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STATE OF WEST VIRGINIA  
SECRETARY OF STATE

Charleston 25305

July 10, 1986

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: Department of Motor Vehicles

RULE: Series 20 Seizure of Driver's License, Issuance of the  
Temporary Driver's License Prescribed by §17C-5A-1

DATE FILED AS AN EMERGENCY RULE: June 9, 1986

DECISION NO. 8-86

Following review under WV Code 29A-3-15a, it is the decision of the Secretary of State that the above emergency rule be approved. A copy of the complete decision with required findings is available from this office.

KEN HECHLER  
Secretary of State

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OFFICE OF THE SECRETARY OF STATE  
DEPARTMENT OF MOTOR VEHICLES



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# STATE OF WEST VIRGINIA

## SECRETARY OF STATE

Charleston 25305

### DECISION

### Emergency Rule Decision (ERD 8-86)

AGENCY: Department of Motor Vehicles  
RULE: Series 20 Seizure of Driver's License, Issuance of the  
Temporary Driver's License Prescribed by §17C-5A-1  
DATE FILED AS AN EMERGENCY RULE: June 9, 1986

- par. 1 The Department of Motor Vehicles has filed as an emergency rule a new rule titled Seizure of Driver's License, Issuance of the Temporary Driver's License Prescribed by §17C-5A-1
- par. 2 The rule provides the procedures for seizure of a driver's license, the issuance and duration of a temporary license following seizure and the extension of such temporary license.
- par. 3 West Virginia Code 29A-3-15A requires the Secretary of State to review all emergency rules filed after March 8, 1986. This review requires the Secretary of State to determine if the agency filing such emergency rule 1) has complied with the procedures for adopting an emergency rule; 2) exceeded the scope of its statutory authority in promulgating the emergency rule; or 3) can show that an emergency exists justifying the promulgation of an emergency rule.
- par. 4 Following review, the Secretary of State shall issue a decision as to whether or not such an emergency rule should be disapproved [29A-3-15a(a)].
- par. 5 (A) Procedural Compliance: WV Code 29A-3-15 permits an agency to adopt, amend or repeal, without hearing, any legislative rule by filing such rule, along with a statement of the circumstances constituting the emergency, with the Secretary of State and forthwith with the Legislative Rule-Making Review Committee (LRMRC).
- par. 6 If an agency has accomplished the above two required filings with the appropriate supporting documents by the time the ERD is issued or the expiration of the forty-two day review period, whichever is sooner, the Secretary of State shall rule in favor of procedural compliance.

par. 7 The Department of Motor Vehicles has filed this emergency rule with supporting documents with the Secretary of State on June 9, 1986 and with the LRMRC prior to the issuance of this decision. It is, therefore, the determination of the Secretary of State that the Department of Motor Vehicles has complied with the procedural requirements of WV Code 29A-3-15.

par. 8 (B) Statutory Authority: WV Code 17A-2-9 reads:

*§17A-2-9. Same -- Powers and Duties; rules and regulations; seal.*

*(a) The commissioner is hereby vested with and is charged with the duty of observing, administering and enforcing the provisions of this chapter and of all laws the enforcement of which is now or hereafter vested in the department: Provided, however, that nothing in this chapter shall deprive the public service commission of West Virginia of any of the duties or powers now vested in it with regard to the regulation of motor vehicle carriers.*

*(b) The commissioner is hereby authorized to adopt and enforce such rules and regulations as may be necessary to carry out the provisions of this chapter and any other laws the enforcement and administration of which are vested in the department.*

*(c) The commissioner may adopt an official seal for the use of the department. (1951, c. 129.)*

par. 9 WV Code 17A-5A-1 reads:

*(b) Any law-enforcement officer arresting a person for an offense described in section two, article five of this chapter or for an offense described in a municipal ordinance which has the same elements as an offense described in said section two of article five, shall take the person's license at the time of arrest and issue a temporary license to be prescribed by the department of motor vehicles, pending a request for an administrative hearing, and shall report to the commissioner of the department of motor vehicles by written statement within forty-eight hours the name and address of the person so arrested. (Emphasis added)*

par. 10 WV Code 17C-5A-2 reads in part:

*(a) Upon the written request of a person whose license to operate a motor vehicle in this state has been revoked under the provisions of section one of this article or section seven, article five of this chapter, the commissioner of motor vehicles shall extend the temporary license issued under section one of this article, if applicable, and afford the person an opportunity to be heard. (emphasis added)*

par. 11 (C) Emergency: WV Code 29A-3-15(g) defines "emergency" as follows:

*(g) For the purposes of this section, an emergency exists when the promulgation of a rule is necessary for the immediate preservation of the public peace, health, safety or welfare or is necessary to comply with a time limitation established by this code or by a federal statute or regulation or to prevent substantial harm to the public interest.*

- par. 12 There are essentially three classes of emergency broadly presented with the above provision: 1) immediate preservation; 2) time limitation; and 3) substantial harm. An agency need only document to the satisfaction of the Secretary of State that there exists a nexus between the proposal and the circumstances creating at least one of the above three emergency categories.
- par. 13 The Department of Motor Vehicles claims that this proposal is "to prevent substantial harm to the public interest."
- par. 14 The facts and circumstances as presented by the Department of Motor Vehicles are as follows:
- 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.
- par. 15 The primary purpose of drunk driving statutes is to prevent injury or death on the highways resulting from intoxication or other substance impaired drivers.
- par. 16 In discussion with DMV officials, this office was made aware that approximately 8500 temporary licenses are issued each year resulting in approximately 2500 to 3000 hearings.
- par. 17 There exists a statutory connection between the DMV and the law enforcement departments in the state in carrying out the legislature's drunk driving laws.
- par. 18 With no guidelines for the efforts intended within SB 524, there exists the risk of officer error resulting in loss of convictions and possible officer liability; the end result being potential endangerment upon the public highways.
- par. 19 As cited in ERD 6-86, par. 17, 18, 19 and 24, an emergency rule requires a lesser standard of evidence when the purpose of the rule is to prevent a life or injury threatening situation.
- par. 20 This office chooses, in such situations, to side with caution when protection of life is involved as a concern addressed in an emergency rule.

- par. 21 The Secretary of State determines that the Department of Motor Vehicles has demonstrated the need to make effective this proposal.
- par. 22 It is the decision of the Secretary of State that this proposal by the Department of Motor Vehicles is in procedural compliance with WV Code 29A-3-15; does not exceed the statutory authority of the Department of Motor Vehicles; and that the facts and circumstances presented constitute an emergency. Therefore, the Secretary of State decides that this emergency rule should be approved.
- par. 23 This decision shall be cited as Emergency Rule Decision 8-86 or ERD 8-86 and may be cited as precedent. This decision is available from the Secretary of State's office and has been filed with the Department of Motor Vehicles, the Attorney General and the Legislative Rule Making Review Committee.

*Ken Hechler*

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KEN HECHLER  
SECRETARY OF STATE

FILED IN THE OFFICE OF  
THE SECRETARY OF STATE

Entered \_\_\_\_\_ THIS DATE July 11, 1986  
ADMINISTRATIVE LAW DIVISION