

WEST VIRGINIA  
SECRETARY OF STATE

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

Form #3

FILED

23 11 35 AM '93

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE  
AND  
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

AGENCY: Division of Motor Vehicles TITLE NUMBER: 91CSR9

CITE AUTHORITY §17A-2-9, §17C-5A-3a(a)

AMENDMENT TO AN EXISTING RULE: YES  NO

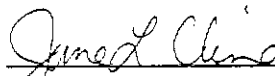
IF YES, SERIES NUMBER OF RULE BEING AMENDED: \_\_\_\_\_

TITLE OF RULE BEING AMENDED: \_\_\_\_\_

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: 91CSR9

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

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE FOR THEIR REVIEW.

  
\_\_\_\_\_

James L. Cline, Commissioner



**WEST VIRGINIA  
DEPARTMENT OF TRANSPORTATION**

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

Gaston Caperton  
Governor

Charles L. Miller, P.E.  
Secretary

May 11, 1993

The Honorable Ken Hechler  
Secretary of State  
State Capitol  
Charleston, WV 25305

Dear Mr. Secretary:

The Commissioner of Motor Vehicles is hereby authorized to promulgate proposed and emergency rules related to 91CSR9: Motor Vehicle Alcohol Test and Lock Program.

  
\_\_\_\_\_  
Charles L. Miller, Secretary

5-10-93  
Date

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Motor Vehicle Alcohol Test and Lock Program 91CSR9

Type of Rule: X Legislative      Interpretive      Procedural

Agency Division of Motor Vehicles

Address Building 3, Capitol Complex  
Charleston, WV 25317

1. Effect of Proposed Rule

|                             | ANNUAL FISCAL YEAR |          |           |           |            |
|-----------------------------|--------------------|----------|-----------|-----------|------------|
|                             | INCREASE           | DECREASE | CURRENT   | NEXT      | THEREAFTER |
| <u>ESTIMATED TOTAL COST</u> | \$ 41,568          | \$ ---   | \$ 41,568 | \$ 40,064 | \$ 40,064  |
| PERSONAL SERVICES           | 21,568             | ---      | 21,568    | 20,064    | 20,064     |
| CURRENT EXPENSE             | 20,000             |          | 20,000    | 20,000    | 20,000     |
| REPAIRS & ALTERNATIONS      | N/A                |          | N/A       |           |            |
| EQUIPMENT                   | N/A                |          | N/A       |           |            |
| OTHER                       | N/A                |          | N/A       |           |            |

2. Explanation of above estimates: These estimates are based on the need for 1 full time clerk (\$20,068) and a portion of 1 programmer's time (\$1,500) to reprogram the computer programs to determine eligibility, track compliance, and issue a specially marked restricted license. The costs for installation and use of equipment is borne by the user/participant and paid to the service provider. The current expense estimate refers to costs generating a restricted drivers license and computer fees related to entry and storage of such information.

3. Objectives of these rules: The objective of this rule is to implement a motor vehicle alcohol and test and lock program as required under the provisions of W. Va. Code §17C-5A-3a. The program will allow restricted driving privileges for persons whose license are revoked for DUI and install special equipment which detects alcohol in the system of the vehicle operator.

Rule Title: 91CSR9 Motor Vehicle Alcohol Test and Lock Program

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

See first page.

B. Economic Impact on Political Subdivisions; Specific Industries; Specific groups of Citizens.

A person whose license is revoked for a driving under the influence offense may choose to obtain an ignition interlock device for their vehicle for the purpose of obtaining restricted driving privileges. The estimated cost per applicant per month is approximately \$60.

C. Economic Impact on Citizens/Public at Large.

N/A

Date: May 19, 1993

Signature of Agency Head or Authorized Representative

Jane L. Cline

Jane L. Cline, Commissioner

DATE: June 23, 1993

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: Jane L. Cline, Commissioner

LEGISLATIVE RULE TITLE: 9ICSR9 Motor Vehicle Alcohol Test and Lock Program

1. Authorizing statute(s) citation West Virginia §17A-2-9 and §17C-5A-3a(a)

2. a. Date filed in State Register with Notice of Hearing: May 19, 1993

b. What other notice, including advertising, did you give of the hearing?

Please see attached

c. Date of hearing(s): Public Comment Period from May 19, 1993 to June 22, 1993

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached X No comments received                     

e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (Be exact.)

June 23, 1993

f. Name and phone number(s) of agency person(s) to contact for additional information:

Steven O. Dale 558-2723

3. If the statute under which you promulgated the submitted rules required certain findings and determinations to be made as a condition precedent to their promulgation:

a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

N/A

b. Date of hearing: N/A

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefore?

N/A

d. Attach findings and determinations and reasons:

Attached N/A

FILED

MAY 19 11 39 AM '93

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

(PROPOSED)  
WEST VIRGINIA LEGISLATIVE RULES  
DIVISION OF MOTOR VEHICLES  
91CSR9

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

MAY 23 11 05 AM 1993

FILED

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 -

1.4 Effective Date -

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 manufactures 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 pursuant to West Virginia Code §17E-1-3;

2.3.1 If the vehicle has a gross vehicle weight rating of over 26,000 pounds.

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, such 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 these rules, 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 the 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 8,000 pounds or less 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 calculated from the date that all licenses are received by the Commissioner.

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

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 ninety (90) days before he or she is eligible to participate in the program.

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 one (1) year before he or she is eligible to participate in the program.

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

3.4.5 If an applicant is under the age of twenty-one (21), the applicant must serve a minimum revocation period of one (1) year before he or she is eligible to participate in the program.

3.5 An applicant must be enrolled in or have completed the Safety and Treatment Program as established in West Virginia Code §17C-5A-3. 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-5-1 et seq. or §17C-5A-1 more than three (3) times in the ten (10) year period preceding the date of application.

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

3.8 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.

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

3.10 An applicant must not have been convicted of any violation of West Virginia Code §17B-4-3, driving while suspended or revoked, within the five (5) year period preceding the date of application.

3.11 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.

3.12 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. Such person 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 terms of the program 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 shall be 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 to the satisfaction of the service provider, 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 report of equipment installation and successful orientation and training. Such 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 such 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.

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.

#### §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 Is suspended or revoked for any other offense.

6.1.3 The Commissioner receives 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 The Commissioner receives 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 The Commissioner receives 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 The Commissioner receives 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.

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 sec. is required to have the equipment in their 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 who withdraws or is removed from the program shall be required to serve out the remainder of their 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.

7.3 A participant whose license has been revoked for more than one (1) offense as described in West Virginia Code §17C-5A-1 et sec. is required to have the equipment in their 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.

7.4 A participant whose license has been revoked for a refusal to submit to a secondary chemical test is required to have the equipment in their vehicle for a minimum

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

7.5 A participant who is under the age of twenty-one (21) at the time of the offense is required to have the equipment in their vehicle until the participant reaches the age of twenty-(21) or 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.

7.6 For purposes of this rule eligibility for reinstatement of driving privileges shall mean, 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.

7.7 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 Shall 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.

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 applicant 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, 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 instaler 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, employee and or subcontractor thereof 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.

§91-9-10 SEVERABILITY

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



Dave  
Steve  
Greg  
Dr.  
Jury  
J

Department of Public Safety  
(West Virginia State Police)  
725 Jefferson Road  
South Charleston, West Virginia 25309-1698

Gaston Caperton  
Governor

May 19, 1993

Colonel Thomas L. Kirk  
Superintendent

Commissioner Jane L. Cline  
Division of Motor Vehicles  
1800 Kanawha Boulevard, East  
Building 3  
Charleston, West Virginia 25317-0010

Dear Commissioner:

I have reviewed the Division of Motor Vehicles proposed regulations concerning the Alcohol Test and Lock Program.

I see no problems with these regulations as proposed.

Sincerely,

FIRST LIEUTENANT R. D. BLANKENSHIP  
COMMISSION ON DRUNK DRIVING  
PREVENTION

RDB:dlc

RECEIVED  
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DMV-COMMISSIONER



SENECA  
Mental Health/Mental Retardation  
Council, Inc.

Serving:  
Greenbrier County  
Nicholas County  
Pocahontas County  
Webster County

June 16, 1993

Steven O. Dale  
Division of Motor Vehicles  
Building 3, Room 113, Capitol Complex  
Charleston, WV 25317

Dear Mr. Dale,

I am writing to comment on the proposed Test and Lock Program. I feel very strongly that persons with a third and possibly second offense DUI should not be eligible for this program. I have been working in the West Virginia DUI Safety and Treatment Program providing evaluations, education, and treatment for two years. During those two years most of the second time offenders have had a problem with alcohol/drugs. I do realize this puts a great inconvenience on them, but I feel their consequences should remain consistent.

I also am concerned that persons might be able to by-pass their consequences by paying for this program.

I agree this program is needed, but I do not agree with the way it is currently being proposed. Please contact me if further information is needed or desired. I am very interested in this proposal and appreciate the opportunity to comment on it. Thank you.

Sincerely,

Regina Edens, MA

DIRECT CORRESPONDENCE TO:

- WEBSTER COUNTY, 500 South Main Street, Box W, Webster Springs, WV 26288 • 304/847-5425 • FAX: 304/847-5422
- GREENBRIER COUNTY, Rainelle Medical Center, 645 Kanawha Avenue, Rainelle, WV 25962 • 304/438-6101 • FAX: 304/438-6618
- GREENBRIER COUNTY, 100 Church Street, Lewisburg, WV 24901 • 304/645-3319 • FAX: 304/645-6532
- POCAHONTAS COUNTY, 704 Third Avenue, Marlinton, WV 24954 • 304/799-6865 • FAX: 304/799-6878
- POCAHONTAS COUNTY, Durbin Clinic, P.O. Box 245, Durbin, WV 26264 • 304/456-3399
- NICHOLAS COUNTY, #1 Stevens Road, Summersville, WV 26651 • 304/872-2659 • FAX: 304/872-1685
- NICHOLAS COUNTY, Drawer D, Richwood, WV 26261 • 304/846-2516 • FAX: 304/846-2920



WEST VIRGINIA DEPARTMENT OF TRANSPORTATION  
**Division of Motor Vehicles**

Gaston Caperton  
Governor

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

Charles L. Miller, P.E.  
Secretary

Jane L. Cline  
Commissioner

91CSR9 (1993-1994)  
Motor Vehicle Alcohol Test and Lock Program  
Persons/Organizations Notified of Public Comment Period

Colonel Thomas Kirk  
Superintendent of  
Public Safety  
725 Jefferson Road  
So. Charleston, WV 25309

MADD of Kanawha County  
415 D. Street  
So. Charleston, WV 25303

Lt. R. D. Blankenship  
Comm. on Drunk Driving  
725 Jefferson Road  
So. Charleston, WV 25309

Bob Stanley  
WV Motor Truck Assoc.  
2005 Quarrier St.  
Charleston, WV 25311

WV Sheriff's Association  
Paula Crawford  
116 Smith Street, Room 313  
Charleston, WV 25301

WV Trial Lawyers Assoc.  
1018 Kanawha Blvd., E.  
Charleston, WV 25311

James Albert  
Criminal Justice and  
Highway Safety  
Building 1, Room MB146  
Capitol Complex

Chuck Moses, President  
Fraternal Order of Police  
P. O. Box 606  
Fayetteville, WV 25840

Capitol Press Services  
MB 46  
State Capitol Complex

WV Safety Council  
1550 4th Avenue  
Chareston, WV 25312

WV Troopers Association  
210 Chesapeake Ave.  
Charleston, WV 25311

WV Bar Association  
F. Witcher McCullough  
Security Buidling  
Charleston, WV 25301

WV State Bar Association  
2006 Kanawha Blvd., E.  
Charleston, WV 25311

WV Citizens Action Group  
1324 Virginia St., E.  
Charleston, WV 25301

Paul Jordan  
Asst. Attorney General  
West Wing, Room 435  
State Capitol Complex

WV Legal Services Plan,  
Inc.  
1003 Quarrier Street  
Charleston, WV 25301

Madd West Virginia  
605 9th Street  
Huntington, WV 25701

Appalachian Mental Health  
Yokum and Wilmoth Streets  
P. O. Box 1170  
Elkins, WV 26241

Seneca Mental Health/  
Mental Retardation  
Council  
100 Church Street  
Lewisburg, WV 24901

FMRS Mental Health  
Council  
101 South Eisenhower Dr.  
Beckley, WV 25801

Summit Center for Human  
Development  
No. Six Hospital Plaza  
Clarksburg, WV 26301

Northern Panhandle Mental  
Health Center  
2121 Eoff Street  
Wheeling, WV 26003

P. A. R. C. Place  
623 4th Avenue  
Huntington, WV 25701

Eastern Panhandle Mental  
Health Center  
235 South Water Street  
Martinsburg, WV 25401

Southern Highlands Comm.  
Mental Health Center  
12th Street Extension  
Princeton, WV 24740

Logan-Mingo Area Mental  
Health Center  
Route 10, 3-Mile Curve  
Logan, WV 25601

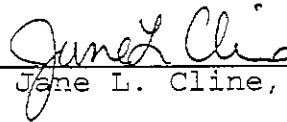
Western District Guidance  
Center  
2121 East Seventh Street  
Parkersburg, WV 26101

Shawnee Hills Community  
Mental Health/ Mental  
Retardation Center  
705 South Park Road  
Charleston, WV 25304

Hancock-Brooke Mental  
Health Services  
501 Colliers Way  
Weirton, WV 26062

Valley Comprehensive  
Community Mental  
Health Center  
2101 Pleasant Valley Rd.  
Fairmont, WV 26554

Potomac Highlands Mental  
Health Services  
P. O. Box 1119  
Petersburg, WV 26847



Jane L. Cline, Commissioner



WEST VIRGINIA DEPARTMENT OF TRANSPORTATION  
**Division of Motor Vehicles**

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

Gaston Caperton  
Governor

Charles L. Miller, P.E.  
Secretary

Jane L. Cline  
Commissioner

91CSR9

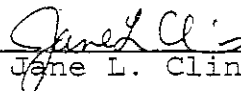
Motor Vehicle Alcohol Test and Lock Program  
Proposed Legislative Rule (1993-94)

Summary of Content  
Statement of Circumstances Requiring Filing

The purpose of this rule is to establish a motor vehicle alcohol test and lock program as required and established under the provisions of West Virginia Code §17C-5A-3a.

This program will allow restricted driving privileges for persons whose licenses are revoked for a driving under the influence offense. Program participants will contract with a DMV authorized service provider to have special ignition interlock equipment installed in his or her vehicle. The equipment will prevent the operation of the vehicle if the equipment detects alcohol in the system of the vehicle operator.

The rule establishes eligibility for participation in the program, time period required for equipment installation, and criteria for full reinstatement of driving privileges.

  
\_\_\_\_\_  
Jane L. Cline, Commissioner



WEST VIRGINIA DEPARTMENT OF TRANSPORTATION  
**Division of Motor Vehicles**

Gaston Caperton  
Governor

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

Charles L. Miller, P.E.  
Secretary

91CSR9

Motor Vehicle Test and Lock Program  
Proposed Legislative Rule (1993-94)

Jane L. Cline  
Commissioner

SUMMARY OF PUBLIC COMMENT

1. First Lt. R. D. Blankenship, Director, Commission on Drunk Driving  
Lt. Blankenship supports the proposed rule.
2. Regina Edens, M.A., Seneca Mental Health Council  
Ms. Edens raised two points of concern:
  - A. 2nd and 3rd offenders should not be eligible for participation  
in the program.

Response

\*W. Va. Code §17C-5A-3a does not restrict entry into the program to only first time offenders. In fact, it prescribes minimum revocation period for other DUI offenses.

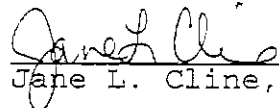
\*The Legislature provides the alternative for several reasons including the fact that repeat offenders are the most likely to drive in spite of being revoked.

- B. Persons may be able to "by-pass their consequences by paying for the program."

Response

\*The program has been established by statute. The Division of Motor Vehicles' responsibility is to implement the program in accordance with the mandate of W. Va. Code §17C-5A-3a.

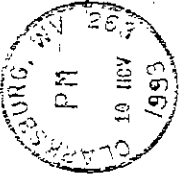
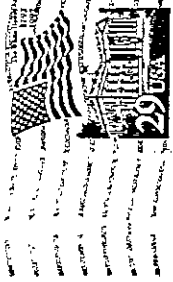
\*If a person wishes to participate in the closely monitored program, he or she must be enrolled in the Safety and Treatment Program. As long as the participant is getting the attention and intervention he needs from the Safety and Treatment Program, the Test and Lock Program can provide a means for the responsible participant to continue to provide for family members, to continue an education, or simply continue being a productive citizen.

  
Jane L. Cline, Commissioner

Wanda J. Thomas  
Rt. 8, Box 212 Lot-83  
Morgantown, WV 26505

CLARKSBURG FADF 262 11/10/93 UDR#2

Secretary of State  
Ken Hechlen  
State Capitol  
Charleston, WV 25305



November 9, 1993

Secretary of State  
Ken Hechler  
State Capitol  
Charleston, WV 25305

Dear Mr. Hechler:

I think you should do some investigating before you make your decisions. I don't understand how you can reject an emergency rule for a Breathalyzer in a vehicle. Every person is an individual and every situation is different and should not all be dealt with in the same manner. There are those who are sincere and straighten up their lives and I feel they should be given some consideration. I can understand being punished for a crime, but not over and over for the same thing. I guess as far as you're concerned once a person has been convicted of DUI, no matter what the circumstances, they should be driven from society.

I think this state has enough people on welfare. When someone wants to work and take care of their family you don't think they should be entitled to do so.

The Department of Motor Vehicles has different rules for different people. I have been going through this so called system for over two years now and no one seems to care whether I get to my job which I have held for nine years, or pay bills, or get groceries or even exist! I am a responsible, sensible person who realizes what I've done and have worked very hard to change my life. I have not had a drink since 9-14-91, and I've gone through all of the classes, AA, jail, home detention, community service and anything else they could think of just to learn that I'm not eligible to be humiliated more with a Breathalyzer until July, 1994, let alone get my license back. A murderer gets better treatment in this state.

I think you need to take time to re-evaluate your decision. It could happen to you or one of your family. Of course that would fall under another set of rules.

Thank you for your time.

*Wanda J. Thomas*

Wanda J. Thomas  
Rt. 8, Box 212 Lot-83  
Morgantown, WV 26505  
304-594-3525  
SS# 233-84-8099  
Birthdate 5-17-53  
Lic# C153384 7/95  
File # 206122-A

KEN HECHLER  
Secretary of State

MARY P. RATLIFF  
Deputy Secretary of State

A. RENEE COE  
Deputy Secretary of State

CATHERINE FREROTTE  
Executive Assistant

Telephone: (304) 558-6000  
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## STATE OF WEST VIRGINIA

### SECRETARY OF STATE

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

November 29, 1993

WILLIAM H. HARRINGTON  
Chief of Staff

JUDY COOPER  
Director, Administrative Law

DONALD R. WILKES  
Director, Corporations

(Plus all the volunteer  
help we can get)

FAX: (304) 558-0900

Wanda J. Thomas  
Rt. 8, Box 212, Lot 83  
Morgantown, West Virginia 26505

Dear Wanda:

Thank you for letting me know your opinion about my decision to disapprove the emergency rule relating to breathalyzers. I congratulate you for taking responsibility for your life and making the necessary changes so that you don't drive under the influence of alcohol or drugs.

I would like to set the record straight about my decision. I do not disagree with the legislature's policy to have a breathalyzer program. I want to assure you that the breathalyzer program is currently operating, and that the agency's rule will go into effect after the legislature reviews it, regardless of my decision.

Why did I disapprove the emergency rule? When I review an emergency rule, I must decide whether or not there is an emergency. If I find that an emergency exists, the rule goes into effect immediately, with only thirty-five days for the people who are affected by it to have a chance for input.

On the other hand, if I find no emergency, I disapprove that emergency rule, and it goes before the legislature. This is vitally important because in the legislature, there is much more opportunity for people who are affected by the rule to make themselves heard.

In this case, I did not find any emergency, as defined by law, that could justify putting the breathalyzer rule into immediate effect without giving the public the maximum opportunity for input.

I hope that you will not dismiss my concern as bureaucratic nitpicking. The opportunity to be heard is a fundamental aspect of constitutional due process rights. Although you may disagree with my final decision, my goal was to protect the constitutional rights of all West Virginians.

Sincerely,

Handwritten signature of Ken Hechler in cursive script.  
Ken Hechler  
Secretary of State