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STATE OF WEST VIRGINIA

OFFICE OF THE SECRETARY OF STATE

CHARLESTON 25305

A. JAMES MANCHIN
SECRETARY OF STATE

STATE REGISTER FILING

FILED IN THE OFFICE OF
A. JAMES MANCHIN
SECRETARY OF STATE
THIS DATE Sept. 1, 1983
Administrative Law Division

I, Virginia L. Roberts, Commissioner,
Title or Position

Department of Motor Vehicles, hereby submit to record in
Department or Division

the State Register on 8 1/2 x 11" paper two (2) copies of

- (X) ^{Emergency} ~~proposed~~ rules and regulations concerning topics of material not covered by existing rules and regulations;
- () proposed rules and regulations superseding rules and regulations already on file;
- () notice of hearing;
- () findings and determinations;
- () rules and regulations; or
- () other - specify (LEGISLATIVE () PROCEDURAL () INTERPRETIVE () RULE

This filing pertains to

Chapter 17A

Article 2

Series XIV

Section 1 through 10

Page No. 1 through 6

- (X) proposed rules and regulations are required to go to Legislative Rule Making Committee;
- () proposed rules and regulations are excluded from Legislative Rule Making Committee;

September 1, 1983

Date Submitted

Virginia L. Roberts
Signature of Person Authorizing
this Filing

JOHN D. ROCKEFELLER IV
Governor



VIRGINIA L. ROBERTS
Commissioner

DEPARTMENT OF MOTOR VEHICLES
STATE OFFICE BUILDING
CHARLESTON, W. VA.
25317

September 1, 1983

The Honorable A. James Manchin
Secretary of State
State Capitol Building
Charleston, West Virginia

FILED IN THE OFFICE OF
A. JAMES MANCHIN
SECRETARY OF STATE

THIS DATE Sept. 1, 1983
Administrative Law Division

Dear Mr. Manchin:

Please find attached two copies of emergency legislative rules being filed pursuant to §29A-3-15. These rules have been designated Series XIV of the Administrative Regulations of the Department of Motor Vehicles. The rules are entitled "Driving Under the Influence; Drivers' License Revocation Administrative Hearings."

Recent legislation on drunk driving has provided for the assessment and reimbursement of certain costs related to administrative hearings. The Legislature has deemed it in the public interest to allow law enforcement agencies to recoup some of their costs in administering the Drunk Driving law. Delay in implementing these provisions would be substantially harmful to the public interest.

I certify that the attached constitutes the emergency rules promulgated and filed on September 1, 1983.

Very truly yours,

Virginia L. Roberts
Virginia L. Roberts
Commissioner

VLR:SD/ns

FILED IN THE OFFICE OF
A. JAMES MANCHIN
SECRETARY OF STATE
THIS DATE Sept. 1, 1983
Administrative Law Division

(EMERGENCY LEGISLATIVE RULES)
DRIVING UNDER THE INFLUENCE

DRIVERS' LICENSE REVOCATION ADMINISTRATIVE HEARINGS

Chapter 17A-2
Series XIV
1983

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(EMERGENCY)
WEST VIRGINIA LEGISLATIVE RULES
DEPARTMENT OF MOTOR VEHICLES

Chapter 17A-2
Series XIV
1983

Subject: Driving Under the Influence; Drivers' License Revocation Administrative Hearings

Section 1. General

1.01. Scope - These legislative rules relate to a hearing requested by a person whose license or privilege to operate a motor vehicle has been revoked under an administrative proceeding pursuant to §17C-5A-1 or a refusal to submit to a secondary chemical test pursuant to §17C-5-7.

1.02. Authority - These legislative rules are issued under the authority of §17A-2-9.

1.03. Filing Date - These legislative rules were promulgated on September 1, 1983 and were filed on September 1, 1983 in the Office of the Secretary of State.

1.04. Effective Date - These legislative rules become effective on September 1, 1983.

Section 2. Application and Enforcement

2.01. Application - These legislative rules apply to hearings requested by persons whose license or privilege to operate a motor vehicle has been revoked pursuant to an offense described in Chapter 17C, Article 5, and 5A of the Code.

2.02. Enforcement - Enforcement of these legislative rules is vested with the Commissioner of Motor Vehicles or lawful designee.

Section 3. Definitions - The following definitions shall apply in the interpretation and enforcement of these legislative rules.

3.01. Arresting Officer - Means any law enforcement officer as described in §17C-5-4.

3.02. Code - Means the Code of West Virginia of 1931, as amended.

3.03. Commissioner - Means the executive officer of the Department of Motor Vehicles appointed by the Governor pursuant to §17A-2-2, or lawful designee.

3.04. Hearing - Means the administrative procedures conducted by the Commissioner pursuant to Chapter 17C and Chapter 29A of the Code and these legislative rules as applied to contested cases arising out of the enforcement of administrative revocations imposed under the provisions of Chapter 17C of the Code.

Section 4. Challenge of the Secondary Chemical Test

4.01. Notification - Any person requesting a hearing under the provisions of §17C-5A-2 and who intends to challenge the results of any secondary chemical test of blood, breath or urine, or intends to cross-examine the individual or individuals who administered the test or performed the chemical analysis, shall notify the Commissioner. Such notification must be submitted in writing, either in person or by mail to the Commissioner in Charleston, West Virginia, at least ten days prior to the hearing date.

4.02. Admissibility - Failure to comply with the notice requirements of Section 4.01 shall mean that the results of the secondary test, if any, will be admissible as though the person and the Commissioner had stipulated the admissibility of such evidence.

4.03. Exceptions - The provisions of 4.02 shall not be invoked in the case of a person who is not represented by counsel unless the communication from the Commissioner to the person establishing a time and place for hearing also informed the person of the consequences of his failure to timely notify Commissioner pursuant to Section 4.01.

Section 5. Request for Hearing

5.01. Initial Notice of Procedures - The order of revocation shall also include:

1. A statement of the issues involved.
2. A statement that a request for hearing must be made as prescribed in Section 5.02.
3. A statement that the Commissioner must be notified if there is an intent to challenge the results or operation of the chemical test as prescribed in Section 4.
4. A statement of the costs associated with the hearing which may be incurred, as prescribed in Section 8.

5.02. Request For Hearing - A request for hearing must be submitted in writing to the Commissioner in Charleston, West Virginia either in person or by registered or certified mail, return receipt requested. The request must be made within ten days from the date on which the order of revocation's mail receipt was signed. However, in cases where the registered or certified mail is not signed for, the provisions of §17A-2-19 shall apply. If the person requesting the hearing intends to challenge the results or operation of the chemical test, notice of such action must be made as prescribed in Section 4.

5.03. Notice of Hearing - The notice of hearing shall be sent to the person requesting the hearing by registered or certified mail, return receipt requested.