WEST VIRGINIA CODE CHAPTER 17A ARTICLE 6

WV Legislature

§17A-6-1. Definitions.

(a) Unless the context in which used clearly requires a different meaning, as used in this article:

(1) "New motor vehicle dealer" means every person (other than agents and employees, if any, while acting within the scope of their authority or employment), engaged in, or held out to the public to be engaged in, the business in this state of selling five or more new motor vehicles or new and used motor vehicles in any fiscal year of a type required to be registered under the provisions of this chapter, except, for the purposes of this article only, motorcycles.

(2) "Used motor vehicle dealer" means every person (other than agents and employees, if any, while acting within the scope of their authority or employment), engaged in, or held out to the public to be engaged in, the business in this state of selling 10 or more used motor vehicles, and projecting to sell 10 or more used motor vehicles, in any fiscal year of a type required to be registered under the provisions of this chapter, except, for the purposes of this article only, motorcycles.

(3) "House trailer dealer" means every person (other than agents and employees, if any, while acting within the scope of their authority or employment), engaged in, or held out to the public to be engaged in, the business in this state of selling new or used house trailers, or both, or new or used, or both, house trailers and trailers or new or used, or both, manufactured homes, and mobile homes.

(4) "Trailer dealer" means every person (other than agents and employees, if any, while acting within the scope of their authority or employment), engaged in, or held out to the public to be engaged in, the business in this state of selling new or used trailers.

(5) "Motorcycle dealer" means every person (other than agents and employees, if any, while acting within the scope of their authority or employment), engaged in, or held out to the public to be engaged in, the business in this state of selling new or used motorcycles.

(6) "Used parts dealer" means every person (other than agents and employees, if any, while acting within the scope of their authority or employment), engaged in, or held out to the public to be engaged in, the business in this state of selling any used appliance, accessory, member, portion, or other part of any vehicle.

(7) "Wrecker/dismantler/rebuilder" means every person (other than agents and employees, if any, while acting within the scope of their authority or employment), engaged in, or held out to the public to be engaged in, the business in this state of dealing in wrecked or damaged motor vehicles or motor vehicle parts for the purpose of selling the parts thereof or scrap therefrom or who is in the business of rebuilding salvage motor vehicles for the purpose of resale to the public.

WV Legislature

(8) "New motor vehicles" means all motor vehicles, except motorcycles and used motor vehicles, of a type required to be registered under the provisions of this chapter.

(9) "Used motor vehicles" means all motor vehicles, except motorcycles, of a type required to be registered under the provisions of this chapter which have been sold and operated, or which have been registered or titled, in this or any other state or jurisdiction.

(10) "House trailers" means all trailers designed and used for human occupancy on a continual nonrecreational basis but may not include fold-down camping and travel trailers, mobile homes, or manufactured homes.

(11) "Trailers" means all types of trailers other than house trailers, and shall include, but not be limited to, pole trailers and semitrailers but excluding recreational vehicles.

(12) "Sales instrument" means any document resulting from the sale of a vehicle, which shall include, but not be limited to, a bill of sale, invoice, conditional sales contract, chattel mortgage, chattel trust deed, security agreement, or similar document.

(13) "Sell", "sale", or "selling", in addition to the ordinary definitions of the terms, includes offering for sale, soliciting sales of, negotiating for the sale of, displaying for sale or advertising for sale, any vehicle, whether at retail, wholesale or at auction. "Selling", in addition to the ordinary definition of that term, also includes buying and exchanging.

(14) "Applicant" means any person making application for an original or renewal license certificate under the provisions of this article.

(15) "Licensee" means any person holding any license certificate issued under the provisions of this article.

(16) "Predecessor" means the former owner or owners or operator or operators of any new motor vehicle dealer business or used motor vehicle dealer business.

(17) "Established place of business" means, in the case of a new motor vehicle dealer, a permanent location, not a temporary stand or other temporary quarters, owned or leased by the licensee or applicant and actually occupied or to be occupied by him or her, as the case may be, which is or is to be used exclusively for the purpose of selling new motor vehicles or new and used motor vehicles, which shall have space under roof for the display of at least one new motor vehicle and facilities and space therewith for the servicing and repair of at least one motor vehicle, which servicing and repair facilities and space is adequate and suitable to carry out servicing and to make repairs necessary to keep and carry out all representations, warranties, and agreements made or to be made by the dealer with respect to motor vehicles sold by him or her, which is easily accessible to the public, which conforms to all applicable laws of this state and the ordinances of the municipality in which it is located, if any, which displays thereon at least one permanent sign, clearly visible from the principal public street or highway nearest the location and clearly stating the business which

WV Legislature

is or shall be conducted thereat, and which has adequate facilities to keep, maintain and preserve records, papers and documents necessary to carry on the business and to make the business available to inspection by the commissioner at all reasonable times: *Provided*, That each established place of business shall have a display area which may be outside or inside or a combination thereof of at least 1,200 square feet which is to be used exclusively for the display of vehicles which are offered for sale by the dealer, office space of at least 144 square feet and a telephone listed in the name of the dealership. Each established place of business shall be open to the public a minimum of 20 hours per week at least 40 weeks per calendar year with at least 10 of those hours being between the hours of 9:30 a.m. and 8:30 p.m., Monday through Saturday: *Provided, however*, That the requirement of exclusive use is met even though: (A) Some new and any used motor vehicles sold or to be sold by the dealer or sold or are to be sold at a different location or locations not meeting the definition of an established place of business of a new motor vehicle dealer, if each location is or is to be served by other facilities and space of the dealer for the servicing and repair of at least one motor vehicle, adequate and suitable as aforesaid, and each location used for the sale of some new and any used motor vehicles otherwise meets the definition of an established place of business of a used motor vehicle dealer; (B) house trailers, trailers, or motorcycles are sold or are to be sold thereat, if, subject to the provisions of §17A-6-5 of this code, a separate license certificate is obtained for each type of vehicle business, which license certificate remains unexpired, unsuspended, and unrevoked; (C) farm machinery is sold thereat; (D) accessory, gasoline and oil, or storage departments are maintained thereat, if the departments are operated for the purpose of furthering and assisting in the licensed business or businesses; and (E) the established place of business has an attached single residential rental unit with an outside separate entrance and occupied by a person or persons with no financial or operational interest in the dealership where the established place of business has space under roof for the display of at least three new motor vehicles and facilities and space therewith for the concurrent servicing and repair of at least two motor vehicles and otherwise meets the requirements set forth in this subdivision.

(18) "Farm machinery" means all machines and tools used in the production, harvesting or care of farm products.

(19) "Established place of business", in the case of a used motor vehicle dealer, means a permanent location, not a temporary stand or other temporary quarters, owned or leased by the licensee or applicant and actually occupied or to be occupied by him or her, as the case may be, which is or is to be used for the purpose of selling used motor vehicles, which shall have facilities and space therewith for the servicing and repair of at least one motor vehicle, which servicing and repair facilities and space shall be adequate and suitable to carry out servicing and to make repairs necessary to keep and carry out all representations, warranties and agreements made or to be made by the dealer with respect to used motor vehicles sold by him or her, which is easily accessible to the public, conforms to all applicable laws of this state, and the ordinances of the municipality in which it is located, if any, which displays thereon at least one permanent sign, clearly visible from the principal public street or highway nearest the location and clearly stating the business which is or

WV Legislature

shall be conducted thereat, and which has adequate facilities to keep, maintain and preserve records, papers and documents necessary to carry on the business and to make the business available to inspection by the commissioner at all reasonable times: *Provided*, That if a used motor vehicle dealer has entered into a written agreement or agreements with a person or persons owning or operating a servicing and repair facility or facilities adequate and suitable as aforesaid, the effect of which agreement or agreements is to provide the servicing and repair services and space in like manner as if the servicing and repair facilities and space were located in or on the dealer's place of business, then, so long as the agreement or agreements are in effect, it is not necessary for the dealer to maintain the servicing and repair facilities and space at the place of business in order for the place of business to be an established place of business as herein defined.

(20) "Established place of business", in the case of a house trailer dealer, trailer dealer, recreational vehicle dealer, motorcycle dealer, used parts dealer, and wrecker or dismantler, means a permanent location, not a temporary stand or other temporary quarters, owned or leased by the licensee or applicant and actually occupied or to be occupied by the licensee, as the case may be, which is easily accessible to the public, which conforms to all applicable laws of this state and the ordinances of the municipality in which it is located, if any, which displays thereon at least one permanent sign, clearly visible from the principal public street or highway nearest the location and clearly stating the business which is or shall be conducted thereat, and which has adequate facilities to keep, maintain and preserve records, papers and documents necessary to carry on the business and to make the business available to inspection by the commissioner at all reasonable times.

(21) "Manufacturer" means every person engaged in the business of reconstructing, assembling, or reassembling vehicles with a special type of body required by the purchaser if the vehicle is subject to the title and registration provisions of this code.

(22) "Transporter" means every person engaged in the business of transporting vehicles to or from a manufacturing, assembling, or distributing plant to dealers or sales agents of a manufacturer, or purchasers.

(23) "Recreational vehicle dealer" means every person (other than agents and employees, if any, while acting within the scope of their authority or employment), engaged in, or held out to the public to be engaged in, the business in this state of selling new or used recreational vehicles, or both.

(24) "Motorboat" means any vessel propelled by an electrical, steam, gas, diesel or other fuel-propelled or -driven motor, whether or not the motor is the principal source of propulsion, but does not include a vessel which has a valid marine document issued by the bureau of customs of the United States government or any federal agency successor thereto.

(25) "Motorboat trailer" means every vehicle designed for or ordinarily used for the transportation of a motorboat.

WV Legislature

(26) "All-terrain vehicle" (ATV) means any motor vehicle designed for off-highway use and designed to travel on not less than three low-pressure or nonhighway tires, is 50 inches or less in width and intended by the manufacturer to be used by a single operator or is specifically designed by the manufacturer with seating for each passenger. "All-terrain vehicle" and ATV does not include mini trucks, golf carts, riding lawnmowers, or tractors.

(27) "Travel trailer" means every vehicle, mounted on wheels, designed to provide temporary living quarters for recreational, camping or travel use of such size or weight as not to require special highway movement permits when towed by a motor vehicle and of gross trailer area less than 400 square feet.

(28) "Fold-down camping trailer" means every vehicle consisting of a portable unit mounted on wheels and constructed with collapsible partial sidewalls which fold for towing by another vehicle and unfold at the camp site to provide temporary living quarters for recreational, camping or travel use.

(29) "Motor home" means every vehicle, designed to provide temporary living quarters, built into an integral part of or permanently attached to a self-propelled motor vehicle, chassis or van including: (1) Type A motor home built on an incomplete truck chassis with the truck cab constructed by the second-stage manufacturer; (2) Type B motor home consisting of a van-type vehicle which has been altered to provide temporary living quarters; and (3) Type C motor home built on an incomplete van or truck chassis with a cab constructed by the chassis manufacturer.

(30) "Snowmobile" means a self-propelled vehicle intended for travel primarily on snow and driven by a track or tracks in contact with the snow and steered by a ski or skis in contact with the snow.

(31) "Recreational vehicle" means a motorboat, motorboat trailer, all-terrain vehicle, travel trailer, fold-down camping trailer, motor home, snowmobile, or utility-terrain vehicle.

(32) "Major component" means any one of the following subassemblies of a motor vehicle: (A) Front clip assembly consisting of fenders, grille, hood, bumper, and related parts; (B) engine; (C) transmission; (D) rear clip assembly consisting of quarter panels and floor panel assembly; or (E) two or more doors.

(33) "Factory-built home" includes mobile homes, house trailers, and manufactured homes.

(34) "Manufactured home" has the same meaning as the term is defined in §21-9-2 of this code which meets the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U. S. C.§ 5401 *et seq*.), effective on June 15, 1976, and the federal manufactured home construction and safety standards and regulations promulgated by the Secretary of the United States Department of Housing and Urban Development.

(35) "Mobile home" means a transportable structure that is wholly, or in substantial part,

WV Legislature

made, fabricated, formed or assembled in manufacturing facilities for installation or assembly and installation on a building site and designed for long-term residential use and built prior to enactment of the federal Manufactured Housing Construction and Safety Standards Institute (ANSI) — A119.1 standards for mobile homes.

(36) "Utility terrain vehicle" means any motor vehicle with four or more low-pressure or nonhighway tires designed for off-highway use and is greater than 50 inches in width. "Utility terrain vehicle" does not include mini trucks, golf carts, riding lawnmowers, or tractors.

(b) Under no circumstances whatever may the terms "new motor vehicle dealer", "used motor vehicle dealer", "house trailer dealer", "trailer dealer", "recreational vehicle dealer", "motorcycle dealer", "used parts dealer", or "wrecker/dismantler/ rebuilder" be construed or applied under this article in such a way as to include a banking institution, insurance company, finance company, or other lending or financial institution, or other person, the state or any agency or political subdivision thereof, or any municipality, who or which owns or comes in possession or ownership of, or acquires contract rights, or security interests in or to, any vehicle or vehicles or any part thereof and sells the vehicle or vehicles or any part thereof for purposes other than engaging in and holding out to the public to be engaged in the business of selling vehicles or any part thereof.

(c) It is recognized that throughout this code the term "trailer" or "trailers" is used to include, among other types of trailers, house trailers. It is also recognized that throughout this code the term "trailer" or "trailers" is seldom used to include semitrailers or pole trailers. However, for the purposes of this article only, the term "trailers" has the meaning ascribed to it in subsection (a) of this section.

(d) For purposes of this section, volunteer fire departments and part-volunteer fire departments are hereby exempt from being considered “automobile brokers” or “unlicensed dealers”, so long as such organizations hold a valid charitable raffle license or valid online charitable raffle license and raffle no more than four vehicles per month.

WV Legislature

§17A-6-1a. Unlawful to be an automobile broker; definition; criminal penalties.

(a) No person, except as provided below, shall arrange or offer to arrange for a fee, commission, or other valuable consideration, a transaction involving the sale of more than two new or used motor vehicles per calendar year. Such person shall be deemed an automobile broker: *Provided*, That a licensed new or used motor vehicle dealer in the State of West Virginia or an agent or employee of such dealer; an authorized distributor or an agent or employee of such distributor; an authorized automobile auction held by a licensed auctioneer; any person who sells a motor vehicle pursuant to a pledge of security and lien as established in §17A-4a-1 *et seq*. of this code; and an individual or corporation, including banks and financial institutions, who is the owner of the new or used motor vehicle titled in the State of West Virginia which is the object of a sale are not automobile brokers.

(b) Any person violating the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $1,000, or imprisoned in the county jail not more than 60 days, or both fined and imprisoned.

(c) For purposes of this section, volunteer fire departments and part-volunteer fire departments are hereby exempt from being considered “automobile brokers” or “unlicensed dealers”, so long as such organizations hold a valid charitable raffle license or valid online charitable raffle license and raffle no more than four vehicles per month.

WV Legislature

§17A-6-1b. Dealers authorized to issue motor vehicle registration.

(a) Notwithstanding any other provision in this chapter, the division may allow a licensed motor vehicle dealer as defined in section one of this article, authority to issue or transfer motor vehicle registrations for vehicles sold by the dealer. The authority to issue and transfer motor vehicle registrations shall be contingent upon the dealer collecting all fees and taxes required for the titling and registration of vehicles, receiving proof of insurance as described in subsection (e), section three, article three of this chapter, and if applicable receiving the receipt showing full payment of personal property taxes in accordance with section three-a, article three of this chapter.

(b) Authorization to issue and transfer motor vehicle registrations shall be contingent on the dealer completing an application provided by the division and meeting all criteria established by the division. The authority shall also be contingent upon the dealer agreeing to participate fully in a computerized system of electronic submission of registration, titling and lien information and all fees and taxes required under the provisions of this chapter, either directly to the division or through an authorized service provider selected and approved by the division. Any transaction conducted under the provisions of this section shall be conditional pending the determination by the division that the application for title, registration and lien recordation is complete, accurate and in accordance with the provisions of this chapter.

(c) The authority to participate in the electronic transmission of title, registration and lien information shall be immediately revoked upon revocation or cancellation of a dealer's license issued under the provisions of this chapter: Provided, That the authority to issue and transfer motor vehicle registrations may be revoked by the division immediately and separately from any other action against the dealer's license if the division determines that the terms of the agreement or agreements authorizing issuance, transfer or renewal of a vehicle registration or the electronic transmission of information have been violated.

(d) A fee established by the motor vehicle dealer advisory board may be charged by a motor vehicle dealer for its services required under this section.

(e) Only motor vehicle registrations of a type specified by the division may be issued, transferred or renewed by the authorized dealer.

(f) All fees and taxes collected by an authorized dealer under the provisions of this section shall be deposited in a financial institution designated by the division or the service provider in the manner prescribed by the division.

(g) The division may authorize a service provider to supply an authorized dealer with the necessary forms, supplies, registration plates and registration renewal decals necessary to enable the authorized dealer to perform the duties and functions specified in this section.

(1) Any service provider authorized to perform services under the provisions of this section

WV Legislature

shall post a bond of the applicant in the penal sum of $1 million, in the form prescribed by the commissioner, conditioned that the applicant will not in the conduct of business practice any fraud which, or make any fraudulent representation which, shall cause a financial loss to any dealer, financial institution or agency, or the State of West Virginia, with a corporate surety thereon authorized to do business in this state, which bond shall be effective as of the date on which the authorization to provide services commences.

(2) The service provider is solely responsible for the inventory, tracking, safety and reconciliation of all supplies, registration plates, registration decals or other motor vehicle credentialing items in accordance with procedures established by the division and subject to audits by the division.

(3) The division may rescind without notice the authority of a service provider to perform services when the division has cause to believe that any state or federal law has been violated or that the service provider is not adhering to the terms and conditions of the authorization agreement.

(h) The service provider and the authorized dealer assume full responsibility for the care, custody, control, disclosure and use of any information provided by the division in order to execute the duties and responsibilities required by this section. Each service provider and each authorized dealer agrees to ensure that the disclosure of information to it and its handling of information received from the division complies with all federal and state statutes and division directives governing the disclosure and protection of such information.

(i) The commissioner may enter into agreements with other states and jurisdictions granting licensed dealers regulated by other states and jurisdictions the authority to issue or transfer motor vehicle registrations for vehicles sold by the dealer in the same manner as dealers licensed by this state.

WV Legislature

§17A-6-2. Legislative findings, declaration of public policy and dealer recovery fund.

(a) The Legislature hereby determines and finds that in the past some persons engaged in the business of selling new or used motor vehicles, house trailers, trailers, recreational vehicles, motorcycles, or used motor vehicle parts, and in the business of wrecking or dismantling motor vehicles, have not had the necessary qualifications, staff, equipment or facilities to adequately serve the public; that some persons engaged in the businesses have made false and deceptive claims and advertisements to the public and have engaged in fraud and other illegal conduct; that certain citizens of this state have sustained financial losses as a result thereof; and that in some of the cases there has been no adequate means to prevent the conduct or protect the interests of the citizens of West Virginia. It is, therefore, declared to be the public policy of this state that the business of new motor vehicle dealer, used motor vehicle dealer, house trailer dealer, trailer dealer, recreational vehicle dealer, motorcycle dealer, used parts dealer, or wrecker or dismantler, affects the general welfare of this state and its citizens; that persons without the necessary qualifications, staff, equipment or facilities to adequately serve the public, and persons not of good character or who have or are likely to attempt to misrepresent their product or engage in fraudulent or other illegal conduct should not engage in these businesses; and that the evils may best be prevented and the interests of the public best served by requiring persons in the businesses to meet the qualifications set forth in this article and to be licensed by the Commissioner of Motor Vehicles as provided in this article.

(b) The Legislature further determines and finds that there exists a significant problem when a motor vehicle dealer goes out of business or engages in business practices that cause citizens or businesses of the affected community, as well as this state substantial financial loss. It is, therefore determined, that the creation of a dealer recovery fund is necessary as a remedial measure to allow both the state and the citizens of this state to recover any taxes which have not been properly remitted to the state and to provide financial relief to citizens, businesses and other motor vehicle dealers who have suffered financial harm through the failure of a motor vehicle dealer to properly fulfill its responsibilities such as failure to properly release liens and deliver clear title in motor vehicle transactions.

www.legislature

§17A-6-2a. Dealer recovery fund created.

(a) There is hereby created a special fund in the State Treasury which is to be designated the "Dealer Recovery Fund." The fund consists of certain moneys received from persons engaged in the business of selling new or used motor vehicles, new or used motorcycles, trailers, multitrailers or recreational vehicles and from grants, gifts, bequests or awards arising out of the settlement or adjudication of a claim. The fund is not to be treated by the Auditor and Treasurer as part of the general revenue of the state. The fund is to be a special revolving fund paid out upon order of the Commissioner of Motor Vehicles based on the recommendation of the Dealer Recovery Fund control board created in this section, solely for the purposes specified in this section. The commissioner may use up to one percent of funds from the Dealer Recovery Fund for the administrative expenses of operating the Dealer Recovery Fund program.

(b) The Dealer Recovery Fund control board consists of the Commissioner of Motor Vehicles or his or her designee, the Attorney General's designee representing the Office of Consumer Protection and one representative selected by the Motor Vehicle Dealer's Advisory Board. The Commissioner of Motor Vehicles or his or her designee serves as chair and the board shall meet at least once a year during the month of July, and as required by the commissioner. The board may hear claims consistent only with the purposes specified in this section. The board may recommend rejection or acceptance of a claim, in full or in part. The recommendation of the board requires a majority vote of the board. The commissioner may propose rules for promulgation in accordance with §29A-3-1 et seq. of this code that are necessary to effectuate the provisions of this section. The commissioner may employ the necessary staff needed to operate the program. The board may prorate the amount paid on claims when the aggregate amount of valid claims submitted would exceed 33 percent of the fund. However, claims presented by the Division of Motor Vehicles for taxes and fees shall be paid in full. The board may purchase insurance at a cost not to exceed one percent of the fund to cover extraordinary or excess claims from the fund.

(c) Every applicant for either an original dealer license or renewal of an existing dealer license of the type enumerated in subsection (a) of this section shall pay, in addition to any other license fee, an annual Dealer Recovery Fund fee of $150. All dealers shall continue to maintain a surety bond as required by this article and the Dealer Recovery Fund payment unless exempt by one of the following requirements:

(1) Any dealer who, for the three years immediately preceding assessment of the fees, has not had a claim paid against their bond or against the Dealer Recovery Fund, whose license has not been suspended or revoked and who has not been assessed any civil penalties is not required to continue to keep the bond required by this article. However, no dealer can submit a claim against the fund unless it has contributed to the fund for at least three years.

(2) If the Dealer Recovery Fund reaches or exceeds the amount of $3,000,000 as of July 1, of any year, a dealer who meets the requirements of subdivision (1) of this subsection, is

WV Legislature

exempt from payment of the annual Dealer Recovery Fund fee. However, if the fund should, as of April 1 of any year, drop below $3,000,000, all dealers, regardless of any previous exemption shall pay the annual dealer recovery fee of $150. The exemption prescribed in subdivision (1) of this subsection remains in effect regardless of the status of the fund.

(d) The Dealer Recovery Fund control board may consider payment only after any dealer surety bond required pursuant to the provisions of section four of this article has been exhausted.

(e) When the fund reaches $250,000, the board shall consider claims for payment.

(f) Claims against the fund are not to be made for any act or omission which occurred prior to July 1, 2002.

(g) Claims for payment shall be submitted within six months of the date of sale or the date the division is made aware of the claim.

(h) The board shall pay claims in the following order:

(1) Claims submitted by the Division of Motor Vehicles for unpaid taxes and fees;

(2) Claims submitted by a retail purchaser of a vehicle from a dealer covered by the fund with an undisclosed lien or a retail purchaser of a vehicle from a dealer covered by the fund who finds that the lien on the vehicle traded in has not been satisfied by the selling dealer if the lien satisfaction was a condition of the purchase agreement;

(3) Claims submitted by a motor vehicle dealer contributing to the fund, which has purchased a vehicle or vehicles from another dealer covered by the fund with an undisclosed lien;

(4) Claims submitted by a retail purchaser of third party goods or services from a dealer covered by the fund for the unpaid charges when the dealer fails to pay the third party for the goods or services; or

(5) Claims submitted by the Division of Motor Vehicles, a retail purchaser or a motor vehicle dealer contributing to the fund, not authorized by subdivisions (1) through (4) of this subsection, but otherwise payable under the bond described in section four of this article, may be considered for payment by the board up to the amount of $50,000 for each licensing year the West Virginia dealer that is the subject of the complaint did not maintain the bond: Provided, That the board may not consider claims submitted by or on behalf of a financial institution for money owed by a dealer upon a loan to a dealer or credit extended to a dealer that is secured by a lien upon the inventory of the dealer, commonly referred to as a floor planner.

(i) Payments under this section may not include payment for claims of punitive or exemplary damages, compensation for property damage other than to the vehicle, recompense for any

WV Legislature

personal injury or inconvenience, reimbursement for alternate transportation or payment for attorney fees, legal expenses, court costs or accrued interest.

(j) The maximum claim against the fund for any unpaid lien of a used vehicle is the unpaid balance of the lien up to the loan value of the vehicle as of the date of the sale or other transaction as shown by a generally accepted motor vehicle value guide. The maximum claim against the fund for any new or unused vehicle is the amount of the invoice less any amounts rebated or to be rebated to the dealer from the manufacturer. Payment is only to be made to a secured party who agrees to accept payment from the Dealer Recovery Fund and who accepts the payment in full settlement of any claims, and who releases the lien and the title, if applicable, prior to receiving payment. Any dealer who agrees to accept payment from the Dealer Recovery Fund shall release the title prior to receiving payment.

(k) On payment by the board to a claimant from the fund, the board shall immediately notify the licensee against whom a claim was paid and request full reimbursement within thirty days of notification. If a dealer fails to fully reimburse the board within the specified period of time, the commissioner shall immediately and without prior hearing revoke the dealer license of dealer against whom the claim was paid. No applicant with an unpaid claim is eligible for renewal or relicensure until the full amount of the reimbursement plus interest as determined by the board is paid to the fund. This section does not limit the authority of the commissioner to suspend, revoke or levy civil penalties against a dealer, nor does full repayment of the amount owed to the fund necessarily nullify or modify the effect of any action by the commissioner.

(l) This section does not limit the right of any person to seek relief though civil action against any other person.

(m) The provisions of this section do not apply to those class DTR dealers in the business of selling manufactured housing and covered by the state manufactured housing recovery fund established by the Division of Labor pursuant to a legislative rule.

WV Legislature

§17A-6-3. License certificate required; engaging in more than one business; established place of business required; civil penalties.

(a) No person shall engage or represent or advertise that he or she is engaged or intends to engage in the business of new motor vehicle dealer, used motor vehicle dealer, house trailer dealer, trailer dealer, recreational vehicle dealer, motorcycle dealer, used parts dealer or wrecker or dismantler in this state unless and until he or she first obtains a license certificate therefor as provided in this article, which license certificate remains unexpired, unsuspended and unrevoked. Any person desiring to engage in more than one such business must, subject to the provisions of section five of this article, apply for and obtain a separate license certificate for each such business.

(b) A person in business as a new motor vehicle or recreational vehicle dealer may sell low-speed vehicles as defined in section one, article one of this chapter.

(c) Except for the qualification contained in subdivision (17), subsection (a), section one of this article with respect to a new motor vehicle dealer, each place of business of a new motor vehicle dealer, used motor vehicle dealer, house trailer dealer, trailer dealer, recreational vehicle dealer, motorcycle dealer, used parts dealer and wrecker or dismantler must be an established place of business as defined for such business in said section one.

(d) Any person who violates this section shall, in addition to any other penalty prescribed by law, be subject to a civil penalty levied by the commissioner in an amount not to exceed $1,000 for the first violation, $2,000 for the second violation and $5,000 for every subsequent violation.

(e) The commissioner shall promulgate rules, in accordance with the provisions of chapter twenty-nine-a of this code, establishing procedures whereby persons against whom such civil penalties are to be assessed shall be afforded all due process required pursuant to the provisions of the West Virginia Constitution.

WV Legislature

§17A-6-4. Application for license certificate; insurance; bonds; investigation; information confidential.

(a) Application for any license certificate required by section three of this article shall be made on a form prescribed by the commissioner. There shall be attached to the application a certificate of insurance certifying that the applicant has in force an insurance policy issued by an insurance company authorized to do business in this state insuring the applicant and any other person, as insured, using any vehicle or vehicles owned by the applicant with the express or implied permission of the named insured, against loss from the liability imposed by law for damages arising out of the ownership, operation, maintenance or use of the vehicle or vehicles, subject to minimum limits, exclusive of interest and costs, with respect to each vehicle, as follows: Twenty thousand dollars because of bodily injury to or death of one person in any one accident and, subject to the limit for one person, $40,000 because of bodily injury to or death of two or more persons in any one accident, and $10,000 because of injury to or destruction of property of others in any one accident.

(b) In the case of an application for a license certificate to engage in the business of new motor vehicle dealer, used motor vehicle dealer or house trailer dealer, the application shall disclose, but not be limited to, the following:

(1) The type of business for which a license certificate is sought;

(2) If the applicant is an individual, the full name and address of the applicant and any trade name under which he or she will engage in the business;

(3) If the applicant is a copartnership, the full name and address of each partner in the copartnership, the name of the copartnership, its post office address and any trade name under which it will engage in the business;

(4) If the applicant is a corporation, its name, the state of its incorporation, its post office address and the full name and address of each officer and director of the corporation;

(5) The location of each place in this state at which the applicant will engage in the business and whether the business is owned or leased by the applicant;

(6) Whether the applicant, any partner, officer or director of the business has previously engaged in the business or any other business required to be licensed under the provisions of this article and if so, with or for whom, at what location and for what periods of time;

(7) Whether the applicant, any partner, officer, director or employer of the business has previously applied for a license certificate under the provisions of this article or a similar license certificate in this or any other state, and if so, whether the license certificate was issued or refused and, if issued, whether it was ever suspended or revoked;

(8) A statement of previous general business experience and the past history of the applicant; and

WV Legislature

(9) Any other information that the commissioner may reasonably require which may include information relating to any contracts, agreements or understandings between the applicant and other persons respecting the transaction of the business, and any criminal record of the applicant if an individual, or of each partner if a copartnership, or of each officer and director, if a corporation.

(c) In the case of an application for a license certificate to engage in the business of new motor vehicle dealer, the application shall, in addition to the matters outlined in subsection (b) of this section disclose:

(1) The make or makes of new motor vehicles which the applicant will offer for sale in this state during the ensuing fiscal year; and

(2) The exact number of new and used motor vehicles, if any, sold at retail and wholesale by the applicant or his or her predecessor, if any, during the preceding fiscal year, and if no new and used motor vehicles were sold at retail and wholesale by the applicant or his or her predecessor, if any, during the preceding fiscal year, the number of new and used motor vehicles the applicant reasonably expects to sell at retail and wholesale during the ensuing fiscal year.

(d) In the case of an application for a license certificate to engage in the business of used motor vehicle dealer, the application shall in addition to the matters outlined in subsection (b) of this section, disclose the exact number of used motor vehicles, if any, sold at retail and wholesale by the applicant or his or her predecessor, if any, during the preceding fiscal year, and if no used motor vehicles were sold at retail and wholesale by the applicant or his or her predecessor, if any, during the preceding fiscal year, the number of used motor vehicles the applicant reasonably expects to sell at retail and wholesale during the ensuing fiscal year.

(e) In the case of an application for a license certificate to engage in the business of trailer dealer, recreational vehicle dealer, motorcycle dealer, used parts dealer or wrecker/dismantler/rebuilder, the application shall disclose any information that the commissioner may reasonably require.

(f) The application shall be verified by the oath or affirmation of the applicant, if an individual, or if the applicant is a copartnership or corporation, by a partner or officer thereof, as the case may be. Except as provided in section two-a of this article, the application shall be accompanied by a bond of the applicant in the penal sum of $25,000, in the form prescribed by the commissioner, conditioned that the applicant will not in the conduct of his or her business practice any fraud which, or make any fraudulent representation which, shall cause a financial loss to any purchaser, seller or financial institution or agency, or the State of West Virginia, with a corporate surety thereon authorized to do business in this state. The bond shall be effective as of the date on which the license certificate sought is issued.

(g) Upon receipt of any fully completed application, together with any bond required under

WV Legislature

subsection (f) of this section, the certificate of insurance as required in subsection (a) of this section and the appropriate fee provided in section ten of this article, the commissioner may conduct any investigation he or she considers necessary to determine the accuracy of any statements contained in the application and the existence of any other facts which he or she considers relevant in considering the application. To facilitate the investigation, the commissioner may withhold issuance or refusal of the license certificate for a period not to exceed twenty days.

(h) Any application for a license certificate under the provisions of this article and any information submitted with the application is confidential for the use of the division. No person shall divulge any information contained in any application or any information submitted with the application except in response to a valid subpoena or subpoena duces tecum issued pursuant to law.

WV Legislature

§17A-6-5. License certificate exemption.

(a) Any new motor vehicle dealer, used motor vehicle dealer, house trailer dealer, trailer dealer, recreational vehicle dealer, motorcycle dealer or wrecker/dismantler/rebuilder receiving a vehicle in trade of a type other than that he is licensed to sell hereunder may sell such vehicle without obtaining a license certificate to engage in the business of selling vehicles of such type and without being considered to be a dealer in vehicles of such type.

(b) Any used motor vehicle dealer may obtain a new motor vehicle from a new motor vehicle dealer licensed in this state or any other state and sell the new motor vehicle without first obtaining a license to engage in the business of selling new motor vehicles: Provided, That the used motor vehicle dealer first titles the new motor vehicle in the name of the used motor vehicle dealer.

WV Legislature

§17A-6-5a. Reciprocity for out-of-state dealers; establishing violations of this section as misdemeanor offense; mandating that the commissioner propose or amend legislative rules.

(a) The division may permit a vehicle dealer licensed in another state contiguous to this state to participate in industry wide public vehicle shows and exhibitions subject to the following:

(1) The division determines that the state in which the out-of-state dealer is licensed permits dealers licensed by this state to participate in public vehicle shows and exhibitions under conditions substantially equivalent to the conditions which are imposed upon dealers from that state who participate in public vehicle shows and exhibitions in this state;

(2) The division determines that the out-of-state dealer holds a valid and unrevoked vehicle dealer license from the dealer's home state;

(3) The dealer has secured the permission of its manufacturer; and

(4) The dealer first obtains an off-premises sales permit issued under legislative rules promulgated by the division.

(b) Nothing in this section requires an organizer of a public vehicle show or exhibition to invite or to include an out-of-state vehicle dealer as a participant.

(c) Any person who violates the provisions of this section is guilty of a misdemeanor and, shall be fined not more than $500 or confined in the regional or county jail for not more than six months, or both.

(d) In addition to any penalty imposed pursuant to subsection (c) of this section, any person violating the provisions of this section may be subject to a civil penalty as provided for in section twenty-five-a of this article.

(e) The commissioner shall propose legislative rules for promulgation, in accordance with the provisions of article three, chapter twenty-nine-a of this code, to effectuate the purposes of this section.

WV Legislature

§17A-6-6. Refusal or issuance of license certificate; license certificate not transferable.

(a) Upon the review of the application and all other information before him or her, the commissioner may make and enter an order denying an application for a license certificate and refuse the license certificate sought. A denial and refusal are final and conclusive unless an appeal is made in accordance with the provisions of rules proposed for legislative approval in accordance with the provisions of §29A-3-1 *et seq*. of this code. The commissioner shall make and enter an order denying or refusing a license, if the commissioner finds that the applicant (individually, if an individual, or the partners, if a co-partnership, or the officers and directors, if a corporation):

(1) Has failed to furnish the required bond unless otherwise exempt under the provisions of §17A-6-2a of this code;

(2) Has failed to furnish the required certificate of insurance;

(3) Has knowingly made false statement of a material fact in his or her application;

(4) Has habitually defaulted on financial obligations in this state or any other state or jurisdiction;

(5) Has been convicted of a felony: *Provided*, That the commissioner shall apply §17A-6-6(c) and §17A-6-6(d) of this code in determining whether an applicant's prior criminal convictions bear a rational nexus to the license being sought;

(6) So far as can be ascertained, has not complied with, and will not comply with, the registration and title laws of this state or any other state or jurisdiction;

(7) Does not or will not have or maintain at each place of business, subject to the qualification contained in §17A-6-1(a)(17) of this code with respect to a new motor vehicle dealer (an established place of business as defined for the business in question) in that section;

(8) Has been convicted of any fraudulent act in connection with the business of new motor vehicle dealer, used motor vehicle dealer, house trailer dealer, trailer dealer, recreational vehicle dealer, motorcycle dealer, used parts dealer, or wrecker or dismantler in this state or any other state or jurisdiction: *Provided*, That the commissioner shall apply §17A-6-6(c) and §17A-6-6(d) of this code in determining whether an applicant's prior criminal convictions bear a rational nexus to the license being sought;

(9) Has done any act or has failed or refused to perform any duty for which the license certificate sought could be suspended or revoked were it then issued and outstanding;

(10) Is not age 18 years or older;

WV Legislature

(11) Is delinquent in the payment of any taxes owed to the United States, the State of West Virginia, or any political subdivision of the state;

(12) Has been denied a license in another state or has been the subject of license revocation or suspension in another state;

(13) Has committed any action in another state which, if it had been committed in this state, would be grounds for denial and refusal of the application for a license certificate;

(14) Has failed to pay any civil penalty assessed by this state or any other state;

(15) Has failed to reimburse, when ordered, any claim against the dealer recovery fund as prescribed in §17A-6-2a of this code; or

(16) Has failed to comply with the provisions of §17A-6E-1 *et seq*. of this code pertaining to the employment of licensed salespersons.

Otherwise, the commissioner shall issue to the applicant the appropriate license certificate which entitles the licensee to engage in the business of new motor vehicle dealer, used motor vehicle dealer, house trailer dealer, trailer dealer, recreational vehicle dealer, motorcycle dealer, used parts dealer, or wrecker or dismantler, as the case may be.

(b) A license certificate issued in accordance with the provisions of this article is not transferable.

(c) The commissioner may not disqualify an applicant from initial licensure because of a prior criminal conviction that remains unreversed unless that conviction is for a crime that bears a rational nexus to the activity requiring licensure. In determining whether a criminal conviction bears a rational nexus to a profession or occupation, the commissioner shall consider at a minimum:

(1) The nature and seriousness of the crime for which the individual was convicted;

(2) The passage of time since the commission of the crime;

(3) The relationship of the crime to the ability, capacity, and fitness required to perform the duties and discharge the responsibilities of the profession or occupation; and

(4) Any evidence of rehabilitation or treatment undertaken by the individual.

(d) Notwithstanding any other provision of this code to the contrary, if an applicant is disqualified from licensure because of a prior criminal conviction, the commissioner shall permit the applicant to apply for initial licensure if:

(1) A period of five years has elapsed from the date of conviction or the date of release from incarceration, whichever is later;

WV Legislature

(2) The individual has not been convicted of any other crime during the period of time following the disqualifying offense; and

(3) The conviction was not for an offense of a violent or sexual nature: *Provided,* That a conviction for an offense of a violent or sexual nature may subject an individual to a longer period of disqualification from licensure, to be determined by the commissioner.

(e) An individual with a criminal record who has not previously applied for licensure may petition the commissioner at any time for a determination of whether the individual's criminal record will disqualify the individual from obtaining a license. This petition shall include sufficient details about the individual's criminal record to enable the commissioner to identify the jurisdiction where the conviction occurred, the date of the conviction, and the specific nature of the conviction. The commissioner shall provide the determination within 60 days of receiving the petition from the applicant. The commissioner may charge a fee to recoup costs for each petition.

WV Legislature

§17A-6-7. When application to be made; expiration of license certificate; renewal.

(a) Every license certificate issued in accordance with the provisions of this article shall, unless sooner suspended or revoked, expire on June 30 next following the issuance thereof.

(b) A license certificate may be renewed each year in the same manner, for the same fee as prescribed in section ten of this article and upon the same basis as an original license certificate is issued under section six of this article.

All applications for the renewal of any license certificate shall be filed with the commissioner at least thirty days before the expiration thereof. Any application for renewal of any license certificate not filed at least thirty days before the expiration may not be renewed except upon payment of the same fee as an original license certificate as prescribed in subsection (a), section ten of this article. The commissioner may allow the delinquent applicant to complete an abbreviated application for renewal in lieu of an original application.

WV Legislature

§17A-6-8. Form and display of license certificate or certified copy thereof; obtaining certified copy of license certificate; bond.

(a) The commissioner shall prescribe the form of license certificate for each type of business required to be licensed under the provisions of this article, and each license certificate shall have printed on it the seal of the division and any other information prescribed by the commissioner, and shall show as to any licensee the location of each place of business of the licensee. The license certificates for each type of business shall show the year for which issued and shall be serially numbered. The license certificate shall be delivered or mailed to the licensee.

(b) When a licensee conducts his or her licensed business at more than one location, he or she shall, upon application therefor, obtain from the commissioner for each place of business one certified copy of his or her license certificate. A fee of $1 shall be paid for each certified copy. Each licensee shall keep his or her license certificate or certified copy of the license certificate conspicuously posted at each place of business.(c) A licensee shall keep the bond, unless otherwise exempt by section two-a of this article, and liability insurance required by section four of this article in full force and effect at all times. The aggregate liability of the surety in no event shall exceed the principal sum of the bond. The surety on the bond shall have the right to cancel the bond upon giving thirty days> notice to the commissioner and thereafter shall be relieved of liability for any breach of condition occurring after the effective date of the cancellation.

(d) In the event of the loss or destruction of a license certificate or a certified copy of a license certificate, the licensee shall immediately make application for a certified copy of the license certificate. A fee of $1 shall be required for any certified copy.

WV Legislature

§17A-6-9. Changes in business; action required; applications for and issuance of certificates; fees.

Every new motor vehicle dealer, used motor vehicle dealer and house trailer dealer shall notify the commissioner within sixty days from and after the date on which any of the following changes in the business occur:

(1) A change of the location of any place of business;

(2) A change of the name or trade name under which the licensee engages or will engage in the business;

(3) The death of the licensee or any partner or partners thereof;

(4) A change in any partners, officers or directors;

(5) A change in ownership of the business;

(6) A change in the type of legal entity by and through which the licensee engages or will engage in the business; or

(7) The appointment of any trustee in bankruptcy, trustee under an assignment for the benefit of creditors, master or receiver.

When any change specified in subdivisions (1), (2), (3), (4), (5) and/or (6) occurs, an application for a new license certificate shall immediately be filed with the commissioner: Provided, That when a subdivision (3), (4) and/or (5) change is involved, an application for a new license certificate need not be filed during the balance of the license year if the change results from death and a member of the family of such deceased person succeeds to his interest in the business. Thereupon, a new license certificate shall be issued incorporating the changes specified in said subdivisions (1), (2), (3), (4), (5) and/or (6) and reflecting any new licensee occasioned thereby, if there is then no reason for refusing said license certificate as specified in section six of this article. No new license certificate shall be required for any trustee in bankruptcy, trustee under an assignment for the benefit of creditors, receiver or master, appointed pursuant to law, who shall take charge of or operate such business for the purpose of winding up the affairs of such business or protecting the interests of the creditors of such business. No additional fee for the balance of the license year shall be required for the issuance of any new license certificate issued as a result of any change specified in this section.

WV Legislature

§17A-6-10. Fee required for license certificate; dealer special plates.

(a) The initial application fee for a license certificate to engage in the business of a new motor vehicle dealer, used motor vehicle dealer, house trailer dealer, trailer dealer, motorcycle dealer, recreational vehicle dealer or wrecker/dismantler/rebuilder is $250: Provided, That if an application for a license certificate is denied or refused in accordance with section six of this article, $125 shall be refunded to the applicant. The initial application fee entitles the licensee to dealer special plates as prescribed by subsections (b), (c), (d) and (e) of this section.

(b) The annual renewal fee required for a license certificate to engage in the business of new motor vehicle dealer is $100. This fee shall also entitle the licensee to one dealer's special plate which shall be known as a Class D special plate. Up to two additional Class D special plates shall be issued to the licensee upon application on a form prescribed by the commissioner for such purpose and the payment of a fee of $5 for each additional Class D special plate. Any licensee is also entitled to receive additional Class D special plates on a formula basis, that is, one additional Class D special plate per twenty new and used motor vehicles sold at retail and wholesale by the licensee or predecessor during the preceding fiscal year, upon application on a form prescribed by the commissioner for such purpose and the payment of a fee of $5 for each additional Class D special plate: Provided, That in the case of a licensee who did not own or operate the business during the preceding fiscal year and who has no predecessor who owned or operated a business during the fiscal year, additional Class D plates shall be issued for the ensuing fiscal year only on a formula basis of one additional Class D plate per twenty new and used motor vehicles which the licensee estimates on his or her application for his or her license certificate he or she will sell at retail and wholesale during the ensuing fiscal year. The licensee may revise his or her estimate if actual sales of new and used motor vehicles in the initial year exceed the estimate by filing an amended application for his or her license certificate. Additional Class D plates shall be issued for the remaining portion of the fiscal year only on a formula basis of one additional Class D plate per twenty new and used vehicles in the revised estimate. A licensee may receive no more than five additional Class D special license plates upon a showing that the licensee's new vehicle retail sale business requires more special license plates than authorized under the formula established under the provisions of this section. Such showing shall include evidence of the geographical divergence of the licensee's customer base and the number of licensees holding similar franchises of a particular brand of a motor vehicle to show the need for additional Class D special plates.

(c) The annual renewal fee required for a license certificate to engage in the business of used motor vehicle dealer is $100. This fee also entitles the licensee to one dealer's special plate which shall be known as a Class D-U/C special plate. Up to two additional Class D-U/C special plates shall be issued to the licensee upon application on a form prescribed by the commissioner for such purpose and the payment of a fee of $5 for each additional Class D-U/C special plate. Any licensee is also entitled to receive additional Class D-U/C special plates on a formula basis, that is, one additional Class D-U/C special plate per twenty used motor vehicles sold at retail and/or wholesale by the licensee or his or her predecessor

WV Legislature

during the preceding fiscal year, upon application therefor on a form prescribed by the commissioner for such purpose and the payment of a fee of $5 for each additional Class D-U/C special plate: Provided, That in the case of a licensee who did not own or operate the business during the preceding fiscal year and who has no predecessor who owned or operated the business during the preceding fiscal year, additional Class D-U/C plates shall be issued for the ensuing fiscal year only on a formula basis of one additional Class D-U/C plate per twenty used motor vehicles which the licensee estimates on his or her application for the license certificate he or she will sell at retail and/or wholesale during the ensuing fiscal year. The licensee may revise his or her estimate if actual sales of used motor vehicles in the ensuing fiscal year exceed the estimate by filing an amended application for his or her license certificate. Additional Class D-U/C plates shall be issued for the remaining portion of the fiscal year only on a formula basis of one additional Class D-U/C plate per twenty used vehicles in the revised estimate.

(d) The annual renewal fee required for a license certificate to engage in the business of house trailer dealer or trailer dealer, as the case may be, is $25. This fee also entitles the licensee to four dealer's special plates which shall be known as Class D-T/R special plates. Additional Class D-T/R special plates shall be issued to any licensee upon application therefor on a form prescribed by the commissioner for such purpose and the payment of a fee of $5 for each such additional Class D-T/R special plate.

(e) The annual renewal fee required for a license certificate to engage in the business of recreational vehicle dealer is $100. This fee shall also entitle the licensee to four dealer special plates which shall be known as Class D-R/V special plates. Additional Class D-R/V special plates shall be issued to any licensee upon application therefor on a form prescribed by the commissioner for such purpose on the payment of a fee of $25 for each additional Class D-R/V special plate.

(f) The annual renewal fee required for a license certificate to engage in the business of motorcycle dealer is $10. This fee shall also entitle the licensee to two dealer's special plates which shall be known as Class F special plates. Additional Class F special plates shall be issued to any dealer upon application therefor on a form prescribed by the commissioner for such purpose and the payment of a fee of $5 for each additional Class F special plate.

(g) The annual renewal fee required for a license certificate to engage in the business of wrecker/dismantler/rebuilder is $15. Upon payment of the fee for the license certificate, a licensee is entitled to up to four special license plates which shall be known as Class WD special plates. The plates shall be issued to any licensee upon application therefor on a form prescribed by the commissioner for such purpose and the payment of a fee of $25 for each plate. The plate issued under the provisions of this subsection shall have the words "Towing Only" affixed thereon. A wrecker/dismantler/rebuilder is entitled to one special plate known as a Class WD/Demo special plate upon payment of a $25 fee. This plate shall only be used for demonstrating rebuilt automobiles owned by the wrecker/dismantler/rebuilder.

(h) All of the special plates provided for in this section shall be of such form and design and

WV Legislature

contain such other distinguishing marks or characteristics as the commissioner may prescribe.

WV Legislature

§17A-6-10a. Special plates for manufacturers and transporters; fee.

(1) The initial application fee for a license certificate to engage in the business of a manufacturer or transporter shall be $250: Provided, That if an application for a license certificate is denied or refused in accordance with section six of this article, $125 shall be refunded to the applicant. The initial application shall entitle the licensee to manufacturer or transporter plates as prescribed in subsection five of this section.

(2) Notwithstanding any of the other provisions of this article, a manufacturer or transporter may operate or move a vehicle upon the highways of this state solely for purposes of transporting and/or testing the same without first registering each such vehicle upon condition that any such vehicle display thereon, in a manner prescribed by the commissioner, a special plate or plates issued to such manufacturer or transporter as provided in this section.

(3) Any manufacturer or transporter may make application to the commissioner upon a form prescribed by him for a certificate containing a general distinguishing number and for a special plate or plates. The applicant shall also submit proof of his status as a bona fide manufacturer or transporter as may be required by the commissioner.

(4) The commissioner, upon approving any such application, shall issue to the applicant a certificate containing the applicant's name and address and the general distinguishing number assigned to the applicant. The commissioner shall also issue a special plate, or special plates, as applied for, which shall have displayed thereon the general distinguishing number assigned to the applicant. Each plate shall also contain a number or symbol identifying the same from every other plate or plates bearing the same general distinguishing number.

(5) The annual renewal fee for a license certificate for a manufacturer or transporter and one special plate shall be $100. Additional special plates shall be $25 each.

(6) Every manufacturer or transporter shall keep a written record of the vehicle upon which such special plates are used, the time during which each is used on a particular vehicle, and the location to which the vehicle was delivered, which record shall be open to inspection by any police officer or employee of the department.

(7) The provisions of this section shall not apply to work or service vehicles owned by a manufacturer or transporter.

(8) Said manufacturer or transporter shall be required to furnish a certificate of insurance in amounts which shall be no less than the requirements of section two, article four, chapter seventeen-d of this code.

WV Legislature

§17A-6-10b. Special plates for financial institutions; fee.

(1) Notwithstanding any of the other provisions of this article, a financial institution may operate or move a vehicle upon the highways and streets of this state solely for the purposes of transporting such vehicle, in conjunction with a repossession or sale of said vehicle conducted in the ordinary course of such institution's business in financing the purchase of the vehicle or where the vehicle otherwise serves as collateral or security in a loan transaction, without first registering each such vehicle upon the condition that any such vehicle display thereon, in a manner prescribed by the commissioner, a special plate or plates issued to such financial institution as provided in this section.

(2) Any financial institution may make application to the commissioner upon a form prescribed by him for a certificate containing a general distinguishing number and for a special plate or plates. The applicant shall submit proof of its status as a bona fide financial institution requiring such special plates as required by the commissioner. The commissioner shall determine that the applicant is a bona fide financial institution eligible to receive a special plate or plates under the provisions of this section and that said institution does, as a regular incident to its business, repossess and sell vehicles and have need to transport said vehicles in conjunction with the repossession or sale.

(3) The commissioner, upon approving any such application, shall issue to the applicant a certificate containing the applicant's name and address and the general distinguishing number assigned to the applicant. The commissioner shall also issue a special plate, or special plates, as applied for, which shall have displayed thereon the general distinguishing number assigned to the applicant. Each plate shall also contain a number or symbol identifying the same from every other plate or plates bearing the same general distinguishing number.

(4) The annual fee for a license certificate for a financial institution and one special plate shall be $100. Additional special plates, not to exceed four, shall be available upon appropriate application to the commissioner at a fee of $25 each.

(5) Every financial institution shall keep a written record of the vehicle upon which such special plates are used, the time during which each is used upon a particular vehicle and the location of the place of repossession, storage and subsequent delivery, if any, of each vehicle, which record shall be open to inspection by any police officer or employee of the department.

(6) The provisions of this section shall not apply to any work, company or service vehicles of the financial institution.

(7) The financial institution shall be required to furnish a certificate of insurance in the amount of $25,000 because of bodily injury to or death of any one person in any one accident, $40,000 because of bodily injury or death to two or more persons in any one accident and $10,000 because of injury to or destruction of property of others in any one

WV Legislature

accident.

(8) For purposes of this section, "financial institution" shall mean any state bank, state savings and loan association, state building and loan association, national bank, federally chartered savings and loan, savings bank, industrial bank, industrial loan company or similar institution.

WV Legislature

§17A-6-10c. Special demonstration plates for dealers in trailers, truck-tractors, road-tractors and trucks; application; fee.

(a) Notwithstanding any other provisions of this code, a new motor vehicle dealer or used motor vehicle dealer engaged in the business of selling trailers, truck-tractors, road-tractors or trucks that demonstrates the motor vehicles under actual work conditions to potential purchasers shall obtain a special demonstration plate from the Division of Motor Vehicles. The motor vehicle dealer may obtain special demonstration plates without first titling or registering each vehicle.

(b) The commissioner shall prescribe the application form for these special demonstration plates and shall require the applicant to submit proof of the applicant's status as a bona fide dealer in motor vehicles and to certify that the applicant needs special demonstration plates in the ordinary course of business.

The commissioner, upon approving an application, shall issue to the new motor vehicle dealer or used motor vehicle dealer up to four special demonstration plates which display the term "demonstration" or "demo" and a distinguishing number assigned to the motor vehicle dealer. The commissioner may issue no more than ten additional special demonstration plates to a licensee upon a showing that the licensee has sales or potential sales justifying additional plates. This showing may include, but is not limited to, the dealer's on-site inventory of the applicable type of vehicles, previous sales of applicable vehicles or the geographical divergence of the dealer's customer base.

(c) The annual fee for special demonstration plates is $100 for the first plate and $50 for each additional special demonstration plate that is issued, not to exceed a total of fourteen plates per dealer.

(d) Each motor vehicle dealer who is issued special demonstration plates shall keep a written record, on a form approved by the commissioner and open to inspection by a police officer or employee of the division, containing the following information:

(1) Identification of the motor vehicles upon which the special demonstration plates are used;

(2) The times and dates during which each special demonstration plate is used;

(3) The name and address of the company or individual using a motor vehicle on which a special demonstration plate is used; and (4) Other information considered necessary by the commissioner.

(e) Each motor vehicle operated under the provisions of this section is considered to be registered at the maximum vehicle weights allowable under article seventeen, chapter seventeen-c of this code.

(f) A motor vehicle dealer shall not:

WV Legislature

(1) Use a special demonstration plate issued under the provisions of this section on a motor vehicle which is not being demonstrated;

(2) Use a special demonstration plate to demonstrate a single motor vehicle for more than seven calendar days in a calendar year for a single customer;

(3) Use a special demonstration plate on a motor vehicle leased or rented to a customer; or

(4) Use a special demonstration plate in any way other than to demonstrate the on-the-job capabilities of a motor vehicle to a potential purchaser.

(g) The motor vehicle dealer is required to furnish a certificate of insurance in the amount required by regulations of the West Virginia Public Service Commission or the United States Department of Transportation for the class of motor carrier for which the motor vehicle is to be demonstrated.

WV Legislature

§17A-6-10d. Special plates for nonprofit corporations engaged in research and development.

(a) Notwithstanding any of the other provisions of this article, a nonprofit corporation engaged in research and development using motor vehicles pursuant to §18B-12-1 *et seq*. of this code and affiliated with institutions of higher education may operate or move a vehicle, either owned or in the possession of the nonprofit corporation upon the highways of this state for purposes of transporting or testing that vehicle without first registering or titling the vehicle and displaying, in a manner prescribed by the commissioner, a special plate issued to the nonprofit corporation as provided in this section.

(b) Any nonprofit corporation as prescribed in subsection (a) of this section may make application to the commissioner upon a form prescribed by him or her for a certificate containing a general distinguishing number and for a special plate or plates. The applicant shall verify that it is a Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, nonprofit corporation and submit sufficient information, as may be required by the commissioner, that it is engaged in research and development of vehicles, special fuels, or equipment for motor vehicles.

(c) The commissioner, upon approving an application, may issue without charge to the applicant, a certificate containing the nonprofit corporation's name and address and its general distinguishing number. The commissioner may also issue without charge, a special plate or plates, as determined by the commissioner as necessary, that must be displayed on the vehicle. Each plate shall also contain a number or symbol distinguishing it from other plates bearing the same general distinguishing number.

(d) The nonprofit corporation that is issued a special plate pursuant to this section must keep written records as required by the commissioner concerning the operation of the vehicle. The records shall be open to inspection by any law-enforcement officer or division employee.

(e) This section does not apply to the use of any other vehicles owned, leased, or operated by the nonprofit corporation.

(f) A nonprofit corporation that has been issued a special plate is not required to comply with the bond or dealer recovery fund otherwise required under this article for that vehicle.

(g) A nonprofit corporation that has been issued a special plate shall furnish information, satisfactory to the commissioner, that the vehicle is covered by an appropriate insurance policy or proof of financial responsibility in amounts not less than the requirements of §17D-4-2 of this code.

(h) Vehicles operated by a nonprofit corporation pursuant to this section are exempt from the periodic motor vehicle inspection and the displaying of the certificate of inspection otherwise required by §17C-16-1 *et seq*. of this code. However, a vehicle that has been issued a special plate pursuant to this section must be safe and may not, in any manner,

WV Legislature

endanger the driver, other vehicle occupants, other motorists, pedestrians, or the general public.

WV Legislature

§17A-6-11. Expiration of special plates.

Every special plate or plates issued hereunder shall expire at midnight on June thirtieth next following the issuance thereof. A new plate or plates for the ensuing fiscal year may be obtained as specified in section ten of this article.

WV Legislature

§17A-6-12. Operation of vehicles under special plates.

A dealer holding an unexpired, unsuspended and unrevoked license certificate and owning a vehicle or vehicles of the type he is licensed to sell hereunder and which are otherwise required to be registered under this chapter may operate or move the same upon the streets and highways without registering each such vehicle upon condition that any such vehicle display thereon a special plate issued to such dealer as provided in this article.

WV Legislature

§17A-6-13. Use of special plates; records to be maintained by dealer.

(a) The Class D special plates and the Class D-U/C special plates authorized in this article may be used for any purpose on any motor vehicle owned by the dealer to whom issued and which is being operated with his or her knowledge and consent and not otherwise: Provided, That under no circumstances whatever may a Class D special plate or Class D-U/C special plate be used on any work or service vehicle owned by a dealer, on any vehicle owned by a dealer and offered for hire or lease, or on any vehicle which has been sold by a dealer to a customer: Provided, however, That a dealer is authorized to use a Class D or Class D-U/C special plate on no more than one courtesy vehicle per dealership: Provided further, That a Class D licensee is authorized to use a Class D special plate on no more than one Class A type pickup truck or van which is specifically identified as a parts truck for the Class D licensee and which is used exclusively for the transportation of parts for the dealership.

(b) Under no circumstances whatever may a Class D-T/R special plate be used for the purpose of operating a motor vehicle upon the streets and highways, or on any house trailer or other trailer owned by a dealer and offered for hire or lease, or on any house trailer or other trailer which has been sold by a dealer to a customer: Provided, That notwithstanding the sale or any provision of this code to the contrary, a Class D-T/R special plate may be used in moving a house trailer sold by a house trailer dealer to a customer for one trip only from the house trailer dealer's established place of business to a place designated by the customer.

(c) Under no circumstances whatever may a Class D-R/V special plate be used for the purpose of operating a motor vehicle upon the streets and highways, or on any recreational vehicle owned by a dealer and offered for hire or lease, or on any recreational vehicle which has been sold by a dealer to a customer: Provided, That notwithstanding any provision of this code to the contrary, a Class D-R/V special plate may be used upon the streets and highways for demonstration purposes only on those recreational vehicles that are subject to registration under article three of this chapter.

(d) Under no circumstances whatever may a Class F special plate be used for the purpose of operating any type of motor vehicle other than a motorcycle on the streets and highways, or on a motorcycle owned by a dealer and offered for hire or lease, or on any motorcycle which has been sold by a dealer to a customer.

(e) Under no circumstances whatever may a special plate authorized under the provisions of this section be subcontracted, brokered, leased or rented.

(f) Every dealer entitled to and issued a special plate or plates under the provisions of this article shall keep a written record of the salesman, mechanic, employee, agent, officer or other person to whom a special plate or plates have been assigned by the dealer. Every record shall be open to inspection by the commissioner or his or her representatives or any law-enforcement officer.

WV Legislature

§17A-6-14. Operation of motor vehicles by certain dealers under special permits.

The commissioner is hereby authorized to grant, in his discretion, special permits to a new motor vehicle dealer for use on new motor vehicles driven under their own power from the factory or distributing place of a manufacturer, or other dealer, to a place of business of such dealer, or from such place of business to a place of business of another such dealer. Each special permit shall be good only for one trip, and such permit shall not be used by any such dealer in lieu of any registration card or plate required by this chapter.

WV Legislature

§17A-6-15. Temporary registration plates or markers.

(a) In order to permit a vehicle which is sold to a purchaser by a dealer to be operated on the streets and highways pending receipt of the annual registration plate from the division for such vehicle, the commissioner may, subject to the limitations and conditions hereinafter set forth, deliver temporary vehicle registration plates or markers to dealers who in turn may, subject to the limitations and conditions hereinafter set forth, issue the same to purchasers of vehicles, but such purchasers must comply with the pertinent provisions of this section.

(b) Application by a dealer to the commissioner for temporary registration plates or markers shall be made on the form and in the manner prescribed and furnished by the commissioner for such purpose and shall be accompanied by a fee of $3 for each such temporary registration plate or marker. The commissioner may require the fee to be remitted to the division in an electronic format. No refund or credit of fees paid by dealers to the commissioner for temporary registration plates or markers shall be allowed, except that in the event the commissioner discontinues the issuance of such temporary plates or markers, dealers returning temporary registration plates or markers to the commissioner may petition for and be entitled to a refund or a credit thereof. No temporary registration plates or markers shall be delivered by the commissioner to any dealer in house trailers only, and no such temporary plates or markers shall be issued for or used on any house trailer for any purpose.

(c) Every dealer who has made application for and received temporary registration plates or markers shall maintain in a manner prescribed by the commissioner, a record of all temporary registration plates or markers issued by him or her, and a record of any other information pertaining to the receipt or the issuance of temporary registration plates or markers which the commissioner may require. Every dealer who issues a temporary registration plate or marker shall notify the division in the manner prescribed by the commissioner. No temporary registration plates or markers may be delivered to any dealer until such dealer has fully accounted to the commissioner for the temporary registration plates or markers last delivered to such dealer, by showing the number issued to purchasers by such dealer and any on hand.

(d) A dealer may not issue, assign, transfer or deliver a temporary registration plate or marker to anyone other than the bona fide purchaser of the vehicle to be registered; nor may a dealer issue a temporary registration plate or marker to anyone possessing an annual registration plate for a vehicle which has been sold or exchanged, except a dealer may issue a temporary registration plate or marker to the bona fide purchaser of a vehicle to be registered who possesses an annual registration plate of a different class and makes application to the division to exchange such annual registration plate of a different class in accordance with the provisions of §17A-4-1 of this code; nor may a dealer lend to anyone, or use on any vehicle which he or she may own, a temporary registration plate or marker. It is unlawful for any dealer to issue any temporary registration plate or marker knowingly containing any misstatement of fact, or knowingly to insert any false information upon the face thereof.

WV Legislature

(e) Every dealer who issues temporary registration plates or markers shall affix or insert clearly and indelibly on the face of each temporary registration plate or marker in the manner prescribed by the commissioner, the date of issuance and expiration thereof, and the make and motor or serial number of the vehicle for which issued.

(f) If the commissioner finds that the provisions of this section or his or her directions are not being complied with by a dealer, he or she may suspend the right of such dealer to issue temporary registration plates or markers.

(g) Every person to whom a temporary registration plate or marker has been issued shall permanently destroy such temporary registration plate or marker immediately upon receiving the annual registration plate for such vehicle from the division: *Provided*, That if the annual registration plate is not received within 90 days of the issuance of the temporary registration plate or marker, the owner shall, notwithstanding the fact that the annual registration plate has not been received, immediately and permanently destroy the temporary registration plate or marker: *Provided, however,* That not more than one temporary registration plate or marker shall be issued to the same bona fide purchaser for the same vehicle.

(h) A temporary registration plate or marker shall expire and become void upon the receipt of the annual registration plate from the division or upon the rescission of the contract to purchase the vehicle in question, or upon the expiration of 90 days from the date of issuance, depending upon whichever event shall first occur.

(i) For the purpose of this section, the term "dealer" includes a wrecker/dismantler/rebuilder and, in the context of issuing temporary registration plates, any other business licensed by the division in accordance with the provisions of this chapter and authorized to issue temporary registration plates or markers.

(j) The commissioner may require participation in an electronic temporary plate issuance system by all dealers as a precondition for authority for a dealer to issue temporary license plates or markers.

WV Legislature

§17A-6-15a. Temporary registration plates for auto mechanics; fees.

(a) Notwithstanding any of the other provisions of this article, an auto mechanic may make application for access to the division's electronic temporary plate issuance system established in §17A-6-15 for an auto mechanic temporary registration plate or plates as developed by the Division of Motor Vehicles. The auto mechanic temporary registration plate may be used to operate or move a vehicle upon the highways and streets of this state solely for the purposes of diagnosing mechanical or functional problems of a vehicle or testing a vehicle being repaired or serviced that is in the possession or bailment of the mechanic or his or her employer for repairs or diagnosis of a malfunction, conducted in the ordinary course of the business of the auto mechanic, if such vehicle does not have a valid registration plate physically displayed or available for display.

(b) An auto mechanic may make application upon a form prescribed by the commissioner for access to the electronic temporary plate issuance system. The application fee is $100. The applicant shall submit all necessary information required by the commissioner. The commissioner shall determine whether the applicant is a bona fide person or business eligible to access the electronic temporary registration plate system and does, as a regular incident to, or in the regular course of its business perform repairs, services, tests or diagnoses malfunctions of motor vehicles, and has need to operate motor vehicles which may not be properly registered, upon the highways and streets of this state in the performance of such activities.

(c) Upon the commissioner's approval, the qualified auto mechanic will be given access to the electronic temporary plate issuance system for one year which access may be renewed annually upon proper application and payment of a $100 renewal fee. The auto mechanic temporary registration plate fees shall be the same amount and format as those fees required of dealers participating in the electronic temporary plate issuance system. Each auto mechanic temporary registration plate shall expire at 11:59 pm on the date of issuance.

(d) The mechanic must furnish a certificate of insurance to the commissioner showing coverage as required in §17D-1-1 *et seq*. of this code on vehicles displaying the auto mechanic temporary registration plates while being operated.

(e) For purposes of this section, "auto mechanic" or "mechanic" means a person, including an individual or an entity that is registered to do business in this state that performs repairs, services, diagnoses malfunctions of, or performs mechanical services to motor vehicles.

(f) If any auto mechanic using the electronic temporary plate issuance system violates the provisions of this section, the commissioner shall have the authority to immediately terminate said auto mechanic's access to the electronic temporary plate issuance system.

WV Legislature

§17A-6-16. Records must be kept and maintained.

(a) In addition to all other records herein required to be kept and maintained, each licensee shall keep and maintain a record in such form and for such period of time as may be prescribed by the commissioner of:

(1) Every vehicle which is bought, sold, or exchanged by such licensee or received or accepted by such licensee for sale or exchange;

(2) Every used vehicle body or chassis which is sold or otherwise disposed of; and

(3) Every vehicle which is bought or otherwise acquired and wrecked or dismantled by such licensee.

(b) Every such record shall state the name and address of the person from whom such vehicle was purchased or acquired and the date thereof, the name and address of the person to whom any such vehicle, vehicle body, or chassis was sold or otherwise disposed of, the date thereof, and a description of every such vehicle, body or chassis by name and identifying numbers sufficient to identify the same.

(c) Every licensee shall also keep and maintain such other records as the commissioner may require by reasonable rules and regulations authorized in section nine, article two of this chapter and promulgated in accordance with the provisions of article three, chapter twenty-nine-a of this code.

WV Legislature

§17A-6-17. Sales instrument; full disclosure required.

Every vehicle sale at retail shall be evidenced by a sales instrument in writing which shall contain all of the agreements between the buyer and the seller, which shall be signed by the buyer and seller or a representative of either party, and a copy of which shall be delivered to the buyer before such sale becomes final. Such instrument shall contain the following information, so far as applicable:

(1) Name of the seller;

(2) Name of the buyer;

(3) Make, year and model of the vehicle;

(4) Cash sale price;

(5) Cash paid down by the buyer;

(6) Amount credited to buyer for any trade-in;

(7) Provisions as to whether the seller or buyer is to pay off the indebtedness, if any, on the trade-in;

(8) Description of the trade-in;

(9) Amount of the time differential charge (if not a cash sale so far as the dealer is concerned);

(10) Amount charged by seller for insurance and the type of coverage afforded; if any insurance does not include coverage for bodily injury and/or property damage caused to others, the sales instrument shall expressly so state; and

(11) Net balance due from buyer and the terms of payment (if not a cash sale so far as the dealer is concerned). A copy of such sales instrument shall be kept and maintained among the records of the seller as provided in section sixteen of this article.

WV Legislature

§17A-6-17a. Approved practices.

Notwithstanding any other provision of this code, a motor vehicle dealer may, consistent with applicable federal law and regulations, advance money to retire an amount owed against a motor vehicle used as a trade-in and finance repayment of that money in a retail installment contract.

WV Legislature

§17A-6-18. Investigation; matters confidential; grounds for suspending or revoking license or imposing fine; suspension and revocation generally.

(a) The commissioner may conduct an investigation to determine whether any provisions of this chapter have been or are about to be violated by a licensee. Any investigation shall be kept confidential by the commissioner and the division, unless and until the commissioner suspends or revokes the license certificate of the licensee involved or fines the licensee: Provided, That the commissioner may advise the Motor Vehicle Dealers Advisory Board of pending actions and may disclose to the Motor Vehicle Dealers Advisory Board any information that enables it to perform its advisory function in imposing penalties. The commissioner may suspend or revoke a license certificate, suspend a special dealer plate or plates, impose a fine or take any combination of these actions if the commissioner finds that the licensee:

(1) Has failed or refused to comply with the laws of this state relating to the registration and titling of vehicles and the giving of notices of transfers, the provisions and requirements of this article, or any reasonable rules authorized in section nine, article two of this chapter and promulgated to implement the provisions of this article by the commissioner in accordance with the provisions of article three, chapter twenty-nine-a of this code;

(2) Has given any check in the payment of any fee required under the provisions of this chapter which is dishonored;

(3) In the case of a dealer, has knowingly made or permitted any unlawful use of any dealer special plate or plates issued to him or her;

(4) In the case of a dealer, has a dealer special plate or plates to which he or she is not lawfully entitled;

(5) Has knowingly made false statement of a material fact in his or her application for the license certificate then issued and outstanding;

(6) Has habitually defaulted on financial obligations;

(7) Does not have and maintain at each place of business (subject to the qualification contained in subdivision (17), subsection (a), section one of this article with respect to a new motor vehicle dealer) an established place of business as defined for the business in question in section one of this article;

(8) Has been guilty of any fraudulent act in connection with the business of new motor vehicle dealer, used motor vehicle dealer, house trailer dealer, trailer dealer, motorcycle dealer, used parts dealer or wrecker or dismantler;

(9) Has defrauded or is attempting to defraud any buyer or any other person, to the damage of the buyer or other person, in the conduct of the licensee's business;

WV Legislature

(10) Has defrauded or is attempting to defraud the state or any political subdivision of the state of any taxes or fees in connection with the sale or transfer of any vehicle;

(11) Has committed fraud in the registration of a vehicle;

(12) Has knowingly purchased, sold or otherwise dealt in a stolen vehicle or vehicles;

(13) Has advertised by any means, with intent to defraud, any material representation or statement of fact which is untrue, misleading or deceptive in any particular relating to the conduct of the licensed business;

(14) Has willfully failed or refused to perform any legally binding written agreement with any buyer;

(15) Has made a fraudulent sale or purchase;

(16) Has failed or refused to assign, reassign or transfer a proper certificate of title;

(17) Has a license certificate to which he or she is not lawfully entitled;

(18) Has misrepresented a customer's credit or financial status to obtain financing;

(19) Has failed to reimburse, when ordered, any claim against the dealer recovery fund as prescribed in section two-a of this article; or

(20) Has employed unlicensed salespersons in violation of article six-e of this chapter on or after January 1, 2008.

(b) The commissioner shall also suspend or revoke the license certificate of a licensee if he or she finds the existence of any ground upon which the license certificate could have been refused or any ground which would be cause for refusing a license certificate to the licensee were he or she then applying for the license certificate.

(c) Whenever a licensee fails to keep the bond, unless exempt from the requirement pursuant to section two-a of this article or liability insurance required by section four of this article, in full force and effect, or fails to provide evidence of the bond or liability insurance, the commissioner shall automatically suspend the license certificate of the licensee unless and until a bond or certificate of insurance as required by section four of this article is furnished to the commissioner. When the licensee furnishes the bond or certificate of insurance to the commissioner and pays all reinstatement fees, the commissioner shall vacate the suspension.

(d) Suspensions under this section shall continue until the cause for the suspension has been eliminated or corrected. Revocation of a license certificate does not preclude application for a new license certificate. The commissioner shall process the application for a new license certificate in the same manner and issue or refuse to issue the license certificate on the

WV Legislature

same grounds as any other application for a license certificate is processed, considered and passed upon, except that the commissioner may give any previous suspension and the revocation such weight in deciding whether to issue or refuse the license certificate as is correct and proper under all of the circumstances.

WV Legislature

§17A-6-18a. Motor Vehicle Dealers Advisory Board.

(a) There is continued a Motor Vehicle Dealers Advisory Board to assist and to advise the commissioner on the administration of laws regulating the motor vehicle industry; to work with the commissioner in developing new laws, rules, or policies regarding the motor vehicle industry; to advise the commissioner on setting documentary charges or similar charges motor vehicle dealers may charge consumers for documentary services in relation to securing a title, which such charges the commissioner is hereby granted authority to set; and to give the commissioner any further advice and assistance as he or she may, from time to time, require.

The board shall consist of 10 members and the Commissioner of Motor Vehicles, or his or her representative, who shall be an ex officio member. Two members shall represent new motor vehicle dealers, with one of these two members representing dealers that sell less than 100 new vehicles per year; one member shall represent used motor vehicle dealers; one member shall represent wrecker/dismantler/rebuilders; two members shall represent automobile auctions, with one of these two members representing automobile auctions of primarily salvage vehicles; one member shall represent recreational dealers; one member shall represent the West Virginia Attorney General's office; and two members shall represent consumers. All of the representatives, except the Attorney General representative who shall be designated by the Attorney General, shall be appointed by the Governor with the advice and consent of the Senate, with no more than five representatives being from the same political party.

The terms of the board members shall be for three years. The Attorney General representative shall serve continuously.

The board shall meet at least four times annually and at the call of the commissioner.

(b) The commissioner shall consult with the board before he or she takes any disciplinary action against a dealer, an automobile auction, or a license service to revoke or suspend a license, place the licensee on probation or levy a civil penalty, unless the commissioner determines that the consultation would endanger a criminal investigation.

(c) The commissioner may consult with the board by mail, by facsimile, by telephone or at a meeting of the board, but the commissioner is not bound by the recommendations of the board. The commissioner shall give members seven days from the date of a mailing or other notification to respond to proposed actions, except in those instances when the commissioner determines that the delay in acting creates a serious danger to the public's health or safety or would unduly compromise the effectiveness of the action.

(d) No action taken by the commissioner is subject to challenge or rendered invalid on account of his or her failure to consult with the board.

(e) The appointed members shall serve without compensation; however, members are

WV Legislature

entitled to reimbursement of travel and other necessary expenses actually incurred while engaged in legitimate board activities in accordance with the guidelines of the Travel Management Office of the Department of Administration or its successor agency.

WV Legislature

§17A-6-18b.

Repealed.

Acts, 2010 Reg. Sess., Ch. 32.

WV Legislature

§17A-6-19. Notice of refusal, or suspension or revocation, of license certificate or of suspension of right to issue temporary registration plates or markers or of suspension of a dealer special plate or plates; relinquishing license certificate, dealer special plate or plates and temporary plates or markers.

(a) Whenever the commissioner shall refuse to issue a license certificate, or shall suspend or revoke a license certificate, or shall suspend the right of a dealer to issue temporary plates or markers under the provisions of section fifteen of this article, or shall suspend a dealer special plate or plates, he shall make and enter an order to that effect and shall cause a copy of such order to be served in person or by certified mail, return receipt requested, on the applicant or licensee, as the case may be.

(b) Whenever a license certificate is suspended or revoked, the commissioner shall in the order of suspension or revocation direct the licensee to return to the department his license certificate and any special dealer plates and temporary registration plates or markers issued in conjunction with the issuance of such license certificate or such business, which temporary registration plates or markers are still in the licensee's possession. Whenever the right of a dealer to issue temporary registration plates or markers is suspended or a dealer special plate or plates are suspended as aforesaid, the commissioner shall in the order of suspension direct the licensee to return to the department all temporary registration plates or markers issued in conjunction with such business and still in the licensee's possession or such dealer special plate or plates. It shall be the duty of the licensee to comply with any such order following expiration of the period provided in section twenty-one of this article for an appeal to the license certificate appeal board (created in section twenty of this article) without an appeal to such board having been timely perfected, and immediately if a license certificate were suspended in accordance with the provisions of subsection (b), section eighteen of this article. Whenever a licensee shall fail or refuse to comply with any such order as herein specified, the commissioner shall proceed as provided in section seven, article nine of this chapter.

WV Legislature

§17A-6-20.

Repealed.

Acts, 1986 Reg. Sess., Ch. 153.

WV Legislature

§17A-6-21.

Repealed.

Acts, 1986 Reg. Sess., Ch. 153.

WV Legislature

§17A-6-22. Original action by board; matters confidential.

In the event the commissioner shall receive a sworn complaint in writing alleging a violation of any of the provisions of this chapter by a licensee, and the commissioner does not within thirty days thereafter make and enter an order with respect thereto, the complainant may file a sworn complaint with the board. Upon receipt of any such sworn complaint, the board may investigate the matter, and hold a hearing with respect thereto and decide the matter with like effect as if the commissioner had made and entered an order and the licensee had appealed such order to the board. Any complaint and any investigation shall be kept in strictest confidence by the board, the commissioner, the department, the licensee, the complainant and all other persons, unless and until the commissioner or board suspends or revokes the license certificate of the licensee involved.

WV Legislature

§17A-6-23. Judicial review.

(a) Any person or the commissioner adversely affected by a final order made and entered by the board is entitled to judicial review thereof. All of the pertinent provisions of section four, article five, chapter twenty-nine-a of this code shall apply to and govern such review with like effect as if the provisions of said section four were set forth in extenso in this section.

(b) The judgment of the circuit court shall be final unless reversed, vacated or modified on appeal to the Supreme Court of Appeals in accordance with the provisions of section one, article six, chapter twenty-nine-a of this code.

(c) Legal counsel and services for the commissioner in all appeal proceedings in any circuit court and the Supreme Court of Appeals shall be provided by the Attorney General or his assistants, and in appeal proceedings in any circuit court by the prosecuting attorney of the county as well, all without additional compensation and in accordance with the provisions of section twenty, article two of this chapter. The board or commissioner, with the written approval of the Attorney General, may employ special counsel to represent the board or commissioner in a particular proceeding.

WV Legislature

§17A-6-24. Actions to enjoin violations; injunctive relief.

(a) Whenever it appears to the commissioner that any person has been or is violating or is about to violate any provision of this article or any final order of the commissioner or board, the commissioner may apply in the name of the state, to the circuit court of the county in which the violation or violations or any part thereof has occurred, is occurring or is about to occur, or the judge thereof in vacation, for an injunction against such person and any other persons who have been, are or are about to be, involved in, or in any way participating in, any practices, acts or omissions, so in violation, enjoining such person or persons from any such violation or violations. Such application may be made and prosecuted to conclusion whether or not any such violation or violations have resulted or shall result in prosecution or conviction under the provisions of article eleven of this chapter.

(b) Upon application by the commissioner, the circuit courts of this state may by mandatory or prohibitory injunction compel compliance with the provisions of this article and all final orders of the commissioner or board. The court may issue a temporary injunction in any case pending a decision on the merits of any application filed.

(c) The judgment of the circuit court upon any application permitted by the provisions of this section shall be final unless reversed, vacated or modified on appeal to the Supreme Court of Appeals. Any such appeal shall be sought in the manner and within the time provided by law for appeals from circuit courts in other civil cases.

(d) The commissioner shall be represented in all such proceedings by the Attorney General or his assistants and in such proceedings in the circuit courts by the prosecuting attorneys of the several counties as well, all without additional compensation and in accordance with the provisions of said section twenty, article two of this chapter. With the written approval of the Attorney General, the commissioner may employ special counsel to represent him in any such proceeding.

WV Legislature

§17A-6-25. Inspections; violations and penalties.

(a) The commissioner and all law-enforcement officers of the state, acting at the commissioner's request, are hereby authorized to inspect the place of business, vehicles and pertinent records, documents and papers of any person required to be licensed under the provisions of this article to the extent deemed reasonably necessary to determine compliance with and violations of this article. For the purpose of making any such inspection, the commissioner and such law-enforcement officers are authorized, at reasonable times, to enter in and upon any such place of business and any other public garage or enclosure where vehicles are sold, stored, hired or repaired.

(b) Any person who shall violate any provision of this article or any final order of the commissioner or board hereunder shall be guilty of a misdemeanor and, the provisions of article eleven of this chapter governing violations of this chapter generally shall be fully applicable thereto.

WV Legislature

§17A-6-25a. Civil penalties.

(a) In addition to any other remedy or penalty provided by law, the commissioner may levy and collect a civil fine, in an amount not to exceed $1,000 for each first violation, against any person who violates the provisions of this article, article six-b, article six-c or article six-d of this chapter, any of the rules or policies implemented to enforce those articles, or any lawful order of the commissioner pursuant to authority set forth in those articles. Every transaction which violates this article, article six-b, article six-c or article six-d of this chapter shall be considered a separate violation. For a second violation, being any violation occurring within three years following any previous violation for which the violator has been disciplined pursuant to section eighteen, article six of this chapter, the commissioner may levy and collect a fine in an amount not to exceed $2,500 and for a third and subsequent violation occurring within the three-year period following the first violation, the commissioner may levy and collect a fine in an amount not to exceed $5,000.

(b) A fine assessed under this section shall not take effect until the commissioner sends to the person against whom the penalty is assessed by certified mail, return receipt requested, a notice of violation finding that the person has committed an offense. The notice shall contain:

(1) A statement of the offense the person committed;

(2) A summary of the facts on which the finding of a violation was made;

(3) The amount of the fine which is being levied; and

(4) An order that the person:

(A) Cease and desist from all future violations and pay the fine; or

(B) Protest in writing the findings of the commissioner or the amount of the assessed fine and request a hearing.

Any request for a hearing must be received by the commissioner within thirty days after the mailing date of the notice of violation. The notice of violation may be sent to any address which the person has used on any title or license application, or other filing or record which the commissioner believes is current. Failure of any person to receive a notice of violation does not preclude the fine from taking effect. However, the commissioner shall accept as timely a request for hearing from any person who, within one year of the date the notice of violation was sent, provides satisfactory proof that he or she did not receive the notice of violation and that good cause exists to excuse his or her failure to receive the notice of violation and that he or she wishes in good faith to assert a protest to the notice of violation. The pendency of the one-year period shall not keep any penalty from taking effect, but the commissioner shall stay enforcement of the fine upon his or her acceptance of any notice filed after the thirty-day period pending the outcome of the appeal.

WV Legislature

(c) Upon receipt of a timely request, the commissioner shall afford the person a hearing in accordance with the rules of the Division of Motor Vehicles. The commissioner, in addition to considering the evidence relied upon to prove or defend against a finding of a violation, shall also evaluate the appropriateness of the amount of the civil penalty. In making such evaluation, the commissioner shall consider:

(1) The severity of the violation and its impact on the public;

(2) The number of similar or related violations;

(3) Whether the violations were willful or intentional; and

(4) Any other facts considered appropriate.

(d) In addition to any other findings of fact or conclusions of law, the commissioner may reduce the civil penalty to a stated amount. The appellant may, at any time during the pendency of the appeal, enter into a settlement agreement with the commissioner. The settlement agreement may provide for a reduction in the penalty and may provide that the appellant does not admit a violation. The entry into a settlement agreement or the payment of any fine pursuant to a settlement agreement which states that the appellant does not admit a violation shall not amount to an admission of guilt for purposes of any criminal prosecution.

(e) Upon the expiration of all periods for protest or appeal of a notice of violation, including judicial review pursuant to section four, article five, chapter twenty-nine-a of this code, the notice of violation shall have the same force and effect and be enforceable as a judgment entered by any court of law of this state.

(f) If a corporation is found to have committed a violation against which a penalty may be assessed under this section, any officer of the corporation who is found to have knowingly and intentionally committed the violation, to have knowingly and intentionally directed another to commit the violation or to have knowingly and intentionally failed to take reasonable steps to prevent another from committing the violation, may be individually found to be in violation and assessed a civil penalty as provided by this section.

WV Legislature

§17A-6-26. Construction.

(a) The provisions of this article shall be liberally construed so as to effectuate its purposes.

(b) All of the provisions of this chapter expressly stated to be applicable throughout such chapter shall be as fully applicable to this act as if they were set forth in extenso herein.

WV Legislature