



COMMONWEALTH of VIRGINIA
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MEMORANDUM

TO: The Honorable D. B. Smit, Commissioner
Department of Motor Vehicles

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

DATE: May 25, 2004

SUBJECT: Statutory Authority (1) to Repeal the Regulation Governing Commercial Driving Schools; (2) to Promulgate new Regulations Governing Driving Schools; and (3) to Repeal Regulations Governing Motorcycle Rider Safety Training Centers.

You have asked for a letter of assurance from this Office that the Department of Motor Vehicles ("DMV") has statutory authority to do three things with regard to regulations. First, you asked for a letter of assurance that DMV can repeal 24 VAC 20-120 (Commercial Driving School Regulations). Second, you ask for a letter of assurance that DMV can promulgate new regulations regarding driving schools. Third, you ask for a letter of assurance that DMV can repeal 24 VAC 20-50 (Motorcycle Rider Safety Training Center Regulations). With regard to the two regulations that DMV wishes to repeal, I assume that DMV wishes to repeal both in their entirety.

COMMERCIAL DRIVING SCHOOLS

With regard to your first and second requests (commercial driving schools and driving schools), it is my opinion that DMV has statutory authority to promulgate regulations governing commercial driving schools and driving schools, pursuant to the provisions of Va. Code § 46.2-203 (general authority to adopt regulations), and § 46.2-1703 (specific authority to adopt regulations for commercial driving schools).

Because the authority to promulgate regulations pursuant to each of those Code sections is permissive rather than mandatory, such authority, by implication, includes the authority to modify or amend or repeal such regulations as have been promulgated thereunder.

MOTORCYCLE RIDER SAFETY TRAINING CENTER PROGRAM

It is my opinion that DMV has statutory authority to promulgate regulations governing the requirements for motorcycle rider safety training centers, pursuant to the provisions of Va. Code § 46.2-203 (general authority to adopt regulations), and § 46.2-1189 (specific authority to adopt regulations regarding motorcycle rider safety training centers).

Because the authority to promulgate regulations pursuant to each of those Code sections is permissive rather than mandatory, such authority, by implication, includes the authority to modify or amend or repeal such regulations as have been promulgated thereunder.

2004 SESSION OF GENERAL ASSEMBLY

As you are aware, the 2004 Session of the General Assembly passed legislation regarding both the above-mentioned subject matters. HB 532 amended the provisions governing motorcycle rider safety training centers, and in fact, amended § 46.2-1189 to delete the specific authority to promulgate regulations. However, HB 532 will not be effective until January 1, 2005. It was signed by the Governor, and will be Chapter 734 of the 2004 Acts of Assembly. As for commercial driving schools, SB 288 amended the provisions governing such schools, but did not alter the specific authority to promulgate regulations. In fact, § 46.2-1703 had language added that expands what can be in the regulations. It was signed by the Governor and will be Chapter 587 of the 2004 Acts of Assembly.

CONCLUSION

I would conclude that DMV has the authority to repeal the existing two different regulations in question in their entirety. I also believe that if the regulations are repealed, DMV can proceed to promulgate new regulations regarding driving schools.

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