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OFFICE OF THE 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: Steve Dale  
Motor Vehicles, Division of  
Capitol Complex  
Building 3, Room 113  
  
FROM: Legislative Rule-Making Review Committee

Proposed Rule: **Motor Vehicle Dealers, Wreckers/Dismantlers/Rebuilders, 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 Recommends that the Legislative rule be withdrawn; a statement of reasons for such recommendation is attached. \_\_\_\_\_

ANALYSIS OF PROPOSED LEGISLATIVE RULES

**Agency:** Division of Motor Vehicles

**Subject:** Motor Vehicle Dealers, Wrecker/Dismantlers/Rebuilders, License Services, Automobile Auctions, Vehicle Leasing Companies, Daily Passenger Vehicle Rental Car Businesses, 91CSR6

PERTINENT DATES

Filed for public comment: May 31, 2000  
 Public comment period ended: July 7, 2000  
 Filed following public comment period: July 25, 2000  
 Filed LRMRC: July 25, 2000  
 Filed as emergency: May 31, 2000

Fiscal Impact: No

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ABSTRACT

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

Section 9 relates to daily passenger rental car businesses. I has been amended throughout to refer to a license as opposed to registration. It defines a daily passenger rental car business as any business which conducts at least 500 daily rental transactions per year and requires that the businesses be licensed and bonded. Businesses which are not required to be licensed are not exempted from payment of the privilege tax.

This section sets forth the statutory initial and renewal application fee and also provides that a licensee may license additional locations for \$50 each. The renewal fee for the additional locations is \$25.

Language has been added which provides that cancellation or forfeiture of the bond for a particular location does not affect the ability of the licensee to conduct business at any other business location.

This section requires every daily passenger rental car business to have an established place of business with adequate facilities to keep and maintain the records necessary to carry on the business.

This section imposes on the rental of daily passenger vehicles, a daily passenger rental car tax of \$1.00 for each rental day or part of a day. The statute allowed for a fee of \$1 to \$1.50. It exempts any federal, state, county or municipal governmental agency or any PSD renting passenger vehicles from the payment of the tax. It requires any licensee who fails to conduct at least one hundred transactions in a calendar year to remit with its annual return a payment equal to the difference between the tax collected on actual transactions and the tax due on 100 transactions.

#### AUTHORITY

Statutory authority: W.Va. Code, §17A-6D-15, which provides as follows:

The commissioner may promulgate rules in accordance with article three [§ 29A-3-1 et seq.], chapter twenty-nine-a of this code in order to effect the provisions of this article.

#### ANALYSIS

I. HAS THE AGENCY EXCEEDED THE SCOPE OF ITS STATUTORY AUTHORITY IN APPROVING THE PROPOSED LEGISLATIVE RULE?

Yes. Subdivision 9.6.4 requires a business to pay a minimum of \$100 per year in tax. The statute does not provide for this minimum amount of tax.

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. Actually, the statute was based on the rule.

III. DOES THE PROPOSED LEGISLATIVE RULE CONFLICT WITH OTHER CODE PROVISIONS OR WITH ANY OTHER RULE ADOPTED BY THE SAME OR A DIFFERENT AGENCY?

Yes. See I.

IV. IS THE PROPOSED LEGISLATIVE RULE NECESSARY TO FULLY ACCOMPLISH THE OBJECTIVES OF THE STATUTE UNDER WHICH THE PROPOSED RULE WAS PROMULGATED?

Yes, although much of the relevant section of the proposed rule is no longer necessary now that the provisions have been codified.

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.