



FILED

WEST VIRGINIA LEGISLATURE 2002 SEP 17 A 10:36
Legislative Rule-Making Review Committee

STATE OF WEST VIRGINIA
SECRETARY OF STATE

Building 1, Room MB-49
1900 Kanawha Boulevard, East
Charleston, WV 25305-0610
(304) 347-4840
(304) 347-4919 FAX

email: tanders@mail.wvnet.edu

Senator Mike Ross, Cochair
Delegate Virginia Mahan, Cochair
Debra A. Graham, Counsel

September 15, 2002

Joseph A. Altizer, Associate Counsel
Connie A. Bowling, Associate Counsel
Teri Anderson, Administrative Assistant

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
Capitol Complex
Building 3, Room 118
FROM: Legislative Rule-Making Review Committee

Proposed Rule: **Motor Vehicle Dealers, Wrecker/Dismantler/Rebuilders and License Services, Automobile Auctions, Vehicle Leasing Companies, Daily Passenger Rental Car Businesses and Administrative Due Process, 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 Recommends that the Legislative rule be withdrawn; a statement of reasons for such recommendation is attached.

SCANNED

ANALYSIS OF PROPOSED LEGISLATIVE RULES

Agency: Division of Motor Vehicles

Subject: Motor Vehicle Dealers, Wrecker/Dismantler/Rebuilders and License Services, Automobile Auctions, Vehicle Leasing Companies, Daily Passenger Rental Car Businesses and Administrative Due Process, 91CSR6

PERTINENT DATES

Filed for public comment: May 15, 2002
Public comment period ended: June 17, 2002
Filed following public comment period: July 3, 2002
Filed LRMRC: July 3, 2002
Filed as emergency: April 18, 2002

Fiscal Impact: None

ABSTRACT

OFFICE OF THE
SECRETARY OF STATE
2002 JUL 12 A 11:24
FILED

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

Section 2 relates to requirements for license - general.
Subsection 2.3 relates to off premises permits. It has been amended to require a licensee to obtain an off premises permit prior to participating at an industry wide vehicle show or exhibition. It authorizes the Commissioner to approve an off premises permit for limited periods of time and limits the licensee to three permits for any one location in one fiscal year.

Subdivisions 2.3.d relating to reciprocal out of state dealer off premises permits is new. Senate Bill No. 695, which passed during the 2002 Legislative Session, allows licensed dealers in adjacent states to participate in industry wide vehicle shows and exhibitions in this state, if their

state allows the same privilege to West Virginia dealers. This subdivision requires the dealer to apply for a permit at least 10 days prior to the date of the show or exhibition and provides that the permit is valid for the length of the show or exhibition not to exceed 10 days. The dealer must agree to be subject to the consumer protection laws of this State, pay the initial licensing fees required of West Virginia dealers and post a \$25, 000 bond. The vehicle show or exhibition must have a minimum of three West Virginia participants.

Subdivision 2.9.c is new. It requires a licensee, which lists itself as a lien holder on a vehicle it sold, to attach with the title work a copy of the sales contract or sales instrument which includes the amount of the lien, the monthly payment and the number of payments.

Subsection 2.10 relates to bonding requirements. Two new subdivisions have been added requiring that the surety bond be made payable to the Division and that all claims against the bond be submitted to and through the Division.

Subsection 2.12 relates to the issuance of temporary registration plates. The rule currently allows a licensee to apply for a maximum of 200 plates at a time. The proposed rule would increase this number to 400. The current rule prohibits the Division from issuing additional temporary registration plates to the licensee, if the licensee's application shows 50 or more plates on hand from the previous allotment. The proposed rule would increase this number to 100.

Section 4 relates to license services - general. The rule currently allows a licensee to apply for a maximum of 200 plates at a time. The proposed rule would increase this number to 400. The current rule prohibits the Division from issuing additional temporary registration plates to the licensee, if the licensee's application shows 50 or more plates on hand from the previous allotment. The proposed rule would increase this number to 100.

Section 5 relates to automobile auction businesses. Subsection 5.8 is new. It requires an automobile auction licensee to provide the Division, on a monthly basis, with a record of

transactions of sales to individuals who do not hold a dealer license.

Section 7 relates to civil penalties for unlicensed dealers. Subsection 7.2 has been amended to state that a rebuttable presumption exists that a person is engaged in the business of a dealer, if he or she sells five or more vehicles in a calendar year.

Section 10 relating to the dealer recovery fund is new. House Bill No. 2961, which passed during the 2001 Legislative Session, created a dealer recovery fund to be managed by a Dealer Recovery Fund Control Board. This section states that the Board will consider only claims submitted for the purposes enumerated under the statute and that the Board will not consider claims for attorney fees, accrued interest, punitive damages or claims submitted by or on behalf of floor planners. It also requires any dealer exempted from the surety bond requirement, under the statute, who subsequently is subject to a claim to obtain a new surety bond and maintain the bond for a period of three licensing years before again qualifying for the exemption.

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.