WEST VIRGINIA CODE CHAPTER 17a ARTICLE 6D

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§17A-6D-1. License certificate required; application.

No person may engage in a daily passenger rental car business in West Virginia without a license certificate.

Application for a daily passenger rental car license certificate shall be made on a form prescribed by the commissioner and shall disclose any information required by the commissioner. The application shall be verified by an oath or affirmation of the applicant, if an individual, or if the applicant is a corporation, partnership or limited liability company by a partner or officer thereof.

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§17A-6D-2. Collection of daily passenger car rental tax imposed.

The tax authorized by section four, article three of this chapter and established by rules promulgated in accordance with the provisions of article three, chapter twenty-nine-a of this code shall be collected by each rental car business. The daily passenger car business shall collect the tax on each vehicle rented regardless of where the vehicle is titled or registered and shall remit all taxes collected to the Division of Motor Vehicles on a monthly basis. All taxes collected pursuant to this section shall be deposited in the state road fund and subject to appropriation by the Legislature. The daily passenger car business shall complete the returns required by the Commissioner of Motor Vehicles and submit them monthly with the remittance. In addition, an annual return which summarizes the monthly returns is required. The monthly returns are due no later than the fifteenth day following the last day of the month for which the return applies, and the annual return shall be due no later than the thirtieth day following the close of the year to which it applies. The Commissioner of Motor Vehicles shall promulgate an emergency rule pursuant to the provisions of chapter twenty-nine-a of this code setting forth pertinent information regarding the collection of the tax imposed under this section, the definition of a daily passenger car rental business, and specifying forms. Nonpayment of the tax shall constitute grounds for the Commissioner of Motor Vehicles to deny, suspend or revoke the license certificate set forth in this article. The emergency rule shall be filed on or before June 1, 2000.

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§17A-6D-3. Liability of officers of corporation, etc.

If the taxpayer is an association, partnership or corporation, the officers thereof shall be personally liable, jointly and severally, for any default on the part of the association, partnership or corporation, and payment of the tax and any additions to the tax, penalties and interest on the tax imposed by this article may be enforced against the officers as against the association, partnership or corporation which they represent. Any failure to collect the tax imposed in this article and/or any failure to timely remit to the Commissioner of Motor Vehicles the tax imposed by this article constitutes a default for purposes of this section. Any other failure to comply with the provisions of this article constitutes a default for purposes of this section.

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§17A-6D-4. Annual return; extension of time.

(a) Date due. -- On or before thirty days after the end of the tax year, each person liable for the payment of any tax due under this article shall make and file an annual return in such form as may be required by the Commissioner of Motor Vehicles, showing:

(1) Total gross proceeds of his or her daily passenger car rental business for preceding tax year;

(2) Gross proceeds upon which the tax for that year was computed; and

(3) Any other information necessary in the computation or collection of the tax that the Commissioner of Motor Vehicles may require.

(b) Payment. -- After deducting the amount of prior payments during the tax year, the taxpayer shall forward the annual return along with payment of any remaining tax, due for the preceding tax year, to the Commissioner of Motor Vehicles. The taxpayer or his duly authorized agent shall verify the return under oath.

(c) Extension of time. -- The Commissioner of Motor Vehicles for good cause shown, may, on written application of a taxpayer, extend the time for making any return required by the provisions of this article.

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§17A-6D-5. Applicant must be bonded.

An application for a license certificate must be accompanied by a bond in the penal sum of $25,000 and have a corporate surety authorized to do business in this state, to ensure that the applicant will not, in the conduct of his or her business, make any fraudulent representation which causes a financial loss to any purchaser, seller, financial institution, agency or the State of West Virginia. The bond shall be effective on the date the license certificate is issued.

A licensee shall keep the bond in full force and effect at all times. The surety on the bond may cancel the bond upon giving thirty days' notice to the commissioner and, after notice of cancellation, the surety is relieved of liability for any breach or condition occurring after the effective date of the cancellation.

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§17A-6D-6. Fee required for license certificate.

The initial application fee for a certificate to engage in a daily passenger rental car business is two hundred and fifty dollars. The annual renewal fee for the certificate is one hundred dollars.

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§17A-6D-7. Investigation prior to issuance of license certificate; information confidential.

Upon receipt of a completed application, the required bond and the application fee, the commissioner may conduct an investigation if necessary to determine the accuracy of any statements contained in the application and the existence of any other facts 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 thirty days.

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

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§17A-6D-8. Refusal of license certificate.

If the commissioner finds that the applicant:

(1) Has failed to furnish the required bond;

(2) Has knowingly made a false statement of a material fact in the application;

(3) Has habitually defaulted on financial obligations;

(4) Has been convicted of a felony within five years immediately preceding receipt of the application by the commissioner;

(5) Has not complied with the registration and title laws of this state;

(6) Has been guilty of any fraudulent act in connection with the business of a daily passenger rental car business;

(7) 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;

(8) Has not attained the age of eighteen years;

(9) Has been delinquent in the payment of any taxes owed to a political subdivision of or to the State of West Virginia;

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

(11) 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.

Then, upon the basis of the application, such finding and all other information, the commissioner shall make and enter an order denying the application for a license certificate. The denial is final and conclusive subject to appeal. If there is no basis to deny the application, the commissioner shall issue to the applicant the license certificate which shall entitle the licensee to engage in a daily passenger rental car business.

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§17A-6D-9. When application to be made; expiration of license certificate; renewal.

(a) The initial application for a license certificate to engage in a daily passenger rental car business shall be made at least thirty days prior to January 1, 2001. This license shall be valid for one year.

(b) Any initial application made after January 1, 2001, and any year thereafter, shall expire on December 31, of that year.

(c) A license certificate may be renewed by paying the renewal fee and review by the commissioner. Any application for renewal must be received by the commissioner at least thirty days prior to its expiration.

(d) A license certificate issued in accordance with the provisions of this article shall not be transferable.

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§17A-6D-10. Form and display of license certificate; certified copies of license.

(a) The commissioner shall prescribe the form of the license certificate for a daily passenger rental car business. Each license certificate shall have printed on the certificate the seal of the division, the location of each place of business of the licensee, the year for which the license is issued, the license certificate number and any other information the commissioner may prescribe. 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 apply to the commission for a certified copy of the license certificate for each place of business. A fee of $1 shall be paid for each certified copy of the license certificate. The license certificate is to be conspicuously posted at each place of business.

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

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§17A-6D-11. Changes in business; action required.

Every daily passenger rental car business shall notify the commissioner within sixty days from 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 of the licensee;

(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 subdivision (1), (2), (3), (4), (5) or (6) occurs, an application for a new license certificate shall immediately be filed with the commissioner: Provided, That when a change is made involving subdivision (3) of this section, an application for a new license certificate need not be filed during the balance of the license year if a member of the family of the deceased person succeeds to the interest in the business. Upon receipt and review of the application, a new license certificate shall be issued incorporating the changes. No additional fee for the balance of the license year is required for the issuance of any new license certificate issued as a result of any change specified in this section.

No new license certificate is 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 the business or protecting the interests of the creditors of the business.

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§17A-6D-12. Investigation; grounds for suspending or revoking a license certificate; notice of refusal, suspension or revocation of license certificate; relinquishing license certificate.

The commissioner may conduct an investigation to determine whether any provisions of this chapter have been violated by a licensee. Any investigation shall be kept in strictest confidence by the commissioner, the division, the licensee, any complainant and all other persons, unless and until the commissioner suspends or revokes the license certificate of the license involved.

(a) The commissioner may suspend or revoke a license certificate 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;

(2) Has failed or refused to comply with the provisions and requirements of this article and the promulgated rules authorized in section nine, article two of this chapter which were implemented by the commissioner, in accordance with the provisions of article three, chapter twenty-nine-a of this code, to enforce the provisions of this article; or

(b) The commissioner shall suspend or revoke a license certificate if the commissioner finds that the licensee:

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

(2) Has habitually defaulted on financial obligations;

(3) Has been guilty of any fraudulent act in connection with the license service business;

(4) 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;

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

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

(7) 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;

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

(9) The existence of any other ground upon which the license certificate could have been refused, or any ground upon which would be cause for refusing a license certificate to the

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licensee were he then applying for the same.

(c) Whenever a licensee fails or refuses to keep the bond required by section two of this article in full force and effect, the license certificate of the licensee shall automatically be suspended unless and until the required bond is furnished to the commissioner, in which event the suspension shall be vacated.

(d) Whenever the commissioner refuses to issue a license certificate, or revokes a license certificate, he or she shall make and enter an order to that effect and shall cause a copy of the order to be served in person or by certified mail, return receipt requested, on the applicant or licensee.

(e) Suspensions under this section shall continue until the cause of the suspension has been eliminated or corrected. 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 division his or her license certificate and any other documents specified. It is the duty of the licensee to comply with the order. Whenever a licensee fails or refuses to comply with any order of the commissioner, the commissioner shall proceed as provided in section seven, article nine of this chapter.

(f) Any applicant whose request for a license certificate is refused and any licensee whose license is suspended or revoked may appeal that action in accordance with procedures established by the commissioner. The revocation or suspension of a license certificate does not preclude a person from submitting an application for a new license certificate, to be processed in the same manner. The license certificate shall be issued or refused on the same grounds as any other application for a license certificate, except that any previous suspension and revocation may be considered in deciding whether to issue or refuse the license certificate.

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§17A-6D-13. Inspections; violations and penalties.

(a) The commissioner and his agents, acting at the commissioner's request, are hereby authorized to inspect the place of business 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 an inspection, the commissioner and his agents are authorized, at reasonable times, to enter in and upon the place of business suspected of being in violation of this article.

(b) Any person who violates any provision of this article or any final order of the commissioner or board issued pursuant to this article, shall be guilty of a misdemeanor and, the provisions of article eleven of this chapter governing violations of this chapter shall be fully applicable to the violation.

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§17A-6D-14. Injunctive relief.

(a) Whenever it appears to the commissioner that any person or licensee has violated any provision of this article or any final order of the commissioner, the commissioner may petition, in the name of the state, the circuit court of the county in which the violation or violations occurred, for an injunction against the person or licensee. A violation or violations resulting in prosecution or conviction under the provisions of article eleven of this chapter shall not prohibit injunctive relief.

The circuit court may, by mandatory or prohibitory injunction, compel compliance with the provisions of this article and all final orders of the commissioner. The court may also issue temporary injunctions.

(b) The judgment by the circuit court 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.

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§17A-6D-15. Promulgation of rules.

The commissioner may promulgate rules in accordance with article three, chapter twenty-nine-a of this code in order to effect the provisions of this article.

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§17A-6D-16. Vehicle license cost recovery fee charged by daily passenger rental car company.

(a) As used in this section:

(1) "Vehicle license costs" means the costs incurred by a daily passenger rental car company for licensing, titling, registration, property tax, plating and inspecting rental motor vehicles; and

(2) "Vehicle license cost recovery fee" means a charge on a vehicle rental transaction originating within this state that may be separately stated on the rental agreement to recover vehicle license costs.

(b) Method for vehicle cost recovery. –

(1) If a daily passenger car rental company includes a vehicle license cost recovery fee as a separately stated charge in a rental transaction, the amount of the fee shall represent the company's good-faith estimate of the daily passenger rental car daily charge to recover its actual total annual vehicle license costs.

(2) If the total amount of the vehicle license cost recovery fees collected by a daily passenger rental car company under this section in any calendar year exceeds the company's actual vehicle license costs, the daily passenger car rental company shall:

(A) Retain the excess amount; and

(B) Adjust the vehicle cost recovery fee for the following calendar year by a corresponding amount.

(c) Nothing in this section prevents a daily passenger car rental company from including, or making adjustments during the calendar year to, separately stated surcharges, fees or charges in the rental agreement, which may include, but are not limited to, vehicle license cost recovery fees, airport access fees, airport concession fees, consolidated facility charges and all applicable taxes.

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§17A-6D-17. Authorized administrative fees.

(a) As used in this section, “administrative fees” means reasonable costs expressly provided for in the master rental agreement pertaining to parking tickets, tolls, citations for other non-moving violations, and other costs incurred by the rental customer and not timely paid by the rental customer and paid by the daily passenger car rental company. Administrative fees may not exceed $25 per rental agreement or ten percent of the debt owed, whichever is less.

(b) Notwithstanding any provision of this code to the contrary, including, but not limited to §46A-2-128(d) of this code, a daily passenger rental car company may collect or charge administrative fees incidental to, or arising from, the rental transaction when the administrative fees are expressly provided for in the master rental agreement and affirmatively acknowledged by the rental customer.

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