Maryland General Assembly
Department of Legislative Services

Emergency/Proposed Regulation
Department of Transportation
(DLS Control No. 15-162)

Overview and Legal and Fiscal Impact

The regulation removes the "grandfather" provision of COMAR 11.15.29.01 in order to allow the Motor Vehicle Administration to refuse or rescind issuance of certain specialty registration plates, regardless of when the registration plates were first issued.

The regulation presents no legal issues of concern. However, additional comments have been included in the technical corrections and special notes section below for the Administrative, Executive, and Legislative Review Committee's consideration.

Regulation of COMAR Affected

Department of Transportation:

Motor Vehicle Administration — Vehicle Registration: Rejection of Registration Plates: COMAR 11.15.29.01

Legal Analysis

Background

Section 13-619 of the Transportation Article authorizes the administration to issue specialty license plates to nonprofit organizations that meet certain eligibility requirements. As enacted in 1985, the statute allowed specialty license plates to include any combination of letters, numerals, or both and the name, initials, or abbreviation of the name of the organization. The law was amended in 1990 to allow the inclusion of an emblem or logo of the organization.

In June 1995, an organization called the Sons of Confederate Veterans (SCV) applied for specialty plates with a logo depicting the Confederate battle flag. The administration issued the plates in December 1996. After receiving numerous complaints about the plates, however, the administration withdrew its approval and recalled the plates, inviting SCV to resubmit logo artwork with an alternative design. In doing so, the administration relied on regulations in effect at the time that permitted the cancellation or recall of a plate containing words or images that could be considered objectionable or offensive as a term of bigotry, a term of hostility, an insulting or derogatory term, or a racially degrading term.

SCV challenged the administration's action in federal court, arguing that the administration's actions violated the organization's constitutional right to free speech, as guaranteed by the First and Fourteenth Amendments of the U.S. Constitution. *Sons of Confederate Veterans, Inc. v. Glendening*, 954 F. Supp. 1099 (D. Md. 1997). The court ruled in

favor of SCV, interpreting the license plates as a kind of public forum and stating that the government could not discriminate on the basis of viewpoint in a public forum. Based on this interpretation, the court enjoined the administration from recalling the previously issued plates and required the administration to issue and renew the plates going forward.

The U.S. Supreme Court recently handed down a decision calling into question the outcome of *Glendening*. During its most recent session, the Court considered the validity of a decision by the Texas Department of Motor Vehicles to refuse a proposed SCV specialty plate that depicted a Confederate battle flag. The Court determined that the plates constituted government speech, and that "[w]hen the government speaks, it is not barred by the Free Speech Clause from determining the content of what it says." *Walker v. Texas Division, Sons of Confederate Veterans*, 576 U.S. ___, 2015 WL 2573375, *5 (2015). In doing so, the Court rejected the approach taken by the federal district court in the *Glendening* case. Specifically, the Court determined that specialty plates, such as those issued in Maryland, are government speech and that forum analysis is not appropriate.

The Supreme Court's decision in *Walker* did not purport to address the status of specialty plates under state laws generally, but only in Texas. However, on the basis of this decision, Maryland has filed a motion to lift the injunction imposed by the federal district court in *Glendening*. As of July 31, the motion was still pending.

Under COMAR 11.15.29.02, the administration is authorized to refuse to issue or rescind issuance of a registration plate for a number of reasons, including a determination by the administration that the plate "communicates a message of any kind about any of the following characteristics of a group of people: (1) Race, (2) Ethnic or national origin, (3) Color, (4) Religion, (5) Disability, or (6) Sexual orientation." Chapter 29 also contains guidelines for determining compliance (Regulation .03), a process for public complaints concerning the content of a specialty plate (Regulation .04), and an administrative appeals process for challenging adverse determinations concerning specialty plates (Regulation .05). A registration plate issued before the chapter's effective date of October 18, 1999, is exempt from regulation under the chapter so long as the plate is continually renewed.

Summary of Regulation

The regulation removes the grandfather provision of COMAR 11.15.29.01, authorizing the administration to refuse to issue or rescind issuance of a personalized registration plate (COMAR 11.15.07) or a registration plate for nonprofit organizations (COMAR 11.15.19) regardless of the date of issuance.

Legal Issue

The regulation presents no legal issue of concern.

Statutory Authority and Legislative Intent

The administration cites §§ 12-104(b) and 13-619 of the Transportation Article as authority for the regulation. Section 12-104(b) gives the administration broad authority to adopt the regulation to carry out the provisions of any law that the administration is authorized to administer and enforce. Section 13-619 authorizes the issuance of special registration plates to

members of certain nonprofit organizations. Subsection (d) of this section requires the administration to adopt regulations "not inconsistent with the Maryland Vehicle Law" governing the issuance of such special registration plates.

This authority is correct and complete. The regulation complies with the legislative intent of the law.

Reason for Emergency Status

The administration requests emergency status beginning August 1 and expiring January 27, 2016. This emergency period is within normal timeframes approved by the committee. The administration indicates the emergency status is necessary to begin revocation of certain offensive license plates as quickly as possible.

Technical Corrections and Special Notes

It is important to note that the administration is still subject to the injunction on recalling SCV plates imposed in the *Glendening* decision. The State has filed a motion to lift the injunction in light of the Supreme Court's decision in *Walker*, but this motion is still pending. The Attorney General has advised that the emergency regulation is not in violation of the injunction because the regulation does not actually recall any plate; rather it simply enables the administration to do so sometime in the future. However, the administration should refrain from recalling any SCV plates while the motion is still pending.

Fiscal Analysis

There is no material fiscal impact on State or local agencies.

Agency Estimate of Projected Fiscal Impact

The department advises that the regulation may result in a minimal decrease in the number of special registration plates and organizational registration plates issued. The Department of Legislative Services concurs and notes that any decrease in Transportation Trust Fund revenues is expected to be negligible.

Impact on Budget

There is no impact on the State operating or capital budget.

Agency Estimate of Projected Small Business Impact

The department advises that the regulation has minimal or no economic impact on small businesses in the State. The Department of Legislative Services concurs.

Contact Information

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