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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE
Legislative Rule-Making Review Committee

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September 11, 2000

NOTICE OF ACTION TAKEN BY THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

TO: Ken Hechler, Secretary of State, State Register

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

FROM: Legislative Rule-Making Review Committee

Proposed Rule: **Examination and Issuance of Driver's Licenses, 91CSR4**

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 Recommends that the Legislative rule be withdrawn; a statement of reasons for such recommendation is attached.

ANALYSIS OF PROPOSED LEGISLATIVE RULES

Agency: Division of Motor Vehicles

Subject: Examination and Issuance of Driver's Licenses, 91CSR4

PERTINENT DATES

Filed for public comment: July 11, 2000

Public comment period ended: August 15, 2000

Filed following public comment period: August 21, 2000

Filed LRMRC: August 21, 2000

Filed as emergency:

Fiscal Impact: None

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ABSTRACT

The proposed rule repeals and replaces a current legislative rule. The rule is necessitated by House Bill 2258 which passed during the 1999 Regular Session and transferred responsibility for driver's license examinations from the State Police to the Division of Motor Vehicles. The following is a section-by-section synopsis of the substantive amendments made by the proposed rule.

Section 2 states that the rule applies to the examination of applicants for driver's licenses and the issuance and renewal of driver's licenses and identification cards.

Section 3 relates to the preliminary examination of applicants. It sets forth the information which must be contained on or attached to an application for an instruction permit. It sets forth the five components of the preliminary examination which are the visual acuity test, a color vision test, a depth perception test, a basic knowledge examination test and a driving while under the influence awareness education component.

Section 4 relates to the road skill examination and sets forth the requirements which an applicant must meet in order to take the examination. The examination is to consist of a check of the safety equipment of the testing vehicle and an examination of the

applicant's ability to operate a motor vehicle on a designated course. It sets forth the reasons for which an applicant would fail an examination. It allows an unsuccessful applicant to return for reexamination after seven days and allows for three attempts before a new instruction permit must be obtained.

Section 5 relates to the issuance, renewal and content of a driver's license. It sets forth the content of a driver's license and states that the driver's social security number shall not appear on the face of the driver's license. It also allows the Commissioner to designate distinguishing colors for licenses based upon the age of the driver. It sets forth the requirements for renewing licenses and requires a licensee whose license has expired for more than six months to resubmit to the examination requirements for the license.

Section 6 provides for the reissuance of a driver's license based on the change of the driver's address or name.

Section 7 requires an applicant for a license to be a resident of this state and prohibits nonresidents from renewing their West Virginia license until they reestablish a residence in this state.

Section 8 relates to a motorcycle license or endorsement. It requires a road skill examination on a motorcycle with a 50 cc engine or larger.

Section 9 relates to commercial driver's licenses. It requires an applicant to have a current Federal Motor Carrier Safety Administration Medical Examiners Certificate unless the applicant is exempt under federal regulations. It requires an applicant to complete a written examination and complete any applicable road skill examination. It also contains provisions regarding the intrastate waiver program for drivers of commercial vehicles. It sets forth medical guidelines that the Commissioner is to consider when considering a waiver.

This section also allows the Division to contract with third party examiners to conduct the road skills examination test and provides for a \$50 examination fee from the third party examiners.

Section 10 provides for the transfer of a license from another state or country. It requires the surrender of the license issued by the other state or country. It allows the Division to

incorporate the driving record from the applicant's prior licensing state or jurisdiction into the Division's records.

Section 11 contains the statutory provisions regarding identification cards.

AUTHORITY

Statutory authority: W.Va. Code, §17B-2-7, which provides, in part, as follows:

...(b) The commissioner shall propose legislative rules for promulgation in accordance with the provisions of article three, chapter twenty-nine-a of this code concerning the examination of applicants for licenses and the qualifications required of applicants, and the examination of applicants by the division shall be in accordance with the rules. The rules shall provide for the viewing of educational material or films on the medical, biological, and psychological effects of alcohol upon persons, the dangers of driving a motor vehicle while under the influence of alcohol and the criminal penalties and administrative sanctions for alcohol and drug related motor vehicle violations...

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.

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 PROVISIONS OF THE CODE?

Yes.

VIII. OTHER

Counsel has technical modifications to suggest.