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

SECRETARY OF STATE

ARCH A. MOORE, JR.
Governor

L. W. BECHTOLD
Commissioner

NOTICE OF EMERGENCY RULE

RULE TITLE Seizure of Driver's License, Issuance of The Temporary
Driver's License Prescribed by §17C-5A-1.


The attached rule is filed as an Emergency Rule. The facts and circumstances constituting the emergency are as follows:

Emergency promulgation of this rule is necessary to prevent substantial harm to the public interest.

The provisions of Senate Bill 524 requires the department to immediately adopt procedures to:

1. Provide for a temporary license for persons arrested for Driving Under the Influence,
2. Establish procedures for collection of permanent license at the time of arrest, and
3. Establish procedures for extension of the temporary license after perfection of administrative appeal.

Immediate promulgation of these rules is necessary to implement the provisions of Senate Bill 524 which provides for more stringent penalties for driving under the influence of alcohol or controlled substances or drugs.


L. W. Bechtold
Commissioner

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(EMERGENCY)
WEST VIRGINIA LEGISLATIVE RULES
DEPARTMENT OF MOTOR VEHICLES
CHAPTER 17A-2
SERIES 20
INDEX

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

Title: Seizure of Driver's License, Issuance of the Temporary Driver's License Prescribed by §17C-5A-1

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(EMERGENCY)
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Title: Seizure of Driver's License, Issuance of the Temporary Driver's License Prescribed by §17C-5A-1

Section 1. General

1.1 Scope - These legislative rules establish the procedures for seizure of a person's driver's license and issuance of a temporary driver's license in accordance with the provisions of Chapter 17C, Article 5A of the West Virginia Code.

1.2 Authority - §17A-2-9 related to §17C-5A-1 and §17C-5A-2.

1.3 Filing Date - June 9, 1986

1.4 Effective Date - June 9, 1986

Section 2. Application and Enforcement

2.1 Application - These legislative rules apply to any law enforcement officer arresting a person for an offense described in §17C-5-2 or for an offense described in a municipal ordinance which has the same elements as an offense described in §17C-5-2. These rules also apply to any person issued a temporary driver's license in accordance with the provisions of §17C-5A-1 or §17C-5A-2.

2.2 Enforcement - Enforcement of these legislative rules is vested with the Commissioner or lawful designee.

Section 3. Seizure and Disposition of Driver's License

3.1 Seizure of License - In accordance with §17C-5A-1(b), any law enforcement officer arresting a person for an offense described in §17C-5-2 or similar municipal ordinance shall take the driver's license at the time of arrest.

3.2 Disposition of License - Any driver's license secured in accordance with §17C-5A-1(b) shall be taped to the written statement known as the "Statement of Arresting Officer" and, in accordance with §17C-5A-1(b), both documents shall be submitted to the Commissioner within forty-eight hours.

Section 4. Issuance of Temporary Driver's License

4.1 Prescribed Form - The form contained on the lower portion of the "Statement of Arresting Officer" supplied to law enforcement agencies by the Department shall constitute the prescribed temporary driver's license form.

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4.2 Completion of License - The temporary driver's license form shall be completed in full by the arresting officer at the time of arrest, and upon completion, shall be given to the arrested person. The temporary driver's license shall not be valid unless signed by the licensee.

4.3 Issuance - A temporary driver's license shall only be issued when the arresting officer secures a valid West Virginia driver's license. The temporary driver's license provisions of §17C-5A-1(b) do not apply to a person with an out-of-state driver's license or to a person who fails to surrender a valid West Virginia driver's license at the time of arrest. The temporary driver's license form shall not be detached from the "Statement of Arresting Officer" form and shall be marked "void" when a temporary driver's license is not issued.

4.4 Revoked or Suspended License - A temporary driver's license shall not be issued to a person whose driving privilege has been suspended or revoked. Any West Virginia driver's license taken from such person in accordance with 3.1 shall be taped to the "Statement of Arresting Officer" and the temporary driver's license form shall not be detached from the "Statement of Arresting Officer Form" and shall be marked void.

4.5 Term of License - Any temporary driver's license issued by an arresting officer shall be valid for a period of thirty (30) days from the date of arrest.

4.6 Failure to Surrender License - A person who fails to surrender a valid West Virginia driver's license at the time of arrest shall be ordered to surrender such driver's license through the order of revocation directed to such person in accordance with the provisions of §17C-5A-1(c). Failure to surrender the driver's license as directed by the order of revocation shall result in an order being directed to the Department of Public Safety, local law enforcement agency or other lawful means to secure such driver's license in accordance with §17B-3-8.

Section 5. Extension of Temporary Driver's License

5.1 Perfection of Hearing Request - Upon a timely request for a hearing in accordance with §17C-5A-2(a), a temporary driver's license, if issued, shall be extended by the Commissioner.

5.2 Term of License Extension - An extension of a temporary driver's license shall be for for a period of time to be determined by the Commissioner to extend the temporary driver's license until the final order is made and entered either affirming or reversing the original order of revocation.

5.3 Further Extension - It shall be the responsibility of the holder of a temporary driver's license to apply for a further extension of the temporary license should a final order not be made and entered prior to the

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expiration of the extension granted pursuant to Section 5.2. Such further extension shall be for a period of time to be determined by the Commissioner to extend the temporary driver's license until a final order is made and entered either affirming or reversing the original order of revocation.

5.4 License Status - Upon the granting of a request for hearing in accordance with §17C-5A-2(a), revocation of the licensees' privilege to operate a motor vehicle is stayed pending the making and entering of the final order of the Commissioner. However, such licensee who has been issued a temporary license, shall not be issued a duplicate operator or chauffeurs license during the pendency of any such proceedings.

Section 6. Severability

In the event any portion of these rules shall be held to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the validity or constitutionality of the remaining portions of these rules.