



COMMONWEALTH of VIRGINIA

Office of the Attorney General

Kenneth T. Cuccinelli, II
Attorney General

900 East Main Street
Richmond, Virginia 23219
804-786-2071
FAX 804-786-1991
Virginia Relay Services
800-828-1120
7-1-1

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: May 1, 2013

SUBJECT: Statutory Authority to Repeal the Regulation 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 repeal 24 VAC 20-50 (Motorcycle Rider Safety Training Center Regulations). With regard to the regulation that DMV wishes to repeal, I understand that DMV wishes to repeal it in its entirety.

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). At the time these particular regulations were promulgated, DMV also had specific authority under § 46.2-1189 to adopt regulations regarding motorcycle rider safety training centers. Although, as discussed below, § 46.2-1189 was amended in 2004, and that authority was deleted, the authority under § 46.2-203 remains.

Because the authority to promulgate regulations pursuant to that statutory provision 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 the above-mentioned subject matter. Chapter 734 of the 2004 Acts of Assembly (HB 532)

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amended the provisions governing motorcycle rider safety training centers, and amended § 46.2-1189 to delete the specific authority to promulgate regulations.

2013 SESSION OF GENERAL ASSEMBLY

As you are also aware, the 2013 Session of the General Assembly passed legislation regarding some of the above mentioned statutory provisions governing motor cycle rider safety training centers to remove language that referred to requirements "established by the Department." and clarified that said requirements were contained within the statutory provisions themselves. This legislation was HB 2080, was signed by the Governor and will be Chapter 226 of the 2013 Acts of Assembly.

CONCLUSION

DMV believes that since it is now clear that the oversight of the motor cycle rider safety training centers is governed by the statutory provisions of the Code, the regulations are unnecessary and redundant. As a legal matter, and not addressing the policy issues, I would conclude that DMV has the authority to repeal 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.