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2002 SEP 17 A 10: 36

WEST VIRGINIA LEGISLATURE
Legislative Rule-Making Review Committee

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SECRETARY OF STATE

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September 15, 2002

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

TO: Joe Manchin, Secretary of State, State Register

TO: Roger Pritt
Motor Vehicles, Division of
Building 3, Room 118
Capitol Complex

FROM: Legislative Rule-Making Review Committee

Proposed Rule: **Denial, Suspension, Revocation or Non-renewal 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 Recommends that the Legislative rule be withdrawn; a statement of reasons for such recommendation is attached. _____

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ANALYSIS OF PROPOSED LEGISLATIVE RULES

Agency: Division of Motor Vehicles

2002 AUG -9 A 9:36

Subject: Denial, Suspension, Revocation or Non-renewal of State Driving Privileges, 91CSR5

OFFICE OF THE WEST VIRGINIA
SECRETARY OF STATEPERTINENT DATES

Filed for public comment: June 12, 2002

Public comment period ended: July 15, 2002

Filed following public comment period: July 18, 2002

Filed LRMRC: July 18, 2002

Filed as emergency:

Fiscal Impact: None

ABSTRACT

The proposed rule amends a current legislative rule. The following is a synopsis of the substantive amendments.

Section 1 has been amended to state that the proposed rule repeals and replaces the Division's rule, Motor Vehicle Test and Lock Program, 91CSR9.

Section 3 relates to the denial of driving privileges for medical reasons. It has been amended to allow a licensee to submit other records or documentation concerning his or her competency to drive, in addition to the medical or vision report forms for consideration by the Driver's License Advisory Board and the Commissioner.

Section 7 relates to the point system. It has been amended by adding three points for littering and two points for operating a vehicle without a proper driver's license or endorsement. This section also lists traffic convictions with no point value. Added

to the list is convictions for offenses which are grounds for a driver's license revocation or suspension.

Section 8 relates to the Driver Improvement Course. The current rule allows a person to attend a Driver Improvement Course every five years and have points deducted. The proposed rule would allow attendance and deduction of points every two years.

Section 10 relates to the suspension or revocation following the notice of a returned check. It has been amended to remove language requiring the Division to suspend or revoke a license or registration paid for with a returned check.

Section 14 relates to driving under the influence. A new Subsection 14.5 has been added which allows the Division to consolidate multiple suspension, revocation or disqualification order files arising from the same incident or occurrence into one administrative hearing.

Section 16 relating to the Alcohol Test and Lock Program is new. This section incorporates Series 9 with the following amendments:

The current rule requires an applicant to be a resident of West Virginia. The proposed rule requires an applicant to hold a West Virginia license. It allows an applicant who holds an out-of-state license or who does not have a license to obtain a restricted West Virginia license and participate in the program by successfully completing all requirements for obtaining a West Virginia license. The applicant must surrender the out-of-state license at the time of application.

It has been amended to allow an applicant whose license has been revoked for DUI with child endangerment to participate in the program.

Language has been deleted which gives applicants who have completed the safety and treatment program priority for enrollment in the alcohol test and lock program. Language has been deleted which disallows applicants who have been previously enrolled in the program.

The current rule sets forth those purposes for which an applicant with a restricted license may drive the vehicle. These specific purposes have been deleted, in order to mirror the less restrictive federal rule.

Language has been added allowing the Commissioner to assess applicants for reentry into the program. It also sets forth eligibility requirements for reentry and those circumstances under which reentry is not permitted.

AUTHORITY

Statutory authority: W.Va. Code, §17A-2-9 and §17C-5A-3a, which provide, in part, as follows:

§17A-2-9

...(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...

§17C-5A-3a

(a) The division of motor vehicles shall control and regulate a motor vehicle alcohol test and lock program for persons whose licenses have been revoked pursuant to this article or the provisions of article five of this chapter. Such program shall include the establishment of a users fee for persons participating in the program which shall be paid in advance and deposited into the driver's rehabilitation fund. Except where specified otherwise, the use of the term "program" in this section refers to the motor vehicle alcohol test and lock program. The commissioner of the division of motor vehicles shall propose legislative rules for promulgation in accordance with the provisions of chapter twenty-nine-a of this code for the

purpose of implementing the provisions of this section. Such rules shall also prescribe those requirements which, in addition to the requirements specified by this section for eligibility to participate in the program, the commissioner determines must be met to obtain the commissioner's approval to operate a motor vehicle equipped with a motor vehicle alcohol test and lock system. For purposes of this section, a "motor vehicle alcohol test and lock system" means a mechanical or computerized system which, in the opinion of the commissioner, prevents the operation of a motor vehicle when, through the system's assessment of the blood alcohol content of the person operating or attempting to operate the vehicle, such person is determined to be under the influence of alcohol...

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?

In Counsel's opinion, if promulgated, it would conflict with Series 9. In Counsel's opinion, the rule being repealed must go through the rule-making process as well, in order to comply with the Code and to provide adequate public notice.

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?

In Counsel's opinion, the provisions relating to the Alcohol Test and Lock Program should have remained as a separate rule.

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.