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WEST VIRGINIA LEGISLATURE
Legislative Rule-Making Review Committee

OFFICE OF THE SECRETARY OF STATE

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September 15, 1999

NOTICE OF ACTION TAKEN BY LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

TO: Ken Hechler, Secretary of State, State Register

TO: Joe E. Miller
Division of Motor Vehicles
Capitol Complex
Building 3, Room 113

FROM: Legislative Rule-Making Review Committee

Proposed Rule: **Administrative Due Process, 91CSR1**

The Legislative Rule-Making Review Committee recommends that the West Virginia Legislature:

1. Authorize the agency to promulgate the Legislative Rule
 - (a) as originally filed
 - (b) as modified by the agency
2. Authorize the agency to promulgate part of the Legislative rule; a statement of reasons for such recommendation is attached.
3. Authorize the agency to promulgate the Legislative rule with certain amendments; amendments and a statement of reasons for such recommendation is attached.
4. Authorize the agency to promulgate the Legislative rule as modified with certain amendments; amendments and a statement of reasons for such recommendation is attached.
5. Recommends that the rule be withdrawn; a statement of reasons for such recommendation is attached.

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ANALYSIS OF PROPOSED LEGISLATIVE RULES

Agency: Division of Motor Vehicles

Subject: Administrative Due Process, 91CSR1

PERTINENT DATES

Filed for public comment: July 1, 1999
Public comment period ended: August 2, 1999
Filed following public comment period: August 5, 1999
Filed LRMRC: August 5, 1999
Filed as emergency:

Fiscal Impact: \$20,000 increase in revenue.

OFFICE OF THE CLERK
SECRETARY OF STATE

SEP 1 9 33 AM '99

ABSTRACT

The proposed rule repeals and replaces a current legislative rule. The following is a synopsis of the substantive amendments.

Section 1 is the standard general section, setting forth the scope, authority, filing date and effective date of the proposed rule.

Section 2 relates to application and enforcement. It provides that the rule applies to persons contesting any order or decision of the Commissioner of Motor Vehicles, and that it takes precedence over all administrative due process rules or hearing procedures found in Title 91.

Section 3 relates to hearings. It defines terms; provides for the issuance of subpoenas; sets forth information required to be in orders of revocation or suspension; sets forth methods for challenging secondary chemical tests and sobriety checkpoints; sets forth requirements for requesting a hearing; sets forth standards for providing notice of a hearing; contains provisions on failure to appear, requests for continuance, hearing procedures and assessment of costs; and sets forth provisions regarding final orders.

The proposed rule would allow the Commissioner to assess a docket fee of \$50 against those persons requesting a hearing, except for DUIs for which the statute specifies a \$10 docket fee.

AUTHORITY

Statutory authority: W.Va. Code, §17A-2-9, which provides, in part, as follows:

...(b) The commissioner may adopt and enforce any rules that are necessary to carry out the provisions of this chapter and any other laws the enforcement and administration of which are vested in the department...

ANALYSIS

I. HAS THE AGENCY EXCEEDED THE SCOPE OF ITS STATUTORY AUTHORITY IN APPROVING THE PROPOSED LEGISLATIVE RULE?

No.

II. IS THE PROPOSED LEGISLATIVE RULE IN CONFORMITY WITH THE INTENT OF THE STATUTE WHICH THE RULE IS INTENDED TO IMPLEMENT, EXTEND, APPLY, INTERPRET OR MAKE SPECIFIC?

Yes.

III. DOES THE PROPOSED LEGISLATIVE RULE CONFLICT WITH OTHER CODE PROVISIONS OR WITH ANY OTHER RULE ADOPTED BY THE SAME OR A DIFFERENT AGENCY?

No.

IV. IS THE PROPOSED LEGISLATIVE RULE NECESSARY TO FULLY ACCOMPLISH THE OBJECTIVES OF THE STATUTE UNDER WHICH THE PROPOSED RULE WAS PROMULGATED?

Yes.

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Yes.

V. IS THE PROPOSED LEGISLATIVE RULE REASONABLE, ESPECIALLY AS IT AFFECTS THE CONVENIENCE OF THE GENERAL PUBLIC OR OF PERSONS AFFECTED BY IT?

Yes.

VI. CAN THE PROPOSED LEGISLATIVE RULE BE MADE LESS COMPLEX OR MORE READILY UNDERSTANDABLE BY THE GENERAL PUBLIC?

No.

VII. WAS THE PROPOSED LEGISLATIVE RULE PROMULGATED IN COMPLIANCE WITH THE REQUIREMENTS OF CHAPTER 29A, ARTICLE 3 AND WITH ANY REQUIREMENTS IMPOSED BY ANY OTHER PROVISION OF THE CODE?

Yes.

VIII. OTHER.

Counsel has technical modifications to suggest.