



Mac Warner
Secretary of State
State of West Virginia

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

March 7, 2017

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: Justice and Community Services

RULE: New Rule, 224CSR1, William R. Laird IV - Second Chance Driver's License Program

DATE FILED AS AN EMERGENCY RULE: February 17, 2017

DECISION NO. 3-17

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

A handwritten signature in cursive script that reads "Mac Warner".

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Secretary of State

EMERGENCY RULE DECISION
(ERD 3-17)

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- par. 1 The Division of Justice and Community Services (Division) has filed the above new rule as an emergency rule.
- par. 2 W. Va. 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. 3 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].
- par. 4 (A) Procedural Compliance: W. Va. 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. 5 If an agency has accomplished the above two required filings with the appropriate supporting documents by the time the emergency rule decision 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. 6 The Committee filed this emergency rule with supporting documents with the Secretary of State February 17, 2017 and with the LRMRC February 17, 2017.
- par. 7 It is the determination of the Secretary of State that the Committee has complied with the procedural requirements of W. Va. Code §29A-3-15 for adoption of an emergency rule.
- par. 8 (B) Statutory Authority -- W. Va. Code §17B-7-10 reads:

§17B-7-10. Rule-making authority.

(a) To implement the provisions of this article, the director, in consultation with the commissioner, shall promulgate emergency and legislative rules pursuant to the provisions of article three, chapter twenty-nine-a of this code, which shall include, but not be limited to, the following:

- (1) The form, content and information required to be furnished in the application forms;*
- (2) The procedure and requirements of the eligibility review process;*
- (3) Guidelines for creation of a consolidated repayment schedule of unpaid court costs;*
- (4) Terms and conditions for acceptance into the program, maintenance of good standing, and completion of the program;*
- (5) Forms for certificates of compliance, certificates of noncompliance, program removal notice and program completion certificate; and*
- (6) The procedures for removal or suspension from the program.*
- (b) To implement the provisions of this article, the commissioner shall promulgate emergency and legislative rules pursuant to the provisions of article three, chapter twenty-nine-a of this code, which may include, but are not limited to, the following:*
 - (1) Establishing the procedures for issuing a stay of a participant's driver's license suspension or revocation; and*
 - (2) Establishing the restrictions upon where and when a participant may utilize his or her driver's license to operate a motor vehicle during the stay of the suspension or revocation authorized by this article.*

par. 9 It is the determination of the Secretary of State that the Committee has not exceeded its statutory authority in promulgating this emergency rule.

par. 10 (C) Emergency -- W. Va. Code §29A-3-15(f) defines "emergency" as follows:

(f) 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. 11 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. 12 The facts and circumstances as presented by the Committee are as follows:

This rule is a new rule to set the process to be carried out concerning the William R. Laird IV Second Chance Driver's License Program and to clarify the intent of the Legislature in passing it during the 2016 session. The program authorized by the statute is now in place and operating since the 8 July 16 effective date of the statute. Rules required to allow for execution of the program. Rule has also been filed for standard review as a new rule during the 2017 legislative session

par. 13 It is the determination of the Secretary of State that this proposal qualifies under the definition of an emergency as defined in §29A-3-15(f). . . "immediate preservation of public peace, health, safety or welfare"

par. 14

This decision shall be cited as Emergency Rule Decision 3-17 or ERD 3-17 and may be cited as precedent. This decision is available from the Secretary of State and has been filed with the Governor's Committee on Crime, Delinquency and Correction



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