

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #6

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

**NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE RULE AUTHORIZED
BY THE WEST VIRGINIA LEGISLATURE.**

AGENCY: Division of Motor Vehicles TITLE NUMBER: 91CSR9

AMENDMENT TO AN EXISTING RULE: YES X, NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 91CSR9

TITLE OF RULE BEING AMENDED: Motor Vehicle Alcohol Test and Lock Program

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED:

TITLE OF RULE BEING PROPOSED:

THE ABOVE RULE HAS BEEN AUTHORIZED BY THE WEST VIRGINIA LEGISLATURE.

AUTHORIZATION IS CITED IN (house or senate bill number) SB 201

SECTION 64-8-1(h), PASSED ON March 7, 1996

THIS RULE IS FILED WITH THE SECRETARY OF STATE. THIS RULE BECOMES EFFECTIVE ON

THE FOLLOWING DATE: April 2, 1996

Jane L. Clune
AUTHORIZED SIGNATURE



WEST VIRGINIA DEPARTMENT OF TRANSPORTATION
Division of Motor Vehicles

1800 Kanawha Boulevard East • Building Three
Charleston, West Virginia 25317-0010

Gaston Caperton
Governor

Fred VanKirk, P.E.
Secretary
Commissioner of Highways

Jane L. Cline
Commissioner

91CSR9
Motor Vehicle Alcohol Test and Lock Program
Promulgation History

Rule Title:	Motor Vehicle Alcohol Test and Lock Program
Rule Cite:	91CSR9
Rule Type:	Legislative
Initial Filing:	June 16, 1995
Comment Period Expiration:	July 17, 1995
Filing of Agency Approved Rule:	July 21, 1995
Filed with LRMRC:	July 21, 1995
Rule Authorized by LRMRC as	
Modified by Agency:	September 11, 1995
Filing of Modified Rule:	September 19, 1995
Final Legislative Approval:	March 7, 1996, Senate Bill 201, 64-8-1(b)
Final Filing:	April 1, 1996
Effective Date:	April 2, 1996


Jane L. Cline, Commissioner

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATIVE RULES
DIVISION OF MOTOR VEHICLES
91CSR9

Title: Motor Vehicle Alcohol Test and Lock Program

§91-9-1 General

1.1 Scope - This legislative rule establishes a motor vehicle alcohol test and lock program in accordance with the provisions of West Virginia Code §17C-5A-3a.

1.2 Authority - West Virginia Code §17A-2-9 and West Virginia Code §17C-5A-3a(a).

1.3 Filing Date - April 1, 1996

1.4 Effective Date - April 2, 1996

1.5 Application and Enforcement - This legislative rule applies to persons applying for early reinstatement of restricted driving privileges revoked for a driving under the influence offense under the provisions of West Virginia Code §17C-5A-3a and to providers and manufacturers of alcohol test and lock equipment.

§91-9-2 Definitions

2.1 Applicant - Means the person applying for enrollment in the motor vehicle test and lock program as established in accordance with West Virginia Code §17C-5A-3a.

2.2 Commissioner - Means the executive officer of the Division of Motor Vehicles appointed by the Governor pursuant to West Virginia Code §17A-2-2 or his or her lawful designee.

2.3 Commercial Vehicle - Means any motor vehicle designed or used to transport passengers or property.

2.3.1 If the vehicle has a gross vehicle weight rating of 26,001 pounds or more.

2.3.2 If the vehicle is designed to transport sixteen (16) or more passengers, including the driver.

2.3.3 If the vehicle is transporting hazardous materials and is required to be placarded in accordance with Federal Rule 49 C.F.R. part 172, sup-part F.

2.4 Equipment - Means a mechanical or computerized system which prevents the operation of a motor vehicle when, through the system's assessment of the blood alcohol content of the person operating or attempting to operate the vehicle, that person is determined to be under the influence of alcohol.

2.5 Final Revocation - Means a license suspension or revocation which has run the full course of administrative and or judicial review. In the context of this rule, a person may not participate in the program if the person has any action pending on the offense either criminally or administratively. The revocation must be final.

2.6 Law Enforcement Officer - Means a law enforcement officer as defined in West Virginia Code §17C-5-4.

2.7 License - Means any camera card, permit or license issued by this State which authorizes a person to drive a motor vehicle, or the privilege to operate a motor vehicle.

2.8 Participant - Means the person accepted for enrollment in the motor vehicle test and lock program as established in accordance with West Virginia Code §17C-5A-3a.

2.9 Passenger Vehicle - Means a Class A vehicle weighing 8,000 pounds or less which is used for private, noncommercial use.

2.10 Program - Means the motor vehicle alcohol test and lock program as established in accordance with West Virginia Code §17C-5A-3a.

2.11 Safety and Treatment Program - Means the Safety and Treatment Program as established in accordance with West Virginia Code §17C-5A-3.

2.12 Service Provider - Means the vendor authorized by Division of Motor Vehicles to provide services related to the program.

2.13 Service Center - Means the physical location of the vendor where services related to the program are provided.

§91-9-3 Eligibility For Program Participation

3.1 An applicant must be a resident of West Virginia.

3.2 An applicant must be eighteen (18) years of age or older.

3.3 An applicant's license must be revoked for an offense in violation of West Virginia Code §17C-5-1 et. seq. or §17C-5A-1 et. seq. A person whose license is revoked for driving under the influence of controlled substances is not eligible.

3.4 An applicant must have served the minimum license revocation period as prescribed by West Virginia Code §17C-5A-3a, and this rule.

3.4.1 If the applicant's license has been revoked for a first offense described in West Virginia Code §17C-5A-2(i), and West Virginia Code §17C-5A-2 (l) the applicant must serve a minimum revocation period of thirty (30) days before he or she is eligible to participate in the program. The applicant must retain the interlock device in his or her vehicle for a minimum period of five (5) months.

3.4.2 If an applicant's license has been revoked for a first offense described in West Virginia Code §17C-5-7, refusal to submit to designated secondary chemical test, the applicant must serve a minimum revocation period of thirty (30) days before he or she is eligible to participate in the program. The applicant must retain the interlock device in his or her vehicle for a minimum period of nine (9) months.

3.4.3 If an applicant's license has been revoked for a second offense described in West Virginia Code §17C-5A-1 et seq. or 17C-5-1 et. seq., the applicant must serve a minimum revocation period of nine (9) months before he or she is eligible to participate in the program. The applicant must retain the interlock device in his or her vehicle for a minimum period of eighteen (18) months

3.4.4 If an applicant's license has been revoked for a third offense described in West Virginia Code §17C-5A-1 et seq. or §17C-5-1 et seq., the applicant must serve a minimum revocation period of eighteen (18) months before he or she is eligible to participate in the program. The applicant must retain the interlock device in his or her vehicle for a minimum period of two (2) years.

3.4.5 If an applicant's license has been revoked for more than three (3) offenses described in West Virginia Code 17C-5A-1 et seq. or 17C-5-1 et seq., the applicant must serve a minimum revocation period of eighteen (18) months plus an additional six (6) months for each offense greater than three. The applicant must retain the interlock device in his or her vehicle for a minimum period of two (2) years and an additional one (1) year period for each offense greater than three.

3.5 An applicant must within sixty (60) days of acceptance in the program be enrolled in or have completed the Safety and Treatment Program. Applicants who have completed the Safety and Treatment Program will have priority for enrollment in the program.

3.6 An applicant's license must not have been revoked for an offense described in West Virginia Code §17C-5A-2(f) or (g) where the applicant caused the death or injury of a person.

3.7 An applicant's license must not be currently revoked or suspended for any other reason, or have any other suspensions or revocations pending final resolution.

3.8 An applicant must not have been previously enrolled in the program.

3.9 An applicant must not have been convicted of any violation of West Virginia Code §17B-4-3, for driving while the applicant's driver's license was suspended or revoked, within the two (2) year period preceding the date of application.

3.10 An applicant who holds a Class A, B, C or D driver's license must not have his or her driver's license revoked for an offense related to West Virginia Code §17C-5-1 et seq., §17C-5A-1 et seq., West Virginia Code §17E-1-14 or §17E-1-15 while driving a commercial vehicle.

3.11 An applicant who holds a Class A, B, C or D driver's license, whose driver's license has been revoked for an offense related to West Virginia Code § 17C-5-1 et seq. or West Virginia Code §17C-5A-1 et seq. while driving a passenger vehicle is not eligible for participating in the program by installing the equipment in a commercial vehicle. The applicant is however, eligible for participating in the program by installing the equipment in a passenger vehicle.

§91-9-4 Application Procedures.

4.1 An applicant shall complete a program application, agree in writing to the conditions of participation and completion and submit a non-refundable fee of twenty-five (\$25.00) dollars in the form of a certified check or money order.

4.2 The payment of the application fee shall cause the application to remain valid for a period of six (6) months.

4.3 The Commissioner shall either approve the application for participation, subject to the availability of equipment for installation, or shall rule the applicant ineligible for participation based on the criteria prescribed in this rule.

4.4 An applicant may reapply no more than two (2) times in a six (6) month period. An applicant initially ruled ineligible and subsequently found to be eligible within six (6) months of the initial application is not required to pay the application fee again.

§91-9-5 Applicant Requirements

5.1 The applicant, upon receipt of program entry approval is responsible for completing, signing and returning to the Commissioner, the agreement of conditions of participation and completion, and contacting an approved service provider for installation of the equipment.

5.2 A licensed driver shall drive the applicant to the service center in the vehicle in which the equipment is to be installed. The vehicle shall be a Class A passenger type vehicle registered in the State of West Virginia. No vehicle of any other vehicle class may be used in the program.

5.3 The applicant shall complete the orientation and training program provided by the service provider to the satisfaction of the service provider. Any other person who will operate the vehicle while the equipment is installed shall also complete the orientation and training program to the satisfaction of the service provider.

5.4 If the vehicle owner is not present at the time of the installation, the applicant shall provide the service provider with a notarized statement of authorization by the vehicle owner allowing the installation of the equipment.

5.5 The service provider shall notify the Commissioner of the applicant's successful completion of the orientation and training program and that the equipment was installed in accordance with the criteria established by the Commissioner.

5.6 The Commissioner shall issue the applicant a restricted license upon the Commissioner's receipt of the service provider's notification of equipment installation and successful orientation and training. The license shall restrict the applicant to operating only the vehicle in which the equipment is installed, and only for the purposes of:

5.6.1 Driving to and from work;

5.6.2 Incidental driving as a part of employment duties provided that the duties do not include transporting persons for hire;

5.6.3 Driving to and from school;

5.6.4 Driving to and from participation in the Safety and Treatment Program;

5.6.5 Driving to and from the service provider for monitoring and servicing of the equipment; and

5.6.6 Driving associated with a bona fide medical emergency.

5.7 Under no circumstances shall the applicant operate any motor vehicle until the equipment is installed and the applicant has received the specially marked restricted license.

5.8 The applicant is responsible for any consequences of operation of the vehicle by persons who have not been trained by the service provider, or who fail to operate the equipment in the manner prescribed by the service provider.

5.9 Additional interlock devices may be obtained by a person accepted into the program if that person can show a compelling need for such devices in vehicles used in his or her employment. The installation of additional interlock devices will be restricted to Class A type vehicles.

§91-9-6 Participant Requirements For Continued Eligibility

6.1 The Commissioner shall immediately revoke the restricted driving privileges

of any participant who:

6.1.1 Fails to meet the attendance and participation requirements of the Safety and Treatment Program in which the participant is enrolled, if the participant has not already successfully completed the program;

6.1.2 Has his or her license suspended or revoked for any other offense;

6.1.3 Upon written notice from any law enforcement officer or service provider that the participant was operating a motor vehicle not containing the required equipment, or was operating a vehicle in violation of any restriction imposed by this rule or the program participation agreement;

6.1.4 Upon written notice from any service provider or law enforcement officer that the equipment in the vehicle has been altered, tampered with, bypassed or removed without the prior approval of the Commissioner;

6.1.5 Upon written notice from any law enforcement officer or service provider that the participant has allowed or caused another person to bypass, or attempt to bypass the equipment or to circumvent the device in any manner;

6.1.6 Upon written notice from any law enforcement officer, service provider or Safety and Treatment Program Coordinator that the participant operated or attempted to operate a motor vehicle under the influence of alcohol or controlled substances;

6.1.7 Is convicted of any motor vehicle offense contained in West Virginia Code §17B-3-5; or

6.1.8 Fails to abide by the terms and conditions of the lease agreement with the service provider. A service provider shall not remove a participant from the program without prior approval of the Commissioner.

§91-9-7 Eligibility For Reinstatement Of License

7.1 A participant whose license has been revoked for a first offense as described in West Virginia Code §17C-5A-1 et seq. is required to have the equipment in the participant's vehicle for a minimum period of five (5) months, complete the Safety and Treatment Program, and pay all required fees before his or her license may be reinstated.

7.2 A participant whose license has been revoked for more than one (1) offense as described in West Virginia Code §17C-5A-1 et seq. is required to have the equipment in his or her vehicle for a minimum period of one (1) year, complete the Safety and Treatment Program, and pay all required fees before his or her license may be reinstated.

7.3 A participant whose license has been revoked for a refusal to submit to a secondary chemical test is required to have the equipment in his or her vehicle for a

minimum period of nine (9) months, and pay all required fees before his or her license may be reinstated.

7.4 A participant who is under the age of twenty-one (21) at the time of the offense is required to have the equipment in his or her vehicle until the participant reaches the age of twenty-(21) or for one (1) year, which ever is longer, complete the Safety and Treatment Program and pay all required fees before his or her license may be reinstated.

7.5 For purposes of this rule eligibility for reinstatement of driving privileges means, completion of the Safety and Treatment Program, expiration of the required period of time in which equipment is required to be installed and payment of all fees including any fees owed to the service provider.

7.6 A participant who withdraws or is removed from the program shall serve out the remainder of his or her original license revocation period pursuant to West Virginia Code §17C-5A-2. The period of time the participant had the equipment in use with restricted driving privileges shall not count towards fulfilling the requirements of the original revocation period.

7.7 If a participant has failed to complete the Safety and Treatment Program and pay all required fees by the end of the mandatory equipment usage time period, the participant shall either:

7.7.1 Continue to use the equipment while actively enrolled in and completing the Safety and Treatment Program or,

7.7.2 Return all equipment to the service provider and return all licenses to the Division and shall not operate any motor vehicle until all requirements are met for license reinstatement.

§91-9-8 Service Provider Standards

8.1 The service provider shall have a minimum of one (1) year experience providing similar service in another jurisdiction.

8.2 The service provider shall install only equipment which has been approved for use in the program by the Commissioner. No equipment shall be approved unless:

8.2.1 The equipment has been in actual field use for at least six (6) months; and,

8.2.2 The equipment has met minimum specifications established by the Commissioner by submission of test data from an independent alcohol testing laboratory.

8.3 The service provider shall initially establish at least one (1) service center to be located in the Charleston, West Virginia area. However, the service provider shall establish additional locations if the Commissioner determines the participation in the program justifies additional locations.

8.4 The Commissioner shall prescribe the hours of operation in consultation with the service provider based on the needs of the applicants in the service area, and the needs of the service provider.

§91-9-9 Program Cost

9.1 The program shall operate on a user fee basis with the cost of the program assumed by the applicant.

9.2 The fees for instruction or leasing, monitoring, servicing and deinstallation of equipment shall be set by the Commissioner and can not be changed without prior review and approval of the Commissioner, and can only be changed a maximum of one (1) time per year.

9.3 The established fees shall be based on average costs and shall not vary according to participant or make of vehicle. Fees shall be uniform at each service center. The service provider shall establish a fee schedule to be applied to indigent participants to be approved by the commissioner.

9.4 The manufacturer, service provider and or installer through the contract shall indemnify and hold harmless the State of West Virginia and or its employees and agents from any and all claims, demands, actions and costs whatsoever that may arise out of an act or omission by the manufacturer, service provider, installer, and employee or subcontractor of the service provider in the performance of the agreement.

9.5 The manufacturer, service provider and or subcontractor shall maintain comprehensive general liability insurance in the amount of at least one million dollars (\$1,000,000) per occurrence with a three million dollar \$3,000,000 aggregate total. The liability insurance shall cover defects or problems in or with product design, materials, and workmanship during the manufacture, calibration and installation of the equipment. The insurance shall be obtained through an insurer licensed to do business in the State of West Virginia and the policy shall be designed to provide the Commissioner with at least forty-five (45) days prior to written notice of any cancellation, material change or intent to allow coverage to lapse.

1227

H. B. 4271

(By Delegates Douglas, Gallagher, Faircloth, Compton,
Linch and Riggs)
(Introduced January 29, 1996 ; referred to the
Committee on the Judiciary)

91-9

A BILL to amend and reenact section two, article eight,
chapter sixty-four of the code of West Virginia, one
thousand nine hundred thirty-one, as amended, relating
to authorizing the division of motor vehicles to
promulgate legislative rules relating to the motor
vehicle alcohol test and lock program.

Be it enacted by the Legislature of West Virginia:

That section two, article eight, chapter sixty-four of
the code of West Virginia, one thousand nine hundred
thirty-one, as amended, be amended and reenacted, to read
as follows:

ARTICLE 8. AUTHORIZATION FOR DEPARTMENT OF TRANSPORTATION
TO PROMULGATE LEGISLATIVE RULES.

§64-8-2. Division of motor vehicles.

~~(a) The legislative rules filed in the state register~~

4271

1 ~~on the second day of December, one thousand nine hundred~~
2 ~~eighty-two, relating to the commissioner of motor vehicles~~
3 ~~(denial of driving privileges), are authorized with the~~
4 ~~amendments set forth below:~~

5 ~~By inserting the words "licensed in the United States"~~
6 ~~after the phrase "physician of the applicant's choice," on~~
7 ~~page five, line two, and page seven, line one; and by~~
8 ~~striking out the words "licensed vision specialist" and~~
9 ~~inserting in lieu thereof the words "an optometrist or~~
10 ~~ophthalmologist licensed in the United States," on page~~
11 ~~five, line three, and on page seven, line two.~~

12 ~~(b) The legislative rules filed in the state register~~
13 ~~on the ninth day of November, one thousand nine hundred~~
14 ~~eighty-three, relating to the commissioner of motor~~
15 ~~vehicles (driving under the influence, driver's license~~
16 ~~revocation administrative hearings), are authorized.~~

17 ~~(c)(a) The legislative rules filed in the state~~
18 ~~register on the fifteenth day of December, one thousand~~
19 ~~nine hundred eighty-three, authorized under the authority~~
20 ~~of section three, article five-a, chapter seventeen-c, of~~
21 ~~this code, relating to the department of motor vehicles~~
22 ~~(safety and treatment program, 91 CSR 15), are authorized.~~

23 ~~(d) The legislative rules filed in the state register~~
24 ~~on the sixteenth day of June, one thousand nine hundred~~

1 ~~eighty-three, relating to the commissioner of motor~~
2 ~~vehicles (compulsory insurance), are authorized.~~

3 ~~(e)~~(b) The legislative rules filed in the state
4 register on the twentieth day of November, one thousand
5 nine hundred eighty-four, authorized under the authority of
6 section nine, article two, chapter seventeen-a, of this
7 code, relating to the commissioner of motor vehicles (motor
8 vehicle titling a vehicle, 91 CSR 3), are authorized.

9 ~~(f)~~(c) The legislative rules filed in the state
10 register on the tenth day of September, one thousand nine
11 hundred eighty-four, authorized under the authority of
12 section eight, article two-a, chapter seventeen-d, of this
13 code, modified by the commissioner of motor vehicles to
14 meet the objections of the legislative rule-making review
15 committee and refiled in the state register on the fifth
16 day of October, one thousand nine hundred eighty-four,
17 relating to the commissioner of motor vehicles (compulsory
18 motor vehicle liability insurance, 91 CSR 13), are
19 authorized.

20 ~~(g)~~(d) The legislative rules filed in the state
21 register on the fifth day of August, one thousand nine
22 hundred eighty-five, authorized under the authority of
23 section nine, article two, chapter seventeen-a, of this
24 code, modified by the commissioner of motor vehicles to

1 meet the objections of the legislative rule-making review
2 committee and refiled in the state register on the fourth
3 day of October, one thousand nine hundred eighty-five,
4 relating to the commissioner of motor vehicles (eligibility
5 for reinstatement following suspension or revocation of
6 driving privileges, 91 CSR 16), are authorized.

7 ~~(h)~~(e) The legislative rules filed in the state
8 register on the fifth day of August, one thousand nine
9 hundred eighty-five, authorized under the authority of
10 section four, article sixteen, chapter seventeen-c, of this
11 code, relating to the commissioner of motor vehicles (the
12 ~~administration and enforcement of motor vehicle~~
13 ~~inspections motor vehicle inspection manual, 91 CSR 12~~),
14 are authorized.

15 ~~(i)~~(f) The legislative rules filed in the state
16 register on the twenty-fifth day of July, one thousand nine
17 hundred eighty-six, authorized under the authority of
18 section nine, article two, chapter seventeen-a, of this
19 code, modified by the commissioner of motor vehicles to
20 meet the objections of the legislative rule-making review
21 committee and refiled in the state register on the ninth
22 day of October, one thousand nine hundred eighty-six,
23 relating to the commissioner of motor vehicles (seizure of
24 a driver's license and issuance of a temporary driver's

1 license, 91 CSR 20), are authorized.

2 ~~(j)(g)~~ The legislative rules filed in the state
3 register on the twenty-fifth day of July, one thousand nine
4 hundred eighty-six, authorized under the authority of
5 section nine, article two, chapter seventeen-a, of this
6 code, modified by the commissioner of motor vehicles to
7 meet the objections of the legislative rule-making review
8 committee and refiled in the state register on the ninth
9 day of October, one thousand nine hundred eighty-six,
10 relating to the commissioner of motor vehicles (federal
11 safety standards inspection program, 91 CSR 21), are
12 authorized.

13 ~~(k)~~ The legislative rules filed in the state
14 register on the seventeenth day of August, one thousand
15 nine hundred eighty seven, modified by the commissioner of
16 motor vehicles to meet the objections of the legislative
17 rule-making review committee and refiled in the state
18 register on the twenty-second day of September, one
19 thousand nine hundred eighty seven, relating to the
20 commissioner of motor vehicles (denial, suspension,
21 revocation or nonrenewal of driving privileges), are
22 authorized with the amendments set forth below:

23 On page 7, section 7.2 after the words "75 m.p.h.",
24 add the words "except on highways where the established

1 ~~speed limit is 65 m.p.h., and conviction was in excess of~~
2 ~~80 m.p.h.,"~~

3 And,

4 ~~On page 14, section 8.1 by inserting the words "not to~~
5 ~~exceed fifteen hours" after the word "course" and in~~
6 ~~section 8.2 by inserting the words "not to exceed fifteen~~
7 ~~hours" after the word "course".~~

8 ~~(1) The legislative rules filed in the state~~
9 ~~register on the twenty second day of November, one thousand~~
10 ~~nine hundred eighty eight, modified by the commissioner of~~
11 ~~motor vehicles to meet the objections of the legislative~~
12 ~~rule making review committee and refiled in the state~~
13 ~~register on the twentieth day of January, one thousand nine~~
14 ~~hundred eighty nine, relating to the commissioner of motor~~
15 ~~vehicles (denial, suspension, revocation or nonrenewal of~~
16 ~~driving privileges), are authorized.~~

17 ~~(m)(h)~~ The legislative rules filed in the state
18 register on the thirteenth day of August, one thousand nine
19 hundred ninety-one, authorized under the authority of
20 section nine, article two, chapter seventeen-a, of this
21 code, modified by the division of motor vehicles to meet
22 the objections of the legislative rule-making review
23 committee and refiled in the state register on the
24 twenty-sixth day of September, one thousand nine hundred

1 ninety-one, relating to the division of motor vehicles
2 (denial, suspension, revocation or nonrenewal of driving
3 privileges, 91 CSR 5), are authorized with the amendment
4 set forth below:

5 On page nine, after the words "Following too closely",
6 by striking out the number "3" and inserting in lieu
7 thereof the number "2".

8 ~~(n)~~(i) The legislative rules filed in the state
9 register on the fifteenth day of September, one thousand
10 nine hundred ninety-two, authorized under the authority of
11 section nine, article two, chapter seventeen-a, of this
12 code, modified by the division of motor vehicles to meet
13 the objections of the legislative rule-making review
14 committee and refiled in the state register on the
15 seventeenth day of November, one thousand nine hundred
16 ninety-two, relating to the division of motor vehicles
17 (motor vehicle dealers, wreckers/ dismantlers/ rebuilders
18 and license services, 91 CSR 6), are authorized.

19 ~~(e)~~(j) The legislative rules filed in the state
20 register on the ~~twenty-third~~ twenty-first day of ~~June~~ July,
21 one thousand nine hundred ~~ninety-three~~ ninety-five,
22 authorized under the authority of section three-a, article
23 five-a, chapter seventeen-c, of this code, modified by the
24 division of motor vehicles to meet the objections of the

1 legislative rule-making review committee and refiled in the
2 state register on the ~~tenth~~ nineteenth day of ~~August~~
3 ~~September~~, one thousand nine hundred ~~ninety-three~~ ninety-
4 five, relating to the division of motor vehicles (motor
5 vehicle alcohol test and lock program, 91 CSR 9), are
6 authorized.

7

8 NOTE: The purpose of this bill is to authorize the
9 Division of Motor Vehicles to promulgate legislative rules
10 relating to the motor vehicle alcohol test and lock
11 program.

12

13 Strike-throughs indicate language that would be
14 stricken from the present law, and underscoring indicates
15 new language that would be added.

SENATE BILL NO. 201

(By Senators Ross, Anderson, Boley,
Buckalew, Grubb and Macnaughtan)

[Introduced January 29, 1996; referred
to the Committee on

the Judiciary

91-9

6
7
8
9
10 A BILL to amend and reenact section two, article eight,
11 chapter sixty-four of the code of West Virginia, one
12 thousand nine hundred thirty-one, as amended, relating
13 to authorizing the division of motor vehicles to
14 promulgate legislative rules relating to the motor
15 vehicle alcohol test and lock program.

16 Be it enacted by the Legislature of West Virginia:

17 That section two, article eight, chapter sixty-four of
18 the code of West Virginia, one thousand nine hundred
19 thirty-one, as amended, be amended and reenacted, to read
20 as follows:

21 ARTICLE 8. AUTHORIZATION FOR DEPARTMENT OF TRANSPORTATION
22 TO PROMULGATE LEGISLATIVE RULES.

23 §64-8-2. Division of motor vehicles.

24 ~~(a) The legislative rules filed in the state register~~

1 ~~on the second day of December, one thousand nine hundred~~
2 ~~eighty two, relating to the commissioner of motor vehicles~~
3 ~~(denial of driving privileges), are authorized with the~~
4 ~~amendments set forth below:~~

5 ~~By inserting the words "licensed in the United States"~~
6 ~~after the phrase "physician of the applicant's choice," on~~
7 ~~page five, line two, and page seven, line one; and by~~
8 ~~striking out the words "licensed vision specialist" and~~
9 ~~inserting in lieu thereof the words "an optometrist or~~
10 ~~ophthalmologist licensed in the United States," on page~~
11 ~~five, line three, and on page seven, line two.~~

12 ~~(b) The legislative rules filed in the state register~~
13 ~~on the ninth day of November, one thousand nine hundred~~
14 ~~eighty three, relating to the commissioner of motor~~
15 ~~vehicles (driving under the influence, driver's license~~
16 ~~revocation administrative hearings), are authorized.~~

17 ~~(c)(a) The legislative rules filed in the state~~
18 ~~register on the fifteenth day of December, one thousand~~
19 ~~nine hundred eighty-three, authorized under the authority~~
20 ~~of section three, article five-a, chapter seventeen-c, of~~
21 ~~this code, relating to the department of motor vehicles~~
22 ~~(safety and treatment program, 91 CSR 15), are authorized.~~

23 ~~(d) The legislative rules filed in the state register~~
24 ~~on the sixteenth day of June, one thousand nine hundred~~

1 ~~eighty-three, relating to the commissioner of motor~~
2 ~~vehicles (compulsory insurance), are authorized.~~

3 ~~(e)~~(b) The legislative rules filed in the state
4 register on the twentieth day of November, one thousand
5 nine hundred eighty-four, authorized under the authority of
6 section nine, article two, chapter seventeen-a, of this
7 code, relating to the commissioner of motor vehicles (motor
8 vehicle titling a vehicle, 91 CSR 3), are authorized.

9 ~~(f)~~(c) The legislative rules filed in the state
10 register on the tenth day of September, one thousand nine
11 hundred eighty-four, authorized under the authority of
12 section eight, article two-a, chapter seventeen-d, of this
13 code, modified by the commissioner of motor vehicles to
14 meet the objections of the legislative rule-making review
15 committee and refiled in the state register on the fifth
16 day of October, one thousand nine hundred eighty-four,
17 relating to the commissioner of motor vehicles (compulsory
18 motor vehicle liability insurance, 91 CSR 13), are
19 authorized.

20 ~~(g)~~(d) The legislative rules filed in the state
21 register on the fifth day of August, one thousand nine
22 hundred eighty-five, authorized under the authority of
23 section nine, article two, chapter seventeen-a, of this
24 code, modified by the commissioner of motor vehicles to

1 meet the objections of the legislative rule-making review
2 committee and refiled in the state register on the fourth
3 day of October, one thousand nine hundred eighty-five,
4 relating to the commissioner of motor vehicles (eligibility
5 for reinstatement following suspension or revocation of
6 driving privileges, 91 CSR 16), are authorized.

7 ~~(h)~~(e) The legislative rules filed in the state
8 register on the fifth day of August, one thousand nine
9 hundred eighty-five, authorized under the authority of
10 section four, article sixteen, chapter seventeen-c, of this
11 code, relating to the commissioner of motor vehicles (~~the~~
12 ~~administration and enforcement of motor vehicle~~
13 ~~inspections~~ motor vehicle inspection manual, 91 CSR 12),
14 are authorized.

15 ~~(i)~~(f) The legislative rules filed in the state
16 register on the twenty-fifth day of July, one thousand nine
17 hundred eighty-six, authorized under the authority of
18 section nine, article two, chapter seventeen-a, of this
19 code, modified by the commissioner of motor vehicles to
20 meet the objections of the legislative rule-making review
21 committee and refiled in the state register on the ninth
22 day of October, one thousand nine hundred eighty-six,
23 relating to the commissioner of motor vehicles (seizure of
24 a driver's license and issuance of a temporary driver's

1 license, 91 CSR 20), are authorized.

2 ~~(j)~~(g) The legislative rules filed in the state
3 register on the twenty-fifth day of July, one thousand nine
4 hundred eighty-six, authorized under the authority of
5 section nine, article two, chapter seventeen-a, of this
6 code, modified by the commissioner of motor vehicles to
7 meet the objections of the legislative rule-making review
8 committee and refiled in the state register on the ninth
9 day of October, one thousand nine hundred eighty-six,
10 relating to the commissioner of motor vehicles (federal
11 safety standards inspection program, 91 CSR 21), are
12 authorized.

13 ~~(k) The legislative rules filed in the state~~
14 ~~register on the seventeenth day of August, one thousand~~
15 ~~nine hundred eighty seven, modified by the commissioner of~~
16 ~~motor vehicles to meet the objections of the legislative~~
17 ~~rule-making review committee and refiled in the state~~
18 ~~register on the twenty-second day of September, one~~
19 ~~thousand nine hundred eighty seven, relating to the~~
20 ~~commissioner of motor vehicles (denial, suspension,~~
21 ~~revocation or nonrenewal of driving privileges), are~~
22 ~~authorized with the amendments set forth below:~~

23 ~~On page 7, section 7.2 after the words "75 m.p.h.",~~
24 ~~add the words "except on highways where the established~~

1 ~~speed limit is 65 m.p.h., and conviction was in excess of~~
2 ~~80 m.p.h.,"~~

3 ~~And,~~

4 ~~On page 14, section 8.1 by inserting the words "not to~~
5 ~~exceed fifteen hours" after the word "course" and in~~
6 ~~section 8.2 by inserting the words "not to exceed fifteen~~
7 ~~hours" after the word "course".~~

8 ~~(1) The legislative rules filed in the state~~
9 ~~register on the twenty second day of November, one thousand~~
10 ~~nine hundred eighty eight, modified by the commissioner of~~
11 ~~motor vehicles to meet the objections of the legislative~~
12 ~~rule-making review committee and refiled in the state~~
13 ~~register on the twentieth day of January, one thousand nine~~
14 ~~hundred eighty nine, relating to the commissioner of motor~~
15 ~~vehicles (denial, suspension, revocation or nonrenewal of~~
16 ~~driving privileges), are authorized.~~

17 ~~(*)~~ (h) The legislative rules filed in the state
18 register on the thirteenth day of August, one thousand nine
19 hundred ninety-one, authorized under the authority of
20 section nine, article two, chapter seventeen-a, of this
21 code, modified by the division of motor vehicles to meet
22 the objections of the legislative rule-making review
23 committee and refiled in the state register on the
24 twenty-sixth day of September, one thousand nine hundred

1 ninety-one, relating to the division of motor vehicles
2 (denial, suspension, revocation or nonrenewal of driving
3 privileges, 91 CSR 5), are authorized with the amendment
4 set forth below:

5 On page nine, after the words "Following too closely",
6 by striking out the number "3" and inserting in lieu
7 thereof the number "2".

8 ~~(n)~~(i) The legislative rules filed in the state
9 register on the fifteenth day of September, one thousand
10 nine hundred ninety-two, authorized under the authority of
11 section nine, article two, chapter seventeen-a, of this
12 code, modified by the division of motor vehicles to meet
13 the objections of the legislative rule-making review
14 committee and refiled in the state register on the
15 seventeenth day of November, one thousand nine hundred
16 ninety-two, relating to the division of motor vehicles
17 (motor vehicle dealers, wreckers/ dismantlers/ rebuilders
18 and license services, 91 CSR 6), are authorized.

19 ~~(e)~~(j) The legislative rules filed in the state
20 register on the ~~twenty-third~~ twenty-first day of ~~June~~ July,
21 one thousand nine hundred ~~ninety-three~~ ninety-five,
22 authorized under the authority of section three-a, article
23 five-a, chapter seventeen-c, of this code, modified by the
24 division of motor vehicles to meet the objections of the

1 legislative rule-making review committee and refiled in the
2 state register on the ~~tenth~~ nineteenth day of ~~August~~
3 September, one thousand nine hundred ~~ninety-three~~ ninety-
4 five, relating to the division of motor vehicles (motor
5 vehicle alcohol test and lock program, 91 CSR 9), are
6 authorized.

7

8 NOTE: The purpose of this bill is to authorize the
9 Division of Motor Vehicles to promulgate legislative rules
10 relating to the motor vehicle alcohol test and lock
11 program.

12
13 Strike-throughs indicate language that would be
14 stricken from the present law, and underscoring indicates
15 new language that would be added.

KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

STEPHEN N. REED
Deputy Secretary of State

CATHERINE FREROTTE
Executive Assistant

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WILLIAM H. HARRINGTON
Chief of Staff

JUDY COOPER
Director, Administrative Law

PENNEY BARKER
Supervisor, Corporations

STATE OF WEST VIRGINIA

SECRETARY OF STATE

Building 1, Suite 157-K
1900 Kanawha Blvd., East
Charleston, WV 25305-0770

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

(Please all the volunteer
help we can get)

TO: Steve Dale

AGENCY: Division of Motor Vehicles

FROM: JUDY COOPER, DIRECTOR, ADMINISTRATIVE LAW DIVISION

DATE: April 9, 1996

THE ATTACHED RULE FILED BY YOUR AGENCY HAS BEEN ENTERED INTO OUR COMPUTER SYSTEM. PLEASE REVIEW, PROOF AND RETURN IT WITH ANY CORRECTIONS. IF THERE ARE NO CORRECTIONS, PLEASE SIGN THIS MEMO AND RETURN IT TO THIS OFFICE. YOU WILL BE SENT A FINAL VERSION OF THE RULE FOR YOUR RECORDS.

PLEASE RETURN EITHER THE CORRECTED RULE OR THIS FORM WITHIN TEN (10) WORKING DAYS OF THE DATE YOU RECEIVED THIS REQUEST. CALL IF YOU HAVE ANY QUESTIONS.

SERIES: 9 TITLE: 91 Division of Motor Vehicles

* THE ATTACHED RULE HAS BEEN REVIEWED AND IS CORRECT.

SIGNED: Steven C. Dale

TITLE OF PERSON SIGNING: Assistant to the Commissioner

DATE: 4/23/96

* THE ATTACHED RULE HAS BEEN REVIEWED AND NEEDS CORRECTING. THE CORRECTIONS HAVE BEEN MARKED.

SIGNED: _____

TITLE OF PERSON SIGNING: _____

DATE: _____

NOTE: IF YOU ARE NOT THE PERSON WHO HANDLES THIS RULE, PLEASE FORWARD TO THE CORRECT PERSON.

KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

STEPHEN N. REED
Deputy Secretary of State

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(Plus all the volunteer
help we can get)

March 12, 1996

Steven O Dale
Motor Vehicles
Bldg 3 Capitol Complex
Charleston, WV 25317

SB 201 authorizing, **Title 91, Series 09, Motor Vehicle Alcohol Test & Lock Program** passed the Legislature on **March 7, 1996**. It is now awaiting the Governor's signature.

You have sixty (60) days after the Governor signs **SB 201** to final file the legislative rule with the Secretary of State's office. To final file your legislative rule, fill in the blanks on the enclosed form #6, the "Final Filing" form and file the form with our office with a promulgation history of the rule. Authorization for your legislative rule is cited in **SB 201 Section 64-8-1(b)**. The agency may set the effective date of the legislative rule up to ninety (90) days from the date the legislative rule is final filed with the Secretary of State's office. Please have an authorized signature on the bottom line.

*****IMPORTANT: IF YOUR AGENCY HAS COMPLETED THE LEGISLATIVE RULE ON A WORD PERFECT OR WORD PERFECT COMPATIBLE COMPUTER SYSTEM THAT USES A 3 1/2" DISK, YOU MUST SUBMIT A CLEAN COPY WITH ALL UNDERLINING AND STRIKE-THROUGHS, HEADERS OR FOOTERS REMOVED, TO OUR OFFICE WHEN FINAL FILING THE RULE. REMEMBER, THE TEXT OF THE COMPUTER FILED RULE MUST BE IDENTICAL - WORD FOR WORD, COMMA FOR COMMA, WITH ALL UNDERLINING, STRIKE-THROUGHS, HEADERS OR FOOTERS REMOVED, AS THE HARD COPY AUTHORIZED BY THE LEGISLATURE. NOTICE: ALL ELECTRONIC FILINGS NOT COMPLYING WITH THIS WILL BE REJECTED AND SENT BACK TO THE AGENCY TO BE RESUBMITTED!**

After the final rule is entered into the data base, the rule will be sent back to the agency for review and proofing. The agency has ten (10) working days to send a confirmation or corrections to the Secretary of States. If the agency fails to return this within ten (10) working days, the rule will be filed in the data base with a disclaimer attached stating that the agency failed to review the rule. Following confirmation, corrections or failure to review, as the case may be, the Secretary of State shall submit to the agency a final version of the rule for their records.

If you have any questions or need any assistance, please do not hesitate to contact our office.

Thank you,
Administrative Law Division