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WEST VIRGINIA LEGISLATURE
Legislative Rule-Making Review Committee

OFFICE OF THE WEST VIRGINIA
SECRETARY OF STATE

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October 16, 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: **Denial, Suspension, Revocation or Nonrenewal of Driving Privileges, 91CSR5**

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 Recommends that the Legislative rule be withdrawn; a statement of reasons for such recommendation is attached.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: Denial, Suspension, Revocation or Nonrenewal of Driving Privileges, 91CSR5

PERTINENT DATES

Filed for public comment: July 27, 2000
Public comment period ended: August 28, 2000
Filed following public comment period: August 30, 2000
Filed LRMRC: August 30, 2000
Filed as emergency:

Fiscal Impact: None

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ABSTRACT

The proposed rule amends a current legislative rule. It also repeals West Virginia Legislative rule, Compulsory Motor Vehicle Insurance, 91CSR13, filed May 12, 1997. Throughout the proposed rule, hearing procedures have been deleted and reference has been made to the Division of Motor Vehicle's rule, Administrative Due Process, 91CSR1. References have been changed from the State Police to the Division of Motor Vehicles as they relate to driver examination procedures. The following is a synopsis of the substantive amendments.

Section 7 relates to the point system. The subsection relating to point totals for offenses has been amended to make it clear that the point totals apply to licensees who have reached the age of 18 years or older or who have obtained a level three full license. It has also been amended to state the Division will not record any conviction which is received more than one year from the date of conviction unless the nature of the offense, by statute, requires mandatory revocation.

The lists of offenses and point values have been amended to include the offense of fleeing from an officer in a vehicle with a

point value of eight. The current rule provides a point value of six for speeding in violation of specified or established limits where the speed was in excess of 75 MPH. Under the proposed rule, different point values have been awarded based upon whether the speeding was 15 MPH, 10 MPH or 5 MPH over the posted speed limit.

This section has also been amended to provide that a conviction includes a finding of guilt, a guilty plea or a plea of nolo contendere.

Current law provides that the Division is to undertake a review of a licensee's driving record when the licensee has accumulated 12 or more points. It also provides the Division's options based upon the review. The proposed rule requires the Division to suspend the licensee's drivers license for a period of time based upon the number of points.

Section 8 relates to the driver improvement course. The current rule provides that the course is not to exceed 15 hours. It has been amended to require the course to consist of at least seven hours of instruction time. This section also provides for the deduction of points upon the successful completion of the course. It has been amended to make it clear that this deduction relates to licensees 18 years of age or older or those with a level three full driver's license.

Subsection 8.3 is new. It provides for a graduated driver improvement course of four hours for younger drivers. Completion of the course does not negate the prerequisite of conviction free driving for the 12 months immediately preceding the date of application for a level three full license. It also allows a substitution of a regular driver improvement course if a graduated driver course is not available.

Section 9 relates to the procedures for medical and driving reexamination of licensed drivers. The section currently defines the term "good cause". The definition has been amended to include "a written notice from an employee of a rehabilitation facility's driver education, driver training or similar program that in his or her judgment, the licensee is incompetent to drive a motor vehicle".

Section 11 relates to suspension under the nonresident violator compact. It has been amended to provide that the Division shall not act on any failure to comply report transmitted to the Division more than six months from the date of the offense.

Section 13 relates to suspension under the residence violator program. It has been amended to provide that the Division shall not act on any failure to comply report transmitted to the Division more than one year from the date of the offense.

Section 14 relates to driving under the influence. All the current provisions regarding hearings have been deleted. As amended, it simply allows the Division to revoke a licensee's driving privileges and disqualify a licensee from operating a commercial motor vehicle. A revocation of both privileges for the same offense are to run concurrently.

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.

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.