of the West Virginia Code to carry out the purposes of the Act.

§91-8-4 Definitions.

4.1. "Appropriate identification" means an original or a legible photocopy of the driver's license or state-issued identification card of the person requesting personal information. If the person is a corporation or business, an employee of the company shall provide a copy of his or her driver's license or state-issued identification card.

4.2. "Consensual users" means persons to whom the Division may disclose personal information pursuant to W.Va. Code §17A-2A-6. Under that section, personal information may be disclosed by the Division with written permission of the person about whom the information is sought.

4.3. "Permitted users" means persons allowed to receive information as defined by the permitted disclosures section of the Act found in W. Va. Code §17A-2A-7. Persons who want copies of their own records are permitted users and may obtain copies of their own records.

4.4. "Requestor" means any person who requests personal information from the Division.

4.5. "Required users" means persons to whom the Division must disclose personal information as mandated under W.Va. Code §17A-2A-5.

4.6. "Uniform Motor Vehicle Records Disclosure Act" or "Act" means the provisions of W.Va. Code §17A-2A-1 et seq. pertaining to the implementation of the federal Drivers Protection Act of 1994 in this state.

4.7. "Written permission" includes a copy of a power of attorney, a completed Division waiver form, or a written statement signed and dated by the individual about whom the information is sought.

§91-8-5 Disclosure of Records that do not contain personal information.

5.1. Verbal Requests. The Division may disclose records that do not contain personal information upon verbal request.

5.1.a. Division employees may confirm information over the telephone given by the person requesting the information.

5.1.b. Division employees may disclose information over the telephone regarding the status of vehicle titles, and vehicle registrations including the vehicle identification number, the year, the make, and the model of vehicles registered or titled in West Virginia.

5.1.c. Division employees may disclose information over the telephone concerning the status of driver's licenses and identification cards including revocations, suspensions, and citations.

5.1.d. Division employees may disclose information over the telephone regarding the status of a dealership license including final revocations, suspensions, and civil penalties.

5.2. Written Requests. The Division may disclose records that do not contain personal information upon written request pursuant to W. Va. Code §29B-1-1 et seq.

§91-8-6 Disclosure of Records that contain personal information.

6.1. Verbal Requests. The Division may not disclose records that contain personal information upon verbal request.

6.2. Written Requests. The Division shall disclose records that contain personal information if the request is in writing on a form prescribed by the Division, if the request is for a legitimate purpose, if the requestor pays the required fees, and if the requestor provides proper identification. Records shall be disclosed only to required users, consensual users, or permitted users pursuant to the Act.

6.2.a. Permitted Users.

1. Requestors may obtain their own driver records at any branch office of the Division. All other requests must be processed through the Charleston Capitol office at the following address:

Attention: Driver Records
WVDMV
1800 Kanawha Blvd., E
Charleston, WV 25317

2. Obtaining Another Person's Driver's License Records. All driver records released will cover a five-year period. Courts, law enforcement agencies, government agencies, and

employers may request records covering a longer period.

3. Requesting Vehicle Records. Requestors may obtain their own vehicle records and other persons' vehicle information, if permitted, by sending a written request to the Charleston Capitol office at the following address:

Attention: Vehicle Records
WVDMV
1606 Washington Street, E
Charleston, WV 25317

~~4. If the Division discloses personal information pursuant to W. Va. Code §17A-2A-7 and this subdivision, the Division shall notify the person whose personal information was requested in writing that the information has been disclosed as required by statute and this rule. The notice provisions of this paragraph do not apply to disclosure of information through bulk information contracts or disclosure pursuant to a subpoena or court order.~~

6.2.b. Bulk Sales. The Division shall disclose personal information in bulk to required or permitted users only after review by the Division and only after the requestor has:

1. Completed and submitted a letter of intent. The letter of intent shall specify that personal information will be used only in accordance with the Act; and it shall specify the section of the Act that qualifies the requestor as either a required user, a consensual user, or a permitted user;
2. Completed and submitted a contract prescribed by the Division; and
3. Submitted the appropriate fees.

6.2.c. Non-Permitted Users. The Division may release records that contain personal information to non-permitted users under the Act if all personal information has been obscured or redacted. Any requestor who wants copies of another person's personal information, including copies of records about their immediate family members, may be able to obtain this information only if:

1. The Division has a completed Opt-in form from the person who is the subject of the request; or
2. The requestor is a consensual user as defined by W. Va. Code §17A-2A-6.

6.2.d. Opt-In. The Division shall disclose all personal information about a person to any requestor if the person about whom the information is requested has signed and submitted a written consent form, or opt-in form, allowing the Division to disclose personal information for any purpose.

6.3. Nondisclosure of Records.

6.3.a. The Division shall not disclose personal information contained in records if the Division has reasonable grounds to believe that the information will not be used for a legitimate purpose.

6.3.b. The Division shall not disclose personal information to satisfy curiosity, for marketing purposes, for solicitations or for any purpose not permitted under the Act.

6.3.c. The Division shall not disclose personal information to the media since the media are not required users, permitted users, or consensual users under the Act.

6.3.d. The Division shall not disclose finger images collected by the Division except for issuing and processing driver's licenses and any legal process associated with issuing and processing driver's licenses.

6.3.e. The Division shall not disclose personal information by facsimile machine unless the request is made pursuant to the Act and all appropriate fees have been received.

6.3.f. The Division shall not disclose information contained in motor vehicle dealership files maintained by the Division pursuant to W.Va. Code §17A-6-4, except by valid subpoena or court order.

6.3.g. The Division shall not disclose medical or disability records to any person except a consensual user; a required user with statutory requirements and authority for the use of medical or disability records; the Division's driver's license advisory board; a reviewing court, pursuant to a valid subpoena pursuant to a valid Supreme Court or Circuit Court order.

6.3.h. Message Forwarding- The Division shall not disclose personal information if the requester is not a permitted user, a required user, or a consensual user. However, the Division may send a message to the person about whom the personal information pertains. The requestor shall fill out a form prescribed by the Division, write a message on the form and pay the appropriate, nonrefundable fee. The Division shall forward the message to the last known address in its records. The Division shall not guarantee a response. The Division may refuse to send the message if it contains offensive language, threats, language that may incite violence, or any language that may induce or assist in criminal activities.

6.3.i. The Division shall not disclose social security numbers or credit card numbers except pursuant to federal law, West Virginia law, a valid court order, a valid subpoena, or a valid government agency request on agency letterhead that includes statutory authority for the release of the social security number or credit card number.

§91-8-7 Fees. All fees listed in this subsection shall accompany requests for information. Fees are nonrefundable even if the requested information is not available from the Division's records. Fees referenced in this rule are established in accordance with W.Va. Code §17A-2A-9 or related statute.

7.1. Five Dollars (\$5) per request for a certified abstract of operating record (~~7~~ 5 years). A

One Dollar (\$1) additional fee will be charged if the driver's license number is not provided by the requestor.

7.2. Five Dollars (\$5) per request for each certified complete abstract of operating record.

7.3. One Dollar (\$1) per request for vehicle registration information (screen print from computer records).

7.4. Five Dollars (\$5) for a title file which includes any documents submitted at the time the vehicle was titled and any documents submitted subsequent to titling.

7.5. Twenty-five Dollars (\$25) for a complete title history.

7.6. Five Dollars (\$5) per request for proof of fees paid to the Division when vehicle was purchased.

7.7. Five Dollars (\$5) per request for encumbrance information that includes both registration and lien information (screen print from computer records).

7.8. Twenty-five Dollars (\$25) per copy for each administrative hearing cassette tape.

7.9. One Dollar and fifty cents (\$1.50) per page for each transcribed page from an administrative hearing.

7.10. Twenty-five cents (0.25) per page for each copy of a driver license suspension, revocation, or disqualification file. This excludes investigation information.

7.11. Five Dollars (\$5) nonrefundable fee for any message forwarding request.

7.12. Thirty Dollars (\$30) for each copy of an administrative hearing CD.

7.13. Fifteen Dollars (\$15) per copy of a video tape in the administrative hearing file.

7.14. The cost of each bulk information request fee may vary and will be determined by the cost of producing the information.

7.15. Ten Dollars (\$10) for each certified record of a vehicle title.

7.16. Twenty Dollars (\$20) per copy of lien perfection information.



WEST VIRGINIA
DEPARTMENT OF TRANSPORTATION
1900 Kanawha Boulevard East • Building Five • Room 109
Charleston, West Virginia 25305-0440 • 304/558-0444

Joe Manchin III
Governor

September 18, 2007

The Honorable Betty Ireland
Secretary of State
State Capitol Building
Charleston, WV 25305

Dear Madam Secretary:

The Commissioner of Motor Vehicles is hereby authorized to promulgate emergency and proposed amendments to 91 CSR 8, Disclosure of Information from the Files of the Division of Motor Vehicles.

Comments and concerns about the contents of this rule should be directed to the Commissioner of Motor Vehicles. Thank you for your assistance in this matter.

Sincerely,

A handwritten signature in cursive script that reads "Paul A. Mattox, Jr.".

Paul A. Mattox, Jr., P.E.
Secretary of Transportation/
Commissioner of Highways

PAM:sd
Enclosure