



COMMONWEALTH of VIRGINIA

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MEMORANDUM

TO: The Honorable Richard D. Holcomb, Commissioner
Department of Motor Vehicles

FROM: Eric K. G. Fiske *Eric K. G. Fiske*
Senior Assistant Attorney General

DATE: June 4, 2013

SUBJECT: Letter of Assurance for Periodic Review of Regulations -- 24 VAC 20-40
(Older Drivers Accident Prevention Course)

You have asked for a letter of assurance from this Office that the Department of Motor Vehicles ("DMV") has statutory authority to have promulgated 24 VAC 20-40 (Accident Prevention Course for Older Drivers). I understand that DMV is conducting a periodic review of this regulation and is seeking an examination by this Office to ensure statutory authority.

It is my opinion that DMV has statutory authority to promulgate regulations governing accident prevention courses for older drivers age 55 years or older. I believe that this authority can be found in the provisions of Va. Code § 46.2-203 (general authority to adopt regulations) and in § 38.2-2217 (specific authority to promulgate rules and regulations to assist DMV in carrying out the provision of that section). I have reviewed the regulations and these regulations do not appear to conflict with any state or federal law, and are not in conflict with the Constitution of Virginia or of the United States.

This memorandum only addresses legal matters and does not address and does not serve as a comment for or against the merits of the regulations themselves. I would conclude that DMV has the authority to have promulgated the existing regulation in question in its entirety.

I hope that I have addressed all of your concerns. If any other questions arise, please do not hesitate to contact me.