



FILED IN THE OFFICE OF
THE SECRETARY OF STATE
THIS DATE June 12, 1987
ADMIN. LAW DIVISION

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

ARCH A. MOORE, JR.
Governor

L. W. BECHTOLD
Commissioner

NOTICE OF FINAL FILING - LEGISLATIVE RULE

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

The attached legislative rule is hereby filed by the Department of Motor Vehicles as authorized by Enrolled Senate Bill 748, §64-2-17a(2) (9) (d)


L. W. Bechtold, Commissioner



FILED IN THE OFFICE OF
THE SECRETARY OF STATE

THIS DATE JUNE 12, 1987
ADMINISTRATIVE LAW DIVISION

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

ARCH A. MOORE, JR.
Governor

L. W. BECHTOLD
Commissioner

Promulgation History Abstract

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

Rule Type: Legislative

Filed Notice: June 10, 1986

Public Hearing Held: July 15, 1986

Filed Agency Approved Rule: July 25, 1986

Filed Agency Approved Rule with LRMRC: July 25, 1986

Action by LRMRC: Approved as modified by Agency

Legislative Action: Authorized, SB 748 §64-2-17a(2)(9)(d)

Final Rule Filed With Secretary of State: June 12, 1987

Effective Date: June 12, 1987

ENTERED


L. W. Bechtold, Commissioner
Department of Motor Vehicles

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

FILED IN THE OFFICE OF
THE SECRETARY OF STATE
THIS DATE June 12, 1987
ADMINISTRATIVE LAW DIVISION

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

Section 1.	General	1
2.	Application and Enforcement	1
3.	Seizure and Disposition of Driver's License	1
4.	Issuance of Temporary Driver's License	2
5.	Extension of Temporary Driver's License	2
6.	Severability	3

WEST VIRGINIA LEGISLATIVE RULES
DEPARTMENT OF MOTOR VEHICLES
CHAPTER 17A-2
SERIES 20

FILED IN THE OFFICE OF
THE SECRETARY OF STATE
THIS DATE June 12, 1987
ADMINISTRATIVE LAW DIVISION

Title: Seizure of Driver's License, Issuance of the Temporary Driver's License Prescribed by W. Va. Code §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 - W. Va. Code §17A-2-9 related to W. Va. Code §17C-5A-1 and W. Va. Code §17C-5A-2.

1.3 Filing Date - June 12, 1987

1.4 Effective Date - June 12, 1987

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 W. Va. Code §17C-5-2 or for an offense described in a municipal ordinance which has the same elements as an offense described in W. Va. Code §17C-5-2. These rules also apply to any person issued a temporary driver's license in accordance with the provisions of W. Va. Code §17C-5A-1 or W. Va. Code §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 W. Va. Code §17C-5A-1(b), any law enforcement officer arresting a person for an offense described in W. Va. Code §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 W. Va. Code §17C-5A-1(b) shall be taped to the written statement known as the "Statement of Arresting Officer" and, in accordance with W. Va. Code §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 temporary driver's license form prescribed by W. Va. Code §17C-5A-1.

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 W. Va. Code §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 Section 3.1 of these rules 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 W. Va. Code §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 W. Va. Code §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 W. Va. Code §17C-5A-2(a), a temporary driver's license, if issued, shall be extended by the Commissioner.

Department of Motor Vehicles
Legislative Rule 17A-2
Series 20, Sec. 5

5.2 Term of License Extension - An extension of a temporary driver's license shall be for a fixed 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. 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 expiration of the extension granted pursuant to these rules. 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.

5.3 License Status - Upon the granting of a request for hearing in accordance with W. Va. Code §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.

1
2
3
4
5
6
7
8
9

Senate Bill No. 341
(By Senator Tucker)

[Introduced February 4, 1987; referred to the Committee
on TRANSPORTATION ; then to the
Committee on THE JUDICIARY .]

10 A BILL to amend and reenact section seventeen-a(two)(nine),
11 article two, chapter sixty-four of the code of West Virginia,
12 one thousand nine hundred thirty-one, as amended, relating to
13 authorizing the commissioner of motor vehicles to promulgate
14 legislative rules relating to the seizure of a driver's
15 license and issuance of a temporary driver's license.

16 Be it enacted by the Legislature of West Virginia:

17 That section seventeen-a (two)(nine), article two, chapter
18 sixty-four of the code of West Virginia, one thousand nine
19 hundred thirty-one, as amended, be amended and reenacted to read
20 as follows:

21 ARTICLE 2. EXECUTIVE AGENCY AUTHORIZATION TO PROMULGATE
22 LEGISLATIVE RULES.

23 §64-2-17a(2)(9). Commissioner of motor vehicles.

24 (a) The legislative rules filed in the state register on the
25 second day of December, one thousand nine hundred eighty-two,
26 relating to the commissioner of motor vehicles (denial of driving
27 privileges), are authorized with the amendments set forth below:

1 By inserting the words "licensed in the United States" after
2 the phrase "physician of the applicant's choice," on page five,
3 line two, and page seven, line one; and by striking out the words
4 "licensed vision specialist" and inserting in lieu thereof the
5 words "an optometrist or ophthalmologist licensed in the United
6 States," on page five, line three, and on page seven, line two.

7 These rules were proposed by the commissioner pursuant to
8 section nine, article two, chapter seventeen-a and section six,
9 article three-c, chapter seventeen-b of this code.

10 (b) The legislative rules filed in the state register on the
11 twentieth day of November, one thousand nine hundred eighty-four,
12 relating to the commissioner of motor vehicles (titling a
13 vehicle) are authorized.

14 (c) The legislative rules filed in the state register on the
15 fifth day of August, one thousand nine hundred eighty-five,
16 modified by the the commissioner of motor vehicles to meet the
17 objections of the legislative rule-making review committee and
18 refiled in the state register on the fourth day of October, one
19 thousand nine hundred eighty-five, relating to the commissioner
20 of motor vehicles (eligibility for reinstatement following
21 suspension or revocation of driving privileges) are authorized.

22 (d) The legislative rules filed in the state register on the
23 twenty-fifth day of July, one thousand nine hundred eighty-six,
24 modified by the commissioner of motor vehicles to meet the
25 objections of the legislative rule-making review committee and
26 refiled in the state register on the ninth day of October, one

1 thousand nine hundred eighty-six, relating to the commissioner of
2 motor vehicles (seizure of a driver's license and issuance of a
3 temporary driver's license) are authorized.

4

5 NOTE: The purpose of this bill is to authorize the
6 Commissioner of Motor Vehicles to promulgate legislative rules
7 relating to seizure of a driver's license and issuance of a
8 temporary license, when a driver is arrested for driving under
9 the influence.

10

11 Strike-throughs indicate language that would be stricken from
12 the present law, and underscoring indicates new language that
13 would be added.

14

1
2
3
4
5
6
7
8
9

H. B. 2580

Delegate Knight

(By _____)
(Introduced February 4, 1987; referred to the
Committee on Roads and Transportation then
the Judiciary)

10 A BILL to amend and reenact section seventeen-a(two)(nine),
11 article two, chapter sixty-four of the code of West Virginia,
12 one thousand nine hundred thirty-one, as amended, relating to
13 authorizing the commissioner of motor vehicles to promulgate
14 legislative rules relating to the seizure of a driver's
15 license and issuance of a temporary driver's license.

16 Be it enacted by the Legislature of West Virginia:

17 That section seventeen-a (two)(nine), article two, chapter
18 sixty-four of the code of West Virginia, one thousand nine
19 hundred thirty-one, as amended, be amended and reenacted to read
20 as follows:-

21 ARTICLE 2. EXECUTIVE AGENCY AUTHORIZATION TO PROMULGATE
22 LEGISLATIVE RULES.
23 §64-2-17a(2)(9). Commissioner of motor vehicles.

24 (a) The legislative rules filed in the state register on the
25 second day of December, one thousand nine hundred eighty-two,
26 relating to the commissioner of motor vehicles (denial of driving
27 privileges), are authorized with the amendments set forth below:

2580

1 By inserting the words "licensed in the United States" after
2 the phrase "physician of the applicant's choice," on page five,
3 line two, and page seven, line one; and by striking out the words
4 "licensed vision specialist" and inserting in lieu thereof the
5 words "an optometrist or ophthalmologist licensed in the United
6 States," on page five, line three, and on page seven, line two.

7 These rules were proposed by the commissioner pursuant to
8 section nine, article two, chapter seventeen-a and section six,
9 article three-c, chapter seventeen-b of this code.

10 (b) The legislative rules filed in the state register on the
11 twentieth day of November, one thousand nine hundred eighty-four,
12 relating to the commissioner of motor vehicles (titling a
13 vehicle) are authorized.

14 (c) The legislative rules filed in the state register on the
15 fifth day of August, one thousand nine hundred eighty-five,
16 modified by the the commissioner of motor vehicles to meet the
17 objections of the legislative rule-making review committee and
18 refiled in the state register on the fourth day of October, one
19 thousand nine hundred eighty-five, relating to the commissioner
20 of motor vehicles (eligibility for reinstatement following
21 suspension or revocation of driving privileges) are authorized.

22 (d) The legislative rules filed in the state register on the
23 twenty-fifth day of July, one thousand nine hundred eighty-six,
24 modified by the commissioner of motor vehicles to meet the
25 objections of the legislative rule-making review committee and
26 refiled in the state register on the ninth day of October, one

1 thousand nine hundred eighty-six, relating to the commissioner of
2 motor vehicles (seizure of a driver's license and issuance of a
3 temporary driver's license) are authorized.

4

5 NOTE: The purpose of this bill is to authorize the
6 Commissioner of Motor Vehicles to promulgate legislative rules
7 relating to seizure of a driver's license and issuance of a
8 temporary license, when a driver is arrested for driving under
9 the influence.

10

11 Strike-throughs indicate language that would be stricken from
12 the present law, and underscoring indicates new language that
13 would be added.

14