

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #5

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

**NOTICE OF AGENCY ADOPTION OF A PROCEDURAL OR INTERPRETIVE RULE
OR A LEGISLATIVE RULE EXEMPT FROM LEGISLATIVE REVIEW**

AGENCY: Division of Motor Vehicles TITLE NUMBER: 91CSR14

CITE AUTHORITY: WV Code §17A-2-9 and §17C-15-49(b)

RULE TYPE: PROCEDURAL _____ INTERPRETIVE _____

EXEMPT LEGISLATIVE RULE _____
CITE STATUTE(S) GRANTING EXEMPTION FROM LEGISLATIVE REVIEW

AMENDMENT TO AN EXISTING RULE: YES _____, NO X _____

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____


TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF NEW RULE BEING ADOPTED: 91CSR14

TITLE OF RULE BEING ADOPTED: _____

Waiver of Safety Belt Requirements

THE ABOVE RULE IS HEREBY ADOPTED AND FILED WITH THE SECRETARY OF STATE. THE
EFFECTIVE DATE OF THIS RULE IS September 30, 1993



Jane 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

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

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

JUL 30 11 22 AM '93

FILED

Dear Mr. Secretary:

The Commissioner of Motor Vehicles is hereby authorized to promulgate proposed rule 91CSR14 Waiver of Safety Belt Requirements.

Charles L. Miller, Secretary

July 29, 1993

Date

WEST VIRGINIA PROCEDURAL RULES
DIVISION OF MOTOR VEHICLES
91CSR14

Title: Waiver of Safety Belt Requirements

§91-14-1 General

1.1 Scope - This rule establishes the procedure for certifying an exemption from the required use of safety belts in a passenger motor vehicle in accordance with West Virginia Code §17C-15-49.

1.2 Authority - West Virginia Code §17A-2-9 and §17C-15-49(b).

1.3 Filing Date - August 31, 1993

1.4 Effective Date - September 30, 1993

1.5 This rule applies to persons who, due to a physically disabling condition, are unable to comply with the required use of safety belts as provided by West Virginia Code §17C-15-49.

§91-14-2 Application

2.1 The applicant for a waiver of the safety belt requirement pursuant to West Virginia Code §17C-15-49 shall complete Part I of the Safety Belt Waiver Certificate form prescribed by the Division of Motor Vehicles.

2.2 The applicant shall submit the form with Part I completed to a physician of his or her choice, licensed to practice medicine in the United States.

§91-14-3 Physician Certification

3.1 A physician, licensed to practice medicine in the United States, after examination of the applicant, may at his or her discretion complete Part II of the application.

3.2 Completion of the application shall, in accordance with West Virginia Code §17C-15-49(b) include:

3.2.1 Nature of Physical Disability - typed or printed in designated area.

3.2.2 Reason for Waiver of Safety Belt Requirement - typed or printed in the designated area.

3.2.3 Alternate Restraint System - if applicable, may, at the physician's discretion be prescribed for the applicant. The physician shall type or write a description of the alternative restraint system in the designated area. Completion of this part of the application shall serve to require the applicant to use the described alternative restraint system when operator or as a passenger in a passenger vehicle.

3.2.4 The certifying physician, at his or her discretion, may limit the period of time for which the Safety Belt Waiver Certificate is valid.

3.3 Signature of Physician - shall serve to certify the applicant as having a physical disability which prevents the use of safety belts and validate the Safety Belt Waiver Certificate form as evidence of the disability in accordance with West Virginia Code §17C-15-49(b).

3.4 Nothing in this rule shall require any physician to either examine an applicant to determine eligibility for a Safety Belt Waiver, or require the physician to certify an applicant has qualified for a waiver under the provisions of West Virginia Code §17C-15-49(b), unless the physician makes a determination that in his or her medical opinion, the applicant's use of a safety belt is inappropriate due to the applicant's physical disability.

91-14-4 Display and Use of Safety Belt Waiver

4.1 The completion and certification of Part II of the Safety Belt Waiver Certificate form by a physician licensed to practice medicine in the United States, shall serve to:

4.1.1 Completely waive the safety belt requirement of West Virginia Code §17C-15-49, for the applicant when operating or as a passenger in a passenger vehicle, or

4.1.2 Require the applicant to use an alternative restraint system prescribed by the certifying physician when operating or as a passenger in a passenger vehicle.

4.2 The applicant shall keep the Safety Belt Waiver Certificate in any passenger vehicle in which he or she is either an operator or a passenger.

4.3 The applicant may make copies of the Safety Belt Waiver Certificate for use as a duplicate Safety Belt Waiver Certificate if the original is lost or destroyed. The copy shall serve as a valid waiver.

4.4 The applicant shall present the Safety Belt Waiver Certificate upon the demand of any member of a law enforcement agency enforcing the provisions of West Virginia Code §17C-15-49(b).

4.5 The Safety Belt Waiver Certificate shall not expire unless the certifying physician includes an expiration date by including a period of time for which the waiver is valid.

§91-14-5 Enforcement

5.1 Enforcement - A member of a law enforcement agency may, at his or her discretion, undertake any investigation necessary to determine the validity or genuineness of any Safety Belt Waiver Certificate.



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

91CSR14

Waiver of Safety Belt Requirements
Proposed Procedural Rule (1993)
Summary of Public Comment

Two comments received:

Patrolman B. L. Yost, Martinsburg City Police Department
Colonel Thomas L. Kirk, Superintendent of Public Safety

A. Patrolman Yost made several suggestions:

1. Provide Physicians with a list of alternative restraint systems which are available. Physicians may not be skilled in the area of alternative restraint systems.

Response:

a. It is not advisable to list alternative restraint systems, as any prescribed alternative would be tailored to an applicant's particular physical needs. A list would have to contemplate all possible conditions which would preclude safety belt use.

b. A physician who feels an alternative restraint system should be prescribed, but who lacks the expertise to recommend an alternative, should refer the applicant to another physician who is knowledgeable.

2. All exemption certificates should be on file with the Division of Motor Vehicles.

Response:

a. Requiring the applicant to file the exemption certificate with the Division of Motor Vehicles would serve no practical purpose other than create another bureaucratic hoop for citizens to jump through in order to qualify for the waiver.

b. The Division of Motor Vehicles is not going to substitute its judgement for that of the licensed physician so there is no reason for the waiver to be reviewed or approved by the Division.

c. The statute does not refer to requiring any type of DMV issued endorsement or permit so the Division of Motor Vehicles would not require the waiver in order to generate some sort of document to mail back to the applicant.

d. Any question of the validity or genuineness of a safety belt waiver certificate

boils down to whether or not the physician actually waived the safety belt requirement, not by the fact that there is a copy of the waiver in a file at DMV. A law enforcement "Status Check" of a waiver with DMV would only show what the officer already has in hand. Any law enforcement officer is fully within his or her rights to undertake any investigation necessary to determine the validity of a physician's certificate of waiver.

3. The Safety Belt Waiver should be issued as a restriction on the applicant's driver's license.

Response

- a. The Safety Belt law makes no reference to requiring the applicant to carry a specially endorsed driver's license in order to effectuate the waiver provisions.
 - b. Many persons who qualify for a waiver may not possess a driver's license.
- B. Colonel Kirk suggested that applicants be required to return to the examining physician for another wavier if the original is lost.

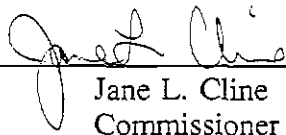
Response

The Division of Motor Vehicles does not believe that persons who have lost their Safety Belt Waiver Certificate should be required to return to the physician for a replacement. Handicapped parking permit holders are not required to have their physicians recertify their eligibility if they have lost their parking placard.

Law Enforcement officers have the authority to undertake any investigation necessary to determine the validity or genuineness of any Safety Belt Waiver Certificate. The fact that the waiver is a copy rather than an original does not present a problem of validity. All of the required information is on the waiver whether it is the original or a copy.

SUMMARY OF CHANGES AS
A RESULT OF PUBLIC COMMENT

No changes were made to the Rule.


Jane L. Cline
Commissioner



West Virginia State Police
725 Jefferson Road
South Charleston, West Virginia 25309-1698
Executive Office

Gaston Caperton
Governor

Colonel Thomas L. Kirk
Superintendent

August 9, 1993

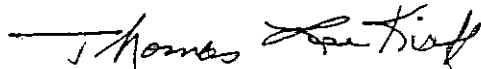
Mr. Steven O. Dale
Division of Motor Vehicles
Building 3, Room 113
Charleston, West Virginia 25317

Dear Mr. Dale:

Upon review of the Waiver of Safety Belt Requirements filed with the Secretary of State's Office on July 30, 1993, Title Number 91CSR14, the following comments are being submitted.

The Division of Public Safety is against section 4.3 which states "The applicant may make copies of the Safety Belt Waiver Certificate for use as a duplicate Safety Belt Waiver Certificate if the original is lost or destroyed. The copy shall serve as a valid waiver." If the original waiver is lost, it is the opinion of this Division an individual should have to return to a physician and obtain a new waiver.

Sincerely yours,


COLONEL THOMAS L. KIRK
SUPERINTENDENT

TLK/ab

CITY OF MARTINSBURG

POLICE DEPARTMENT

Perry F. Smith
Chief of Police

Emergency 911



232 North Queen Street
Martinsburg, WV 25401

(304) 264-2100

Fax (304) 264-2136

8/19/93

To: Steven O. Dale
Fr: Ptlm. B.L. Yost
Re: Seat belt exemption

Mr. Dale,

The proposed seat belt exemption legislation I support fully. I agree that many persons may have disabilities that prevent them from using a conventional seat belt or one that would allow them to get the belt on but may not allow them the ability to be able to get it off.

I would add a few things to the proposed legislation if it is possible. On the application in section C a method of alternate restraint may be available. I would add to the legislation a list of alternate restraints that may be available. A physician may be skilled in a lot of areas but this would to me not be one of the areas. A physician may say that an exemption be permanent but not realize a particular type of restraint that would be available to further protect the exempted driver. I would also request that the exemption certificate be on file at the Dept. of Motor Vehicles. Another idea is if the exemption is to be permanent that the exemption be imprinted on the exempted drivers operators licence, possibly as a new code listing such as "10". That would allow the driver that will be permanently exempted to not have to carry the full page exemption certificate with them from vehicle to vehicle.

Sincerely,

Ptlm. B.L. Yost

PTLM B.L. YOST



KEN HECHLER
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Director, Corporations

(Plus all the volunteer
help we can get)

FAX: (304) 558-0900

STATE OF WEST VIRGINIA

SECRETARY OF STATE

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

TO: Steve Dale

AGENCY: Motor Vehicles

FROM: JUDY COOPER, DIRECTOR, ADMINISTRATIVE LAW DIVISION

DATE: January 11, 1994

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: 14 TITLE: 91 Motor Vehicles

* THE ATTACHED RULE HAS BEEN REVIEWED AND IS CORRECT.

SIGNED: *Steven A. Dale*

TITLE OF PERSON SIGNING: *Assistant to the Commissioner*

DATE: *January 13, 1994*

* 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.