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WEST VIRGINIA LEGISLATURE
Legislative Rule-Making Review Committee

OFFICE OF THE CLERK
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: **Motor Vehicle Dealers, 91CSR6**

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 Recommends that the rule be withdrawn; a statement of reasons for such recommendation is attached.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: Motor Vehicle Dealers, 91CSR6

PERTINENT DATES

Filed for public comment: June 18, 1999
Public comment period ended: July 20, 1999
Filed following public comment period: August 5, 1999
Filed LRMRC: August 5, 1999
Filed as emergency:

Fiscal Impact: None

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ABSTRACT

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

Section 2 relates to general requirements for licensure. It has been amended to provide that if an application for renewal is not filed 30 days prior to the expiration of a license, the license may not be renewed except upon payment of the fee for an original license. It has also been amended by adding two new license application forms. This section has also been amended to allow a Class D or DUC licensee to have one attached single residential rental unit located and operated in accordance with the provisions of the Code.

Subsection 2.16 relating to the dealer license certificate has been amended to provide that a licensee who does not return all license certificates and dealer special plates upon suspension or revocation of his or her license is subject to civil penalties and fines.

Subsection 2.17 relating to a change in dealership has been amended to require a licensee to notify the Division of any change in mailing address within 20 days.

Subsection 2.18 has been amended to allow a Class D licensee to use a Class D special license plate on one Class A type van or

pick-up truck which is used exclusively for the transportation of parts for the dealership. It has also been amended to prohibit a licensee from subcontracting, brokering, leasing or renting a dealer special license plate.

Section 3 relates to wrecker/dismantler/rebuilder dealer licenses. It has been amended to require a licensee to notify the Division of any change in mailing address within 20 days.

Section 4 contains general provisions regarding license services. It has been amended to require a licensee to notify the Division of any change in mailing address within 20 days.

Section 5 relates to automobile auction businesses. It has been amended to require the licensee to have office space of at least 144 sq. ft. as opposed to the current requirement of 145 sq. ft. It has also been amended to require a licensee to notify the Division of any change in mailing address within 20 days.

Section 6 relates to vehicle leasing companies lessor licenses. It has been amended to provide that a lessor whose business consists of less than 5 motor vehicle leases a year to residents of WV may choose to pay the privilege tax in lieu of the monthly payment tax. It has also been amended to require licensees to have a \$25,000 surety bond.

Section 8 relating to administrative appeals has been deleted almost in its entirety with reference made to another legislative rule.

Section 9 relating to daily passenger car rental businesses is new. It requires each business location to be registered and bonded. It requires the registrant to notify the Commissioner when certain changes in the business occur and authorizes inspection of the business and its records by the Commissioner or any law enforcement officer acting at his or her request. Taxicab companies are exempted from the provisions of this section. It also allows the Commissioner to revoke or suspend the registration certificate if the law or the rule have been violated.

This section also requires registrants to collect the daily passenger rental care tax of 25 cents. It requires a monthly and annual tax return and specifies the information which must be contained on the forms.

This section provides a penalty of 5% on any unpaid tax liability. It allows the Commissioner to petition the Kanawha County Circuit Court for an injunction for a violation of the law, the rule or an order of the Commissioner.

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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.