WEST VIRGINIA CODE CHAPTER 17a

WV Legislature

§17A-1-1. Definitions.

Except as otherwise provided in this chapter, the following words and phrases, when used in this chapter, have the meanings respectively ascribed to them in this article:

(a) "Vehicle" means every device in, upon, or by which any person or property is or may be transported or drawn upon a highway, excepting devices moved by human power or used exclusively upon stationary rails or tracks.

(b) "Motor vehicle" means every vehicle which is self-propelled and every vehicle which is propelled by electric power obtained from overhead trolley wires, but not operated upon rails.

(c) "Motorcycle" means every motor vehicle, including motor-driven cycles and mopeds as defined in §17C-1-5 and §17C-1-5a of this code, having a saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground, but excluding a tractor, and an electric bicycle as defined in §17C-1-70 of this code.

(d) "School bus" means every motor vehicle owned by a public governmental agency and operated for the transportation of children to or from school or privately owned and operated for compensation for the transportation of children to or from school.

(e) "Bus" means every motor vehicle designed to carry more than seven passengers and used to transport persons; and every motor vehicle, other than a taxicab, designed and used to transport persons for compensation.

(f) "Truck tractor" means every motor vehicle designed and used primarily for drawing other vehicles and not constructed to carry a load other than a part of the weight of the vehicle and drawn load.

(g) "Farm tractor" means every motor vehicle designed and used primarily as a farm implement for drawing plows, mowing machines, and other implements of husbandry.

(h) "Road tractor" means every motor vehicle designed, used, or maintained for drawing other vehicles and not constructed to carry any load thereon either independently or any part of the weight of a vehicle or drawn load.

(i) "Truck" means every motor vehicle designed, used, or maintained primarily for the transportation of property.

(j) "Trailer" means every vehicle with or without motive power designed for carrying persons or property and for being drawn by a motor vehicle and constructed so that no part of its weight rests upon the towing vehicle but excluding recreational vehicles.

(k) "Semitrailer" means every vehicle with or without motive power designed for carrying persons or property and for being drawn by a motor vehicle and constructed so that some

WV Legislature

part of its weight and that of its load rests upon or is carried by another vehicle.

(l) "Pole trailer" means every vehicle without motive power designed to be drawn by another vehicle and attached to the towing vehicle by means of a reach, or pole, or by being boomed or otherwise secured to the towing vehicle and ordinarily used for transporting long or irregularly shaped loads such as poles, pipes, or structural members capable, generally, of sustaining themselves as beams between the supporting connections.

(m) "Specially constructed vehicles" means every vehicle of a type required to be registered hereunder not originally constructed under a distinctive name, make, model, or type by a generally recognized manufacturer of vehicles and not materially altered from its original construction.

(n) "Reconstructed vehicle" means every vehicle of a type required to be registered hereunder materially altered from its original construction by the removal, addition, or substitution of essential parts, new or used.

(o) "Essential parts" means all integral and body parts of a vehicle of a type required to be registered hereunder, the removal, alteration, or substitution of which would tend to conceal the identity of the vehicle or substantially alter its appearance, model, type, or mode of operation.

(p) "Foreign vehicle" means every vehicle of a type required to be registered hereunder brought into this state from another state, territory, or country other than in the ordinary course of business by or through a manufacturer or dealer and not registered in this state.

(q) "Implement of husbandry" means every vehicle which is designed for or adapted to agricultural purposes and used by the owner thereof primarily in the conduct of his or her agricultural operations, including, but not limited to, trucks used for spraying trees and plants: *Provided,* That the vehicle may not be let for hire at any time.

(r) "Special mobile equipment" means every self-propelled vehicle not designed or used primarily for the transportation of persons or property and incidentally operated or moved over the highways, including, without limitation, road construction or maintenance machinery, ditch-digging apparatus, stone crushers, air compressors, power shovels, graders, rollers, well drillers, wood-sawing equipment, asphalt spreaders, bituminous mixers, bucket loaders, ditchers, leveling graders, finishing machines, motor graders, road rollers, scarifiers, earth-moving carryalls, scrapers, drag lines, rock-drilling equipment, and earth-moving equipment. The foregoing enumeration in this subdivision is partial and may not operate to exclude other vehicles which are within the general terms of this subdivision.

(s) "Pneumatic tire" means every tire in which compressed air is designed to support the load.

(t) "Solid tire" means every tire of rubber or other resilient material which does not depend

WV Legislature

upon compressed air for the support of the load.

(u) "Metal tire" means every tire the surface of which in contact with the highway is wholly or partly of metal or other hard, nonresilient material.

(v) "Commissioner" means the Commissioner of the Division of Motor Vehicles of this state.

(w) "Division" means the Division of Motor Vehicles of this state acting directly or through its duly authorized officers and agents.

(x) "Person" means every natural person, firm, copartnership, association, or corporation.

(y) "Owner" means a person who holds the legal title to a vehicle, or in the event a vehicle is the subject of an agreement for the conditional sale or lease thereof with the right of purchase upon performance of the conditions stated in the agreement and with an immediate right of possession vested in the conditional vendee or lessee, or in the event a mortgagor of a vehicle is entitled to possession, then the conditional vendee or lessee or mortgagor shall be considered the owner for the purpose of this chapter.

(z) "Nonresident" means every person who is not a resident of this state.

(aa) "Dealer" or "dealers" is a general term meaning, depending upon the context in which used, either a new motor vehicle dealer, used motor vehicle dealer, factory-built home dealer, recreational vehicle dealer, trailer dealer or motorcycle dealer, as defined in §17C-1-6 of this code, or all of the dealers or a combination thereof and, in some instances, a new motor vehicle dealer or dealers in another state.

(bb) "Registered dealer" or "registered dealers" is a general term meaning, depending upon the context in which used, either a new motor vehicle dealer, used motor vehicle dealer, house trailer dealer, trailer dealer, recreational vehicle dealer, or motorcycle dealer, or all of the dealers or a combination thereof, licensed under the provisions of §17A-6-1 *et seq.* of this code.

(cc) "Licensed dealer" or "licensed dealers" is a general term meaning, depending upon the context in which used, either a new motor vehicle dealer, used motor vehicle dealer, house trailer dealer, trailer dealer, recreational vehicle dealer, or motorcycle dealer, or all of the dealers or a combination thereof, licensed under the provisions of §17A-6-1 *et seq.* of this code.

(dd) "Transporter" means every person engaged in the business of delivering vehicles of a type required to be registered hereunder from a manufacturing, assembling, or distributing plant to dealers or sales agents of a manufacturer.

(ee) "Manufacturer" means every person engaged in the business of constructing or assembling vehicles of a type required to be registered hereunder at a place of business in this state which is actually occupied either continuously or at regular periods by the

WV Legislature

manufacturer where his or her books and records are kept and a large share of his or her business is transacted.

(ff) “Street” or “highway” means the entire width between boundary lines of every way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel.

(gg) “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 may 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.

(hh) “Motorboat trailer” means every vehicle designed for or ordinarily used for the transportation of a motorboat.

(ii) “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, electric bicycles as defined in §17C-1-70 of this code, or tractors.

(jj) “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.

(kk) “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.

(ll) “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.

(mm) “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.

(nn) “Recreational vehicle” means a motorboat, motorboat trailer, all-terrain vehicle, travel

WV Legislature

trailer, fold-down camping trailer, motor home, or snowmobile.

(oo) “Mobile equipment” means every self-propelled vehicle not designed or used primarily for the transportation of persons or property over the highway but which may infrequently or incidentally travel over the highways among job sites, equipment storage sites, or repair sites, including farm equipment, implements of husbandry, well drillers, cranes, and wood-sawing equipment.

(pp) “Factory-built home” includes mobile homes, house trailers, and manufactured homes.

(qq) “Manufactured home” has the same meaning as the term is defined in §21-2-9 of this code which meets the federal 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.

(rr) “Mobile home” means a transportable structure that is wholly, or in substantial part, 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 Act of 1974 (42 U. S. C.§5401, *et seq*.), effective on June 15, 1976, and usually built to the voluntary industry standard of the American National Standards Institute (ANSI) -- A119.1 standards for mobile homes.

(ss) “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.

(tt) “Parking enforcement vehicle” means a motor vehicle which does not fit into any other classification of vehicle in this chapter, has three or four wheels, and is designed for use in an incorporated municipality by a city, county, state, or other governmental entity primarily for parking enforcement or other governmental purposes with an operator area with sides permanently enclosed with rigid construction and a top which may be convertible, sealed beam headlights, turn signals, brake lights, horn, at least one rearview mirror on each side, and such other equipment that will enable it to pass a standard motorcycle vehicle inspection.

(uu) “Low-speed vehicle” means a four-wheeled motor vehicle whose attainable speed in one mile on a paved level surface is more than 20 miles per hour but not more than 25 miles per hour.

(vv) “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.

WV Legislature

§17A-2-1. Department continued.

The department of the government of this state, known as the department of motor vehicles, heretofore created, shall be continued.

WV Legislature

§17A-2-2. Commissioner of motor vehicles -- Office created; term; to devote entire time to duties.

The department of motor vehicles shall be directed by an executive officer to be designated as the Commissioner of Motor Vehicles, who shall be appointed by the Governor, with the advice and consent of the Senate for a term of four years. The first appointment made hereunder shall be for a four-year term to commence on July 1, 1951. The commissioner shall devote his entire time to the duties of his office.

WV Legislature

§17A-2-3. Commissioner of motor vehicles -- Qualifications; not to hold other office.

The commissioner at the time of his appointment and qualification shall be a citizen of the United States and a resident of the State of West Virginia, shall have been a qualified voter in the state for a period of at least one year next preceding his appointment, and shall be not less than thirty years of age. No commissioner during his period of service as such shall hold any other office under the laws of this state or of the United States.

WV Legislature

§17A-2-4. Same -- Vacancy in office.

All vacancies in the office of the commissioner that occur while the Legislature is not in session shall be filled by appointment by the Governor, which appointment shall expire at the end of thirty days after the date of which the Legislature next convenes. Prior to the expiration of the thirty days the Governor shall transmit to the Senate for its approval an appointment for the unexpired portion of the regular term. Vacancies occurring during a session of the Legislature shall be filled as regular appointments before the end of the session and for the unexpired portion of the regular term.

WV Legislature

§17A-2-5. Commissioner of motor vehicles -- Oath and bond.

The commissioner before entering upon the duties of his office shall take and subscribe to the oath prescribed by the Constitution. He shall also execute a bond in the penalty of $25,000, conditioned according to law, and approved by the Governor. The cost of such bond shall be borne by the department as a part of the operating cost of the department. The bond and the oath shall be filed with the Secretary of State.

WV Legislature

§17A-2-6. Commissioner of motor vehicles -- Salary and expenses.

The commissioner shall receive a salary of $7,000F and the necessary traveling expenses incident to the performance of his duties. Requisition for traveling expenses shall be accompanied by a sworn and itemized statement which shall be filed with the Auditor and permanently preserved as a public record.

WV Legislature

§17A-2-7. Commissioner of motor vehicles -- Organization of department; assistants and employees.

The commissioner shall organize the department in such manner as he may deem necessary to properly segregate and conduct the work of the department. The commissioner shall employ such assistants and employees as may be necessary for the efficient operation of his department, who shall possess all of the qualifications which may from time to time be prescribed for such positions by the commissioner. The duties and salaries of such assistants and employees shall be fixed by the commissioner, who shall have authority to remove any such assistant or employee at his will and pleasure. The total compensation paid to assistants and employees shall not exceed in any one year the appropriation made by the Legislature for that purpose.

The commissioner shall require every employee who collects fees or handles funds or who has custody of equipment and supplies belonging to the state to take the Constitutional oath and give an official bond, with corporate surety, properly conditioned and in a sum to be fixed by the commissioner, which bond shall be approved by him and filed in the office of the Secretary of State. The cost of such bond shall be borne by the department as a part of the operating cost of the department.

WV Legislature

§17A-2-8. Commissioner of motor vehicles -- Office.

The commissioner shall maintain an office in one of the State Capitol buildings and in such other places in the state as he may deem necessary properly to carry out the powers and duties vested in the department. The commissioner shall keep his offices open at all reasonable times for the transaction of public business.

WV Legislature

§17A-2-9. Same -- Powers and duties; rules; seal.

(a) The commissioner shall observe, administer and enforce the provisions of this chapter and all laws the enforcement of which is now or hereafter vested in the department: Provided, That nothing in this chapter shall deprive the Public Service Commission of West Virginia of any of the duties or powers now vested in it with regard to the regulation of motor vehicle carriers.

(b) The commissioner may adopt and enforce any rules that are necessary to carry out the provisions of this chapter and any other laws the enforcement and administration of which are vested in the department.

(c) The commissioner may adopt an official seal for the use of the department.

(d) The commissioner shall, in instances where division personnel become aware of a possible or suspected violation of law where enforcement jurisdiction would be that of the West Virginia state police, communicate the violation to the State Police.

WV Legislature

§17A-2-10. Motor vehicles commissioner -- Reciprocal agreements with other states.

The motor vehicle commissioner in cooperation with the State Auditor, state road commissioner, the Public Service Commission and the Superintendent of State Police as appropriate may enter into reciprocal agreements as he may deem proper or expedient with the proper authorities of other states, jurisdictions or nations, regulating the licensing of drivers and the use, on the roads and highways of this state, of trucks, automobiles and any other vehicles owned and duly licensed in other states, jurisdictions or nations. The commissioner may enter into reciprocal agreements under which the registration of vehicles owned in this state, and the licenses of drivers residing in this state shall be recognized by other states, jurisdictions or other nations.

WV Legislature

§17A-2-10a. Same -- Authorizing the entry of this state intoreciprocal proportional registration agreements; payment of taxes; issuance of registration plates or markers; promulgation of rules; interagency cooperation; requirement that all registrants pay tax; intermittent interstate commerce and promulgation of rules; proportional registration agreement prevails.

(a) The Commissioner of Motor Vehicles is hereby authorized and empowered to enter into reciprocal agreements on behalf of this state with any jurisdiction which permits or requires the licensing of motor vehicles in interstate or combined interstate and intrastate commerce and the payment of taxes, registration, licensing or other fees fixed by the motor vehicle commissioner, pursuant to the execution of this article on an apportionment basis commensurate with and determined by the miles traveled on public roads and highways in that jurisdiction, as compared with the miles traveled on public roads and highways in other jurisdictions or on any other equitable basis of apportionment, and if that jurisdiction exempts motor vehicles registered in other jurisdictions under that apportionment basis from the requirements of full payment of its own registration, license or other fixed fees, the commissioner, by agreement may adopt the exemption as to those motor vehicles, whether owned by residents or nonresidents of this state and regardless of where the vehicles are registered.

(b) The agreements under any terms, conditions or restrictions as the commissioner considers proper may provide that owners of motor vehicles operated in interstate or combined interstate and intrastate commerce in this state shall be permitted to pay registration, license or other fees fixed on an apportionment basis, commensurate with and determined by the miles traveled on public roads and highways in this state as compared with the miles traveled on public roads and highways in other jurisdictions or any other equitable basis of apportionment. The agreements shall not authorize or be construed as authorizing any motor vehicle so registered to be operated without complying with the provisions of chapter eleven and chapter twenty-four-a of this code.

(c) Pursuant to the provisions of this section, the commissioner is expressly authorized and empowered to enter into and become a member of the international registration plan or other designation that may from time to time be given to the reciprocal plan.

(d) The commissioner shall prescribe the substance, form, color and context of any registration plate or marker issued under the provisions of this section, each of which shall be visually distinguishable from other registration plates or markers produced by the Division of Motor Vehicles.

(e) The commissioner is authorized to promulgate procedural rules as may be necessary to carry out the provisions of any agreements entered into pursuant to this section.

(f) The commissioner is authorized to collect and receive funds under this article pursuant to the authority vested in him or her under article six-g of chapter eleven of this code.

WV Legislature

(g) The commissioner is hereby authorized and required to share with the interstate commerce disclosure division of the office of the State Auditor any and all information acquired by the Division of Motor Vehicles pursuant to the implementation of this article. The division shall provide to the interstate commerce disclosure division, and the Department of Tax and Revenue the name of the location and amount paid by West Virginia owners or operators of interstate motor vehicles registered under the proportional registration agreement.

(h) For any other irregular, intermittent or temporary interstate commerce activity, the Division of Motor Vehicles is hereby empowered to promulgate rules for the administration and oversight thereof.

(i) Notwithstanding any other provision of the code to the contrary, the requirements of the proportional assessment plan as contained in article six-g, chapter eleven of this code, and the provisions of this chapter, shall prevail in the event of any conflict with any other portion of the code.

WV Legislature

§17A-2-10b. Same – Entry into reciprocal agreements with certain foreign countries.

(a) The commissioner shall seek to enter into reciprocal agreements with the proper authorities of the foreign countries specified in subsection (e) of this section, which agreements shall provide for:

(1) The recognition of valid driver's licenses of citizens of said foreign countries in this state when such citizens are lawfully present in the United States; and

(2) The recognition of valid driver's licenses of citizens of this state by the authorities of said foreign countries.

The commissioner shall only enter into such reciprocal agreements upon a determination that the requirements and qualifications for the issuance of a driver's license in the foreign country are at least as stringent as those of this state. Following the entry into a reciprocal agreement, a citizen of the country that is party to the agreement, who possesses a valid driver's license issued by the appropriate licensing authority of that country, and who is otherwise lawfully present in the United States, may, subject to the terms of the relevant reciprocal agreement, operate a motor vehicle in this state without obtaining a West Virginia driver's license.

(b) Any person operating a motor vehicle in this state with a foreign driver's license granted recognition by a reciprocal agreement entered into under this section must comply with the compulsory motor vehicle liability insurance and financial responsibility laws of this state.

(c) A citizen of a foreign country that has entered into a reciprocal agreement with this state pursuant to this section shall not, by virtue of having his or her foreign driver's license recognized for use in this state, be registered to vote in this state pursuant to §3-2-11 of this code.

(d) The commissioner may, in his or her discretion, set registration and other fees for the recognition of foreign driver's licenses under reciprocal agreements entered into pursuant to this section.

(e) Reciprocal agreements with the following foreign countries are hereby authorized:

(1) The Republic of Ireland; and

(2) Japan.

(f) The commissioner shall propose rules for legislative approval in accordance with the provisions of §29A-3-1 *et seq.* of this code providing for the entry into reciprocal agreements pursuant to the provisions of this section.

WV Legislature

§17A-2-11. Commissioner of motor vehicles -- Delegation of powers and duties.

All powers and duties vested in the commissioner, except the power to sign contracts and make rules and regulations, may be exercised by the appointees or employees of the commissioner, under his direction; but the commissioner shall be responsible for their acts.

WV Legislature

§17A-2-12. Commissioner of motor vehicles -- Commissioner to prescribe forms.

The commissioner shall prescribe and provide suitable forms of applications, certificates of title, registration cards, operators' and chauffeurs' licenses, and all other forms requisite or deemed necessary to carry out the provisions of this chapter and any other laws, the enforcement and administration of which are vested in the department.

WV Legislature

§17A-2-12a. Commissioner of Motor Vehicles — commissioner shall prescribe forms providing for veteran contributions.

(a) Notwithstanding §17A-2-12 of this code, the commissioner shall prescribe and provide suitable forms of application which provide the following applicants the ability to make a contribution of $5, $10, or other amount to the West Virginia Department of Veterans Assistance:

(1) Applicants for original or renewal driver's licenses or identification cards; and

(2) Applicants for a renewal of a vehicle registration.

(b) A contribution under §17A-2-12a(a) of this code shall be added, as appropriate, to the regular fee for:

(1) An original or renewal driver's license or identification card; and

(2) A renewal of a vehicle registration.

(c) Contributions under §17A-2-12a(a) of this code shall be used exclusively for purposes set forth in §9A-1-1 et seq. of this code.

(d) The division shall determine on a monthly basis the total amount collected under this section and report and transfer said amount to the State Treasurer. The State Treasurer shall transfer the amount collected under this section to the West Virginia Department of Veterans Assistance.

(e) The West Virginia Department of Veterans Assistance shall reimburse the Motor Vehicle Fees Fund for the actual costs incurred by the division in the administration of this section.

WV Legislature

§17A-2-13. Authority to administer oaths and certify copies of records; information as to registration.

(a) Officers and employees of the division designated by the commissioner are, for the purpose of administering the motor vehicle laws, authorized to administer oaths and acknowledge signatures, and shall do so without fee.

(b) The commissioner and such officers of the division as he or she may designate are hereby authorized to prepare under the seal of the division and deliver upon request in conformance with article two-a of this chapter a certified copy of any record of the division, charging a fee of $1.50 for each document so authenticated, and every such certified copy is admissible in any proceeding in any court in like manner as the original thereof. The Division of Motor Vehicles may adjust this fee every five years on September 1, based on the U. S. Department of Labor, Bureau of Labor Statistics most current Consumer Price Index: Provided, That an increase in such fee may not exceed ten percent of the total fee amount in a single year.

(c) Subject to the provisions of article two-a of this chapter, the commissioner and such officers of the division as he or she may designate may furnish the requested information to any person making a written request for information regarding the registration of any vehicle at a fee of $1.50 for each registration about which information is furnished. The Division of Motor Vehicles may adjust this fee every five years on September 1, based on the U. S. Department of Labor, Bureau of Labor Statistics most current Consumer Price Index: Provided, That an increase in such fee may not exceed ten percent of the total fee amount in a single year.

(d) The provisions of this section enacted in 2017 take effect on July 1, 2017.

WV Legislature

§17A-2-14. Destruction of records.

The commissioner may destroy any records of the division which have been maintained on file for three years which he or she deems obsolete and of no further service in carrying out the powers and duties of the division: Provided, That where it is shown that both parties to an accident have filed valid evidence of insurance, the records relating thereto may be destroyed after a period of six months.

WV Legislature

§17A-2-15. Examination, granting and rejection of applications.

The department shall examine and determine the genuineness, regularity, and legality of every application for registration of a vehicle, for a certificate of title therefor, and for an operator's or chauffeur's license and of any other application lawfully made to the department, and may in all cases make such investigation as may be deemed necessary or require additional information, and shall reject any such application if not satisfied of the genuineness, regularity, or legality thereof or the truth of any statement contained therein, or for any other reason, when authorized by law.

WV Legislature

§17A-2-16. Cancellation, suspension, seizure, etc., of documents and plates.

The department is hereby authorized to take possession of any certificate of title, registration card, permit, license, or registration plate issued by it upon expiration, revocation, cancellation, or suspension thereof, or which is fictitious, or which has been unlawfully or erroneously issued.

When the department determines that the required fee for the issuance by the department of any registration card, permit, license or registration plate, or the required tax imposed by section four of article three of this chapter, has not been paid and shall not be paid upon reasonable notice and demand, the commissioner is authorized and empowered to cancel or suspend or revoke, as he shall deem appropriate, any and all registration cards, permits, operator's and chauffeur's licenses, and registration plate or plates, issued to the person, firm or corporation by whom or on whose account any such fee or tax shall have been so determined to remain unpaid after such reasonable notice and demand.

WV Legislature

§17A-2-17. Distribution of synopsis of motor vehicle laws.

The department shall prepare in pamphlet form a synopsis or summary of the laws of this state regulating the operation of vehicles and shall deliver a copy thereof without charge with each original vehicle registration and with each original operator's or chauffeur's license, and to any other citizen of the state upon application.

WV Legislature

§17A-2-18. Department may summon witnesses and take testimony.

(a) The commissioner and officers of the department designated by him shall have authority to summon witnesses to give testimony under oath or to give written deposition upon any matter under the jurisdiction of the department. Such summons may require the production of relevant books, papers, or records.

(b) Every such summons shall be served at least five days before the return date, either by personal service made by any person over eighteen years of age or by registered mail, but return acknowledgment is required to prove such latter service. Failure to obey such a summons so served shall constitute a misdemeanor. The fees for the attendance and travel of witnesses shall be the same as for witnesses before the circuit court.

(c) Any circuit court shall have jurisdiction, upon application by the commissioner, to enforce all lawful orders of the commissioner under this section.

WV Legislature

§17A-2-19. Giving of notice.

(a) Whenever the division is authorized or required to give any notice under this chapter or other law regulating the operation of vehicles, unless a different method of giving such notice is otherwise expressly prescribed or authorized, such notice shall be given either by personal delivery thereof to the person to be so notified, or by deposit in the United States mail of the notice in an envelope with postage prepaid, addressed to the person at his or her address as shown by the records of the division.

(b) (1) Notwithstanding any provision in this chapter, chapter 17B, chapter 17D, or chapter 17G of this code to the contrary, whenever the division is required to deliver notice by United States mail, certified mail, or registered mail, the division may instead deliver such notice by electronic means as provided in this subsection. For purposes of this subsection, "notice by electronic means" or "electronic notice" means notice by electronic mail, text message, online portal of the division, mobile application of the division, or alternate delivery method having the capability of generating a read receipt or other confirmation of access of the notice.

(2) Electronic notice may be used for any person who provided the division with means for electronic access to such person. The division shall make reasonable methods available to its customers to provide and update contact information for electronic notice.

(3) Delivery of electronic notice is complete upon receipt by the division of evidence of electronic notice access. If there is no confirmation of access of the electronic notice within four days, the division shall provide additional notice by United States mail, either regular mail or certified mail, at the discretion of the division.

(c) Delivery of notice by mail is complete upon the expiration of four days after such deposit of the notice. Proof of the giving of notice in any manner may be made by the certificate of any officer or employee of the division or affidavit of any person over 18 years of age, naming the person to whom the notice was given, and specifying the time, place, and manner of the giving thereof.

WV Legislature

§17A-2-20. Legal services rendered to the commissioner.

(a) It is the duty of the Attorney General and assistant attorneys general of this state, the prosecuting attorneys of the several counties, and the legal representatives of the municipalities of this state to render to the commissioner, without additional compensation, any legal services as required in the discharge of the commissioner's duties under the provisions of this chapter.

(b) Any legal services provided pursuant to the provisions of §17C-5-7a of this code:

(1) Are not services provided to the commissioner in the discharge of his or her duties; and

(2) Are the sole responsibility of either the prosecuting attorney of the county with jurisdiction over the matter or the legal representative of the municipality with jurisdiction over the matter, as appropriate.

WV Legislature

§17A-2-21. Motor Vehicle Fees Fund.

Effective July 1, 2007, there is hereby created a special revenue account within the state Treasury to be known as the Motor Vehicle Fees Fund which shall consist of moneys paid into the account in accordance with other provisions of this code and any additional sums appropriated by the Legislature. All other taxes and fees imposed and collected under the provisions of this chapter shall be paid to the state Treasurer in the manner provided by law and credited to the state Road Fund.

WV Legislature

§17A-2-22. Administrative expense.

The expense of the administration of the motor vehicle department shall be appropriated for that purpose from the state road funds.

WV Legislature

§17A-2-23. Worthless checks tendered for fees and taxes; penalty.

If a check tendered to the Division of Motor Vehicles is returned to the division unpaid for any reason, there shall be a penalty of $10 to be paid to the division in addition to the amount due the division. This penalty applies to checks tendered for any fee or tax authorized to be collected by the division and is in addition to any other penalties imposed in this code: Provided, That in the event a specific penalty is set forth for the nonpayment or late payment of fees and taxes, the penalty set forth in this section applies only to the extent that the penalty exceeds any specific penalty for nonpayment or late payment.

WV Legislature

§17A-2-24.

Repealed.

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

WV Legislature

§17A-2-25. Agreements with West Virginia Parkways Authority.

The Division is hereby authorized, directed and empowered to enter into all necessary agreements with the West Virginia Parkways Authority to collect road user fees imposed by the authority under subdivision (16), subsection (a), section six, article sixteen-a, chapter seventeen of this code, or any other applicable section of its enabling legislation, and to deposit the fees collected by the Division into the West Virginia Parkways Authority Single Fee Program Fund established under section eleven-a, article sixteen-a, chapter seventeen of this code.

WV Legislature

§17A-2-26. Enrollment of persons with communication disability.

(a) As used in this section:

(1) "Communication disability" has the same meaning as in §17A-2-27 of this code.

(2) "Disability that can impair communication" has the same meaning as in §17A-2-27 of this code.

(3) "Legal guardian" has the same meaning as in §49-1-205 of this code.

(4) "Ward" means a person for whom a legal guardian has been appointed.

(b) The Division of Motor Vehicles shall establish and maintain an enrollment list of persons who enroll under this section as being diagnosed with a communication disability or a disability that can impair communication.

(c) Any person diagnosed with a communication disability or a disability that can impair communication who is 18 years of age or older may enroll with the division for inclusion in the enrollment list by submitting a completed verification form to the division.

(d) Any parent or guardian of a minor child or a ward diagnosed with a communication disability or a disability that can impair communication may enroll the minor child or the ward with the division for inclusion in the enrollment list by submitting a completed verification form to the division.

(e) (1) The division shall include in the enrollment list information provided on a completed verification form that the division determines is necessary for a law-enforcement officer to identify a person as diagnosed with a communication disability or a disability that can impair communication. The division shall make the enrollment list available to state and local law-enforcement officers through a law-enforcement automated data system.

(2) Information in the enrollment list is not a public record subject to inspection or copying under chapter 29B of this code.

(f) A person diagnosed with a communication disability or a disability that can impair communication who is included in the enrollment list, or the parent or guardian of a minor child or a ward diagnosed with a communication disability or a disability that can impair communication who is included in the enrollment list, may request removal of the person, minor or ward, as applicable, from the enrollment list. The person, parent or guardian shall do so by completing the verification form with only the information required under §17A-2-27(c)(1), §17A-2-27(c)(2), §17A-2-27(c)(3), §17A-2-27(c)(8), and §17A-2-27(c)(9) of this code, as applicable, and submitting the form to the division. Upon receipt of a properly completed verification form requesting the removal of a person with a communication disability or a disability that can impair communication from the enrollment list, the division shall immediately remove that person from the enrollment list.

WV Legislature

(g) The division may propose rules for promulgation in accordance with the provisions of §29A-3-1 *et seq.* of this code to carry out the requirements of this section.

WV Legislature

§17A-2-27. Form for inclusion in enrollment list with a communication disability.

(a) As used in this section:

(1) "Communication disability" means a human condition involving an impairment in the human's ability to receive, send, process, or comprehend concepts or verbal, nonverbal, or graphic symbol systems that may result in a primary disability or may be secondary to other disabilities.

(2) "Disability that can impair communication" means a human condition with symptoms that can impair the human's ability to receive, send, process, or comprehend concepts or verbal, nonverbal, or graphic symbol systems.

(3) "Legal guardian" has the same meaning as in §49-1-205 of this code.

(4) "Health care provider" means a person as defined in §16-30-3 of this code.

(5) "Psychiatrist" means a licensed physician who has satisfactorily completed a residency training program in psychiatry, as approved by the residency review committee of the American Medical Association, the committee on post-graduate education of the American Osteopathic Association, or the American Osteopathic Board of Neurology and Psychiatry.

(6) "Psychologist" means a person licensed under the provisions of §30-21-1 *et seq.* of this code.

(b) The form shall include the following information:

(1) The name of the person diagnosed with a communication disability or a disability that can impair communication;

(2) The name of the person completing the form on behalf of the person diagnosed with a communication disability or a disability that can impair communication, if applicable;

(3) The relationship between the person completing the form and the person diagnosed with a communication disability or a disability that can impair communication, if applicable;

(4) The driver's license number or state identification card number issued to the person diagnosed with a communication disability or a disability that can impair communication, if that person has such a number;

(5) The license plate number of each vehicle owned, operated, or regularly occupied by the person diagnosed with a communication disability or a disability that can impair communication, or enrolled in that person's name;

(6) A physician's, psychiatrist's, or psychologist's signed certification that the person has been diagnosed with a communication disability or a disability that can impair

WV Legislature

communication;

(7) The name, business address, business telephone number, and medical license number of the physician, psychiatrist, or psychologist making the certification;

(8) The signature of the person diagnosed with a communication disability or a disability that can impair communication, or the signature of the person completing the form on behalf of such a person, that may indicate the desire to be removed from the database; and

(9) *Option to explain* – A place where the person or persons may include a short explanation of the type of disability, possible symptoms, and measures which could alleviate or lessen the symptoms.

(c) Any of the following persons may complete the verification form:

(1) Any person diagnosed with a communication disability or a disability that can impair communication who is 18 years of age or older;

(2) The parent or parents of a minor child diagnosed with a communication disability or a disability that can impair communication;

(3) The guardian of a person diagnosed with a communication disability or a disability that can impair communication, regardless of the age of the person.

(d) The Division of Motor Vehicles shall make the verification form electronically available on each of their respective websites.

WV Legislature

§17A-2A-1. Short title.

This act may be cited as the "Uniform Motor Vehicle Records Disclosure Act".

WV Legislature

§17A-2A-2. Statement of intent and purpose.

The purpose of this article is to implement the federal Driver's Protection Act of 1994 (Title XXX of Public Law 103-322) in order to protect the interest of individuals in their personal privacy by prohibiting the disclosure and use of personal information contained in their motor vehicle record, except as authorized by the individual or by law.

WV Legislature

§17A-2A-3. Definitions.

As used in this article:

(a) "Division" means the Division of Motor Vehicles;

(b) "Disclose" means to make available or make known information contained in a motor vehicle record to any person, organization or entity;

(c) "Individual record" is a motor vehicle record which contains personal information about a designated person who is the subject of the record as identified in a request;

(d) "Motor vehicle record" means any record that pertains to a motor vehicle operator's or driver's license or permit, a motor vehicle registration, a motor vehicle title or an identification document issued by the Division of Motor Vehicles or other state or local agency authorized to issue any such form of credential;

(e) "Person" means an individual, organization or entity, but does not include the state or an agency thereof;

(f) "Personal information" means information that identifies a person, including his or her photograph or computerized image, social security number, driver identification number, name, address excluding the five-digit zip code, telephone number and medical or disability information. Personal information does not include information on vehicle accidents, driving or equipment related violations and driver's license or registration status;

(g) "Record" includes any book, paper, photograph, photostat, card, film, tape, recording, electronic data, printout or other documentary material regardless of physical form or characteristic.

WV Legislature

§17A-2A-4. Prohibition on disclosure and use of personal information from motor vehicles records.

Notwithstanding any other provision of law to the contrary, and except as provided in sections five through eight, both inclusive, of this article, the division, and any officer, employee, agent or contractor thereof may not disclose any personal information obtained by the division in connection with a motor vehicle record. Notwithstanding the provisions of this article or any other provision of law to the contrary, finger images obtained and stored by the Division of Motor Vehicles as part of the driver's licensing process may not be disclosed to any person or used for any purpose other than the processing and issuance of driver's licenses and associated legal action unless the disclosure or other use is expressly authorized by this code. Notwithstanding the provisions of this article or any other provision of law to the contrary, an individual's photograph or image, social security number, and medical or disability information shall not be disclosed pursuant to West Virginia Code §17A-2A-7(2),(3), (5), (7), (8), (10) and (11), without the express written consent of the person to whom such information applies.

WV Legislature

§17A-2A-5. Required disclosures.

Personal information as defined in section three of this article shall be disclosed for use in connection with matters of motor vehicles or driver safety and theft, motor vehicle emissions, motor vehicle product alterations, recalls or advisories, performance monitoring of motor vehicles and dealers by motor vehicle manufacturers and removal of nonowner records from the original owner records of motor vehicle manufacturers to carry out the purposes of the federal Automobile Information and Disclosure Act, "Public Law 85-506" (15 U.S.C. 1231 et seq.), the Motor Vehicle Information and Cost Saving Act, "Public Law 92-513" (15 U.S.C. 1901 et seq.), the National Traffic and Motor Vehicle Safety Act of 1966, "Public Law 89-563" (U.S.C. 1381 et seq.), the Anti Car Theft Act of 1992, "Public Law 102-519" (15 U.S.C. 2021 et seq.) and the Clean Air Act, "Public Law 88-206" (42 U.S.C. 7401 et seq.), as amended, and all statutes and agency compliance with, the said acts of the Congress of the United States.

WV Legislature

§17A-2A-6. Disclosure with consent.

Personal information as defined in section three of this article shall be disclosed upon request if the person making the request demonstrates in such form and manner as the department prescribes that he or she has obtained the written consent of the person who is the subject of the information.

WV Legislature

§17A-2A-7. Permitted disclosures.

The division or its designee shall disclose personal information as defined in section three of this article to any person who requests the information if the person: (a) Has proof of his or her identity; and (b) verifies that the use of the personal information will be strictly limited to one or more of the following:

(1) For use by any governmental agency, including any court or law-enforcement agency, in carrying out its functions, or any private person or entity acting on behalf of a governmental agency in carrying out its functions;

(2) For use in connection with matters of motor vehicle or driver safety and theft, motor vehicle product alterations, recalls or advisories, performance monitoring of motor vehicles, motor vehicle parts and dealers, motor vehicle market research activities including survey research and removal of nonowner records from the original owner records of motor vehicle manufacturers;

(3) For use in the normal course of business by a legitimate business or its agents, employees or contractors:

(A) For the purpose of verifying the accuracy of personal information submitted by the individual to the business or its agents, employees or contractors; and

(B) If the information as submitted is not correct or is no longer correct, to obtain the correct information, but only for the purposes of preventing fraud by, pursuing legal remedies against or recovering on a debt or security interest against the individual;

(4) For use in conjunction with any civil, criminal, administrative, or arbitral proceeding in any court or governmental agency or before any self-regulatory body, including investigation in anticipation of litigation, the service of process, the execution or enforcement of judgments and orders, or pursuant to an order of any court;

(5) For use in research and producing statistical reports, so long as the personal information is not published, redisclosed or used to contact individuals;

(6) For use by any insurer or insurance support organization or by a self-insured entity, its agents, employees or contractors in connection with claim investigation activities, antifraud activities, rating or underwriting;

(7) For use in providing notice to the owners of towed or impounded vehicles;

(8) For use by any licensed private investigator agency or licensed security service for any purpose permitted under this section;

(9) For use by an employer or its agent or insurer to obtain or verify information relating to a holder of a commercial driver’s license that is required under the Commercial Motor Vehicle

WV Legislature

Safety Act of 1986 (49 U.S.C. App. 2710 *et seq*.);

(10) For use in connection with the operation of private toll transportation facilities; and

(11) For any other use specifically authorized by law that is related to the operation of a motor vehicle or public safety.

WV Legislature

§17A-2A-8.

Repealed.

Acts, 2001 Reg. Sess., Ch. 200.

WV Legislature

§17A-2A-9. Fees.

Any person making a request for disclosure of personal information required or permitted under sections five through eight of this article, inclusive, shall pay to the division all reasonable fees related to providing the information: *Provided*, That all fees under this section shall be set by legislative rule pursuant to §29A-3-1 *et seq*. of this code: *Provided, however*, That nothing herein shall prohibit the division from entering into a separate fee agreement with a private toll transportation facility to facilitate permitted disclosures pursuant to §17A-2A-7 of this code.

WV Legislature

§17A-2A-10. Additional conditions.

Prior to disclosing personal information the division may require the person making the request to: (a) Verify his or her identity; (b) verify that the information will be used only as authorized, or that the consent of the person who is the subject of the information has been obtained; and (c) make and file a written application in such form and containing certification requirements as the division may prescribe.

WV Legislature

§17A-2A-11. Resale or redisclosure.

(a) An authorized recipient of personal information may resell or redisclose the information for any use permitted under section seven.

(b) Any authorized recipient who resells or rediscloses personal information shall: (1) Maintain for a period of not less than five years, records as to the person or entity receiving information, and the permitted use for which it was obtained; (2) make the records available for inspection by the division, upon request; and (3) only be disseminated in accordance with express consent obtained pursuant to section four of this article.

WV Legislature

§17A-2A-12. Rules.

The division may promulgate rules in accordance with the provisions of chapter twenty-nine-a of this code to carry out the purposes of this article.

WV Legislature

§17A-2A-13. Penalty for false representation.

Any person who requests the disclosure of personal information from division records and misrepresents his or her identity or makes a false statement on any application required by the division pursuant to this article is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $1,000 or confined in jail for not more than one year, or both fined and confined.

WV Legislature

§17A-2A-14. Effective date.

This article shall take effect September 1, 1997.

WV Legislature

§17A-2B-1. Legislative findings and purpose.

(a) The Legislature finds that responsibility for delivery of government services and the enforcement of laws pertaining to the motor carrier industry currently resides in several state agencies, divisions and departments including the Division of Motor Vehicles, Public Service Commission, Division of Highways, State Tax Department and the State Police. The Division of Motor Vehicles currently administers numerous provisions of this code relating to the regulation of the motor carrier industry in this state, including chapter seventeen-a of this code, which prescribes the process for titling and registration of all motor vehicles, the provisions for commercial drivers licenses set forth in chapter seventeen-b of this code, and has numerous other responsibilities relating to the motor carrier industry. The Division of Motor Vehicles also has significant interaction with the various federal agencies and other state agencies responsible for the administration of government functions relative to the industry. It further appears to the Legislature that a significant portion of the responsibility, in terms of volume of transactions and its database, routine contact with the industry and assignment of staff pertaining to regulating the motor carrier industry, is currently vested in the Division of Motor Vehicles. Therefore, the Legislature finds that the Division of Motor Vehicles is the appropriate agency to plan the consolidation of the administration and enforcement of the various state laws pertaining to the motor carrier industry.

(b) The Legislature further finds that it is very cumbersome and onerous for motor carrier business entities to obtain the necessary permits, licenses and file the necessary returns, reports and other documents through numerous state agencies whose offices are scattered both geographically and administratively throughout state government. The lack of centralization of these various state agencies also results in the redundancy of information provided by motor carrier entities to the various state agencies. The Legislature further finds that the lack of centralization of these government functions does not encourage the growth and success of this industry in the State.

(c) The Legislature further finds that it would be more cost effective and efficient to both the state agencies and the motor carrier industry to provide these services through consolidated facilities, licensing and permitting processes and electronic information and communication technologies.

(d) Therefore, it is the purpose of this article to facilitate the consolidation of the administration of government services pertaining to the motor carrier industry and to designate the division as the lead agency in planning the consolidation of state government services and enforcement of laws pertaining to the regulation and taxation of the motor carrier industry.

WV Legislature

§17A-2B-2. Development of plan of consolidation of government services and regulation applicable to the motor carrier industry.

(a) Notwithstanding any other provisions of this code to the contrary, the Division of Motor Vehicles is authorized and directed, and is designated the lead state agency to formulate and develop a plan for the consolidation of state government services and enforcement of laws pertaining to the regulation and taxation of the motor carrier industry.

(b) (1) The Public Service Commission, Division of Highways, State Tax Department and the State Police shall cooperate with the division and provide information, aid and assistance as requested by the division to plan the consolidation of state government services and of enforcement of laws pertaining to the regulation and taxation of the motor carrier industry.

(2) The division shall consult with these agencies and shall solicit and use any applicable experience and expertise that can be beneficial to the development of the plan of consolidation.

WV Legislature

§17A-2B-3. Report to the Joint Committee on Government and Finance.

(a) The Division of Motor Vehicles shall submit to the Joint Committee on Government and Finance on or before December 1, 2012, a report setting forth the plan for the consolidation of state government services and of enforcement of laws pertaining to the regulation and taxation of the motor carrier industry.

(b) The report shall make recommendations pertaining to changes in laws, administration, personnel and procedure in the provision of government services applicable to the motor carrier industry and shall include drafts of recommended legislation necessary to implement the proposed consolidation.

WV Legislature

§17A-3-1. Misdemeanor to violate provisions of article; penalty.

(a) It is unlawful for any person to drive or move or for an owner knowingly to permit to be driven or moved upon any highway any vehicle of a type required to be registered under this article which is not registered or for which a certificate of title has not been issued or applied for or for which the appropriate fee has not been paid when and as required under this article, except as otherwise permitted by the provisions of this chapter: Provided, That in the event of the sale of a vehicle by a person other than a registered dealer, the person purchasing the same may, for a period of not more than ten days, operate such vehicle under the registration of its previous owner and display the registration thereof: Provided, however, That he or she shall have and display on the demand of any proper officer the consent in writing of such previous owner so to use such registration.

(b) Unless otherwise provided for in this article, any person violating the provisions of this article is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $500; and upon a second or subsequent conviction thereof, shall be fined not more than $500, or confined in the county or regional jail not more than six months, or both.

WV Legislature

§17A-3-1a. Registration of vehicles of new residents.

(a) Every owner of a motor vehicle, trailer or other vehicle, shall, within thirty days after taking up residence in the state, apply to the division and obtain registration and title for the vehicle.

(b) For the purposes of this chapter there is a rebuttable presumption that a natural person is a resident of this state if any of the following elements exist including, but not limited to:

(1) The person is registered to vote in this state.

(2) The person enrolls the person's child to be educated in a public elementary or secondary school in this state.

(3) The person is receiving public assistance from this state.

(4) The person resides or has continuously remained in this state for a period exceeding thirty days except for infrequent or brief absences.

(5) The person has accepted employment or engages in any trade, profession, or occupation within this state, except that this does not include a person who is commuting from the person's residence in another state or whose employment is seasonal or temporary, not exceeding ninety days.

(6) The person has filed for a homestead tax exemption on property in this state.

"Resident" does not include a person who is attending a college, university or other educational institution in this state, if the person has a domicile in another state and has a valid operator's license and vehicle registration issued by the state of domicile. "Resident" also does not include members of the Armed Forces that are stationed in West Virginia providing that their vehicles are properly registered in their state of residence or a member of the Armed Forces stationed in another state or country providing that their vehicles are properly registered in that state or country.

A corporation, association, partnership, company or firm whose principal place of business is located within this state is a resident of this state.

The provisions of this section shall not apply to vehicles registered under proportional registration agreement.

WV Legislature

§17A-3-2. Every motor vehicle, etc., subject to registration and certificate of title provisions; exceptions.

(a) Every motor vehicle, trailer, semitrailer, pole trailer, and recreational vehicle when driven or moved upon a highway is subject to the registration and certificate of title provisions of this chapter except:

(1) Any vehicle driven or moved upon a highway in conformance with the provisions of this chapter relating to manufacturers, transporters, dealers, lienholders, or nonresidents or under a temporary registration permit issued by the division as authorized under this chapter;

(2) Any implement of husbandry upon which is securely attached a machine for spraying fruit trees and plants of the owner or lessee or for any other implement of husbandry which is used exclusively for agricultural or horticultural purposes on lands owned or leased by the owner of the implement and which is not operated on or over any public highway of this state for any other purpose other than for the purpose of operating it across a highway or along a highway other than an expressway as designated by the Commissioner of the Division of Highways from one point of the owner's land to another part of the owner's land, irrespective of whether or not the tracts adjoin: *Provided*, That the distance between the points may not exceed 35 miles, or for the purpose of taking it or other fixtures attached to the implement, to and from a repair shop for repairs. The exemption in this subdivision from registration and license requirements also applies to any vehicle described in this subsection or to any farm trailer owned by the owner or lessee of the farm on which the trailer is used, when the trailer is used by the owner of the trailer for the purpose of moving farm produce and livestock from the farm along a public highway for a distance not to exceed 35 miles to a storage house or packing plant, when the use is a seasonal operation:

(A) The exemptions contained in this section also apply to farm machinery, tractors, and mini-trucks: *Provided*, That the machinery, tractors, and mini-trucks may use the highways in going from one tract of land to another tract of land regardless of whether the land is owned by the same or different persons. For the purposes of this section, "mini-truck" means a foreign-manufactured import or domestic-manufactured vehicle designed primarily for off-road use and powered by an engine ranging in size from 550cc to 660cc and weighing approximately 1,800 pounds;

(B) Any vehicle exempted under this subsection from the requirements of annual registration certificate and license plates and fees for the registration certificate and license plate may not use the highways between sunset and sunrise unless the vehicle is classified as a Class A motor vehicle with a farm-use exemption under the provisions of §17A-10-1 of this code and has a valid and current inspection sticker as required by the provisions of §17C-16-1 *et seq*. of this code and is traveling from one tract of land to another over a distance of 35 miles or less;

(C) Any vehicle exempted under this section from the requirements of annual registration

WV Legislature

certificate and license plates may use the highways as provided in this section whether the exempt vehicle is self-propelled, towed by another exempt vehicle or towed by another vehicle required to be registered;

(D) Any vehicle used as an implement of husbandry exempt under this section shall have the words "farm use" in at least 10-inch letters affixed to both sides or to both front and back of the implement or in at least 2-inch letters on license plates affixed to both front and back of the implement. Any vehicle which would be subject to registration as a Class A or B vehicle if not exempted by this section shall display a farm-use exemption certificate on the lower driver's side of the windshield:

(i) The farm-use exemption certificate shall be provided by the commissioner and shall be issued annually by the assessor of the applicant's county of residence. The assessor shall issue a farm-use exemption certificate to the applicant upon his or her determination pursuant to an examination of the property books or documentation provided by the applicant that the vehicle has been properly assessed as Class I personal property. Nothing in this section or any rule promulgated under the authority of chapter 29A of this code may be construed to require any applicant for a renewal of a farm use exemption certificate to appear personally before any assessor. The assessor shall charge a fee of $2 for each certificate, which shall be retained by the assessor;

(ii) A farm-use exemption certificate shall not exempt the applicant from maintaining the security required by §17D-1-1 *et seq*. of this code on any vehicle being operated on the roads or highways of this state;

(iii) No person charged with the offense of operating a vehicle without a farm-use exemption certificate, if required under this section, may be convicted of the offense if he or she produces in court, or in the office of the arresting officer, a valid farm-use exemption certificate for the vehicle in question within five days;

(3) Any vehicle which is propelled exclusively by electric power obtained from overhead trolley wires though not operated upon rails;

(4) Any vehicle of a type subject to registration which is owned by the government of the United States;

(5) Any wrecked or disabled vehicle towed by a licensed wrecker or dealer on the public highways of this state;

(6) The following recreational vehicles are exempt from the requirements of annual registration, license plates and fees, unless otherwise specified by law, but are subject to the certificate of title provisions of this chapter regardless of highway use: Motorboats, all-terrain vehicles, utility terrain vehicles, and snowmobiles; and

(7) Any special mobile equipment as defined in §17A-1-1(r) of this code.

WV Legislature

(b) Notwithstanding the provisions of subsection (a) of this section:

(1) Mobile homes or manufactured homes are exempt from the requirements of annual registration, license plates and fees;

(2) House trailers may be registered and licensed; and

(3) Factory-built homes are subject to the certificate of title provisions of this chapter.

(c) The division shall title and register low-speed vehicles if the manufacturer's certificate of origin clearly identifies the vehicle as a low-speed vehicle. The division may not title or register homemade low-speed vehicles or retrofitted golf carts and such vehicles do not qualify as low-speed vehicles in this state. In addition to all other motor vehicle laws and regulations, except as specifically exempted below, low-speed vehicles are subject to the following restrictions and requirements:

(1) Low-speed vehicles shall only be operated on private roads and on public roads and streets within the corporate limits of a municipality where the speed limit is not more than 25 miles per hour;

(2) Notwithstanding any provisions in this code to the contrary, low-speed vehicles shall meet the requirements of 49 C.F.R. §571.500 (2003);

(3) In lieu of periodic inspection, the owner of a low-speed vehicle shall, upon initial application for registration and each renewal thereafter, certify under penalty of false swearing, that all lights, brakes, tires, and seat belts are in good working condition; and

(4) Any person operating a low-speed vehicle must hold a valid driver's license, not an instruction permit.

WV Legislature

§17A-3-2a. Registration of nonresident vehicles.

(a) A nonresident vehicle is not required to be registered pursuant to §17A-3-2 of this code: *Provided*, That a nonresident vehicle may be registered in this state and be issued a West Virginia registration plate upon payment of all applicable fees to the division. For purposes of this subsection, the receipt and verification requirements of §17A-3-3a of this code do not apply.

(b) For purposes of this section, "nonresident vehicle" means a vehicle titled in this state under the provisions of §17A-4-11 of this code, which is not intended to spend a majority of service time on West Virginia roads, owned by a business whose principal place of business is not in this state, that is not a common carrier, and that maintains a local, national, or international fleet of vehicles.

(c) Nothing in this section subjects a nonresident vehicle to the inspection requirement set forth in §17A-16-4 of this code. A nonresident vehicle is not domiciled in any county in this state, and nothing in this section requires the imposition of personal property taxes within this state pursuant to §11-5-1 *et seq*. of this code.

(d) The division may promulgate emergency rules pursuant to the provisions of §29A-3-15 of this code and may propose rules for legislative approval in accordance with the provisions of §29A-3-1 *et seq*. of this code to accomplish the provisions of this section.

WV Legislature

§17A-3-3. Application for registration; statement of insurance or other proof of security to accompany application; criminal penalties; fees; special revolving fund.

Every owner of a vehicle subject to registration under this article shall make application to the division for the registration of the vehicle upon the appropriate form or forms furnished by the division and every application shall bear the signature of the owner or his or her authorized agent, written with pen and ink, and the application shall contain:

(a) The name, bona fide residence and mailing address of the owner, the county in which he or she resides or business address of the owner if a firm, association or corporation.

(b) A description of the vehicle including, insofar as the data specified in this section may exist with respect to a given vehicle, the make, model, type of body, the manufacturer's serial or identification number or other number as determined by the commissioner.

(c) In the event a motor vehicle is designed, constructed, converted or rebuilt for the transportation of property, the application shall include a statement of its declared gross weight if the motor vehicle is to be used alone, or if the motor vehicle is to be used in combination with other vehicles, the application for registration of the motor vehicle shall include a statement of the combined declared gross weight of the motor vehicle and the vehicles to be drawn by the motor vehicle; declared gross weight being the weight declared by the owner to be the actual combined weight of the vehicle or combination of vehicles and load when carrying the maximum load which the owner intends to place on the vehicle; and the application for registration of each vehicle shall also include a statement of the distance between the first and last axles of that vehicle or combination of vehicles.

The declared gross weight stated in the application may not exceed the permissible gross weight for the axle spacing listed in the application as determined by the table of permissible gross weights contained in chapter seventeen-c of this code; and any vehicle registered for a declared gross weight as stated in the application is subject to the single-axle load limit set forth in that chapter.

(d) Each applicant shall state whether the vehicle is or is not to be used in the public transportation of passengers or property, or both, for compensation and if used for compensation, or to be used, the applicants shall certify that the vehicle is used for compensation and shall, as a condition precedent to the registration of the vehicle, obtain a certificate of convenience or permit from the Public Service Commission unless otherwise exempt from this requirement in accordance with chapter twenty-four-a of this code.

(e) A statement under penalty of false swearing that liability insurance is in effect and will continue to be in effect through the entire term of the vehicle registration period within limits which may not be less than the requirement of section two, article four, chapter seventeen-d of this code, which shall contain the name and National Association of Insurance commissioners assigned code of the applicant's insurer, the policy number, and any other information required by the commissioner of Motor Vehicles or that the applicant has

WV Legislature

qualified as a self-insurer meeting the requirements of section two, article six of said chapter and that as a self-insurer he or she has complied with the minimum security requirements as established in section two, article four of that chapter. If the commissioner determines that the required security is not or was not in effect, he or she shall suspend the vehicle owner's driver's license and revoke the vehicle registration in accordance with the provisions of article two-a, chapter seventeen-d of this code.

If any person making an application required under the provisions of this section, in the application knowingly provides false information, false proof of security or a false statement of insurance, or if any person, including an applicant's insurance agent, knowingly counsels, advises, aids or abets another in providing false information, false proof of security, or a false statement of insurance in the application he or she is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $500, or be imprisoned in jail for a period not to exceed fifteen days, or both fined and imprisoned and, in addition to the fine or imprisonment, shall have his or her driver's license suspended for a period of ninety days and vehicle registration revoked if applicable.

(f) Any further information that is reasonably required by the division to enable it to determine whether the vehicle is lawfully entitled to registration.

(g) Each application for registration shall be accompanied by the fees provided in this article and an additional fee of 50¢ for each motor vehicle for which the applicant seeks registration.

(h) Revocation of a motor vehicle registration pursuant to this section does not affect the perfection or priority of a lien or security interest attaching to the motor vehicle that is noted on the certificate of title to the motor vehicle.

WV Legislature

§17A-3-3a. Payment of personal property taxes and emergency ambulance fees prerequisite to registration or renewal; duties of assessors; schedule of automobile values.

(a) Certificates of registration and renewal of registration of any vehicle or registration plates for any vehicle may not be issued or furnished by the Division of Motor Vehicles, or any other officer charged with the duty, unless the applicant for the certificate or registration plate, except an applicant exempt from payment of registration fees under section eight, article ten of this chapter, has furnished the receipt provided in this section or the division has received verification by electronic means to show full payment of:

(1) The personal property taxes for the current calender year or the calendar year which immediately precedes the calendar year in which application is made on all vehicles which were registered with the Division of Motor Vehicles in the applicant`s name on the tax day for the former calendar year; and

(2) All emergency ambulance fees owed pursuant to section seventeen, article fifteen, chapter seven of this code at the time the receipt is prepared, except for any of the fees that are not yet past due: Provided, That any county which does not impose emergency ambulance fees or which chooses not to show emergency ambulance fees on the personal property tax receipt may issue a receipt without complying with this subdivision and the Commissioner of Motor Vehicles may issue or renew registration without regard to such fees.

(b) If the applicant contends that any registered vehicle was not subject to personal property taxation for that year or that he or she does not owe any emergency ambulance fees if a receipt for fees are required by the county, he or she shall furnish the information and evidence as the Commissioner of Motor Vehicles may require to substantiate his or her contention.

(c) The assessor shall require any person having a duty to make a return of property for taxation to him or her to furnish information identifying each vehicle subject to the registration provisions of this chapter. When the property taxes on any vehicle have been paid, the officer to whom the payment was made shall deliver to the person paying the taxes a written or printed receipt for the payment and shall retain for his or her records a duplicate of the receipt. It is the duty of the assessor and sheriff, respectively, to see that the assessment records and the receipts contain information adequately identifying the vehicle as registered under the provisions of this chapter. The officer receiving payment shall sign each receipt in his or her own handwriting.

(d) Each receipt given to a taxpayer for payment of personal property taxes on a vehicle may indicate on the receipt whether the taxpayer has paid all emergency ambulance fees owed pursuant to section seventeen, article fifteen, chapter seven of this code at the time the receipt is prepared, except for any of the fees that are not yet past due: Provided, That each county shall include on the same notice of personal property taxes due the additional amount

WV Legislature

due for all emergency ambulance fees.

(e) The State Tax Commissioner shall annually compile a schedule of automobile values based on the lowest values shown in a nationally accepted used car guide. The State Tax Commissioner shall furnish the schedule to each assessor and it shall be used by him or her as a guide in placing the assessed values on all automobiles in his or her county.

WV Legislature

§17A-3-3b. Motor vehicles believed illegally unregistered; assessor to make verification.

If, on information and belief the assessor has reason to believe that a motor vehicle has not been properly registered in this state in violation of the provisions of section one of this article, he or she shall give notice by posting on the vehicle a notice advising the owner of the vehicle to contact the office of the assessor within fifteen days to verify that the owner is not a resident of the State of West Virginia. Factors to be considered in determining whether or not such person is a resident of this state include, but are not limited to, the following:

(1) The person is registered to vote in this state;

(2) The person enrolls the person's child or children to be educated in an elementary or secondary school in this state or has complied with applicable provisions of this code indicating an intent to home school the person's child or children in this state;

(3) The person is receiving public assistance from this state;

(4) The person resides or has continuously remained in this state for a period exceeding thirty days, except for infrequent brief absences;

(5) The person has accepted employment or engages in any trade, profession or occupation within this state, except that this does not include a person who is commuting from the person's residence in another state or whose employment is seasonal or temporary, not exceeding thirty days;

(6) The person has filed for a homestead tax exemption on property in this state;

(7) The person subscribes to public utilities in this state in his or her own name;

(8) The person receives his or her mail in this state pursuant to verification from the United States postal service.

In the event the assessor receives no response from the posting, the assessor will refer the matter to the prosecuting attorney. If it is determined that the vehicle has not been properly registered in this state, the owner of the vehicle is in violation of the provisions of this article and the person will be subject to the criminal sanctions contained in section one of this article.

wv Legislature

§17A-3-4. Application for certificate of title; fees; abolishing privilege tax; prohibition of issuance of certificate of title without compliance with consumers sales and service tax provisions; exceptions.

(a) Certificates of registration of any vehicle or registration plates for the vehicle, whether original issues or duplicates, may not be issued or furnished by the Division of Motor Vehicles or any other officer or agent charged with the duty, unless the applicant already has received, or at the same time makes application for and is granted, an official certificate of title of the vehicle in either an electronic or paper format. The application shall be upon a blank form to be furnished by the Division of Motor Vehicles and shall contain a full description of the vehicle, which description shall contain a manufacturer's serial or identification number or other number as determined by the commissioner and any distinguishing marks, together with a statement of the applicant's title and of any liens or encumbrances upon the vehicle, the names and addresses of the holders of the liens and any other information as the Division of Motor Vehicles may require. The application shall be signed and sworn to by the applicant. A duly certified copy of the division's electronic record of a certificate of title is admissible in any civil, criminal or administrative proceeding in this state as evidence of ownership.

(b) A tax is imposed upon the privilege of effecting the certification of title of each vehicle in the amount equal to five percent of the value of the motor vehicle at the time of the certification, to be assessed as follows:

(1) If the vehicle is new, the actual purchase price or consideration to the purchaser of the vehicle is the value of the vehicle. If the vehicle is a used or secondhand vehicle, the present market value at time of transfer or purchase is the value of the vehicle for the purposes of this section: Provided, That so much of the purchase price or consideration as is represented by the exchange of other vehicles on which the tax imposed by this section has been paid by the purchaser shall be deducted from the total actual price or consideration paid for the vehicle, whether the vehicle be new or secondhand. If the vehicle is acquired through gift or by any manner whatsoever, unless specifically exempted in this section, the present market value of the vehicle at the time of the gift or transfer is the value of the vehicle for the purposes of this section.

(2) No certificate of title for any vehicle may be issued to any applicant unless the applicant has paid to the Division of Motor Vehicles the tax imposed by this section which is five percent of the true and actual value of the vehicle whether the vehicle is acquired through purchase, by gift or by any other manner whatsoever, except gifts between husband and wife or between parents and children: Provided, That the husband or wife, or the parents or children, previously have paid the tax on the vehicles transferred to the State of West Virginia.

(3) The Division of Motor Vehicles may issue a certificate of registration and title to an applicant if the applicant provides sufficient proof to the Division of Motor Vehicles that the applicant has paid the taxes and fees required by this section to a motor vehicle dealership

WV Legislature

that has gone out of business or has filed bankruptcy proceedings in the United States bankruptcy court and the taxes and fees so required to be paid by the applicant have not been sent to the division by the motor vehicle dealership or have been impounded due to the bankruptcy proceedings: Provided, That the applicant makes an affidavit of the same and assigns all rights to claims for money the applicant may have against the motor vehicle dealership to the Division of Motor Vehicles.

(4) The Division of Motor Vehicles shall issue a certificate of registration and title to an applicant without payment of the tax imposed by this section if the applicant is a corporation, partnership or limited liability company transferring the vehicle to another corporation, partnership or limited liability company when the entities involved in the transfer are members of the same controlled group and the transferring entity has previously paid the tax on the vehicle transferred. For the purposes of this section, control means ownership, directly or indirectly, of stock or equity interests possessing fifty percent or more of the total combined voting power of all classes of the stock of a corporation or equity interests of a partnership or limited liability company entitled to vote or ownership, directly or indirectly, of stock or equity interests possessing fifty percent or more of the value of the corporation, partnership or limited liability company.

(5) The tax imposed by this section does not apply to vehicles to be registered as Class H vehicles or Class M vehicles, as defined in section one, article ten of this chapter, which are used or to be used in interstate commerce. Nor does the tax imposed by this section apply to the titling of Class B vehicles registered at a gross weight of fifty-five thousand pounds or more, or to the titling of Class C semitrailers, full trailers, pole trailers and converter gear: Provided, That if an owner of a vehicle has previously titled the vehicle at a declared gross weight of fifty-five thousand pounds or more and the title was issued without the payment of the tax imposed by this section, then before the owner may obtain registration for the vehicle at a gross weight less than fifty-five thousand pounds, the owner shall surrender to the commissioner the exempted registration, the exempted certificate of title and pay the tax imposed by this section based upon the current market value of the vehicle: Provided, however, That notwithstanding the provisions of section nine, article fifteen, chapter eleven of this code, the exemption from tax under this section for Class B vehicles in excess of fifty-five thousand pounds and Class C semitrailers, full trailers, pole trailers and converter gear does not subject the sale or purchase of the vehicles to the consumers sales and service tax.

(6) The tax imposed by this section does not apply to titling of vehicles leased by residents of West Virginia. A tax is imposed upon the monthly payments for the lease of any motor vehicle leased by a resident of West Virginia, which tax is equal to five percent of the amount of the monthly payment, applied to each payment, and continuing for the entire term of the initial lease period. The tax shall be remitted to the Division of Motor Vehicles on a monthly basis by the lessor of the vehicle.

(7) The tax imposed by this section does not apply to titling of vehicles by a registered dealer of this state for resale only, nor does the tax imposed by this section apply to titling of vehicles by this state or any political subdivision thereof, or by any volunteer fire department

WV Legislature

or duly chartered rescue or ambulance squad organized and incorporated under the laws of this state as a nonprofit corporation for protection of life or property. The total amount of revenue collected by reason of this tax shall be paid into the State Road Fund and expended by the Commissioner of Highways for matching federal funds allocated for West Virginia. In addition to the tax, there is a charge of $10 for each original certificate of title or duplicate certificate of title so issued: Provided, That this state or any political subdivision of this state or any volunteer fire department or duly chartered rescue squad is exempt from payment of the charge. The Division of Motor Vehicles may adjust the fee for each original certificate or duplicate certificate of title every five years on September 1, based on the U. S. Department of Labor, Bureau of Labor Statistics most current Consumer Price Index: Provided, That an increase in the fee may not exceed ten percent of the total fee amount in a single year.

(8) The certificate is good for the life of the vehicle, so long as the vehicle is owned or held by the original holder of the certificate and need not be renewed annually, or any other time, except as provided in this section.

(9) If, by will or direct inheritance, a person becomes the owner of a motor vehicle and the tax imposed by this section previously has been paid to the Division of Motor Vehicles on that vehicle, he or she is not required to pay the tax.

(10) A person who has paid the tax imposed by this section is not required to pay the tax a second time for the same motor vehicle, but is required to pay a charge of $10 for the certificate of retitle of that motor vehicle, except that the tax shall be paid by the person when the title to the vehicle has been transferred either in this or another state from the person to another person and transferred back to the person. The Division of Motor Vehicles may adjust the fee for each original certificate of title every five years on September 1, based on the U. S. Department of Labor, Bureau of Labor Statistics most current Consumer Price Index: Provided, That an increase in such fee may not exceed ten percent of the total fee amount in a single year.

(11) The tax imposed by this section does not apply to any passenger vehicle offered for rent in the normal course of business by a daily passenger rental car business as licensed under the provisions of article six-d of this chapter. For purposes of this section, a daily passenger car means a Class A motor vehicle having a gross weight of eight thousand pounds or less and is registered in this state or any other state. In lieu of the tax imposed by this section, there is hereby imposed a tax of not less than $1 nor more than $1.50 for each day or part of the rental period. The commissioner shall propose an emergency rule in accordance with the provisions of article three, chapter twenty-nine-a of this code to establish this tax.

(12) The tax imposed by this article does not apply to the titling of any vehicle purchased by a senior citizen service organization which is exempt from the payment of income taxes under the United States Internal Revenue Code, Title 26 U. S. C. §501(c)(3) and which is recognized to be a bona fide senior citizen service organization by the Bureau of Senior Services existing under the provisions of article five-p, chapter sixteen of this code.

WV Legislature

(13) The tax imposed by this section does not apply to the titling of any vehicle operated by an urban mass transit authority as defined in article twenty-seven, chapter eight of this code or a nonprofit entity exempt from federal and state income tax under the Internal Revenue Code and whose purpose is to provide mass transportation to the public at large designed for the transportation of persons and being operated for the transportation of persons in the public interest.

(14) The tax imposed by this section does not apply to the transfer of a title to a vehicle owned and titled in the name of a resident of this state if the applicant:

(A) Was not a resident of this state at the time the applicant purchased or otherwise acquired ownership of the vehicle;

(B) Presents evidence as the commissioner may require of having titled the vehicle in the applicant's previous state of residence;

(C) Has relocated to this state and can present such evidence as the commissioner may require to show bona-fide residency in this state;

(D) Presents an affidavit, completed by the assessor of the applicant's county of residence, establishing that the vehicle has been properly reported and is on record in the office of the assessor as personal property; and

(E) Makes application to the division for a title and registration, and pays all other fees required by this chapter within thirty days of establishing residency in this state as prescribed in subsection (a), section one-a of this article: Provided, That a period of amnesty of three months be established by the commissioner during the calendar year 2007, during which time any resident of this state, having titled his or her vehicle in a previous state of residence, may pay without penalty any fees required by this chapter and transfer the title of his or her vehicle in accordance with the provisions of this section.

(c) Notwithstanding any provisions of this code to the contrary, the owners of trailers, semitrailers, recreational vehicles and other vehicles not subject to the certificate of title tax prior to the enactment of this chapter are subject to the privilege tax imposed by this section: Provided, That the certification of title of any recreational vehicle owned by the applicant on June 30, 1989, is not subject to the tax imposed by this section: Provided, however, That mobile homes, manufactured homes, modular homes and similar nonmotive propelled vehicles, except recreational vehicles and house trailers, susceptible of being moved upon the highways but primarily designed for habitation and occupancy, rather than for transporting persons or property, or any vehicle operated on a nonprofit basis and used exclusively for the transportation of intellectually disabled or physically disabled children when the application for certificate of registration for the vehicle is accompanied by an affidavit stating that the vehicle will be operated on a nonprofit basis and used exclusively for the transportation of intellectually disabled and physically disabled children, are not subject to the tax imposed by this section, but are taxable under the provisions of articles

WV Legislature

fifteen and fifteen-a, chapter eleven of this code.

(d) Beginning on July 1, 2008, the tax imposed under this subsection (b) of this section is abolished and after that date no certificate of title for any motor vehicle may be issued to any applicant unless the applicant provides sufficient proof to the Division of Motor Vehicles that the applicant has paid the fees required by this article and the tax imposed under section three-c, article fifteen, chapter eleven of this code.

(e) Any person making any affidavit required under any provision of this section who knowingly swears falsely, or any person who counsels, advises, aids or abets another in the commission of false swearing, or any person, while acting as an agent of the Division of Motor Vehicles, issues a vehicle registration without first collecting the fees and taxes or fails to perform any other duty required by this chapter or chapter eleven of this code to be performed before a vehicle registration is issued is, on the first offense, guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $500 or be confined in jail for a period not to exceed six months or, in the discretion of the court, both fined and confined. For a second or any subsequent conviction within five years, that person is guilty of a felony and, upon conviction thereof, shall be fined not more than $5,000 or be imprisoned in a state correctional facility for not less than one year nor more than five years or, in the discretion of the court, both fined and imprisoned.

(f) Notwithstanding any other provisions of this section, any person in the military stationed outside West Virginia or his or her dependents who possess a motor vehicle with valid registration are exempt from the provisions of this article for a period of nine months from the date the person returns to this state or the date his or her dependent returns to this state, whichever is later.

(g) No person may transfer, purchase or sell a factory-built home without a certificate of title issued by the commissioner in accordance with the provisions of this article:

(1) Any person who fails to provide a certificate of title upon the transfer, purchase or sale of a factory-built home is guilty of a misdemeanor and, upon conviction thereof, shall for the first offense be fined not less than $100 nor more than $1,000, or be confined in jail for not more than one year, or both fined and confined. For each subsequent offense, the fine may be increased to not more than $2,000, with confinement in jail not more than one year, or both fined and confined.

(2) Failure of the seller to transfer a certificate of title upon sale or transfer of the factory-built home gives rise to a cause of action, upon prosecution thereof, and allows for the recovery of damages, costs and reasonable attorney fees.

(3) This subsection does not apply to a mobile or manufactured home for which a certificate of title has been canceled pursuant to section twelve-b of this article.

(h) Notwithstanding any other provision to the contrary, whenever reference is made to the

WV Legislature

application for or issuance of any title or the recordation or release of any lien, it includes the application, transmission, recordation, transfer of ownership and storage of information in an electronic format.

(i) Notwithstanding any other provision contained in this section, nothing herein shall be considered to include modular homes as defined in subsection (i), section two, article fifteen, chapter thirty-seven of this code and built to the state building code as established by legislative rules promulgated by the State Fire Commission pursuant to section five-b, article three, chapter twenty-nine of this code.

(j) The provisions of this section enacted in 2017 take effect on July 1, 2017.

WV Legislature

§17A-3-5. Application for specially constructed, reconstructed or foreign vehicles or new vehicles purchased outside this state.

(a) In the event the vehicle to be registered is specially constructed, reconstructed, or a foreign vehicle, such fact shall be stated in the application and with reference to every foreign vehicle which has been registered heretofore outside of this state the owner shall surrender to the department all registration plates, registration cards, and certificates of title or other evidence of such foreign registration as may be in his possession or under his control except as provided in subsection (b) hereof.

(b) Where in the course of interstate operation of a vehicle registered in another state it is desirable to retain registration of said vehicle in such other state, such applicant need not surrender but shall submit for inspection said evidences of such foreign registration and the department upon a proper showing shall register said vehicle in this state but shall not issue a certificate of title for such vehicle.

(c) In the event application for registration and certificate of title is made for a new vehicle purchased from a dealer outside this state, a certificate of title shall not be issued for such vehicle nor shall such vehicle be registered by the department unless and until such application shall be accompanied by a certificate of title or a manufacturer's certificate of origin, or if the state of purchase does not require a certificate of title such application shall be accompanied by a manufacturer's certificate of origin, accompanied by evidence that such seller is a bona fide dealer of the state in which such vehicle was purchased.

WV Legislature

§17A-3-6. Temporary permit pending registration and certification.

The department in its discretion may grant a temporary permit to operate a vehicle for which application for registration and certificate of title has been made where such application is accompanied by the proper fee, pending action upon said application by the department.

WV Legislature

§17A-3-7. Grounds for refusing registration or certificate of title.

The division shall refuse registration or issuance of a certificate of title or any transfer of registration upon any of the following grounds:

(1) That the application contains any false or fraudulent statement or that the applicant has failed to furnish required information or reasonable additional information requested by the division or that the applicant is not entitled to the issuance of a certificate of title or registration of the vehicle under this chapter;

(2) That the applicant fails to present a statement of insurance or proof of other security as required pursuant to the provisions of section three of this article;

(3) That the vehicle is mechanically unfit or unsafe to be operated or moved upon the highways;

(4) That the division has reasonable grounds to believe that the vehicle is a stolen or embezzled vehicle or that the granting of registration or the issuance of certificate of title would constitute a fraud against the rightful owner or other person having a valid lien upon such vehicle;

(5) That the registration of the vehicle stands suspended or revoked for any reason as provided in the motor vehicle laws of this state;

(6) That the required fee has not been paid;

(7) That the vehicle is operated by a commercial motor carrier who has failed to provide a federal motor carrier identification number (USDOT number) or whose authority to operate in interstate commerce has been denied or suspended by the federal Motor Carrier Safety Administration; or

(8) That any road user fee due under a single fee program imposed by the West Virginia Parkways Authority has not been paid.

WV Legislature

§17A-3-8. Examination of registration records and index of stolen and recovered vehicles.

The department, upon receiving application for original registration of a vehicle or any certificate of title, shall first check the manufacturer's serial or identification number shown in the application against the indexes of registered motor vehicles and against the index of stolen and recovered motor vehicles required to be maintained by this chapter.

WV Legislature

§17A-3-9. Act of registration and record thereof; registration indexes.

The department shall file each application received and when satisfied as to the genuineness and regularity thereof, and that the applicant is entitled to register such vehicle and to the issuance of a certificate of title shall register the vehicle therein described and keep a record thereof in suitable books, on index cards, or by means of magnetic recording devices as follows:

(1) Under a distinctive registration number assigned to the vehicle;

(2) Alphabetically, under the name of the owner;

(3) Under the manufacturer's serial or identification number if available, otherwise any other identifying number of the vehicle; and

(4) In the discretion of the department, in any other manner it may deem desirable.

WV Legislature

§17A-3-10. Division to issue registration card; duplicate to county assessor.

The division upon registering a vehicle, or an agent of the division upon collecting the required fees and taxes in accordance with the provisions of section one-b, article six of this chapter, shall issue a registration card to be delivered to the owner and containing thereon the date issued, the name and address of the owner, the registration number assigned to the vehicle and such description of the vehicle as determined by the commissioner. The division shall send a duplicate of said registration card to the assessor of the county in which the owner resides, or in cases of nonresidents of the state, to the assessor of the county wherein the vehicle is located.

WV Legislature

§17A-3-11. Registration of vehicles according to permissible gross weight.

The commissioner, upon registering any truck, truck tractor or road tractor, under the laws of this state, may require such information and may make such investigation or test as necessary to determine whether such motor vehicle may safely be operated upon the highways in compliance with all the provisions of law relating to such vehicles. Every such vehicle shall be registered with a permissible gross weight under which the vehicle can safely be operated upon the highways, which weight may not exceed the limitations set forth in chapter seventeen-c of this code.

The commissioner shall include on the registration card issued for every such motor vehicle the gross weight for which it is registered, and if it is a motor vehicle to be used for propelling other vehicles, a separate listing of the total permissible gross weight of such motor vehicle and other vehicles to be propelled by it shall be included. The commissioner shall also cause to be printed or stamped upon the registration card a statement that the vehicle although registered for the gross weight appearing on the registration card is subject to the axle load limit set forth in chapter seventeen-c of this code.

WV Legislature

§17A-3-12. Commissioner to issue certificate of title; signatures on certificate; certificate of title to be delivered to owner or lienor.

(a) The commissioner, if satisfied that the applicant for a certificate of title is the owner of such vehicle, or otherwise entitled to have the same registered in the applicant's name, shall issue an appropriate certificate of title in either an electronic or paper format. The certificate of title in an electronic format shall contain all of the information required by this section.

(b) The certificate of title shall contain upon the face thereof the date issued, the name and address of the owner, the description of the vehicle as determined by the commissioner, and a statement of the owner's title and of all liens and encumbrances upon the vehicle therein described and whether possession is held by the owner under a lease, contract of conditional sale or other like agreement, and shall bear thereon the seal of the division.

(c) The certificate of title shall contain upon the reverse side a space for the signature of the owner and the owner shall write his or her name with pen and ink in the space upon receipt of the certificate. The certificate shall also contain upon the reverse side forms for assignment of title or interest and warranty thereof by the owner with space for notation of liens and encumbrances upon the vehicle at the time of a transfer.

(d) The commissioner, upon issuing a certificate of title, shall deliver same in either an electronic or paper format to the person who holds legal title to the vehicle described on the face of said certificate: Provided, That when a certificate of title is issued showing upon the face thereof a lien or encumbrance of liens or encumbrances, the certificate of title shall be delivered to the lienholder in either an electronic or paper format in order of priority. It shall be unlawful and constitute a misdemeanor for a lienor who holds a certificate of title, as hereinabove in this section provided, to refuse or fail to surrender the certificate of title to the person legally entitled thereto within ten days after the lien or encumbrance or liens or encumbrances shown on the face thereof shall have been paid and satisfied.

WV Legislature

§17A-3-12a. Disclosure of odometer information; exceptions; penalties.

(a) In accordance with the provisions of sections four hundred eight-a and four hundred eight-e of the Motor Vehicle Information and Cost Savings Act, Public Law 92-513, the transferor of a motor vehicle must complete the odometer disclosure form on the certificate of title or a separate written odometer disclosure statement, before executing any transfer of ownership document and before a new certificate of title may be issued for a transfer of ownership of a vehicle. The odometer disclosure form on the certificate of title and the separate written odometer disclosure statement shall contain the following information:

(1) The odometer reading at the time of transfer (not to include tenths of miles);

(2) The date of transfer;

(3) The transferor's name and current address;

(4) The transferee's name and current address;

(5) The transferor's printed name and signature acknowledging the disclosure;

(6) The identity of the vehicle, including its make, model, year, body type and identification number;

(7) Certification by the transferor that to the best of his or her knowledge the odometer reading reflects:

(A) The actual mileage the vehicle has been driven;

(B) The amount of mileage in excess of the designated mechanical odometer limit ; or

(C) A difference from the number of miles the vehicle has actually been driven and that the difference is greater than that caused by odometer calibration error, and that the odometer reading is not the actual mileage. This certification shall state that the odometer reading does not reflect the actual mileage and should not be relied upon, and shall also include a warning notice to alert the transferee that a discrepancy exists between the odometer reading and the actual mileage; and

(8) A warning statement referring to state and federal law and the statement: "That failure to complete or providing false information may result in fines and/or imprisonment."

Upon issuance of a new title, the division shall mark the new title with an appropriate brand which reflects certification of the prior owner.

(b) Before executing any transfer of ownership document, the lessor of a leased motor vehicle must notify a lessee in writing that the lessee is required to provide a written odometer disclosure statement to the lessor. The odometer disclosure statement shall

WV Legislature

contain the following information:

(1) The odometer reading at the time of transfer (not to include tenths of miles);

(2) The date of statement;

(3) The lessee's name and current address;

(4) The lessor's name and current address;

(5) The lessee's printed name and signature acknowledging the disclosure;

(6) The identity of the vehicle, including its make, model, year, body type and identification number;

(7) The date that the lessor notified the lessee of the disclosure requirements;

(8) The date that the completed disclosure statement was received by the lessor;

(9) The signature of the lessor;

(10) Certification by the lessee that to the best of his or her knowledge the odometer reading reflects:

(A) The actual mileage the vehicle has been driven;

(B) The amount of mileage in excess of the designated mechanical odometer limit; or

(C) A difference from the number of miles the vehicle has actually been driven and that the difference is greater than that caused by odometer calibration error, and that the odometer reading is not the actual mileage. This certification shall state that the odometer reading does not reflect the actual mileage and should not be relied upon; and

(11) A warning statement referring to state and federal law and the statement: "That failure to complete or providing false information may result in fines and/or imprisonment."

If a lessor transfers the leased vehicle without obtaining possession of it, the lessor may indicate on the title the mileage disclosed by the lessee, unless the lessor has reason to believe the disclosure does not state the actual mileage.

(c) Notwithstanding the provisions of this section, the form for odometer disclosure on the certificate of title or a separate written odometer disclosure statement need not be completed for any of the following motor vehicles:

(1) A vehicle having a gross weight of more than sixteen thousand pounds;

(2) A vehicle that is not self-propelled;

WV Legislature

(3) A vehicle that is ten years old or older;

(4) A vehicle sold directly by the manufacturer to any agency of the United States in conformity with contracted specifications; or

(5) A new motor vehicle prior to its first transfer for purposes other than resale.

(d) Dealers and distributors of motor vehicles who are required by law to execute an odometer disclosure statement shall retain for five years a photostat, carbon or other facsimile copy of each odometer mileage statement which they issue and receive, at their primary place of business in an order that is appropriate to business requirements and that permits systematic retrieval.

(e) Lessors shall retain for five years following the date they transfer ownership of the leased vehicle each odometer disclosure statement which they receive from a lessee, at their primary place of business in an order that is appropriate to business requirements and that permits systematic retrieval.

(f) Auction companies shall retain for five years following the date of sale of each motor vehicle, at their primary place of business in an order that is appropriate to business requirements and that permits systematic retrieval, the following records:

(1) The name of the most recent owner (other than the auction company);

(2) The name of the buyer;

(3) The vehicle identification number; and

(4) The odometer reading on the date the auction company took possession of the motor vehicle.

(g) A transfer of a motor vehicle which has not been previously titled in this state or which has a certificate of title issued prior to January 1, 1991, must include the execution of the transfer by the owner and the purchaser on a form prescribed by the commissioner signed by each of the two parties, which form contains substantially the same information as is required in this section and with the provisions of the odometer mileage statement form pursuant to the Motor Vehicle Information and Cost Savings Act.

(h) The commissioner shall promulgate rules for the administration of this section in accordance with chapter twenty-nine-a of this code.

(I) Any person who violates any of the provisions of this section with intent to defraud shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $200 nor more than $1,000, or imprisoned in the county jail for not more than six months, or both fined and imprisoned.

WV Legislature

§17A-3-12b. Canceled certificates of title for certain mobile and manufactured homes; reissuance of certificates of title; procedure.

(a) The commissioner may cancel a certificate of title for a mobile or manufactured home affixed to the real property of the owner of the mobile or manufactured home. The person requesting the cancellation shall submit to the commissioner an application for cancellation together with the certificate of title. The application shall be on a form prescribed by the commissioner. The commissioner shall return one copy of the cancellation certificate to the owner and shall send a copy of the cancellation certificate to the clerk of the county commission to be recorded and indexed in the same manner as a deed, with the owner's name being indexed in the grantor index. The commissioner shall charge a fee of $10 per certificate of title canceled. The clerk shall return a copy of the recorded cancellation certificate to the owner, unless there is a lien attached to the mobile or manufactured home, in which case the copy of the recorded cancellation certificate shall be returned to the lienholder. Upon its recording in the county clerk's office, the mobile or manufactured home shall be treated for all purposes as an appurtenance to the real estate to which it is affixed and be transferred only as real estate and the ownership interest in the mobile or manufactured home, together with all liens and encumbrances on the home, shall be transferred to and shall encumber the real property to which the mobile or manufactured home has become affixed.

(b) The commissioner shall reinstate and reissue any title for a mobile home or manufactured home which was previously titled in this state and for which the title was canceled pursuant to this section when the owner of the mobile or manufactured home seeks to sever the home from the real property and applies for a certificate of title in accordance with the provisions of this section. For purposes of this subsection, "owner" means the owner, secured lender of foreclosed or surrendered property, owner of real property who takes possession of an abandoned manufactured home on the property or other person who has the legal right to the manufactured home through legal process.

(1) The owner shall file with the clerk of the county commission where the real property is located an affidavit that includes or provides for all of the following information:

(A) The manufacturer and, if applicable, the model name of the mobile or manufactured home;

(B) The vehicle identification number and serial number of the mobile or manufactured home;

(C) The legal description of the real property on which the mobile or manufactured home is or was placed, stating that the owner of the mobile home or manufactured home also owns the real property;

(D) Certification that there are no security interests in the mobile home or manufactured home that have not been released by the secured party; and

(E) A statement by the owner that the home has been or will be physically severed from the real property.

(2) The owner must submit the following to the commissioner:

(A) A copy of the affidavit filed in accordance with subdivision (1) of this subsection; and

(B) Verification that the manufactured home has been severed from the real property. Confirmation of severance by the assessor where the real property is located is acceptable evidence that the unit has been severed from the real property.

(3) Upon receipt of the information required in subdivision (2) of this subsection, together with a title application and required fee, the commissioner shall issue a new title for the manufactured home.

WV Legislature

§17A-3-13. Registration card to be carried and exhibited on demand.

Every registration card shall at all times be carried in the vehicle to which it refers or shall be carried by the person driving or in control of such vehicle who shall display the same upon demand of a police officer or any officer or employee of the division. Carrying and displaying an electronic or mobile registration card issued by the division satisfies the provisions of this section.

WV Legislature

§17A-3-14. Registration plates generally; description of plates; issuance of special numbers and plates; registration fees; special application fees; exemptions; commissioner to promulgate forms; suspension and nonrenewal. suspension of registration; electronic signatures.

(a) The division, upon registering a vehicle, shall issue to the owner one registration plate with a registration number consisting of a combination of letters, numerals, symbols, or characters in a configuration determined by the commissioner.

(b) Registration plates shall meet the following requirements:

(1) Plates must incorporate reflectorized material.

(2) Registration numbers shall be plainly readable from 100 feet during daylight.

(3) The commissioner may assign any additional feature to facilitate reciprocal agreements, facilitate interstate travel, promote highway safety, or promote the efficient operation of the division.

(c) The commissioner may suspend the registration of any owner who displays a damaged or illegible plate or otherwise fails to comply with the requirements of §17A-3-19 of this code.

(d) Any license plate issued or renewed pursuant to this chapter which is paid for by a check that is returned for nonsufficient funds is void without further notice to the applicant. The applicant may not reinstate the registration until the returned check is paid by the applicant in cash, money order, or certified check and all applicable fees assessed as a result thereof have been paid.

(e) In furtherance of the Uniform Electronic Transactions Act, §39A-1-1 *et seq*. of this code, the division may accept or authorize an electronic signature in any instance the law required to be enforced by the commissioner requires a signature or a pen and ink signature.

WV Legislature

§17A-3-14a. Special registration plates for government officials.

(a) The Governor shall be issued two registration plates, on one of which shall be imprinted the numeral one and on the other the word one.

(b) State officials and judges may be issued special registration plates as follows:

(1) Upon appropriate application, the division shall issue to the Secretary of State, State Superintendent of Schools, Auditor, Treasurer, Commissioner of Agriculture, Attorney General, members of both houses of the Legislature, including elected active and former officials of both houses of the Legislature, active or retired or former justices of the Supreme Court of Appeals of West Virginia, judges of the Intermediate Court of Appeals, representatives and senators of the state in the Congress of the United States, active or retired on senior status judges of the West Virginia circuit courts, the judges of the United States district courts for the State of West Virginia, and judges of the United States Court of Appeals for the fourth circuit, if any of the judges are residents of West Virginia, a special registration plate for any vehicle owned by the official or his or her spouse.

(2) Each plate issued pursuant to this subsection shall bear any combination of letters and numbers, not to exceed an amount determined by the commissioner, and a designation of the office. Each plate shall supersede the regular numbered plate assigned to the official or his or her spouse during the official's term of office and while the vehicle is owned by the official or his or her spouse.

(3) The division shall charge an annual fee of $15 for every registration plate issued pursuant to this subsection, which is in addition to all other fees required by this chapter.

(4) The division shall charge a special initial application fee of $10 for every application received by a former or retired government official authorized to receive a plate in this section, which is in addition to all other fees required by this chapter.

WVLegislature

§17A-3-14b. Special registration plates for military personnel.

(a) The division may continue to issue special plates for any plate class authorized by enactments of §17A-3-14 of this code prior to the year 2023 for active, retired, or honorably discharged military personnel, or the next of kin of a member of any branch of the armed services of the United States killed in combat. The division shall charge an initial application fee of $10 for each special registration plate issued pursuant to this section, which is in addition to all other fees required by this chapter. A surviving spouse may continue to use his or her deceased spouse's military license plate until the surviving spouse dies, remarries, or does not renew the license plate.

(b) The applicant shall present documentation as determined by the commissioner as evidence of qualification for any plate authorized in this section.

(c) The division may issue a special registration plate pursuant to this section to any number of vehicles titled in the name of the applicant.

(d) If a new special plate as authorized in this section recognizes members of a military organization chartered by the United States Congress, the division may produce such plate upon receipt of a guarantee from the organization of a minimum of 100 applicants.

(e) A gold star spouse shall be exempt from all registration fees otherwise required by the provisions of this chapter for the registration of one Gold Star Family license plate for personal use. For purposes of this section, a "gold star spouse" means a veteran's widow (remarried or not) or widower (remarried or not) who is eligible to receive a gold star lapel button under 10 U.S.C. § 1126.

(f) A gold star parent shall be exempt from all registration fees otherwise required by the provisions of this chapter for the registration of one Gold Star Family license plate for personal use. For purposes of this section, "gold star parent" means a veteran's parent who is eligible to receive a gold star lapel button under 10 U.S.C. § 1126.

WV Legislature

§17A-3-14c. Specially arranged registration plates.

Specially arranged registration plates for plate classes and special registration plate types authorized by the commissioner may be issued as follows:

(1) Upon appropriate application, any owner of a motor vehicle subject to registration, may request that the division issue a registration plate bearing specially arranged letters or numbers with the maximum number of letters or numbers to be determined by the commissioner. The division shall attempt to comply with the request wherever possible.

(2) The commissioner shall propose rules for legislative approval in accordance with the provisions of §29A-3-1 *et seq*. of this code regarding the orderly distribution of the plates: *Provided*, That for purposes of this subsection, the registration plates requested and issued shall include all plates bearing the numbers two through 2,000.

(3) An annual fee of $15 shall be charged for each special registration plate issued pursuant to this section, which is in addition to all other fees required by this chapter.

WV Legislature

§17A-3-14d. Special honorary military plates.

(a) The division may issue special plates to disabled veterans, recipients of the distinguished Purple Heart medal, recipients of the Congressional Medal of Honor, recipients of the Distinguished Service Cross, Navy Cross, and Air Force Cross, or veteran survivors of the attack on Pearl Harbor on December 7, 1941. Registration plates issued pursuant to this section are exempt from all registration fees otherwise required by the provisions of this chapter. A surviving spouse may continue to use the license plate of his or her deceased spouse that was issued pursuant to this section until the surviving spouse dies, remarries, or does not renew the license plate.

(b) A qualified applicant may obtain a second license plate as described in this section for use on a passenger vehicle titled in the name of the applicant. The division shall charge for the second plate a one-time fee of $10, to be deposited into the State Road Fund, which is in addition to all other fees required by this chapter.

(c) The applicant shall present satisfactory proof as determined by the commissioner as evidence of qualification for any plate authorized in this section.

(d) An applicant qualified to receive a special plate under subsection (a) of this section, or qualified to receive a registration fee exemption under §17A-10-8(6) of this code as a former prisoner of war, may choose to transfer the registration fee exemptions to a special registration plate for military personnel for which the applicant also qualifies under §17A-3-14b of this code instead of receiving the honorary military plate pursuant to this section.

WV Legislature

§17A-3-14e. Special registration plates for organizations.

(a) The division may continue to issue all special registration plates to organizations issued under a prior enactment of §17A-3-14 of this code.

(b) An organization requesting the creation and issuance of a special registration plate shall make application with the division. The application shall include sufficient information, as determined by the commissioner, to determine whether the special registration plate requested, and the organization making the application, meet all the requirements set forth in this section and legislative rule. The application shall include a proposed design, including lettering, logo, image, or message to be placed on the registration plate. The commissioner shall notify the organization of the commissioner's approval or disapproval of the application.

(c) (1) The commissioner may not begin the design or production of any license plates authorized and approved pursuant to this section until the organization which applied for the special registration plate has collected and submitted collectively to the division applications completed by at least 100 persons of class A vehicles, or 50 persons of class G vehicles, and collectively deposited with the division all fees necessary to cover the first year's basic registration, one-time design and manufacturing costs, and the first year additional annual fee for all of the submitted applications.

(2) By concurrent resolution of the Legislature, the requirement to collectively deposited with the division all fees necessary to cover the first year's basic registration, one-time design, and manufacturing costs may be waived for any organization.

(d) If the organization fails to submit the required number of applications and fees within six months of the effective date of the approval of the application for the plate by the commissioner, the plate may not be produced until a new application is submitted and is approved by the commissioner: *Provided*, That an organization that is unsuccessful in obtaining the minimum number of applications may not make a new application for a special plate until at least two years have passed since the approval of the previous application of the organization.

(e) The division shall charge a special initial application fee of $25 for each special license plate in addition to all other fees required by this chapter. This special fee shall be collected by the division and deposited in the State Road Fund.

(f) The division shall charge an annual fee of $15 for each special registration plate in addition to all other fees required by this chapter.

(g) Upon appropriate application, the division may issue a special registration plate designed by the commissioner in consultation with the organization for any number of vehicles titled in the name of a qualified registration plate applicant. Persons desiring the special registration plate shall offer sufficient proof of membership in the organization unless the

WV Legislature

organization has identified in the application that the special registration plate is desired to be made available for general issuance.

(h) The commissioner may discontinue the issuance or renewal of the registration of any special plate issued pursuant to this section if:

(1) The number of valid registrations for the specialty plate falls below 100 plates of class A vehicles, or 50 plates of class G vehicles for at least 12 consecutive months; or

(2) The organization no longer exists or no longer meets the requirements of this section.

(i) If a new design is requested after issuance of a special registration plate, the organization shall pay the costs of design and any unused material from the previous design. In addition, the division shall charge a special initial application fee of $25 for each newly designed special license plate in addition to all other fees required by this chapter.

WV Legislature

§17A-3-14f. Special 10-year registration plates.

(a) The division may issue special 10-year registration plates as follows for any registration plate exempted from registration fees pursuant to any provision of this code or any restricted use antique motor vehicle license plate authorized by §17A-10-3a of this code: *Provided*, That the provisions of this subsection do not apply to any person who has had a special registration suspended for failure to maintain motor vehicle liability insurance as required by §17D-2A-3 of this code or failure to pay personal property taxes as required by §17A-3-3a of this code.

(b) An initial nonrefundable fee shall be charged for each special registration plate issued pursuant to this section, which is the total amount of fees required by §17A-3-3, §17A-10-3a, or §17A-10-15 of this code for the period requested.

WV Legislature

§17A-3-14g. Special registration plates for first responders.

(a) The division may issue special emergency or volunteer registration plates as follows:

(1) Any owner of a motor vehicle who is a resident of the state of West Virginia and who is a certified paramedic or emergency medical technician, member of a paid fire department, member of the State Fire Commission, the State Fire Marshal, State Fire Marshal assistant, State Fire Administrator, or voluntary rescue squad member may apply for a special license plate for any number of Class A vehicles titled in the name of the qualified applicant which bears the insignia of the profession, group, or commission. Any insignia shall be designed by the commissioner. License plates issued pursuant to this subsection shall bear the requested insignia in addition to the registration number issued to the applicant pursuant to the provisions of this article.

(2) Each application submitted pursuant to this subsection shall be accompanied by an affidavit signed by the fire chief or department head of the applicant stating that the applicant is justified in having a registration with the requested insignia, proof of compliance with all laws of this state regarding registration and licensure of motor vehicles, and payment of all required fees.

(3) Each application submitted pursuant to this subsection shall be accompanied by payment of a special initial application fee of $10, which is in addition to all other fees required by this chapter. All special fees shall be collected by the division and deposited into the State Road Fund.

(b) The division may issue special certified firefighter registration plates as follows:

(1) Any owner of a motor vehicle who is a resident of the state of West Virginia and who is a certified firefighter may apply for a special license plate that bears the insignia of the profession for any number of Class A vehicles titled in the name of the qualified applicant. Any insignia shall be designed by the commissioner. License plates issued pursuant to this subsection shall bear the requested insignia pursuant to the provisions of this article. Upon presentation of written evidence of certification as a certified firefighter, certified firefighters are eligible to purchase the special registration plate issued pursuant to this subsection.

(2) Each application submitted pursuant to this subsection shall be accompanied by an affidavit stating that the applicant is justified in having a registration with the requested insignia, proof of compliance with all laws of this state regarding registration and licensure of motor vehicles, and payment of all required fees. The firefighter certification department, section, or division of the West Virginia University fire service extension shall notify the commissioner in writing immediately when a firefighter loses his or her certification. If a firefighter loses his or her certification, the commissioner may not issue him or her a license plate under this subsection.

WV Legislature

(3) Each application submitted pursuant to this subsection shall be accompanied by payment of a special initial application fee of $10, which is in addition to all other fees required by this chapter. All special fees shall be collected by the division and deposited into the State Road Fund.

(c) The division may issue special volunteer firefighter registration plates as follows:

(1) Any owner of a motor vehicle who is a resident of West Virginia and who is a volunteer firefighter may apply for a special license plate for any Class A vehicle titled in the name of the qualified applicant which bears the insignia of the profession in white letters on a red background. The insignia shall be designed by the commissioner and shall contain a fireman’s helmet insignia on the left side of the license plate.

(2) Each application submitted pursuant to this subsection shall be accompanied by an affidavit signed by the applicant’s fire chief, stating that the applicant is a volunteer firefighter and is justified in having a registration plate with the requested insignia. The applicant must comply with all other laws of this state regarding registration and licensure of motor vehicles and must pay all required fees.

(3) Each application submitted pursuant to this subsection shall be accompanied by payment of a special one-time initial application fee of $10, which is in addition to all other fees required by this chapter. All application fees shall be deposited into the State Road Fund.

(d) The division may issue special registration plates to applicants supporting law-enforcement officers, to retired members of the West Virginia State Police, and to survivors of wounds received in the line of duty as a member with a West Virginia law-enforcement agency as follows:

(1) Upon appropriate application, the division shall issue a special registration plate designed by the commissioner which recognizes, supports, and honors the men and women of law-enforcement and includes the words "Back the Blue". Upon appropriate application, the division shall issue to any member of a municipal police department, sheriff’s department, the State Police, or the law-enforcement division of the Division of Natural Resources who has been wounded in the line of duty and awarded a Purple Heart in recognition thereof by the West Virginia Chiefs of Police Association, the West Virginia Sheriffs’ Association, the West Virginia Troopers Association, or the Division of Natural Resources a special registration plate for one vehicle titled in the name of the qualified applicant with an insignia appropriately designed by the commissioner.

(2) For special registration plates supporting law-enforcement officers, the division shall charge a special initial application fee of $10 in addition to all other fees required by this chapter. This special fee shall be collected by the division and deposited in the State Road Fund. An annual fee of $15 shall be charged for each plate supporting law-enforcement officers in addition to all other fees required by this chapter.

WV Legislature

(3) Registration plates issued pursuant to this subsection to survivors of wounds received in the line of duty as a member with a West Virginia law-enforcement agency are exempt from the registration fees otherwise required by the provisions of this chapter. A surviving spouse may continue to use his or her deceased spouse's special registration plate until the surviving spouse dies, remarries, or does not renew the plate. Survivors of wounds received in the line of duty as a member with a West Virginia law-enforcement agency may obtain a license plate as described in this subsection for use on a passenger vehicle titled in the name of the qualified applicant. The division shall charge for the second plate a one-time fee of $10, to be deposited into the State Road Fund, which is in addition to all other fees required by this chapter.

(4) Upon appropriate application, the division may issue special registration plates designed by the commissioner for any number of vehicles titled in the name of the qualified applicant who offers sufficient proof of being a retired member of the West Virginia State Police. The division shall charge a special initial application fee of $10 in addition to all other fees required by this chapter. This special fee shall be collected by the division and deposited in the State Road Fund.

(e) The division may issue special plates with an insignia appropriately designed by the commissioner to recipients of the distinguished Medal of Valor awarded under §29-32-1 *et seq*. of this code to firefighters, law-enforcement officers, and emergency medical services personnel who distinguish themselves conspicuously by gallantry and intrepidity at the risk of their lives above and beyond the call of duty in the performance of their duties as follows:

(1) Any Medal of Valor recipient under §29-32-1 *et seq*. of this code or their surviving spouse may apply to receive the special registration plate issued pursuant to this subsection for any Class A vehicle titled in the name of the Medal of Valor recipient or their surviving spouse.

(2) The applicant shall present satisfactory proof as determined by the commissioner as evidence of qualification for any plate authorized in this subsection. A surviving spouse may continue to use the license plate of his or her deceased spouse that was issued pursuant to this subsection until the surviving spouse dies, remarries, or does not renew the license plate.

(3) A qualified applicant as provided in paragraph (1) of this subsection may apply for a second license plate as described in this subsection for use on a Class A vehicle titled in the name of the qualified applicant.

(4) Registration plates issued pursuant to this subsection to qualified applicants are exempt from the registration fees otherwise required by the provisions of this chapter. A qualified applicant may obtain a license plate as described in this subsection for use on a passenger vehicle titled in the name of the qualified applicant. The division shall charge for the second plate a one-time fee of $10, to be deposited into the State Road Fund, which is in addition to all other fees required by this chapter.

WV Legislature

§17A-3-14h. Special themed registration plates.

(a) The division may issue new special themed registration plates at the discretion of the commissioner and may continue to issue any special themed registration plate authorized under a prior enactment of §17A-3-14 of this code. The commissioner may discontinue the issuance or renewal of a special registration plate issued or authorized under this section at any time.

(b) Unless otherwise provided in this section, the division shall charge an initial application fee of $10 and an annual fee of $15 for each special themed registration plate in addition to all other fees required by this chapter.

(c) The division may not issue any special themed registration plate pursuant to subsection (a) of this section until at least 100 persons complete an application and deposit with the division a check to cover the first year's basic registration fee, initial application fee, and annual fee.

(d) The division may issue special nongame wildlife registration plates and special wildlife registration plates as follows:

(1) Upon appropriate application, the division shall issue a special registration plate displaying a species of West Virginia wildlife that shall display a species of wildlife native to West Virginia as prescribed and designated by the commissioner and the Director of the Division of Natural Resources.

(2) All annual fees collected pursuant to this section for nongame wildlife registration plates and wildlife registration plates shall be deposited in a special revenue account designated the Nongame Wildlife Fund and credited to the Division of Natural Resources under authority granted in Article VI, Section 56 of The Constitution of West Virginia.

(3) All initial application fees collected by the division for nongame wildlife registration plates and wildlife registration plates shall be deposited in the State Road Fund.

(e) Racing theme special registration plates:

(1) The division may issue a series of special registration plates displaying National Association for Stock Car Auto Racing themes.

(2) An annual fee of $25 shall be charged for each special racing theme registration plate in addition to all other fees required by this chapter. All annual fees collected for each special racing theme registration plate shall be deposited into the State Road Fund.

(3) A special application fee of $10 shall be charged at the time of initial application as well as upon application for any duplicate or replacement registration plate in addition to all other fees required by this chapter. All application fees shall be deposited into the State Road Fund.

WV Legislature

§17A-3-14i. Manufacturing of certain special registration plates; rulemaking.

(a) For all registration plates authorized pursuant to the provisions of §17A-3-14a, §17A-3-14b, §17A-3-14c, §17A-3-14d, §17A-3-14e, §17A-3-14f, §17A-3-14g, and §17A-3-14h, the division is not required to keep a stockpile of such plates, but may create a process for the issuance of such plates by special order.

(b) The division may propose rules for legislative approval in accordance with the provisions of §29A-3-1 *et seq*. of this code to administer the issuance of all special registration plates authorized in this article.

WV Legislature

§17A-3-15. Display of registration plates.

(a) Registration plates issued for vehicles required to be registered under this article shall be attached to the rear of the vehicles except that on truck tractors and road tractors designed and constructed to pull trailers or semitrailers, the registration plate shall be mounted to the front.

(b) Every registration plate shall at all times be securely fastened in a horizontal position to the vehicle for which it is issued so as to prevent the plate from swinging and at a height of not less than twelve inches from the ground, measuring from the bottom of the plate, in a place and position to be clearly visible and shall be maintained free from foreign materials and in a condition to be clearly legible.

(c) Notwithstanding the provisions of subsection (b) of this section, an owner of a motor vehicle with a Class G registration as defined in section one, article ten of this chapter may choose to:

(1) Display a standard, Class G registration plate in a horizontal position; or

(2) Display a specially designed Class G registration plate in a vertical position issued by the Division of Motor Vehicles if the owner:

(A) Pays a one-time fee of $25 to cover the additional cost and services necessary to issue the special registration plate to be deposited into a special revolving fund to be used for the administration of this chapter; and

(B) Pays all other required fees and complies with all other applicable provisions of this code regarding the titling, registration and operation of the vehicle.

WV Legislature

§17A-3-15a. Free parking for disabled veterans and veterans awarded the purple heart.

Notwithstanding any provision of law to the contrary, any person who is a disabled veteran from the United States Armed Forces or who was awarded the Purple Heart, may park at any metered parking space in any municipality in this state without being required to deposit any sum of coins or currency into the meter: *Provided*, That an appropriate designation must appear on the person's registration plate under the provisions of §17A-3-14 demonstrating that the person is a disabled veteran or was awarded the Purple Heart.

WV Legislature

§17A-3-16. Expiration of registration and certificates of title.

(a) Every vehicle registration under this chapter and every registration card and registration plate issued under this chapter expires at midnight on the last day of the month designated by the commissioner: Provided, That the commissioner may extend the period during which the registration plates may be used.

Certificates of title need not be renewed annually but remain valid until canceled by the division for cause or upon a transfer of any interest shown in the vehicle.

(b) Notwithstanding the provisions of this section or of any provision of this chapter, the commissioner shall adopt a staggered registration system whereby the registration of Class A motor vehicles is for a period of twelve consecutive calendar months, the expiration dates of the registrations to be staggered throughout the year: Provided, That on or after July 1, 1997, the commissioner shall also offer an optional two-year registration system whereby the registration of all vehicles shall be for a period of twenty-four consecutive calendar months, the expiration dates of the registrations to be staggered throughout the year. Under this option, all annual fees due at the time of registration shall be multiplied by two.

(1) On or after July 1, 1997, all Class A motor vehicles as defined in section one, article ten of this chapter shall be registered for a period of twelve or twenty-four consecutive calendar months. There hereby are established twelve registration periods, each of which shall start on day one of each calendar month of the year and shall end on the last day of month twelve from date of beginning. The period ending on January 31 is designated the first period; that ending on February 28 or 29 is designated the second; that ending on March 31 is designated the third; that ending on April 30 is designated the fourth; that ending on May 31 is designated the fifth; that ending on June 30 is designated the sixth; that ending on July 31 is designated the seventh; that ending on August 31 is designated the eighth; that ending on September 30 is designated the ninth; that ending on October 31 is designated the tenth; that ending on November 30 is designated the eleventh; and that ending on December 31 is designated the twelfth.

(2) All Class A motor vehicles, which are operated for the first time upon the public highways of this state to and including day fifteen of any given month are subject to registration and payment of the fee for the twelve- or 24-month period commencing day one of the month of operation. All Class A motor vehicles operated for the first time upon the public highways of this state on and after day sixteen of any given month are subject to registration and payment of fee for the twelve- or 24-month period commencing day one of the month of the next following calendar month.

(c) On or before July 1, 1996, all Class T and Class R vehicles shall be registered for a maximum period of three years or portion thereof based on the number of years remaining in the three year period designated by the commissioner.

(d) On or before July 1, 2000, all Class C trailers shall be registered for the duration of the

WV Legislature

owner's interest in the trailer and shall not expire until either sold or otherwise permanently removed from the service of the owner.

(e) Notwithstanding the provisions of this section or of any other provision of this chapter to the contrary, the commissioner shall on or before July 1, 2010, offer an optional two-year registration for Class G vehicles. The commissioner may offer extended prorated registration renewal cycles to accommodate changes in designated expiration dates.

WV Legislature

§17A-3-17. Application for and renewal of registration; sheriffs authorized to issue renewals of registration for certain vehicles.

(a) Application for renewal of a vehicle registration shall be made by the vehicle owner by proper application and payment of taxes and registration fees provided by law.

(b) The division may receive applications for renewal of any vehicle registration and each sheriff shall receive applications from residents in his or her county for renewal of any Class A or G vehicle registration. The division and each sheriff shall issue the renewals of registration each receives, respectively, in accordance with all of the provisions in this article pertaining to renewal of vehicle registration including, but not limited to, the payment of the taxes and fees required thereunder.

(c) Each sheriff shall charge a service fee of $1 for each renewal of a Class A or G vehicle registration he or she issues. Effective July 1, 1998, the sheriff shall pay one half of this fee into the county general fund. The sheriff shall pay the remaining one half of this fee into the deputy sheriff retirement fund created in section six, article fourteen-d, chapter seven of this code.

(d) On the first day of each month, each sheriff shall pay over to the commissioner all fees he or she collected during the preceding month for renewal of Class A and G vehicle registrations, except his or her service fees. The payment shall be accompanied by a report showing the name of the county, the name and address of the person who obtained the registration and paid the registration fee therefor, the vehicle registered, the registration number, the date the registration was issued, the signature of the sheriff and any other information the commissioner may reasonably require in order to maintain the functions and records of the department. The commissioner shall deposit all fees he or she receives from the sheriffs for renewal of Class A and G vehicle registrations in the State Treasury to the credit of the state road fund as provided in section twenty-one, article two of this chapter.

(e) The commissioner shall provide each sheriff with the necessary forms, supplies, registration plates, registration decals and instructions necessary to enable him or her to perform the duties and functions specified in this section.

(f) No person may display upon a vehicle a new registration plate or registration decal prior to the first day of the month preceding the new registration period.

WV Legislature

§17A-3-17a. Application for registration; certain motor vehicle dealers authorized to issue certificates of registration for certain vehicles.

The division may authorize a motor vehicle dealer as defined and licensed in accordance with the provisions of article six of this chapter to issue or transfer motor vehicle registration plates upon the sale of any motor vehicle in compliance with the provisions of section one-b, article six of this chapter. The division shall provide to an authorized motor vehicle dealer the necessary supplies, registration plates, registration decals and instructions necessary for the issuance and transfer of motor vehicle registrations. The division may authorize a service provider to distribute the necessary supplies.

WV Legislature

§17A-3-18. Notice of change of address or name.

(a) Whenever any person after making application for or obtaining the registration of a vehicle or a certificate of title shall move from the address named in the application or shown upon a registration card or certificate of title the person shall within ten days thereafter notify the division in writing of the old and new addresses.

(b) Whenever any person, after making application for or obtaining the registration of a vehicle or a certificate of title, is assigned a new address by the United States postal service or other legally constituted authority, the person shall notify the division in writing of the old and new address and of the registration or title number of the vehicle held by the person. The notification of change of address shall be made at least ten days prior to the last date on which mail with the old address is deliverable by the United States postal service.

(c) Whenever the name of any person who has made application for or obtained the registration of a vehicle or a certificate of title is thereafter changed by marriage or otherwise the person shall within ten days notify the division of the former name and new name upon a form prescribed by the commissioner. The notification shall be accompanied by application for retitle under the new name.

(d) The provisions of section one, article eleven of this chapter relating to imprisonment do not apply to persons who violate the provisions of this section.

WV Legislature

§17A-3-19. Lost or damaged certificates, cards and plates.

In the event any registration card or registration plate is lost, mutilated, or becomes illegible the owner or legal representative or successor in interest of the owner of the vehicle for which the same was issued as shown by the records of the department shall immediately make application for and may obtain a duplicate or a substitute or a new registration under a new registration number, as determined to be most advisable by the department, upon the applicant furnishing information satisfactory to the department.

In the event any certificate of title is lost, mutilated, or becomes illegible, the owner or legal representative or successor in interest of the owner of the vehicle for which the same was issued, as shown by the records of the department, shall immediately make application for and may obtain a duplicate upon the applicant furnishing information satisfactory to the department. Upon issuance of any duplicate certificate of title the previous certificate last issued shall be void.

WV Legislature

§17A-3-20. Department may assign new identifying numbers.

The department may assign a distinguishing number to a motor vehicle whenever the serial number thereon is destroyed or obliterated and issue to the owner a special plate bearing such distinguishing number which shall be affixed to the vehicle in a position to be determined by the commissioner. Such motor vehicle may then be registered under such distinguishing number in lieu of the former serial number.

WV Legislature

§17A-3-21. Regulations governing change of motors.

The commissioner is authorized to adopt and enforce such registration rules and regulations as may be deemed necessary and compatible with the public interest with respect to the change or substitution of one engine in place of another in any motor vehicle.

WV Legislature

§17A-3-22. Issuance and distribution of registration bulletins.

The commissioner shall annually, following a renewal of registration, compile and publish in books or bulletins a list of all registered vehicles and shall thereafter compile and publish monthly supplements thereto. The list of registered vehicles shall be arranged serially according to the registration numbers assigned to registered vehicles and shall contain in addition the names and addresses of registered owners and a brief description of each vehicle.

Law-enforcement officers may be furnished with copies of the lists, and copies may also be furnished to other interested parties as may be authorized by the Governor or by the commissioner. The commissioner may also furnish copies of the lists to similar officers in adjoining states. Subject to the provisions of article two-a of this chapter, copies may be furnished to any person upon application, at a price to be fixed by the commissioner.

WV Legislature

§17A-3-23. Registration plates to state, county, municipal and other governmental vehicles; use for undercover activities.

(a) Any motor vehicle designed to carry passengers, owned or leased by the State of West Virginia, or any of its departments, bureaus, commissions, or institutions, except vehicles used by the Governor, Treasurer, not to exceed eight vehicles operated by investigators of the Office of the Attorney General, three vehicles per elected office of the Board of Public Works not otherwise specified, vehicles operated by the State Police, not to exceed five vehicles operated by the office of the Secretary of Military Affairs and Public Safety, not to exceed five vehicles operated by the Division of Homeland Security and Emergency Management, vehicles operated by natural resources police officers of the Division of Natural Resources, not to exceed 10 vehicles operated by the arson investigators of the Office of State Fire Marshal, not to exceed two vehicles operated by the Division of Protective Services, not to exceed 16 vehicles operated by inspectors of the Office of the Alcohol Beverage Control Commissioner, vehicles operated by the West Virginia Wing of the Civil Air Patrol, and vehicles operated by probation officers employed under the Supreme Court of Appeals may not be operated or driven by any person unless it has displayed and attached to the front thereof, in the same manner as regular motor vehicle registration plates are attached, a plate of the same size as the regular registration plate, with white lettering on a green background bearing the words “West Virginia” in one line and the words “State Car” in another line, and the lettering for the words “State Car” shall be of sufficient size to be plainly readable from a distance of 100 feet during daylight: Provided, That beginning January 1, 2019, state vehicle license plates shall be gold with blue lettering.

The vehicle shall also have attached to the rear a plate bearing a number and any other words and figures as the Commissioner of Motor Vehicles shall prescribe. The rear plate shall also be green with the number in white: Provided, That beginning January 1, 2019, state vehicle license plates shall be gold with blue lettering.

(b) Registration plates issued to vehicles owned by counties shall be white on red with the word “County” on top of the plate and the words “West Virginia” on the bottom.

(c) Registration plates issued to a city or municipality shall be white on blue with the word “City” on top and the words “West Virginia” on the bottom.

(d) Registration plates issued to a city or municipality law-enforcement department shall include blue lettering on a white background with the words “West Virginia” on top of the plate and shall be further designed by the commissioner to include a law-enforcement shield together with other insignia or lettering sufficient to identify the motor vehicle as a municipal law-enforcement department motor vehicle. The colors may not be reversed and shall be of reflectorized material. The registration plates issued to counties, municipalities, and other governmental agencies authorized to receive colored plates hereunder shall be affixed to both the front and rear of the vehicles.

WV Legislature

(e) (1) Registration plates issued to vehicles operated by county sheriffs shall be designed by the commissioner in cooperation with the sheriffs' association with the word "Sheriff" on top of the plate and the words "West Virginia" on the bottom. The plate shall contain a gold shield representing the sheriff's star and a number assigned to that plate by the commissioner. Every county sheriff shall provide the commissioner with a list of vehicles operated by the sheriff, unless otherwise provided in this section, and a fee of $10 for each vehicle submitted by July 1, 2002.

(2) Registration plates issued to vehicles operated by the West Virginia Wing of the Civil Air Patrol shall be designed by the commissioner in cooperation with the Civil Air Patrol and include the words "Civil Air Patrol" on the plate. The Civil Air Patrol shall provide the commissioner with a list of vehicles operated by the Civil Air Patrol, unless otherwise provided in this section, and a fee of $10 for each new vehicle for which a Civil Air Patrol license plate is requested.

(f) The commissioner is authorized to designate the colors and design of any other registration plates that are issued without charge to any other agency or nonstate government entity entitled to registration plates at no charge in accordance with the motor vehicle laws: Provided, That where the institutions of higher education opt to have their logo displayed on the state license plate, such institution shall bear any additional costs of those added features: Provided, however, That no public service districts or designated nongovernmental organizations shall be issued a license plate designated for vehicles owned or leased by the State of West Virginia, or any of its departments, bureaus, commissions, or institutions.

(g) Upon application, the commissioner is authorized to issue a maximum of five Class A license plates per applicant to be used by county sheriffs and municipalities on law-enforcement vehicles while engaged in undercover investigations.

(h) The commissioner is authorized to issue a maximum of five Class A license plates to be used on vehicles assigned to the Division of Motor Vehicles investigators for commercial driver examination fraud investigation and driver's license issuance fraud detection and fraud prevention.

(i) The commissioner is authorized to issue an unlimited number of license plates per applicant to authorized drug and violent crime task forces in the State of West Virginia when the chairperson of the control group of a drug and violent crime task force signs a written affidavit stating that the vehicle or vehicles for which the plates are being requested will be used only for official undercover work conducted by a drug and violent crime task force.

(j) The commissioner is authorized to issue 20 Class A license plates to the Criminal Investigation Division of the Department of Revenue for use by its investigators.

(k) The commissioner may issue a maximum of 10 Class A license plates to the Division of Natural Resources for use by natural resources police officers. The commissioner shall

WV Legislature

designate the color and design of the registration plates to be displayed on the front and the rear of all other state-owned vehicles owned by the Division of Natural Resources and operated by natural resources police officers.

(l) The commissioner is authorized to issue an unlimited number of Class A license plates to the Commission on Special Investigations for state-owned vehicles used for official undercover work conducted by the Commission on Special Investigations.

(m) The commissioner is authorized to issue a maximum of two Class A plates to the Division of Protective Services for state-owned vehicles used by the Division of Protective Services in fulfilling its mission.

(n) The commissioner is authorized to issue Class A registration plates for vehicles used by the Medicaid Fraud Control Unit created by §9-7-7 of this code.

(o) The commissioner is authorized to issue Class A registration plates for vehicles used by the West Virginia Insurance Fraud Unit created by §33-41-8 of this code.

(p) No other registration plate may be issued for, or attached to, any state-owned vehicle.

(q) The Commissioner of Motor Vehicles shall have a sufficient number of both front and rear plates produced to attach to all state-owned or leased vehicles.

(r) The commissioner shall, after consultation with the Fleet Management Division established pursuant to §5A-12-1 et seq. of this code and the Enterprise Resource Planning Board established pursuant to §12-6D-1 et seq. of this code, develop and adopt a standardized naming convention for the title, registration, and licensing of state vehicles, pursuant to §17A-3-25 of this code. The naming convention adopted shall be consistent with the naming convention adopted for the centralized accounting system as maintained by the Enterprise Resource Planning Board for the purpose of creating and maintaining an accurate and up to date inventory of the state vehicle fleet.

(s) It is the duty of each office, department, bureau, commission, or institution furnished any vehicle to have plates as described herein affixed thereto prior to the operation of the vehicle by any official or employee.

(t) The commissioner may issue special registration plates for motor vehicles titled in the name of the Division of Public Transit or in the name of a public transit authority as defined in this subsection and operated by a public transit authority or a public transit provider to transport persons in the public interest. For purposes of this subsection, “public transit authority” means an urban mass transportation authority created pursuant to §8-27-1 et seq. of this code or a nonprofit entity exempt from federal and state income taxes under the Internal Revenue Code and whose purpose is to provide mass transportation to the public at large. The special registration plate shall be designed by the commissioner and shall display the words “public transit” or words or letters of similar effect to indicate the public purpose

WV Legislature

of the use of the vehicle. The special registration plate shall be issued without charge.

(u) Each green registration plate with white letters affixed to a state vehicle, and each corresponding title and registration certificate for all state vehicles, other than those vehicles with Class A registration plates as provided in this section, terminates at midnight on December 31, 2018. Each spending unit assigned a state vehicle that is required to display a state vehicle license plate and registration shall obtain a new title, new registration card, and new state vehicle license plate prior to January 1, 2019: Provided, That no state vehicle license plate shall be issued unless the spending unit has provided an affirmative statement that the vehicle is a state asset recorded in the central accounting system as maintained by the Enterprise Resource Planning Board, and the same has been verified by the commissioner, as required by §17A-3-25 of this code. When new registrations are issued pursuant to this article and for subsequent, non-Class A registrations of state owned or leased vehicles, the state vehicle registration plate and certificate shall be valid for a period of not more than 24 months and shall be required to be renewed every two years.

(v) The commissioner is authorized to prepare and promulgate emergency rules, pursuant to §29A-3-1 et seq. of this code in order to implement amendments to this section.

(w) Any person who violates the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $50 nor more than $100. Magistrates have concurrent jurisdiction with circuit courts for the enforcement of this section.

WV Legislature

§17A-3-24. Emergency waiver of registration and licensing requirements; conditions and limitations; statement of purpose; length of emergency waiver period; promulgation of rules.

(a) The Governor may authorize the Commissioner of Motor Vehicles or his or her designee to waive temporarily any requirements under the provisions of this chapter, or any other provision of this code relating to any permits, authorizations or licenses required to operate a motor vehicle in this state: Provided, That such temporary waiver shall be for the sole purpose of facilitating the response of motor carriers providing humanitarian relief during time of emergency officially declared by the president of the United States, the Governor of this state or the chief executive of any other state or jurisdiction: Provided, however, That the following conditions are satisfied:

(1) The driver of any such vehicle shall be properly licensed in his state of residency;

(2) The motor vehicle to be operated is properly licensed and registered in this or any other state; and

(3) The motor vehicle to be operated satisfies all motor vehicle insurance requirements or provisions of its state of registration.

(b) Proof of the insurance required by subdivision (3), subsection (a) of this section shall be carried in the cab of the motor vehicle.

(c) Any motor vehicle operating pursuant to this section shall be issued a statement from the person or entity authorizing the transport of such goods or materials certifying that the motor carrier is providing humanitarian relief without compensation on a volunteer basis and including a description of materials or goods being transported during the time of declared emergency while it is in this state. Such statement shall be carried in the cab of the motor vehicle and be made available for inspection upon request of the commissioner, any of his or her designees, or any law-enforcement officer.

(d) The Commissioner of Motor Vehicles shall determine at the time the temporary waiver is issued the length of time such waiver shall be in effect: Provided, That all temporary waivers issued pursuant to this section shall become void upon the termination of the time of emergency as determined by the president of the United States, the Governor of this state or the chief executive of any other state or jurisdiction.

WV Legislature

§17A-3-25. State vehicle title, registration and relicensing project of 2018; emergency and legislative rules

(a) On or before July 1, 2018, the commissioner shall coordinate with the Fleet Management Division established pursuant to §5A-12-1 et seq. of this code and the Enterprise Resource Planning Board established pursuant to §12-6D-1 et seq. of this code and other applicable agencies, to develop a standardized titling and registration system for state vehicles. To the extent practicable, the standardization of vehicle title, registration, and state vehicle license plates shall conform to the state's central accounting system maintained by the Enterprise Resource Planning Board. The standardization of state vehicle titles, registrations, and license plates, as described in this section, shall be known as the "State Vehicle Title, Registration, and Relicensing Project of 2018". Every spending unit shall comply with the provisions of this section, and §17A-3-23 of this code.

(b) The commissioner, in coordination with the Fleet Management Division, shall develop a standard system for identifying and recording the names of agencies, offices, or spending units to which each state vehicle is assigned, or registered, and such standard naming conventions shall be developed to align with the state's central accounting system, and the centralized state vehicle inventory system. The commissioner shall propose legislative and emergency rules, pursuant to §29A-3-1 et seq. of this code, establishing those standard naming conventions for the registration, titling, and licensing of every state vehicle, and assigning by rule a list of the standardized naming conventions for each spending unit for the purpose of issuing new title, registration, and license plates to each state vehicle by December 31, 2018.

(c) Once the commissioner has promulgated legislative and emergency rules as authorized pursuant to subsection (b) of this section, and not later than September 1, 2018, the division shall begin to issue the standardized title, registration, and state vehicle license plates for all state vehicles.

(d) Any spending unit applying to license or relicense a state vehicle pursuant to this section shall include with the application an affirmative statement that the vehicle is a state asset recorded in the central accounting system as maintained by the Enterprise Resource Planning Board before the commissioner is required to issue any motor vehicle registration plates: Provided, That for leased vehicles, the spending unit shall affirm to the commissioner that the vehicle is leased and not required to be recorded in the state central accounting system.

(e) The commissioner shall confirm that each vehicle for which an agency applies for a license, title, or registration is properly listed within the centralized accounting system as being a vehicle owned by a state agency before processing the application.

(f) The commissioner is authorized, by legislative and emergency rule, to establish a procedure whereby the commissioner shall reject the application for a state vehicle title,

WV Legislature

registration and state vehicle license plate if that application does not conform to the standard naming convention requirements. The commissioner shall provide by rule for the reasonable remedy, correcting of errors, or to compel compliance with the standard naming conventions.

(g) At midnight on December 31, 2018, all green state vehicle license plates with white lettering affixed to vehicles shall expire. The commissioner, in coordination with the Fleet Management Division, shall provide notice to each spending unit, and advertise as deemed appropriate, to inform the fleet coordinators, as defined in §5A-12-3 of this code, that such license plates expire and the procedure for being issued new titles, registrations, and license plates pursuant to this article. The head of each spending unit with state vehicles shall cooperate and comply with the requirements of the State Vehicle Title, Registration, and Relicensing Project of 2018, and the centralized accounting system.

(h) Upon receipt of the new title, registration, and license plates, each spending unit shall enter the appropriate information into the state's central accounting system maintained by the Enterprise Resource Planning Board, in such detail and specificity as required by the board, the Fleet Management Division established pursuant to §5A-12-1 et seq. of this code.

WV Legislature

§17A-3-26. Enforcement; report.

Beginning January 1, 2019, any state vehicle in this state with a green state license plate with white lettering is in violation of this article.

WV Legislature

§17A-3-27. Compliance audit.

On or before December 31, 2019, the Legislative Auditor, in accordance with §4-10-1 et seq. of this code, shall audit the Division of Motor Vehicles for compliance with the State Vehicle Title, Registration, and Relicensing Project of 2018. The Legislative Auditor may make recommendations for future compliance monitoring of any spending unit found not in compliance with the project and make such recommendations for administrative penalties for noncompliance with the project.

WV Legislature

§17A-3A-1.

Repealed.

Acts, 2003 Reg. Sess., Ch. 155.

WV Legislature

§17A-3A-2. Consumer disclosure.

Before a motor vehicle not originally manufactured in accordance with the laws and regulations of the United States Clean Air Act and the Motor Vehicle Safety Act can be sold to a consumer in this state, the seller must provide the purchaser with full written disclosure of all modifications performed to the vehicle. This disclosure consists of a description phrased in terms reasonably understandable to a consumer with no specialized technical training, accompanied by a copy of the technical submissions made to the environmental protection agency and Department of Transportation in order to obtain certification of compliance. Failure to make this disclosure renders the sale voidable.

WV Legislature

§17A-3A-3. Certificates of title.

(a) Before any imported vehicle which has not previously been

titled or registered in the United States may be titled in this state, the applicant must submit: (1) A manufacturer's certificate of origin issued by the actual vehicle manufacturer together with a notarized translation thereof; or (2) the documents constituting valid proof of ownership by an individual owner or exporter and evidencing a change of such ownership to the applicant, together with a notarized translation of any document; or (3) with regard to vehicles imported from countries which cancel the vehicle registration and title for export, the documents assigned to such vehicle after the registration and title have been canceled, together with a notarized translation thereof, and proof satisfactory to the division that the motor vehicle complies with the United States Clean Air Act and the Motor Vehicle Safety Act.

(b) In the event that the documents submitted as required by subsection (a) of this section do not name as owner the current applicant for a certificate of title, the applicant must also submit reliable proof of a chain of title. For those countries which utilize documents of registration rather than a certificate of title, proof of a chain of title for purposes of this subsection shall be accomplished by presenting the change of ownership certificate referred to in subsection (a) of this section.

WV Legislature

§17A-4-1. Registration expires on transfer by owner; transfer, surrender or retention of plates.

Whenever the owner of a registered vehicle transfers or assigns his or her title, or interest thereto, the registration of such vehicle shall expire: Provided, That such owner, if he or she has made application to the department within sixty days from the date of purchase to have said registration plates transferred to be used on another vehicle owned by said owner, may then operate the other vehicle for a period of sixty days, but in no event longer than sixty days from the date of original transfer. Upon such transfer, it shall be the duty of the original owner to retain the registration plates issued therefor and to immediately notify the commissioner of such transfer upon such form as may be provided therefor and to deliver to him or her the certificate of registration, whereupon the commissioner shall, upon the payment of a fee of $10, issue a new certificate showing the use to be made of such plates. The Division of Motor Vehicles may adjust the fee for each new certificate every five years on September 1, based on the U. S. Department of Labor, Bureau of Labor Statistics most current Consumer Price Index: Provided, That an increase in such fee may not exceed ten percent of the total fee amount in a single year. Such plates may then be used by such owner on another vehicle of the same class as the vehicle for which they were originally issued if such other vehicle does not require a greater license fee than was required for such original vehicle. If such other vehicle requires a greater license fee than such original vehicle, then such plates may be used by paying such difference to the commissioner. When such transfer of ownership is made to a licensed dealer in motor vehicles it shall be the duty of such dealer to immediately execute notification of transfer, in triplicate, and to have this notification properly signed by the owner making the transfer. The dealer shall immediately forward to the department the original copy of the notification of transfer. One copy of the notification of transfer shall be given to the owner and one shall be retained by the dealer. The owner shall immediately send to the department the transfer fee of $10 with any additional fee that may be required under the terms of this chapter. The owner’s copy, properly signed by the dealer, will be the owner’s identification until he or she receives a new registration card from the department.

The owner of a set of registration plates may surrender them to the commissioner together with the registration card and, upon the payment of $10 as an exchange fee and upon the payment of such additional fees as are necessary to equalize the value of the plates surrendered with the value of registration plates desired, receive in exchange a set of plates and registration card for a vehicle of a different class.

WV Legislature

§17A-4-2. Endorsement of certificate of title upon transfer by owner.

Whenever the owner of a registered vehicle transfers or assigns his title, he shall endorse an assignment and warranty of title upon the certificate of title for such vehicle with a statement of all liens and encumbrances thereon, which statement shall be verified under oath by the owner, and he shall within sixty days from date of sale deliver the certificate of title to the purchaser or transferee, except in the case of a vehicle sold as scrap or to be dismantled.

WV Legislature

§17A-4-3. New owner must secure registration and certificate of title.

The transferee before operating or permitting the operation of such vehicle upon a highway shall apply for and obtain the registration thereof, as upon an original registration, except as otherwise permitted in sections thirteen and fifteen, article six, or by any other provisions of this chapter: Provided, That such transferee may operate such vehicle under the registration of its previous owner for a period of not more than ten days as provided in section one, article three of this chapter.

A transferee shall at the same time present the certificate of title endorsed and assigned as hereinbefore provided to the department and make application for and obtain a new certificate of title for such vehicle, except as otherwise permitted in sections four and five of this article.

WV Legislature

§17A-4-4. Transfers to dealers and others.

When the transferee of a vehicle is a dealer who holds the same for resale and lawfully operates the same under dealer's plates, such dealer shall not be required to obtain a new registration of said vehicle or be required to forward the certificate of title to the department, but such dealer upon transferring his title or interest to another person shall execute and acknowledge an assignment and warranty of title upon the certificate of title and deliver the same not later than sixty days from date of sale to the person to whom such transfer is made.

When the transferee of a vehicle does not drive such vehicle or permit it to be driven upon the highways, such transferee shall not be required to obtain a new registration of said vehicle, but such transferee shall be required within sixty days from the date of such transfer to forward the certificate of title to the department accompanied by an application for a new certificate of title in his name.

WV Legislature

§17A-4-5. Transfer by operation of law.

Whenever the title or interest of an owner in or to a registered vehicle shall pass to another otherwise than by voluntary transfer, the registration thereof shall expire and the vehicle shall not be operated upon the highways unless and until the person entitled to possession of such vehicle shall apply for and obtain the registration thereof, except that such vehicle may be operated by the person entitled to its possession or his legal representative upon the highways for a distance not exceeding seventy-five miles upon displaying upon such vehicle the registration plates issued to the former owner, or in the event title has become vested in the person holding a lien or encumbrance upon said vehicle, such person may apply to the department for and obtain special plates as may be issued under this chapter to dealers or others and may operate any said repossessed vehicle under such special plates only for purposes of transporting the same to a garage or warehouse or for purposes of demonstrating or selling the same: Provided, That the commissioner is authorized to transfer the plates and registration of a deceased person to his legal heir or legatee without payment of any fee and the legal heir or legatee may keep and use the same license plate until it regularly expires.

Upon any transfer the new owner may secure a new registration and certificate of title upon proper application and upon presentation of the last certificate of title, if available, and such instruments or documents of authority or certified copies thereof as may be sufficient or required by law to evidence or effect a transfer of title or interest in or to chattels in such case. In the event title has become vested in the person or financial institution holding a lien or encumbrance upon said vehicle, such person or institution need not obtain a new registration of said vehicle or forward the certificate of title to the department in order to sell the vehicle, but the person or institution upon transfer of title or interest to another shall execute and acknowledge an assignment and warranty of title upon the certificate of title and deliver the same not later than sixty days from the date of sale to the purchaser. The person or institution holding a lien or encumbrance upon the vehicle who acquires the vehicle as a result of the lien or encumbrance and subsequently, within sixty days, sells the vehicle in satisfaction of the debt creating the lien or encumbrance, shall not be subject to any privilege tax or personal property tax on the vehicle imposed by any other section.

WV Legislature

§17A-4-6. When department to register vehicle and issue new certificate; file of surrendered certificates.

The department upon receipt of a properly endorsed certificate of title and proper application for registration accompanied by the required fee and when satisfied as to the genuineness and regularity of said transfer and of the right of the transferee to a certificate of title shall reregister the vehicle as upon a new registration in the name of the new owner and issue a new certificate of title as upon an original application.

The department shall retain and appropriately file every surrendered certificate of title, such file to be so maintained as to permit the tracing of title of the vehicles designated therein.

WV Legislature

§17A-4-7. Release by lienholder to owner.

A person holding a lien or encumbrance as shown upon a certificate of title upon a vehicle may release the lien or encumbrance or assign his or her interest to the owner without affecting the registration of the vehicle. The division, upon receiving an electronic acknowledgment of a release of lien from the lienholder or a certificate of title upon which a lienholder has released or assigned his or her interest to the owner or upon receipt of a certificate of title not so endorsed but accompanied by a legal release from a lienholder of this interest in or to a vehicle, shall issue a new certificate of title as upon an original application. The division, upon receiving an electronic acknowledgment of a release of lien from the lienholder shall issue, without further application or fee a new certificate of title free of any lien or encumbrance to the vehicle owner to the address shown in the division's records.

WV Legislature

§17A-4-8. Failure to deliver certificate a misdemeanor.

It is a misdemeanor for any person to fail or neglect to properly endorse and deliver a certificate of title to a transferee or owner lawfully entitled thereto.

WV Legislature

§17A-4-9. Owner after transfer not liable for negligent operation.

The owner of a motor vehicle who has made a bona fide sale or transfer of his title or interest and who has delivered possession of such vehicle and the certificate of title thereto properly endorsed to the purchaser or transferee shall not be liable for any damages thereafter resulting from negligent operation of such vehicle by another.

WV Legislature

§17A-4-10. Salvage certificates for certain wrecked or damaged vehicles; fee; penalty.

(a) In the event a motor vehicle is determined to be a total loss or otherwise designated as totaled by an insurance company or insurer, and upon payment of a total loss claim to an insured or claimant owner for the purchase of the vehicle, the insurance company or the insurer, as a condition of the payment, shall require the owner to surrender the certificate of title: *Provided*, That an insured or claimant owner may choose to retain physical possession and ownership of a total loss vehicle. If the vehicle owner chooses to retain the vehicle and the vehicle has not been determined to be a cosmetic total loss in accordance with subsection (d) of this section, the insurance company or insurer shall also require the owner to surrender the vehicle registration certificate. The term "total loss" means a motor vehicle which has sustained damages equivalent to seventy-five percent or more of the market value as determined by a nationally accepted used car value guide or meets the definition of a flood-damaged vehicle as defined in this section.

(b) The insurance company or insurer shall, prior to the payment of the total loss claim, determine if the vehicle is repairable, cosmetically damaged, or nonrepairable. Except as provided in subsection (p) of this section, within 10 days of payment of the total loss claim, the insurance company or insurer shall surrender the certificate of title, a copy of the claim settlement, a completed application on a form prescribed by the commissioner, and the registration certificate if the owner has chosen to keep the vehicle to the Division of Motor Vehicles.

(c) If the insurance company or insurer determines that the vehicle is repairable, the division shall issue a salvage certificate, on a form prescribed by the commissioner, in the name of the insurance company, the insurer, or the vehicle owner if the owner has chosen to retain the vehicle. The certificate shall contain, on the reverse, spaces for one successive assignment before a new certificate at an additional fee is required. Upon the sale of the vehicle, the insurance company, insurer, or vehicle owner if the owner has chosen to retain the vehicle, shall complete the assignment of ownership on the salvage certificate and deliver it to the purchaser. The vehicle may not be titled or registered for operation on the streets or highways of this state unless there is compliance with subsection (h) of this section. The division shall charge a fee of $22.50 for each salvage title issued. The Division of Motor Vehicles may adjust the fee for each salvage title every five years on September 1, based on the U.S. Department of Labor, Bureau of Labor Statistics most current Consumer Price Index: *Provided*, That an increase in such fee may not exceed 10 percent of the total fee amount in a single year.

(d) If the insurance company or insurer determines the damage to a totaled vehicle is exclusively cosmetic and no repair is necessary in order to legally and safely operate the motor vehicle on the roads and highways of this state, the insurance company or insurer shall, upon payment of the claim, submit the certificate of title to the division. Neither the insurance company nor the division may require the vehicle owner to surrender the registration certificate in the event of a cosmetic total loss settlement.

WV Legislature

(1) The division shall, without further inspection, issue a title branded "cosmetic total loss" to the insured or claimant owner if the insured or claimant owner wishes to retain possession of the vehicle, in lieu of a salvage certificate. The division shall charge a fee of $22.50 for each cosmetic total loss title issued. The terms "cosmetically damaged" and "cosmetic total loss" do not include any vehicle which has been damaged by flood or fire. The designation "cosmetic total loss" on a title may not be removed. The Division of Motor Vehicles may adjust the fee for each cosmetic total loss title every five years on September 1, based on the U. S. Department of Labor, Bureau of Labor Statistics most current Consumer Price Index: *Provided*, That an increase in such fee may not exceed ten percent of the total fee amount in a single year.

(2) If the insured or claimant owner elects not to take possession of the vehicle and the insurance company or insurer retains possession, the division shall issue a cosmetic total loss salvage certificate to the insurance company or insurer. The division shall charge a fee of $22.50 for each cosmetic total loss salvage certificate issued. The Division of Motor Vehicles may adjust the fee for each cosmetic total loss salvage certificate every five years on September 1, based on the U. S. Department of Labor, Bureau of Labor Statistics most current Consumer Price Index: *Provided*, That an increase in such fee may not exceed ten percent of the total fee amount in a single year. The division shall, upon surrender of the cosmetic total loss salvage certificate issued under the provisions of this paragraph and payment of the five percent motor vehicle sales tax on the fair market value of the vehicle as determined by the commissioner, issue a title branded "cosmetic total loss" without further inspection.

(e) If the insurance company or insurer determines that the damage to a totaled vehicle renders it nonrepairable, incapable of safe operation for use on roads and highways, and as having no resale value except as a source of parts or scrap, the insurance company or vehicle owner shall, in the manner prescribed by the commissioner, request that the division issue a nonrepairable motor vehicle certificate in lieu of a salvage certificate. The division shall issue a nonrepairable motor vehicle certificate without charge.

(f) Any owner who scraps, compresses, dismantles, or destroys a vehicle without further transfer or sale for which a certificate of title, nonrepairable motor vehicle certificate, or salvage certificate has been issued shall, within 45 days, surrender the certificate of title, nonrepairable motor vehicle certificate, or salvage certificate to the division for cancellation.

(g) Any person who purchases or acquires a vehicle as salvage or scrap, to be dismantled, compressed, or destroyed, shall, within 45 days, surrender to the division the certificate of title, nonrepairable motor vehicle certificate, salvage certificate, or a statement of cancellation signed by the seller, on a form prescribed by the commissioner. Subsequent purchasers of salvage or scrap are not required to comply with the notification requirement.

(h) If the motor vehicle is a "reconstructed vehicle" as defined in this section or §17A-1-1 of this code, it may not be titled or registered for operation until it has been inspected by an official state inspection station and by the Division of Motor Vehicles. Following an approved

WV Legislature

inspection, an application for a new certificate of title may be submitted to the division. The applicant is required to retain all receipts for component parts, equipment, and materials used in the reconstruction. The salvage certificate shall also be surrendered to the division before a certificate of title may be issued with the appropriate brand.

(i) The owner or title holder of a motor vehicle titled in this state which has previously been branded in this state or another state as salvage, reconstructed, cosmetic total loss, cosmetic total loss salvage, flood, fire, an equivalent term under another state's laws, or a term consistent with the intent of the National Motor Vehicle Title Information System established pursuant to 49 U. S. C. § 30502 shall, upon becoming aware of the brand, apply for and receive a title from the Division of Motor Vehicles on which the brand "reconstructed", "salvage", "cosmetic total loss", "cosmetic total loss salvage", "flood", "fire", or other brand is shown. The division shall charge a fee of $10 for each title so issued. The Division of Motor Vehicles may adjust the fee for each reconstructed, salvage, cosmetic total loss, cosmetic total loss salvage, flood, fire, or other brand title issued every five years on September 1, based on the U. S. Department of Labor, Bureau of Labor Statistics most current Consumer Price Index: *Provided*, That an increase in such fee may not exceed 10 percent of the total fee amount in a single year.

(j) If application is made for title to a motor vehicle, the title to which has previously been branded reconstructed, salvage, cosmetic total loss, cosmetic total loss salvage, flood, fire, or other brand by the Division of Motor Vehicles under this section and said application is accompanied by a title from another state which does not carry the brand, the division shall, before issuing the title, affix the brand "reconstructed", "cosmetic total loss", "cosmetic total loss salvage", "flood", "fire", or other brand to the title. The motor vehicle sales tax paid on a motor vehicle titled as reconstructed, cosmetic total loss, flood, fire, or other brand under the provisions of this section shall be based on 50 percent of the fair market value of the vehicle as determined by a nationally accepted used car value guide to be used by the commissioner.

(k) The division shall charge a fee of $22.50 for the issuance of each salvage certificate or cosmetic total loss salvage certificate but shall not require the payment of the five percent motor vehicle sales tax. The Division of Motor Vehicles may adjust the fee for each salvage certificate or cosmetic total loss salvage certificate every five years on September 1, based on the U. S. Department of Labor, Bureau of Labor Statistics most current Consumer Price Index: *Provided*, That an increase in such fee may not exceed ten percent of the total fee amount in a single year. However, upon application for a certificate of title for a reconstructed, cosmetic total loss, flood or fire damaged vehicle, or other brand, the division shall collect the five percent privilege tax on the fair market value of the vehicle as determined by the commissioner unless the applicant is otherwise exempt from the payment of such privilege tax. A wrecker/dismantler/rebuilder, licensed by the division, is exempt from the payment of the five percent privilege tax upon titling a reconstructed vehicle. The division shall collect a fee of $35 per vehicle for inspections of reconstructed vehicles. These fees shall be deposited in a special fund created in the State Treasurer's office and may be expended by the division to carry out the provisions of this article: *Provided*, That on and

WV Legislature

after July 1, 2007, any balance in the special fund and all fees collected pursuant to this section shall be deposited in the State Road Fund. Licensed wreckers/dismantlers/rebuilders may charge a fee not to exceed $25 for all vehicles owned by private rebuilders which are inspected at the place of business of a wrecker/dismantler/rebuilder.

(l) As used in this section:

(1) "Reconstructed vehicle" means the vehicle was totaled under the provisions of this section or by the provisions of another state or jurisdiction and has been rebuilt in accordance with the provisions of this section or in accordance with the provisions of another state or jurisdiction or meets the provisions of §17A-1-1(n) of this code.

(2) "Flood-damaged vehicle" means that the vehicle was submerged in water to the extent that water entered the passenger or trunk compartment.

(3) "Other brand" means a brand consistent with the intent of the National Motor Vehicle Title Information System established pursuant to 49 U. S. C. § 30502 and rules promulgated by the United States Department of Justice to alert consumers, motor vehicle dealers or the insurance industry of the history of a vehicle.

(m) Every vehicle owner shall comply with the branding requirements for a totaled vehicle whether or not the owner receives an insurance claim settlement for a totaled vehicle.

(n) A certificate of title issued by the division for a reconstructed vehicle shall contain markings in bold print on the face of the title that it is for a reconstructed, flood, or fire-damaged vehicle.

(o) Any person who knowingly provides false or fraudulent information to the division that is required by this section in an application for a title, a cosmetic total loss title, a reconstructed vehicle title, or a salvage certificate, or who knowingly fails to disclose to the division information required by this section to be included in the application, or who otherwise violates the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall for each incident be fined not less than $1,000 nor more than $2,500, or imprisoned in jail for not more than one year, or both fined and imprisoned.

(p) Notwithstanding any other provision of law and with respect to a vehicle which the vehicle owner has not chosen to retain, if an insurance company or insurer is unable to obtain the properly endorsed certificate of title for a motor vehicle within 15 days of the payment of a total loss claim, the insurance company or insurer, at any time thereafter, may apply to the Division of Motor Vehicles for a salvage certificate, a cosmetic total loss salvage certificate, or a nonrepairable motor vehicle certificate, as applicable. The application shall be accompanied by evidence that the insurance company or insurer has paid a total loss claim on the vehicle, a copy of a written request for the certificate of title sent to the vehicle owner and any known lienholder by the insurance company or insurer or a designee of the insurance company or insurer, proof that the request was sent by certified mail, return

WV Legislature

receipt requested, to the last known address of the vehicle owner and any known lienholder, service to be complete upon the mailing thereof, and the required fee, if applicable. Upon receipt of a properly completed application, the division shall issue a salvage certificate, a cosmetic total loss salvage certificate or a nonrepairable motor vehicle certificate, as applicable, in the name of the insurance company or insurer. Such salvage certificate, cosmetic total loss salvage certificate, or nonrepairable motor vehicle certificate shall be issued free and clear of all liens and claims of ownership.

(q) If an insurance company or insurer requests that an automobile auction take possession of a motor vehicle that is the subject of an insurance claim, and subsequently the insurance company denies coverage with respect to the motor vehicle or otherwise does not take ownership of the motor vehicle, the automobile auction may proceed as follows. At any time after the automobile auction has had possession of the motor vehicle for 45 days, it may apply to the division for a salvage certificate or a nonrepairable motor vehicle certificate without surrendering the certificate of title for the motor vehicle. The application shall be accompanied by a copy of a written request, on the automobile auction's letterhead, requesting that, upon payment of applicable charges, the vehicle be removed from the automobile auction's facility, proof that the request was delivered by a nationally-recognized courier service or by certified mail to the vehicle owner and any known lienholder at least 15 days before the date of the application, and the required fee, if applicable. Upon receipt of a properly completed application, the division shall issue a salvage certificate or a nonrepairable motor vehicle certificate, as applicable, in the name of the automobile auction. Such salvage certificate or nonrepairable motor vehicle certificate shall be issued free and clear of all liens and claims of ownership.

(r) An applicant pursuant to subsection (p) or (q) of this section shall indemnify and hold harmless the Division of Motor Vehicles from any liability arising from an error or misrepresentation made by such applicant in a submission to the division pursuant to subsection (p) or (q) of this section.

WV Legislature

§17A-4-11. Title Clearinghouse.

(a) The Legislature finds that continuing advances in digital title technology have improved and are expected to continue to improve such that the Division of Motor Vehicles can produce a secure digital title with an efficiency that is sought by businesses in other states. The Legislature hereby authorizes the Division of Motor Vehicles to operate and regulate a title clearinghouse to produce titles for nonresident businesses.

(b) Any nonresident business may apply to participate in the title clearinghouse. Notwithstanding any code provision to the contrary, the division may produce a title for a non-resident business participant in accordance with this section.

(c) The division is authorized to establish a participation fee and title fees for participants. The title fees shall not be less than the fees assessed to residents of this state to obtain a title.

(d) The division shall require a participant to submit a penalty bond payable to the division in the sum of $250,000, conditioned that the participant will not commit any fraud against any purchaser, seller, financial institution, the State of West Virginia or any other state through the use of the title clearinghouse.

(e) The division may issue emergency rules and propose legislative rules to implement the provisions of this section.

(f) The title clearinghouse is not intended to supplant any reciprocal agreements or compacts for title and registration entered by the division with other states and jurisdictions. If any provision of this section or rule is deemed to conflict with a reciprocal agreement or compact, the conflicting provision in this section or rule shall not apply.

(g) The commissioner is authorized to develop and manage a registration process designed for resident businesses maintaining a local, national or international fleet of vehicles.

WV Legislature

§17A-4-12.

Repealed.

Acts, 1970 Reg. Sess., Ch. 56.

WV Legislature

§17A-4A-1. Certificate to show liens or encumbrances.

The division upon receiving an application for a certificate of title to a vehicle, trailer, semitrailer, pole trailer, factory-built home or recreational vehicle for which a certificate of title is required under article three of this chapter, all of which are hereinafter in this article referred to as vehicles, showing liens or encumbrances upon the vehicle, shall, upon issuing to the owner thereof a certificate of title therefor, show upon the face of the certificate of title all liens or encumbrances disclosed by the application. All liens or encumbrances shall be shown in the order of their priority being according to the information contained in the application. When an application shows liens and encumbrances, the information as evidence of the lien in connection therewith as the division may consider necessary shall also be furnished. The information shall include the name and address of the lienholder, the nature and kind of the lien, the date thereof and the amount thereby secured. However, only the name and address of the lienholder will be endorsed on the title certificate. Upon issuing the certificate, the division shall thereupon send or deliver it by either paper or electronic means to the holder of the first lien.

WV Legislature

§17A-4A-2. Liens and encumbrances subsequently created.

(a) Liens or encumbrances placed on vehicles by the voluntary act of the owner after the original issue of title to be properly recorded must be shown on the certificate of title. In such cases, the owner or lienholder shall file application with the division on a blank furnished for that purpose, setting forth the lien or liens and such information and evidence of the lien in connection therewith as the division may deem necessary. Such information shall include the name and address of the lienholder, the kind of and nature of the lien, the date thereof, and the amount thereby secured. However, only the name and address of the lienholder shall be endorsed on the title certificate with the endorsement of the fact of such lien as hereinafter provided. The division, if satisfied that it is proper that the same be recorded, and upon surrender of the certificate of title covering the vehicle, shall thereupon issue a new certificate of title, showing the liens or encumbrances in the order of their filing being according to the date, hour, and minute of receipt by the division of the application for the same. For the purpose of recording a subsequent lien on a certificate of title, the subsequent lienholder shall make a written request upon the lienholder in possession of the certificate of title, accompanied by proof of the existence of the subsequent lien, stating his or her need to have possession of the certificate of title for the purpose of having his or her lien recorded thereon by the division. Thereupon, the lienholder in possession of the certificate shall within a reasonable time, not to exceed 10 days from the receipt of said written request, deliver the certificate of title to the requesting subsequent lienholder.

Upon delivery of the certificate of title, the subsequent lienholder shall immediately forward it and the lienholder's own application to the division for the filing of the lien and for the recording of the same on the certificate of title. Upon issuing the new certificate, the division shall thereupon send or deliver it to the holder of the first lien.

(b) The provisions of subsection (a) of this section shall not apply to: (1) Vehicles held as inventory for sale by a registered dealer holding title by assignment entered upon a certificate of title; or (2) vehicles for which certificates of title have been issued and are held as inventory for lease by a vehicle rental agency or similar person engaged solely in the business of leasing vehicles. Any lien or encumbrance placed on such vehicles by the voluntary act of the owner shall be created and perfected in accordance with the provisions of §46-9-1 *et seq*. of this code.

WVLegislature

§17A-4A-2a. Electronic transfer of liens.

(a) Notwithstanding any requirement in this chapter that a lien on a motor vehicle shall be noted on the face of the certificate of title, if there are one or more liens or encumbrance on a vehicle, trailer, semitrailer, pole trailer, factory-built home, or recreational vehicle, the division may electronically transmit the lien to the first lienholder and notify the first lienholder of any additional liens. Subsequent lien satisfactions may be electronically transmitted to the division and shall include the name and address of the person satisfying the lien and any other information required by the division as a condition of participating in the electronic lien information exchange program.

(b) The division may enter into agreements with a service provider or providers to administer the electronic exchange of lien information between dealers, financial institutions, and the division. For the purposes of this section, the term financial institutions shall have the same meaning as defined in §17A-6-10b of this code.

(c) When electronic transmission of liens and lien satisfaction is used, a hard copy certificate of title need not be issued until the last lien is satisfied and a clear hard copy certificate of title is issued to the owner of the vehicle. When a vehicle is subject to an electronic lien, the certificate of title for the vehicle shall be considered to be physically held by the lienholder for the purpose of compliance with state and federal odometer disclosure requirements and for any other requirement of this code. A duly certified copy of the division's electronic record of the certificate of title and lien shall be admissible in any civil, criminal, or administrative proceeding in this state as evidence of the existence of the lien.

(d) For the purposes of this chapter, whenever reference is made by this code to the physical production of a certificate of title as a paper document, or reference to the completion of information related to recording a lien as a paper document, the reference shall be understood to also include the transmission and recordation of the information in an electronic format.

(e) Beginning July 1, 2025, all financial institutions recording five or more liens in a calendar year shall use the division's electronic lien and title system for all lien actions. The division is not required to issue certificates of title as a paper document to a lienholder after the division’s electronic lien and title system is fully implemented: *Provided*, That nothing in this section invalidates, prohibits a person from requesting, or prevents the division from issuing a certificate of title as a paper document.

WV Legislature

§17A-4A-3. Notice of lien; noninventory lien created by voluntary act of the owner not shown on certificate of title or otherwise perfected void as to subsequent purchasers and lien creditors; exceptions.

(a) A certificate of title, when issued by the division showing a lien or encumbrance, shall be considered from and after the filing with the division of the application therefor or the notice of lien authorized in section four of this article adequate notice to the state and its agencies, boards and commissions, to the United States government and its agencies, boards and commissions, to creditors and to purchasers that a lien against the vehicle exists.

(b) Notwithstanding any other provision of this code to the contrary, and subject to the provisions of subsection (c) of this section, any lien or encumbrance placed on a vehicle by the voluntary act of the owner shall be void as against: (i) Any lien creditor who, without knowledge of the lien, acquires by attachment, levy or otherwise a lien thereupon, unless the lien or encumbrance is noted on the certificate of title, a filed application for certificate of title or the notice of lien authorized in section four of this article; and (ii) any purchaser who, without knowledge of the lien or encumbrance, purchases the vehicle, unless the lien or encumbrance is noted on the certificate of title, a filed application for certificate of title or the notice of lien authorized in section four of this article: Provided, That a purchaser under this subsection who purchases the vehicle without knowledge of the lien or encumbrance and contemporaneously obtains actual physical possession of the vehicle and the certificate of title for the vehicle without the lien or encumbrance noted on the certificate of title, receives the vehicle free and clear of the lien or encumbrance.

(c) The creation and perfection of a lien against: (1) A vehicle held as inventory for sale by a registered dealer holding title by assignment; or (2) a vehicle for which a certificate of title has been issued and is held as inventory for lease by a vehicle rental agency or similar person engaged solely in the business of leasing vehicles in accordance with the provisions of article nine, chapter forty-six of this code shall be deemed adequate notice to the state and its agencies, boards and commissions, to the United States government and its agencies, boards and commissions, to creditors and to purchasers that a lien against the vehicle exists, subject to the provisions of section three hundred seven, article nine, chapter forty-six of this code, except that any lien or encumbrance on such a vehicle shall not be effective against the rights of any purchaser for value who purchases the vehicle primarily for personal, family, household or agricultural purposes unless such lien or encumbrance is recorded on the certificate of title or specified on the bill of sale.

WV Legislature

§17A-4A-4. Purchase money lien or encumbrance; effective date of lien; dealer to record lien; fees.

(a) A purchase money lien or encumbrance upon any vehicle shall be perfected on the date and at time of delivery to the Division of Motor Vehicles of either the application for a certificate of title with all supporting documents, or a completed notice of lien form in a format determined by the division. The notice of lien form may be submitted to the division in paper format, facsimile or in any other electronic format approved by the division.

(b) If perfection occurs through the notice of lien form pursuant to subsection (a) of this section, an application for certificate of title must be received by the Division of Motor Vehicles within sixty days after the date of purchase of the vehicle or refinancing of such purchase in order to maintain the perfected status of such lien or encumbrance. When an application is not filed within the time prescribed, the lien or encumbrance shall become unperfected on the sixty-first day following the purchase or refinancing date of the vehicle. If an application for a certificate of title is received by the division on or after the sixty-first day, the new perfection date for the lien or encumbrance is the date the application for a certificate of title is received by the division. Nothing in this section extends the sixty-day title application filing requirement of section four, article four of this chapter. The name and address of the lien holder shall be recorded on this title by the division in either electronic or paper format.

(c) No certificate of title for a vehicle shall be issued unless an application is delivered to the Division of Motor Vehicles.

(d) In all transactions involving a purchase money lien or encumbrance upon a motor vehicle, the motor vehicle dealer shall collect and remit to the Division of Motor Vehicles the title, tax and registration fees required under section four, article three of this chapter and file and record with the Division of Motor Vehicles any lien created as a result of the transaction: Provided, That a motor vehicle dealer may remit the title, tax and registration fees through any license service that is licensed by the Division of Motor Vehicles.

(e) No fee may be charged by a motor vehicle dealer for its services required under this section except that fee authorized by section one-b, article six of this chapter or subdivision (6), subsection (a), section one hundred nine, article three, chapter forty-six-a of this code.

(f) For purposes of this section, a purchase money lien or encumbrance is defined to include: (1) A lien taken or retained by the seller or the vehicle to secure all or a part of its price; (2) a lien taken by a person who by making advances or incurring an obligation gives value to enable another to acquire rights in or the use of a vehicle if such value is so used; and (3) the refinancing of either of the foregoing for the sole purpose of repaying a loan secured by the vehicle.

WV Legislature

§17A-4A-5. Priority of liens shown on certificate.

The liens shown upon a certificate of title issued by the department pursuant to applications for same shall have priority over any other liens against such vehicle, however created and recorded, except as otherwise provided in this article.

WV Legislature

§17A-4A-6. Who to hold certificate of title subject to lien; transfer of possession upon satisfaction of lien; assignment of obligation by lien holder.

The certificate of title of such vehicle shall be delivered to the person, firm or corporation holding the first lien or encumbrance upon the vehicle and retained by him or them until the entire amount of his or their lien is fully paid. Thereupon the certificate of title shall be delivered to the next lien holder, and so on, or if none, then to the owner of the vehicle. It shall be the responsibility of each lienor upon the satisfaction of his lien to deliver said certificate of title to the lienor next entitled to the possession thereof and, if none to the owner, which acts of delivery may be accomplished through registered or certified mail addressed to the lienor or the owner entitled to such possession at his address as shown upon said certificate. In the event of assignment of the obligation by a lienholder who lawfully has possession of the certificate of title at the time of assignment, the lienholder shall deliver the certificate of title to his assignee who shall be entitled to hold the same until the obligation is satisfied, at which time the assignee shall deliver the certificate of title to the next lienholder, or if none, then to the owner of the vehicle. In the event of assignment of the obligation by a lienholder not entitled to possession of the certificate of title at the time of assignment, the lienholder shall immediately upon becoming lawfully entitled to, and obtaining lawful possession of, the certificate of title, deliver the same to his assignee who shall be entitled to hold the same until the obligation is satisfied, at which time the assignee shall deliver the certificate of title to the next lienholder, or if none, then to the owner of the vehicle.

WV Legislature

§17A-4A-7. Release of lien or encumbrance shown on certificate of title.

An owner upon securing the release of any lien or encumbrance upon a vehicle shown upon the certificate of title issued therefor may exhibit the document evidencing such release, signed by the person or persons making the release and acknowledged before a notary public or someone authorized by the laws of this state to take acknowledgments of deeds, and this document together with the certificate of title shall be returned to the division; or the lienholder may release the lien by endorsing across the lien in his or her favor on the face of the title or closely adjacent thereto the following words or words of similar effect or purport: "This lien, this day fully paid, satisfied and released, this day of ," and duly signing and executing said endorsement and acknowledging the same before a notary public and having the notary public execute a certificate of the acknowledgment in the form required for releasing deeds of trust in this state; or when it is impossible to secure either such release from the beneficiary or holder of the lien, the owner may exhibit to the division whatever evidence may be available showing that the debt secured has been satisfied, together with a statement by the owner under oath that the debt has been paid and the certificate of title to such vehicle. The division when satisfied as to the genuineness and regularity thereof shall issue to the owner either a new certificate of title in proper form or an endorsement or rider showing the release of the lien or encumbrance which the division shall attach to the outstanding certificate of title. For the purposes of this article, the term release shall mean either an electronic or paper transaction format.

WV Legislature

§17A-4A-8. Failure to execute release or to surrender certificate when lien paid.

It shall be unlawful and constitute a misdemeanor for a lienor who holds a certificate of title either electronically or in a paper format as provided in this article to refuse or fail to execute a release as provided for in the next preceding section, or to refuse or fail to surrender the certificate of title to the person legally entitled thereto within fifteen days after the lien shall have been paid and satisfied.

WV Legislature

§17A-4A-9. Levy of execution, etc.

A levy made by virtue of an execution, fieri facias or other proper court order, upon a vehicle for which application for a certificate of title has been filed with the department, shall constitute a recorded lien, with the effect of constructive notice thereof to all persons, subsequent to holders of liens or encumbrances theretofore filed with the department, only from and after the time when the officer making such levy files a report to and with the department of motor vehicles, on forms provided therefor by the department, that such levy has been made and that the vehicle thus levied upon has been seized by and is in the actual custody of such officer; and the provisions of any other article, chapter or section of this code to the contrary notwithstanding, the docketing or recording of any such execution, fieri facias or other court order in the office of the clerk of the county court of any county in this state shall not constitute constructive notice thereof as to any such vehicle.

Such report by such officer shall show among other things the full names of the parties to the proceeding upon which the execution, fieri facias or court order is based; the identity of the court, judge or justice of the peace or other judicial officer from which said execution, fieri facias or other court order was issued; the amount required for the satisfaction thereof; the date thereof; the date and hour when received by the officer; the date, hour and minute of the levy, attachment or other execution of said process and the taking into actual custody of said vehicle; the date returnable; the make, year, body style of the vehicle to which the lien of said execution, fieri facias or court order relates as well as the name of the person or persons whose interest or ownership therein is intended to be affected by the lien of such execution, fieri facias or court order. Such report shall also show, if known, the serial number of such vehicle, the current West Virginia registration card number and current West Virginia registered owner thereof and current West Virginia license plate number, and if any item in this sentence enumerated for listing on such report is unknown to the reporting officer the report shall state that such item is unknown to the officer. Such report shall be dated, signed and certified by the reporting officer and such certification shall constitute an official act on his part. The department shall by endorsement upon or attachment to its records note the officer's report and the day and hour and the minute received upon its record copy of the certificate of title thereby affected; should such lien be thereafter satisfied or should the vehicle thus levied upon and seized be thereafter released by such officer, he shall immediately report that fact to the department of motor vehicles and the department shall in a like manner note such fact. Any owner who after such levy and seizure by an officer and before the report thereof by the officer to the department shall fraudulently assign or transfer his title to or interest in such vehicle or cause the certificate of title thereto to be assigned or transferred or cause a lien or encumbrance to be shown upon such certificate of title shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than $25 nor more than $500, or imprisoned in jail for not less than ten days nor more than twelve months.

The actual possession of the levying or attaching officer of the law or the actual possession of some person, other than the judgment or attachment debtor, holding such property for the officer, shall constitute notice of the lien, if any, of the execution, fieri facias, or other

www.LegisTune

court order under which he levies and seizes or otherwise takes possession.

For any vehicle as to which an involuntary lien has been reported and noted by the department and for which there has been no report of release or satisfaction by the levying or seizing officer, if application be made for the transfer of title thereto or issuance of new certificate of title therefor to the current registered owner or to someone claiming by assignment of title certificate from such registered owner or if application be made pursuant to the provisions of this article for the endorsement upon the certificate of title to such vehicle of a lien or encumbrance created by the voluntary act of the owner and the issuance of a new certificate of title showing the same, such involuntary lien, for which the department's records show no report of satisfaction or release, and the information furnished in the officer's report thereof together with the date, hour and minute of receipt of such report shall be endorsed upon such new certificate of title issued pursuant to any of such applications.

WV Legislature

§17A-4A-10. Fee for recording and release of lien.

The Division of Motor Vehicles is hereby authorized to charge a fee of $10 for the recording of any lien either in an electronic or paper format created by the voluntary act of the owner and endorsing it upon the title certificate issued pursuant to this article. The Division of Motor Vehicles may adjust the fee for each lien recording every five years on September 1, based on the U. S. Department of Labor, Bureau of Labor Statistics most current Consumer Price Index: Provided, That an increase in such fee may not exceed ten percent of the total fee amount in a single year. The Division of Motor Vehicles is hereby authorized to charge a fee of $10 for recordation of any release of a lien created by the voluntary act of the owner. The Division of Motor Vehicles may adjust the fee for each recording of a lien release every five years on September 1, based on the U. S. Department of Labor, Bureau of Labor Statistics most current Consumer Price Index: Provided, That an increase in the fee may not exceed ten percent of the total fee amount in a single year: Provided, however, That no charge shall be made for the endorsement and recordation of liens or releases thereof as provided under section nine of this article. No charge shall be made for the issuance of a title to the owner of a vehicle upon the receipt of an electronic release of the final lien.

The provisions of this section enacted in 2017 take effect on July 1, 2017.

WV Legislature

§17A-4A-11. Article to create no cause of action against lienor for damage to property or injury to person.

The exercise by the lienor of the rights and privileges in this article given him shall not in and of itself give rise to a cause of action against such lienor for damages resulting from any act or omission of the registered and beneficial owner of the vehicle in said registered owner's dominion, ownership, use, operation or control thereof.

WV Legislature

§17A-4A-12. Article not to apply to certain common-law and statutory liens.

The provisions of this article shall not be construed so as to require common-law mechanic's liens or repairman's liens, or the lien of an improver or bailee as provided in article eleven, chapter thirty-eight of the Code of West Virginia, 1931, as amended, to be shown on the certificate of title in order to preserve such liens against any purchaser for value or lien creditor who, in either case, without notice of such lien or encumbrance, purchases such vehicle or acquires by attachment, levy or otherwise a lien thereupon.

WV Legislature

§17A-4A-13. Article not to apply to vehicle accessories.

The provisions of this article shall not apply to the recording of a lien or liens which are created only upon tires, radios, heaters, or other vehicle accessories.

WV Legislature

§17A-4A-14. Effect of article on liens and encumbrances created in transactions consummated before vehicle brought into state and subject to registration and titling in state.

As to bona fide purchasers for value or lien creditors without notice, the provisions of this article shall not be construed so as to invalidate or render void any lien or encumbrance placed upon a vehicle, by the voluntary act of the owner, in a transaction consummated before the vehicle is brought into this state, and before the same is subject to registration in the State of West Virginia, and before the application for a West Virginia certificate of title is required so long as such a lien or encumbrance has been properly recorded according to the laws of the jurisdiction in which it was created so as to be valid against bona fide purchasers for value or lien creditors without notice and so long as such lien or encumbrance is of such kind, nature and character as the law of this state would otherwise protect against such purchasers and lien creditors: Provided, however, That after such vehicle is brought into this state and after it is required to be registered and titled in this state, such lien or encumbrance as in this section described shall be void as to any purchaser for value or lien creditor, who, in either case, without notice of such lien or encumbrances, purchases such vehicle or acquires by attachment, levy or otherwise a lien thereupon, unless such lien holder, within three months after the removal of such vehicle into this state or within ten days after such lien holder received notice of such removal, whichever period of time is least, shall, in the manner set forth in section two of this article file application with the department in which case the department shall proceed as in section two of this article.

WV Legislature

§17A-4A-15. Expiration of lien or encumbrance; refiling.

The filing of any lien or encumbrance and its recordation upon the face of a certificate of title to any vehicle as provided in this article is valid for fifteen years only from the date of filing, unless the lienholder refiles the lien or encumbrance in the manner provided in this article for filing and recordation in the first instance, in which event the lien or encumbrance is valid for successive additional periods of five years from the date of each refiling: Provided, That this article does not require the lienholder to obtain the consent of the owner to refile the lien or encumbrance: Provided, however, That in the case of a mobile home or manufactured home, the filing of any lien or encumbrance and its recordation upon the face of a certificate of title to the mobile home or manufactured home is valid for a period of thirty-three years from the date of filing.

When the last lien or encumbrance shown on a certificate of title becomes invalid by the passage of time as provided in this section, the Commissioner of Motor Vehicles is not required to maintain a lien index as to the certificate of title.

WV Legislature

§17A-4A-16. Vehicle leases which are not sales or security interests.

In the case of motor vehicles or trailers, notwithstanding any other provision of law, a transaction does not create a conditional sale or security interest merely because it provides that the rental price is permitted or required to be adjusted under the agreement either upward or downward by reference to the amount realized upon sale or other disposition of the motor vehicle or trailer.

WV Legislature

§17A-5-1. Exemptions from registration of nonresident owners; special permit and certificate in lieu of registration for nonresidents maintaining temporary and recurrent or seasonal residence in state.

(a) A nonresident owner, except as otherwise provided in this section, owning any vehicle registered in a foreign state or country of a Class A type otherwise subject to registration hereunder may operate or permit the operation of such vehicle within this state for a period of thirty days without registering such vehicle in, or paying any fees to, this state subject to the condition that such vehicle at all times when operated in this state is duly registered in and displays upon it a valid registration card and registration plate or plates issued for such vehicle in the place of residence of such owner and that such vehicle is not operated for commercial purposes.

(b) Every nonresident, including any foreign corporation, carrying on business within this state and owning and regularly operating in such business any motor vehicle, trailer or semitrailer or mobile equipment as defined in section one, article one, chapter seventeen-a of this code, within this state, shall be required to register each such vehicle and pay the same fee therefor as is required with reference to like vehicles owned by residents of this state, except as otherwise provided by reciprocal agreements with other states accomplished pursuant to sections ten and ten-a, article two of this chapter.

(c) Any nonresident who accepts or engages in temporary and recurrent or seasonal employment, business, profession or occupation in this state and maintains temporary and recurrent or seasonal residence in this state in connection with such employment, business, profession or occupation, and any nonresident, including any corporation carrying on business of a temporary and recurrent or seasonal nature in this state and owning and temporarily and recurrently or seasonally operating in such business any motor vehicle, trailer or semitrailer or mobile equipment as defined in section one, article one, chapter seventeen-a of this code, within this state, may operate or permit the operation of such vehicle within this state without causing said vehicle to be registered as otherwise required by article three of this chapter: Provided, That such nonresident, in lieu of registration of such vehicle, shall make application to the division and receive a special permit for such vehicle which shall be evidenced by a metal identification plate and certificate in writing, which special permit plate and certificate shall together identify the vehicle for which such special permit and plate shall issue and such certificate shall bear the name and address of the owner of such vehicle. Such special permit shall be issued without previous certification of title to such vehicle as otherwise required by article three of this chapter or the provisions of subsection (b) of this section:

(1) Every owner of a vehicle for which such special permit is desired shall make a verified application to the division for such special permit upon the appropriate form or forms furnished by the division and shall bear the signature of the owner written with pen and ink and shall contain the character of information called for by section three, article three of this chapter, a description of the employment, residence, business and location of such business set forth in such manner as to show the temporary and recurrent or seasonal nature of such

WV Legislature

residence, employment, business, profession or occupation, and that such vehicle is duly registered in the state of residence of such owner. There shall be an application for each vehicle for which a special permit is desired.

(2) Any special permit or plate issued by the division under this section shall be effective and valid for a period of sixty consecutive days from and including the date of issuance and, upon similar application by the owner, the commissioner may renew any such special permit for immediately ensuing similar period or periods of sixty days in any fiscal year. The division shall charge a fee of $50 for each special permit issued under this section:

(A) A special permit shall be issued for one vehicle only and no combination of two or more vehicles shall be operated under fewer special permits than the number of vehicles in such combination. A special permit shall not be issued for any vehicle which is not duly registered in the state of residence of the owner thereof.

(B) The registration plate issued for such vehicle by the state of residence of the owner shall not be displayed on such vehicle while being operated over any highway during any period for which a special permit shall have been issued for such vehicle under this section, but there shall be carried in such vehicle the certificate of registration issued for such vehicle by the state of residence of such owner.

(C) Any owner of any vehicle making application to operate such vehicle upon the highways of this state pursuant to the provisions of this article shall also be required to comply with the provisions of chapter seventeen-d of this code prior to commencing such operation.

(3) The commissioner shall prescribe the substance, form, color and context of the certificate or special permit and the special permit plate, each of which shall be visually distinguishable from the certificates of registration and registration plates issued under article three of this chapter.

(4) It is a misdemeanor for any person to drive or move or knowingly to permit to be moved or driven upon any highway any vehicle for which a special permit shall have been issued under this section unless such vehicle shall bear the special plate called for by the certificate evidencing such special permit.

(5) When the employment, business, profession, occupation or residence of the owner of a vehicle for which such special permit shall have been issued shall cease to be temporary and recurrent or seasonal, any special permit issued for such vehicle pursuant to this section shall immediately terminate and become void and such vehicle shall thereupon become subject to registration under article three of this chapter or the provisions of subsection (b) of this section.

(6) Any special permit issued pursuant to this section shall be valid and effective on and after the first day of a month; that is, such special permit issued between the first and fifteenth days of a month shall be effective during sixty consecutive days from and including

WV Legislature

the first day of the month in which the permit shall issue; and a special permit issued after the fifteenth day of any month shall be effective during sixty consecutive days commencing with and including the first day of the month next following the month in which such special permit shall be issued.

(d) Any other provision of this section notwithstanding, any nonresident referred to in subsection (c) of this section who is engaged by a public utility, as the latter is defined in chapter twenty-four of this code, for the exclusive purpose of restoring the service of said utility as a result of an emergency in which such service is affected shall be permitted to operate such motor vehicle, trailer or semitrailer or mobile equipment as defined in section one, article one, chapter seventeen-a of this code, within this state, without causing said motor vehicle, trailer or semitrailer or mobile equipment as defined in section one, article one, chapter seventeen-a of this code to be registered as otherwise provided by this section and article three of this chapter for the period actually necessary for such restoration but not to exceed a period of ten consecutive days: Provided, That said motor vehicle, trailer or semitrailer or mobile equipment shall be registered in another state upon entry into this state. The provisions of this subsection shall not affect the requirements of reciprocal agreements with other states accomplished pursuant to sections ten and ten-a, article two of this chapter.

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

www.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

§17A-6A-1. Legislative finding.

The Legislature finds and declares that the distribution and sale of motor vehicles in this state vitally affects the general economy and the public welfare and that in order to promote the public welfare and in exercise of its police power, it is necessary to regulate motor vehicle dealers, manufacturers, distributors and representatives of vehicle manufacturers and distributors doing business in this state in order to avoid undue control of the independent new motor vehicle dealer by the vehicle manufacturer or distributor and to ensure that dealers fulfill their obligations under their franchises and provide adequate and sufficient service to consumers generally, and to protect and preserve the investments and properties of the citizens and motor vehicle dealers of this state.

WV Legislature

§17A-6A-2. Governing law.

(a) In accord with the settled public policy of this state to protect the rights of its citizens, each franchise or agreement between a manufacturer or distributor and a dealer or dealership which is located in West Virginia, or is to be performed in substantial part in West Virginia, shall be construed and governed by the laws of the State of West Virginia, regardless of the state in which it was made or executed and of any provision in the franchise or agreement to the contrary. The public policy of this state is to protect the rights of its citizens and each new motor vehicle dealer for any agreement governed by this article.

(b) The provisions of this article apply only to any franchises and agreements entered into, continued, modified, or renewed subsequent to the effective date of this article.

WV Legislature

§17A-6A-3. Definitions.

For the purposes of this article, the words and phrases defined in this section have the meanings ascribed to them, except where the context clearly indicates a different meaning.

(1) "Dealer agreement" means the franchise, agreement, or contract in writing between a manufacturer, distributor, and a new motor vehicle dealer which purports to establish the legal rights and obligations of the parties to the agreement or contract with regard to the operation and business of a new motor vehicle dealer, including, but not limited to, the purchase, lease, or sale of new motor vehicles, accessories, service, and sale of parts for motor vehicles where applicable.

(2) "Designated family member" means the spouse, child, grandchild, parent, brother, or sister of a new motor vehicle dealer who is entitled to inherit the dealer's ownership interest in the new motor vehicle dealership under the terms of the dealer’s will, or who has otherwise been designated in writing by a deceased dealer to succeed the deceased dealer in the new motor vehicle dealership, or is entitled to inherit under the laws of intestate succession of this state. With respect to an incapacitated new motor vehicle dealer, the term means the person appointed by a court as the legal representative of the new motor vehicle dealer's property. The term also includes the appointed and qualified personal representative and the testamentary trustee of a deceased new motor vehicle dealer. However, the term means only that designated successor nominated by the new motor vehicle dealer in a written document filed by the dealer with the manufacturer or distributor, if a document is filed.

(3) "Distributor" means any person, resident, or nonresident who, in whole or in part, offers for sale, sells, or distributes any new motor vehicle to a new motor vehicle dealer or who maintains a factor representative, resident, or nonresident, or who controls any person, resident, or nonresident who, in whole or in part, offers for sale, sells, or distributes any new motor vehicle to a new motor vehicle dealer.

(4) "Established place of business" means a permanent, enclosed commercial building located within this state easily accessible and open to the public at all reasonable times and at which the business of a new motor vehicle dealer, including the display and repair of motor vehicles, may be lawfully carried on in accordance with the terms of all applicable building codes, zoning, and other land-use regulatory ordinances and as licensed by the Division of Motor Vehicles.

(5) "Factory branch" means an office maintained by a manufacturer or distributor for the purpose of selling or offering for sale vehicles to a distributor, wholesaler, or new motor vehicle dealer, or for directing or supervising, in whole or in part, factory or distributor representatives. The term includes any sales promotion organization maintained by a manufacturer or distributor which is engaged in promoting the sale of a particular make of new motor vehicles in this state to new motor vehicle dealers.

WV Legislature

(6) "Factory representative" means an agent or employee of a manufacturer, distributor, or factory branch retained or employed for the purpose of making or promoting the sale of new motor vehicles or for supervising or contracting with new motor vehicle dealers or proposed motor vehicle dealers.

(7) "Good faith" means honesty in fact and the observation of reasonable commercial standards of fair dealing in the trade.

(8) "Manufacturer" means any person who manufactures or assembles new motor vehicles; or any distributor, factory branch, or factory representative and, in the case of a school bus, truck tractor, road tractor, or truck as defined in §17A-1-1 *et seq*. of this code, also means a person engaged in the business of manufacturing a school bus, truck tractor, road tractor or truck, their engines, power trains, or rear axles, including when engines, power trains or rear axles are not warranted by the final manufacturer or assembler, and any distributor, factory branch, or representative.

(9) "Motor vehicle" means that term as defined in §17A-1-1 of this code, including a motorcycle, school bus, truck tractor, road tractor, truck, or recreational vehicle, all-terrain vehicle and utility terrain vehicle as defined in subsections (c), (d), (f), (h), (l), (nn) and (vv), respectively, of said section, but not including a farm tractor or farm equipment. The term "motor vehicle" also includes a school bus, truck tractor, road tractor, truck, its component parts, including, but not limited to, its engine, transmission, or rear axle manufactured for installation in a school bus, truck tractor, road tractor, or truck.

(10) "New motor vehicle" means a motor vehicle which is in the possession of the manufacturer, distributor, or wholesaler, or has been sold only to a new motor vehicle dealer and on which the original title has not been issued from the new motor vehicle dealer.

(11) "New motor vehicle dealer" or "dealer" means a person who holds a dealer agreement granted by a manufacturer or distributor for the sale of its motor vehicles, who is engaged in the business of purchasing, selling, leasing, exchanging, or dealing in new motor vehicles, service of said vehicles, warranty work, and sale of parts who has an established place of business in this state and is licensed by the Division of Motor Vehicles.

(12) "The operation and business of a new motor vehicle dealer or dealership" includes selling, leasing, exchanging, or otherwise conveying a new motor vehicle at retail and performing warranty and recall work for a motor vehicle: *Provided*, That the provisions of this subdivision do not apply to over the air updates.

(13) "Person" means a natural person, partnership, corporation, association, trust, estate, or other legal entity.

(14) "Proposed new motor vehicle dealer" means a person who has an application pending for a new dealer agreement with a manufacturer or distributor. "Proposed new motor vehicle dealer" does not include a person whose dealer agreement is being renewed or continued.

WV Legislature

(15) "Relevant market area" means the area located within a 20 air mile radius around an existing same line-make new motor vehicle dealership: *Provided*, That a 15 mile relevant market area as it existed prior to the effective date of this statute shall apply to any proposed new motor vehicle dealership as to which a manufacturer or distributor and the proposed new motor vehicle dealer have executed on or before the effective date of this statute a written agreement, including a letter of intent, performance agreement, or commitment letter concerning the establishment of the proposed new motor vehicle dealership.

WV Legislature

§17A-6A-4. Cancellation of dealer contract; notification.

(1) Notwithstanding any agreement, a manufacturer or distributor shall not cancel, terminate, fail to renew or refuse to continue any dealer agreement with a new motor vehicle dealer unless the manufacturer or distributor has complied with all of the following:

(a) Satisfied the notice requirement of section seven of this article;

(b) Acted in good faith;

(c) Engaged in full and open communication with franchised dealer; and

(d) Has good cause for the cancellation, termination, nonrenewal or discontinuance.

(2) Notwithstanding any agreement, good cause exists when a manufacturer or distributor can demonstrate termination is necessary due to a material breach of a reasonable term or terms of the agreement by a dealer when weighed against the interests of the dealer and the public. The burden of proof is on the manufacturer to prove good cause by a preponderance of the evidence. The interests of the dealer and the public shall include consideration of:

(a) The relationship of the dealer's sales to the sales in the relevant market;

(b) The investment and financial obligations of the dealer under the terms of the franchise agreement;

(c) The effect on the public cancellation of the franchise agreement would cause;

(d) The adequacy of the dealer's sales and service facilities, equipment, parts and personnel in relation to other dealers in the relevant market;

(e) Whether the dealer is honoring existing warranties;

(f) Whether the dealer is complying, or can comply within a reasonable time, with reasonable capitalization requirements; and

(g) The dealer's overall performance under the reasonable terms of the franchise agreement. This shall include the overall fairness of the agreement terms, the enforceability of the agreement and the relative bargaining power of the parties.

(h) Whether the manufacturer made available the appropriate volumes and type of motor vehicles to the dealer and a reasonable opportunity for sales and service training to the dealer.

(3) In addition to the requirements of subsection (2) of this section, if the failure by the new motor vehicle dealer to comply with a provision of the dealer agreement relates to the performance of the new motor vehicle dealer in sales or service, good cause exists for the

WV Legislature

purposes of a termination, cancellation, nonrenewal or discontinuance under subsection (1) of this section when the new motor vehicle dealer failed to effectively carry out the performance provisions of the dealer agreement if all of the following have occurred:

(a) The new motor vehicle dealer was given written notice by the manufacturer or distributor of the failure;

(b) The notification stated that the notice of failure of performance was provided pursuant to this article;

(c) The new motor vehicle dealer was afforded a reasonable opportunity to exert good faith efforts to carry out the dealer agreement; and

(d) The failure continued for more than three hundred sixty days after the date notification was given pursuant to subdivision (a) of this subsection.

WV Legislature

§17A-6A-5. Circumstances not constituting good cause.

Notwithstanding any agreement, the following alone does not constitute good cause for the termination, cancellation, nonrenewal, or discontinuance of a dealer agreement under §17A-6A-4 of this code.

(1) A change in ownership of the new motor vehicle dealer's dealership. This section does not authorize any change in ownership which would have the effect of a sale or an assignment of the dealer agreement or a change in the principal management of the dealership without the manufacturer's or distributor's prior written consent which may not be unreasonably or untimely withheld.

(2) The refusal of the new motor vehicle dealer to purchase or accept delivery of any new motor vehicle parts, accessories, or any other commodity or services not ordered by the new motor vehicle dealer.

(3) The fact that the new motor vehicle dealer owns, has an investment in, participates in the management of, or holds a dealer agreement for the sale of another make or line of new motor vehicles, or that the new motor vehicle dealer has established another make or line of new motor vehicles in the same dealership facilities as those of the manufacturer or distributor: *Provided*, That the new motor vehicle dealer maintains a reasonable line of credit for each make or line of new motor vehicles, and that the new motor vehicle dealer remains in substantial compliance with the terms and conditions of the dealer agreement and with any reasonable facilities' requirements of the manufacturer or distributor.

(4) The fact that the new motor vehicle dealer designates as an executive manager or sells or transfers ownership of the dealership or sells or transfers capital stock in the dealership to the new motor vehicle dealer's spouse, son, or daughter: *Provided*, That the sale or transfer shall not have the effect of a sale or an assignment of the dealer agreement or a change in the principal management of the dealership without the manufacturer's or distributor's prior written consent, which may not be unreasonably or untimely withheld or refused in a manner inconsistent with §17A-6A-11 of this code.

(5) This section does not apply to any voluntary agreement entered into after a disagreement or civil action has arisen for which the dealer has accepted separate and valuable consideration. Any prospective agreement is void as a matter of law.

WV Legislature

§17A-6A-6. Burden of proof.

For each termination, cancellation, nonrenewal or discontinuance, the manufacturer or distributor has the burden of proof by a preponderance of the evidence for showing that he or she has acted in good faith, that the notice requirement has been complied with and that there was good cause by a preponderance of the evidence for the termination, cancellation, nonrenewal or discontinuance.

WV Legislature

§17A-6A-7. Notice provisions.

Notwithstanding any agreement, prior to the termination, cancellation, nonrenewal or discontinuance of any dealer agreement, the manufacturer or distributor shall furnish notice of the termination, cancellation, nonrenewal or discontinuance to the new motor vehicle dealer as follows:

(a) Except as otherwise provided in this section, notice shall be made not less than one hundred twenty days prior to the effective date of the termination, cancellation, nonrenewal or discontinuance.

(b) Notice shall be by certified mail with restrictive delivery to the new motor vehicle dealer principal and shall contain the following:

(1) A statement of intention to terminate, cancel, not renew or discontinue the dealer agreement;

(2) A detailed written statement of all reasons for the termination, cancellation, nonrenewal or discontinuance. The statement shall include, at a minimum, a complete explanation of each reason upon which the manufacturer or distributor relies to support its proposed action, along with all supporting documentation which is material to the proposed action and available to the manufacturer or distributor at the time of termination, cancellation, nonrenewal or discontinuance; and

(3) The date on which the termination, cancellation, nonrenewal or discontinuance takes effect.

(c) Notwithstanding subdivision (a) of this subsection, notice shall be made not less than thirty days prior to the effective date of the termination, cancellation, nonrenewal or discontinuance for any of the following reasons:

(1) Insolvency of the new motor vehicle dealer or the filing of any petition by or against the new motor vehicle dealer under any bankruptcy or receivership law;

(2) Failure of the new motor vehicle dealer to conduct his or her customary sales and service operations during his or her customary business hours for seven consecutive business days;

(3) Conviction of the new motor vehicle dealer or its principal owners of a crime, but only if the crime is punishable by imprisonment in excess of one year under the law under which the dealer was convicted or the crime involved theft, dishonesty or false statement regardless of the punishment;

(4) Revocation of a motor vehicle dealership license in accordance with section eighteen, article six of this chapter; or

(5) A fraudulent misrepresentation by the new motor vehicle dealer to the manufacturer or

WV Legislature

distributor, which is material to the dealer agreement.

(d) Notwithstanding subdivision (a) of this subsection, notice shall be made not less than twelve months prior to the effective date of a termination, cancellation, nonrenewal or discontinuance if a manufacturer or distributor discontinues production of the new motor vehicle dealer's product line or discontinues distribution of the product line in this state.

(e) Except as provided in subdivision (c) of this subsection, any motor vehicle dealer who receives a notice of intent to discontinue, cancel or not renew a dealer agreement may, within a one hundred twenty-day notice period, file a petition or complaint for a determination of whether such action is an unfair or prohibited discontinuation, cancellation or nonrenewal. Dealer agreements and certificates of appointment shall continue in effect until a final determination of the issues raised in such petition or complaint by the motor vehicle dealer. A discontinuance, cancellation or nonrenewal is unfair if it is:

(1) Not clearly permitted by the dealer agreement;

(2) Not undertaken for good cause; or

(3) Is based on an alleged breach of the franchise agreement which is not in fact a material and substantial breach.

(f) No replacement dealer shall be named for this point or location to engage in business and the dealer's agreement shall remain in effect until a final judgement is entered after all appeals are exhausted: Provided, That when a motor vehicle dealer appeals a decision upholding a discontinuation, cancellation or nonrenewal under subdivisions (f) and (g) of this section, the dealer agreement shall remain in effect pending exhaustion of all appeals only if the motor vehicle dealer establishes a likelihood of success on appeal and that the public interest will not be harmed by keeping the dealer agreement in effect pending entry of final judgement after such appeal.

(g) If a transfer of ownership is proposed after a notice to discontinue, cancel or not renew a dealer agreement is received but, prior to the final determination, including exhaustion of all appellate remedies of a motor vehicle dealer's complaint or petition contesting such action, the termination proceedings shall be stayed, without bond, during the period the transfer is being reviewed by the manufacturer or distributor. During the period that the transfer is being reviewed by the manufacturer or distributor, the dealer agreement shall remain in full force and effect, and the motor vehicle dealer shall retain all rights and remedies pursuant to the terms and conditions of the dealer agreement and applicable law. This shall include, but is not limited to, all rights of transfer under subdivision (2), section ten, article six-a, chapter seventeen of this code until such time as the manufacturer or distributor has accepted or rejected the proposed transfer. If the proposed transfer is rejected, the motor vehicle dealer shall retain all of its rights pursuant to section sixteen of said article to a judicial determination as to whether the manufacturer or distributor's rejection is in compliance with the provisions of subdivision (2), section ten of said article and during the

WV Legislature

pendency of such judicial proceeding, and any related appellate proceedings, the termination proceedings shall remain stayed without bond, the dealer agreement shall remain in full force and effect and the motor vehicle dealer shall retain all rights and remedies pursuant to the terms and conditions of the dealer agreement and applicable law including all rights of transfer. If a transfer is approved by the manufacturer or distributor or mandated by law, the termination proceedings shall be dismissed with prejudice as moot.

WV Legislature

§17A-6A-8. Reasonable compensation to dealer.

(1) Upon the termination, cancellation, nonrenewal or discontinuance of any dealer agreement, the new motor vehicle dealer shall be allowed fair and reasonable compensation by the manufacturer or distributor for the following:

(a) Any new motor vehicle inventory, manufactured for sale in the United States, purchased from the manufacturer, distributor or other dealers, in the ordinary course of business, which has not been materially altered, substantially damaged or driven for more than one thousand miles, except that for any new motorcycle, new all-terrain vehicle or utility terrain vehicle inventory, including motorhomes and travel trailers, regardless of gross vehicle weight, purchased from the manufacturer or distributor, that inventory must not have been materially altered, substantially damaged or driven for more than fifty miles and for motor vehicles with a rating greater than twenty-six thousand one pounds gross vehicle weight driven no more than five thousand miles. For purposes of a school bus, truck tractor, road tractor or truck, materially altered does not include dealer add-ons, such as, but not limited to, racks, mud flaps, fifth wheel assemblies, dump or tank bodies;

(b) Supplies and parts inventory purchased at the published list price purchased from, or at the direction of, the manufacturer or distributor. Parts shall be restricted to those listed in the manufacturer's or distributor's current parts catalog;

(c) Equipment, special tools, furnishings and signs purchased or leased from, or at the direction of, the manufacturer or distributor; and

(d) Special computer software, hardware, license fees and other programs mandated by the manufacturer to provide training or communication with the manufacturer.

(2) Upon the termination, cancellation, nonrenewal or discontinuance of a dealer agreement by the manufacturer or distributor, the manufacturer or distributor shall also pay to the new motor vehicle dealer a sum equal to the current, fair rental value of his or her established place of business for a period of three years from the effective date of termination, cancellation, nonrenewal or discontinuance, or the remainder of the lease, whichever is less. If the dealer, directly or indirectly, owns the dealership facility, the manufacturer shall pay the dealer a sum equal to the reasonable rental value of the dealership premises for three years. However, the dealer shall have the obligation to mitigate his or her damages, including, but not limited to, listing the facility with a commercial real estate agent and other reasonable steps to sell or lease the property. During this three-year period the manufacturer shall have the right to occupy and use the facilities until such time as the dealer is able to otherwise sell or lease the property to another party. The payment required by this subsection does not apply to any termination, cancellation, nonrenewal or discontinuance made pursuant to subsection (c), section seven of this article.

(3) In addition to the items listed in subsections (1) and (2) of this section, the termination, cancellation or nonrenewal where the manufacturer or distributor is discontinuing the sale

WV Legislature

of a product line, the manufacturer or distributor shall pay or provide to the motor vehicle dealer:

(a) Support of the manufacturer's or distributor's warranty obligations by making parts available and compensating dealers for warranty parts and labor for five years: Provided, That the motor vehicle dealer has adequate facilities, trained personnel and equipment to perform warranty repairs;

(b) Any actual damages that can be proven by a dealer by a preponderance of the evidence;

(c) Any costs the dealer incurred for facility upgrades or alternations required by the manufacturer, distributor or factory branch within the previous five years; and

(d) Within forty-five days after termination, dealer shall submit evidence of items to the manufacturer in accordance with reasonable manufacturer requirements. The manufacturer shall have thirty days from receipt of this evidence to note any objection. If not objected thereto, payment by the manufacturer to the dealer shall be made within thirty days. Thereafter, interest accumulates at the rate of the Fifth Federal Reserve District's secondary discount rate in effect on January 2 of the year in which payment is due plus five percentage points. If a dispute arises over the sufficiency of any evidence or an amount submitted, when interest begins to accumulate will be determined in accordance with West Virginia common law.

WV Legislature

§17A-6A-8a. Compensation to dealers for service rendered.

(a) Every motor vehicle manufacturer, distributor, or wholesaler, factory branch or distributor branch, or officer, agent, or representative thereof, shall:

(1) Specify in writing to each of its dealers, the dealer's obligation for delivery, preparation, warranty, and factory recall services on its products;

(2) Compensate the motor vehicle dealer for warranty and factory recall service required of the dealer by the manufacturer, distributor or wholesaler, factory branch or distributor branch, or officer, agent, or representative thereof;

(3) Provide the dealer the schedule of compensation, which shall be reasonable, to be paid the dealer for parts, work, and service, including reasonable and adequate allowances for diagnostic time, including time communicating with the manufacturer, necessary for a qualified technician to perform the service, in connection with warranty and recall services and the time allowance for the performance of the diagnosis, work, and service. If a disagreement arises between the manufacturer, distributor, or wholesaler, factory branch or distributor branch, and the dealer about the time allowance for the performance of the diagnosis, work, or service, the dealer shall submit a written request for modification of the time allowance, which shall be presumed reasonable. A manufacturer, distributor, or wholesaler, factory branch, or distributor branch shall not unreasonably deny a written request submitted by a new motor vehicle dealer for modification of a time allowance for a specific warranty repair, or a request submitted by a dealer for an additional time allowance for either diagnostic or repair work on a specific vehicle covered under warranty, provided the request includes any information and documentation reasonably required by the manufacturer, distributor, or wholesaler, factory branch, or distributor branch to assess the merits of the request; and

(4) Provide compensation to a new motor vehicle dealer for assistance requested by a retail buyer or lessee whose vehicle was subjected to an over-the-air or remote change, repair, or update to any part, system, accessory, or function by the vehicle manufacturer or distributor, and performed at the dealership to satisfy the customer.

(b) In no event may:

(1) The schedule of compensation fail to compensate the dealers for the diagnosis, work, and services they are required to perform in connection with the dealer's delivery and preparation obligations, or fail to adequately and fairly compensate the dealers for labor, time, or rate, parts, and other expenses incurred by the dealer to perform under and comply with manufacturer's warranty agreements and factory recalls;

(2) Any manufacturer, distributor, or wholesaler, or representative thereof, pay its dealers an amount of money for warranty or recall work that is less than that charged by the dealer to the retail customers of the dealer for nonwarranty and nonrecall work of the like kind;

WV Legislature

and

(3) Any manufacturer, distributor, or wholesaler, or representative thereof, compensate for warranty and recall work based on a flat-rate figure that is less than what the dealer charges for retail work.

(c) It is a violation of this section for any manufacturer, distributor, wholesaler, or representative to require any dealer to pay in any manner, surcharges, limited allocation, audits, charge backs, or other retaliation if the dealer seeks to recover its nonwarranty retail rate for warranty and recall work.

(d) The retail rate charged by the dealer for parts is established by the dealer submitting to the manufacturer or distributor 100 sequential nonwarranty customer-paid service repair orders that contain warranty-like parts or 90 consecutive days of nonwarranty customer-paid service repair orders that contain warranty-like parts covering repairs made no more than 180 days before the submission and declaring the average percentage markup. A dealer may decide to submit a single set of repair orders for the purpose of calculating both the labor rate and parts markup or submit separate sets of repair orders for a labor rate and parts markup calculation.

(e) The retail rate customarily charged by the dealer for labor rate shall be established using the same process as provided under subsection (d) of this section and declaring the average labor rate. The average labor rate shall be determined by dividing the amount of the dealer's total labor sales by the number of total hours that generated those sales. If a labor rate and parts markup rate are simultaneously declared by the dealer, the dealer may use the same repair orders to complete each calculation as provided under subsection (d) of this section. A reasonable allowance for labor for diagnostic time shall be either included in the manufacturer’s labor time allowance or listed as a separate compensable item. A dealer may request additional time allowance for either diagnostic or repair time for a specific repair. The request shall not be unreasonably denied by the manufacturer.

(f) In calculating the retail rate customarily charged by the dealer for parts and labor, the following work may not be included in the calculation:

(1) Repairs for manufacturer or distributor special events, specials, or promotional discounts for customer repairs;

(2) Parts sold at wholesale;

(3) Routine maintenance not covered under any retail customer warranty, including bulbs, batteries, fluids, filters, and belts not provided in the course of repairs;

(4) Nuts, bolts, fasteners, and similar items that do not have an individual part number;

(5) Tires; and

WV Legislature

(6) Vehicle reconditioning.

(g) The average of the parts markup rates and labor rate is presumed to be reasonable and goes into effect 30 days following the manufacturer's approval. A manufacturer or distributor must approve or rebut the presumption by demonstrating that the submitted parts markup rate or labor rate is: (1) Fraudulent or inaccurate; (2) not established in accordance with this section; or (3) unreasonable in light of the practices of all other same line-make dealers in an economically similar area of the state offering the same line-make vehicles, not later than 30 days after the dealer's submission, or the dealer's submission shall be considered approved. If the average parts markup rate or average labor rate is disputed by the manufacturer or distributor, the manufacturer or distributor shall provide written notice to the new motor vehicle dealer stating the specific reasons for the rebuttal, providing a full explanation of the reasons for the allegation, and providing a copy of all calculations used by the manufacturer or distributor in determining the manufacturer or distributor's position. If the manufacturer's or distributor's objection is based on the accuracy or reasonableness of the dealer's rate submission, the manufacturer or distributor shall propose an adjustment of the average percentage parts markup or labor rate based on that rebuttal not later than 30 days after the dealer's submission. If the dealer does not agree with the manufacturer's proposed average percentage parts markup or labor rate, the dealer may file a civil action in the circuit court for the county in which it operates not later than 90 days after dealer's receipt of the written notice of rebuttal or adjustment by the manufacturer or distributor. In the event a civil action is filed, the manufacturer or distributor has the burden of proof to establish, by a preponderance of the evidence, that the dealer's submitted parts markup rate or labor rate was fraudulent, inaccurate, not established in accordance with this section, or is unreasonable in light of the practices of all other same line-make dealers in an economically similar area of the state offering the same line-make vehicles.

(h) Each manufacturer, in establishing a schedule of compensation for warranty work, shall rely on the dealer's declaration of hourly labor rates and parts as stated in subsections (d), (e), and (f) of this section and may not obligate any dealer to engage in unduly burdensome or time-consuming documentation of rates or parts, including obligating dealers to engage in transaction-by-transaction or part-by-part calculations.

(i) A dealer or manufacturer may demand that the average parts markup or average labor rate be calculated using the process provided under subsections (d) and (e) of this section; however, the demand for the average parts markup may not be made within 12 months of the last parts markup declaration and the demand for the average labor rate may not be made within 12 months of the last labor rate declaration. If a parts markup or labor rate is demanded by the dealer or manufacturer, the dealer shall determine the repair orders to be included in the calculation under subsections (d) and (e) of this section.

(j) As it applies to a school bus, truck tractor, road tractor, and truck as defined in §17A-1-1 of this code, with a gross vehicle weight in excess of 26,001 pounds, the manufacturer, distributor and/or original equipment manufacturer supplier shall pay the dealer its incurred

WV Legislature

actual time at the retail labor rate for retrieving a motor vehicle and returning a motor vehicle to the dealer's designated parking area. The dealer shall be paid $50 minimum for each operation that requires the use of each electronic tool (i.e. laptop computer). The manufacturer or distributor may not reduce what is paid to a dealer for this retrieval or return time, or for the electronic tool charge. The dealer is allowed to add to a completed warranty repair order three hours for every 24 hours the manufacturer, distributor, and/or original equipment manufacturer supplier makes the dealer stop working on a vehicle while the manufacturer, distributor, and/or original equipment manufacturer supplier decides how it wants the dealer to proceed with the repairs.

(k) All claims made by dealers pursuant to this section for compensation for delivery, preparation, warranty, and recall work, including labor, parts, and other expenses, shall be paid by the manufacturer within 30 days after approval and shall be approved or disapproved by the manufacturer within 30 days after receipt. When any claim is disapproved, the dealer shall be notified in writing of the grounds for disapproval. A claim which has been approved and paid may not be charged back to the dealer unless it can be shown that the claim was false or fraudulent, that the repairs were not properly made or were unnecessary to correct the defective condition, or the dealer failed to reasonably substantiate the claim in accordance with the reasonable written requirements of the manufacturer or distributor in effect at the time the claim arose. Charge back may not be made until the dealer has had notice and an opportunity to support the claim in question. An otherwise valid reimbursement claim may not be denied once properly submitted within manufacturers' submission guidelines due to a clerical error or omission, a dealer's incidental failure to comply with a specific non-material claim processing requirement or administrative technicality, or based on a different level of technician technical certification or the dealer's failure to subscribe to any manufacturer's computerized training programs. The dealer has 30 days to respond to any audit by a manufacturer or distributor.

(l) Notwithstanding the terms of a dealer agreement or provision of law in conflict with this section, the dealer's delivery, preparation, warranty, and recall obligations constitute the dealer's sole responsibility for product liability between the dealer and manufacturer. Except for a loss caused by the dealer's failure to adhere to the obligations or a loss caused by the dealer's negligence or intentional misconduct or a loss caused by the dealer's modification of a product without manufacturer authorization, the manufacturer shall reimburse the dealer for all loss incurred by the dealer, including legal fees, court costs, and damages, as a result of the dealer having been named a party in a product liability action.

(m) When calculating the compensation that must be provided to a new motor vehicle dealer for labor and parts used to fulfill a warranty and recall obligations under this section, all of the following apply:

(1) The manufacturer shall use time allowances for the diagnosis and performance of the warranty and recall work and services that are reasonable and adequate for the work or services to be performed by a qualified technician.

WV Legislature

(2) At the request of the dealer, the manufacturer shall use any retail labor rate and any retail parts markup percentage established in accordance with this section in calculating the compensation;

(3) If the manufacturer provided a part or component to the dealer at no cost to use in performing repairs under a recall, campaign service action, or warranty repair, the manufacturer shall provide to the dealer an amount equal to the retail parts markup for that part or component, which shall be calculated by multiplying the dealer cost for the part or component as listed in the manufacturer's price schedule by the retail parts markup percentage; and

(4) A manufacturer shall not assess penalties, surcharges, or similar costs to a dealer, transfer or shift any costs to a dealer, limit allocation of vehicles or parts to a dealer, or otherwise take retaliatory action against a dealer based on any dealer's exercise of its rights under this section. This section does not prohibit a manufacturer or distributor from increasing the price of a vehicle or part in the ordinary course of business.

WV Legislature

§17A-6A-9. Payment of compensation.

(1) Compensation for new motor vehicle inventory under subdivision (a), subsection (1), section eight of this article shall be paid within sixty days after the effective date of the termination, cancellation, nonrenewal or discontinuance. Compensation for items of personal property required by subdivisions (b), (c) and (d), subsection (1), section eight of this article shall be paid within sixty days after the effective date of the termination, cancellation, nonrenewal or discontinuance. The new motor vehicle dealer will meet all reasonable requirements of the dealer agreement with respect to the return of the repurchased personal property, including providing clear title.

(2) Reasonable compensation pursuant to subdivision (a), subsection (1), section eight of this article may not be less than the new motor vehicle dealer's net acquisition cost, including any special promotions ordered by the manufacturer, such as advertising charges. Reasonable compensation pursuant to subdivision (b) of said subsection shall be the amount stated in the manufacturer's or distributor's current parts price list. Reasonable compensation pursuant to subdivisions (c) and (d) of said subsection shall be the fair market value of the personal property determined by a five-year straight line depreciation schedule.

(3) In the event payment is not made within ninety days as provided in subsection (1) of this section, interest shall accumulate at the rate of the Fifth Federal Reserve District's secondary discount rate in effect on January 2 of the year in which payment is due plus five percentage points. In determining when interest begins to accumulate, the court may consider whether the dealer reasonably complied with the reasonable manufacturer's submission requirements and the reasonableness of the manufacturer's determinations in refusing or delaying payment to the dealer.

WV Legislature

§17A-6A-10. Prohibited practices.

(a) A manufacturer or distributor may not require any dealer in this state to do any of the following:

(1) Order or accept delivery of any new motor vehicle, part or accessory of the vehicle, equipment, or any other commodity not required by law which was not voluntarily ordered by the dealer. This section does not prevent the manufacturer or distributor from requiring that dealers carry a reasonable inventory of models offered for sale by the manufacturer or distributor;

(2) Order or accept delivery of any new motor vehicle with special features, accessories, or equipment not included in the list price of the new motor vehicle as publicly advertised by the manufacturer or distributor;

(3) Unreasonably participate monetarily in any advertising campaign or contest, or purchase any promotional materials, display devices, display decorations, brand signs and dealer identification, nondiagnostic computer equipment and displays, or other materials at the expense of the dealer;

(4) Enter into any agreement with the manufacturer or distributor or do any other act prejudicial to the dealer by threatening to terminate a dealer agreement, limit inventory, invoke sales and service warranty, or other types of audits or any contractual agreement or understanding existing between the dealer and the manufacturer or distributor, or any manufacturer or distributor's required or designated vendor or supplier. Notice in good faith to any dealer of the dealer's violation of any terms or provisions of the dealer agreement is not a violation of this article;

(5) Change the capital structure or financial requirements of the new motor vehicle dealership without reasonable business justification in light of the dealer's market, historical performance, and compliance with prior capital structure or financial requirements and business necessity, or the means by or through which the dealer finances the operation of the dealership if the dealership at all times meets any reasonable capital standards determined by the manufacturer in accordance with uniformly applied criteria. The burden of proof is on the manufacturer to prove business justification by a preponderance of the evidence;

(6) Refrain from participation in the management of, investment in, or the acquisition of any other line of new motor vehicle or related products: *Provided*, That the dealer maintains a reasonable line of credit for each make or line of vehicle, remains in compliance with reasonable facilities requirements, and makes no change in the principal management of the dealer. Notwithstanding the terms of any dealer agreement, a manufacturer or distributor may not enforce any requirements, including facility or image requirements, that a dealer establish or maintain exclusive facilities, personnel, or display space, when the requirements are unreasonable considering current economic conditions and are not otherwise justified by

WV Legislature

reasonable business considerations. The burden of proving that current economic conditions or reasonable business considerations justify such actions is on the manufacturer or distributor and must be proven by a preponderance of the evidence;

(7) Change the location of the new motor vehicle dealership or make any substantial alterations to the dealership premises, where to do so would be unreasonable. The burden is on the manufacturer or distributor to prove reasonableness by a preponderance of the evidence;

(8) Prospectively assent to a waiver of trial by jury release, arbitration, assignment, novation, waiver, or estoppel which would relieve any person from liability imposed by this article or require any controversy between a dealer and a manufacturer or distributor to be referred to a person other than the duly constituted courts of this state or the United States District Courts of the Northern or Southern Districts of West Virginia. Nothing in this article prevents a dealer, after a civil action is filed, from entering into any agreement of settlement, arbitration, assignment, or waiver of a trial by jury;

(9) Coerce or require any dealer, whether by agreement, program, incentive provision, or otherwise, to construct improvements to its facilities or to install new signs, or other franchisor image elements that replace or substantially alter those improvements, signs, or franchisor image elements completed within the preceding 15 years that were required and approved by the manufacturer, factory branch, distributor or distributor branch, or one of its affiliates. If a manufacturer, factory branch, distributor, or distributor branch offers incentives or other payments to a retail buyer, lessee, or dealer paid on individual new motor vehicle sales or leases under a program offered after the effective date of this subdivision that are available to more than one dealer in the state that are premised, wholly or in part, on dealer facility improvements or installation of franchiser image elements required by and approved by the manufacturer, factory branch, distributor, or distributor branch, and completed within 15 years preceding the program, the dealer is determined to be in compliance with the program requirements pertaining to construction of facilities or installation of signs or other franchisor image elements that would replace or substantially alter those previously constructed or installed within that 15-year period: *Provided*, That the provisions of this subdivision apply to any dealer who obtains ownership, either through a stock purchase, asset purchase or other means, of a new motor vehicle dealership which has met the requirements of this subdivision within the 15-year period set forth in this subdivision, unless the dealer selling the new motor vehicle dealership has signed an agreement with the manufacturer agreeing to dealer facility improvements or the installation of franchiser image elements prior to an agreement to transfer ownership to a subsequent dealer. This subdivision shall not apply to a program that is in effect with more than one dealer in the state on the effective date of this subsection, nor to any renewal of the program, nor to a modification that is not a modification of a material term or condition of the program;

(10) Condition the award, sale, transfer, relocation, or renewal of a dealer agreement, or to condition sales, service, parts, or finance incentives upon site control or an agreement to

WV Legislature

renovate or make substantial improvements to a facility: *Provided*, That voluntary and noncoerced acceptance of such conditions by the dealer in writing, including, but not limited to, a written agreement for which the dealer has accepted separate and valuable consideration, does not constitute a violation;

(11) Enter into a contractual requirement imposed by the manufacturer, distributor, or a captive finance source as follows:

(A) In this section, "captive finance source" means any financial source that provides automotive-related loans or purchases retail installment contracts or lease contracts for motor vehicles in this state and is, directly or indirectly, owned, operated, or controlled by the manufacturer, factory branch, distributor or distributor branch.

(B) It is unlawful for any manufacturer, factory branch, captive finance source, distributor or distributor branch, or any field representative, officer, agent, or any representative of them, notwithstanding the terms, provisions, or conditions of any dealer agreement, to require any of its dealers located in this state to agree to any terms, conditions, or requirements in subdivisions (1) through (10), inclusive, of this subsection in order for the dealer to sell to any captive finance source any retail installment contract, loan, or lease of any new motor vehicles purchased or leased by any of the dealer's customers, or to be able to participate in, or otherwise, directly or indirectly, obtain the benefits of the retail buyer or lessee transaction incentive program payable to the retail buyer, lessee, or the dealer and offered by or through any captive finance source as to that incentive program.

(C) The applicability of this section is not affected by a choice of law clause in any agreement, waiver, novation, or any other written instrument.

(D) It is unlawful for a manufacturer or distributor to use any subsidiary corporation, affiliated corporation, or any other controlled corporation, partnership, association, or person to accomplish what would otherwise be illegal conduct under this section on the part of the manufacturer or distributor; or

(12) Agree to any term or provision in the dealer agreement which gives a manufacturer or distributor the right to unilaterally amend the dealer agreement governing the operation and business of a dealer, including, but not limited to, the purchase, sale, lease, or service of new motor vehicles except as provided for in this article. That term or provision is considered null and void. Any amendment to a dealer agreement governing the purchase, sale, lease, or service of new motor vehicles must be agreed upon by both the manufacturer, factory branch, distributor, or distributor branch and the dealer at the time the dealer agreement is amended.

(b) A manufacturer or distributor may not do any of the following:

(1) Fail to deliver new motor vehicles or new motor vehicle parts or accessories within a reasonable time and in reasonable quantities relative to the dealer’s market area and

WV Legislature

facilities, unless the failure is caused by acts or occurrences beyond the control of the manufacturer or distributor, or unless the failure results from an order by the dealer in excess of quantities reasonably and fairly allocated by the manufacturer or distributor. A manufacturer or distributor may not penalize a dealer for an alleged failure to meet sales quotas where the alleged failure is due to actions of the manufacturer or distributor;

(2) Refuse to offer to its same line-make dealers all models manufactured for that line-make, including, but not limited to, any model that contains a separate label or badge indicating an upgraded version of the same model regardless of the new motor vehicle's means of propulsion: *Provided*, That the dealer meets any reasonable sales, warranty service repair, and recall standards established by the manufacturer or distributor. This prohibition includes a new line make established by a manufacturer with a dealer agreement in this state, or a subsidiary thereof, or a company affiliated through ownership of the manufacturer, factory branch, distributor, or distributor branch of at least 25 percent of the equity of the company. This provision does not apply to motorhome, travel trailer, or fold-down camping trailer manufacturers;

(3) Require as a prerequisite to receiving a model or series of new motor vehicles, that a dealer pay an extra unreasonable acquisition fee or surcharge, or purchase unreasonable advertising displays or other materials, or conduct unreasonable facility or image remodeling, renovation, or reconditioning of the dealer’s facilities, or any other type of unreasonable upgrade requirement;

(4) Use new motor vehicles in transit but not yet in the dealer's physical possession in any sales effective or efficiency formula to the detriment of the dealer;

(5) Refuse to disclose to a dealer the method and manner of distribution of new motor vehicles by the manufacturer or distributor, including any numerical calculation or formula used, nationally or within the dealer's market, to make the allocations within 30 days of a request. Any information or documentation provided by the manufacturer may be subject to a reasonable confidentiality agreement;

(6) Refuse to disclose to a dealer the total number of new motor vehicles of a given model, which the manufacturer or distributor has sold during the current model year within the dealer's marketing district, zone, or region, whichever geographical area is the smallest within 30 days of a request;

(7) Increase prices of new motor vehicles which the dealer had ordered and then eventually delivered to the same retail buyer or lessee for whom the vehicle was ordered if the order was made prior to the dealer's receipt of the written official price increase notification. A sales contract signed by a private retail consumer and binding on the dealer which has been submitted to the vehicle manufacturer is evidence of each order. In the event of manufacturer or distributor price reductions or cash rebates, the amount of any reduction or rebate received by a dealer shall be passed on to the private retail buyer or lessee by the dealer. Any price reduction in excess of $5 shall apply to all new motor vehicles in the

WV Legislature

dealer's inventory which were subject to the price reduction. A price difference applicable to new model or series motor vehicles at the time of the introduction of the new models or the series is not a price increase or price decrease. This subdivision does not apply to price changes caused by the following:

(A) The addition to a motor vehicle of required or optional equipment pursuant to state or federal law;

(B) In the case of foreign-made vehicles or components, revaluation of the United States dollar; or

(C) Any increase in transportation charges due to an increase in rates charged by a common carrier and transporters;

(8) Offer any refunds or other types of inducements to any dealer for the purchase of new motor vehicles of a certain line-make to be sold to this state or any political subdivision of this state without making the same offer available upon request to all other new motor vehicle dealers of the same line-make;

(9) Release to an outside party, except under subpoena or in an administrative or judicial proceeding to which the dealer or the manufacturer or distributor are parties, any business, financial, or personal information which has been provided by the dealer to the manufacturer or distributor, unless the dealer gives his or her written consent;

(10) Deny a dealer the right to associate with another dealer for any lawful purpose;

(11) Establish, operate, or engage in the business of a new motor vehicle dealership. A manufacturer or distributor is not considered to have established, operated, or engaged in the business of a new motor vehicle dealership if the manufacturer or distributor is:

(A) Operating a preexisting dealership temporarily for a reasonable period;

(B) Operating a preexisting dealership which is for sale at a reasonable price; or

(C) Operating a dealership with another person who has made a significant investment in the dealership and who will acquire full ownership of the dealership under reasonable terms and conditions;

(12) A manufacturer may not, except as provided by this section, directly or indirectly:

(A) Own an interest in a dealer or dealership: *Provided*, That a manufacturer may own stock in a publicly held company solely for investment purposes;

(B) Operate a new or used motor vehicle dealership, including, but not limited to, displaying a motor vehicle intended to facilitate the sale of new motor vehicles other than through dealers, unless the display is part of an automobile trade show that more than two motor

WV Legislature

vehicle manufacturers participate in; or

(C) Act in the capacity of a new motor vehicle dealer;

(13) A manufacturer or distributor may own an interest in a dealer, or otherwise control a dealership, for a period not to exceed 12 months from the date the manufacturer or distributor acquires the dealership if:

(A) The person from whom the manufacturer or distributor acquired the dealership was a dealer; and

(B) The dealership is for sale by the manufacturer or distributor at a reasonable price and on reasonable terms and conditions;

(14) The 12-month period may be extended for an additional 12 months. Notice of any extension of the original 12-month period must be given to any dealer of the same line-make whose dealership is located in the same county, or within 20 air miles of, the dealership owned or controlled by the manufacturer or distributor prior to the expiration of the original 12-month period. Any dealer receiving the notice may protest the proposed extension within 30 days of receiving notice by bringing a declaratory judgment action in the circuit court for the county in which the dealer is located to determine whether good cause exists for the extension;

(15) For the purpose of broadening the diversity of its dealer body and enhancing opportunities for qualified persons who are part of a group who have historically been under represented in its dealer body, or other qualified persons who lack the resources to purchase a dealership outright, but for no other purpose, a manufacturer or distributor may temporarily own an interest in a dealership if the manufacturer's or distributor's participation in the dealership is in a bona fide relationship with a dealer who:

(A) Has made a significant investment in the dealership, subject to loss;

(B) Has an ownership interest in the dealership; and

(C) Operates the dealership under a plan to acquire full ownership of the dealership within a reasonable time and under reasonable terms and conditions;

(16) Unreasonably withhold consent to the sale, transfer, or exchange of the dealership to a qualified buyer capable of being licensed as a new motor vehicle dealer in this state;

(17) Fail to respond in writing to a request for consent to a sale, transfer, or exchange of a dealership within 60 days after receipt of a written application from the dealer on the forms generally used by the manufacturer or distributor for that purpose and containing the information required in the application. Failure to respond to the request within the 60 days is consent;

wv legislature

(18) Unfairly prevent a dealer from receiving reasonable compensation for the value of the new motor vehicle dealership;

(19) Audit any dealer in this state for warranty parts or warranty service compensation, service compensation, service or sales incentives, manufacturer rebates, or other forms of sales incentive compensation more than 12 months after the claim for payment or reimbursement has been made by the dealer. A charge back may not be made until the dealer has had notice and an opportunity to support the claim in question within 30 days of receiving notice of the charge back. An otherwise valid reimbursement claim may not be denied once properly submitted in accordance with material and reasonable manufacturer guidelines unless the factory can show that the claim was false or fraudulent, or that the dealer failed to reasonably substantiate the claim consistent with the manufacturer's written, reasonable, and material guidelines. This subsection does not apply where a claim is fraudulent. In addition, the manufacturer or distributor is responsible for reimbursing the audited dealer for all documented copying, postage, and administrative and personnel costs reasonably incurred by the dealer during the audit. Any charges to a dealer as a result of the audit shall be separately billed to the dealer;

(20) Restrict or attempt to restrict a dealer's ownership of a dealership through noncompetition covenants, site control, sublease, collateral pledge of lease, right of first refusal, or option to purchase;

(21) Except for experimental low-volume not-for-retail sale vehicles, cause warranty and recall repair work to be performed by any entity other than a dealer;

(22) Make any material or unreasonable change to the dealer's area of responsibility without giving the dealer written notice, by certified mail of the change at least 60 days prior to the effective date of the change which shall include an explanation of the basis for the alteration. Upon written request from the dealer, this explanation shall include, but is not limited to, a reasonable and commercially acceptable copy of all information, data, evaluations, and methodology relied on or based its decision on, to propose the change to the dealer's area of responsibility. Any information or documentation provided by the manufacturer or distributor may be produced subject to a reasonable confidentiality agreement. At any time prior to the effective date of an alteration of a dealer's area of responsibility, and after the completion of any internal appeal process pursuant to the manufacturer's or distributor's policy manual, the dealer may petition the court to enjoin or prohibit the alteration within 30 days of receipt of the manufacturer's internal appeal process decision. The court shall enjoin or prohibit the alteration of a dealer's area of responsibility unless the manufacturer shows, by a preponderance of the evidence, that the alteration is reasonable and justifiable in light of market conditions. If a motor vehicle dealer petitions the court, an alteration to a dealer's area of responsibility shall not become effective until a final determination by the court. If a dealer's area of responsibility is altered, the manufacturer shall allow 24 months for the dealer to become sales effective prior to taking any action claiming a breach or nonperformance of the dealer's sales performance responsibilities;

WV Legislature

(23) Fail to reimburse a dealer, at the dealer's regular rate, or the full and actual cost of providing a loaner vehicle to any retail buyer or lessee who is having a motor vehicle serviced at the dealership if the provision of the loaner motor vehicle is required by the manufacturer;

(24) Compel a dealer, through its finance subsidiaries, to agree to unreasonable operating requirements, or to directly or indirectly terminate a dealer agreement through the actions of a finance subsidiary of the manufacturer. This subsection does not limit the right of a finance subsidiary to engage in business practices in accordance with the usage of trade in retail or wholesale vehicle financing;

(25) Discriminate directly or indirectly between dealers on vehicles of like grade, line, model, or quantity where the effect of the discrimination would substantially lessen competition;

(26) Use or employ any performance standard that is not fair and reasonable and based upon accurate and verifiable data made available to the dealer; or

(27) Require or coerce any dealer to sell, offer to sell, or sell exclusively an extended service contract, maintenance plan, or similar product, including gap or other products offered, endorsed, or sponsored by the manufacturer or distributor by the following means:

(A) By an act of statement that the manufacturer or distributor will adversely impact the dealer, whether it is express or implied;

(B) By a contract made to the dealer on the condition that the dealer sells, offers to sell, or sells exclusively an extended service contract, extended maintenance plan, or similar product offered, endorsed, or sponsored by the manufacturer or distributor;

(C) By measuring the dealer's performance under the dealer agreement based on the sale of extended service contracts, extended maintenance plans, or similar products offered, endorsed, or sponsored by the manufacturer or distributor;

(D) By requiring the dealer to actively promote the sale of extended service contracts, extended maintenance plans, or similar products offered, endorsed, or sponsored by the manufacturer or distributor: *Provided*, That nothing in this paragraph prohibits a manufacturer or distributor from providing incentive programs to a dealer who makes the voluntary decision to offer to sell, sell, or sell exclusively an extended service contract, extended maintenance plan, or similar product offered, endorsed, or sponsored by the manufacturer or distributor;

(E) By requiring a dealer to purchase goods or services from a vendor selected, identified, or designated by a manufacturer, factory branch, distributor, distributor branch, or one of its affiliates by agreement, program, incentive provision, or otherwise without making available to the dealer the option to obtain the goods or services of substantially similar quality and

WV Legislature

overall design from a vendor chosen by the dealer and approved by the manufacturer, factory branch, distributor, or distributor branch: *Provided*, That the approval may not be unreasonably withheld: *Provided, however*, That the dealer's option to select a vendor is not available if the manufacturer or distributor provides substantial reimbursement for the goods or services offered. Substantial reimbursement is equal to the difference in price of the goods and services from manufacturer's proposed vendor and the dealer's selected vendor: *Provided further*, That the goods are not subject to the manufacturer or distributor's intellectual property or trademark rights, or trade dress usage guidelines.

(c) A manufacturer or distributor, either directly or through any subsidiary, may not terminate, cancel, fail to renew, or discontinue any lease of the dealer's established place of business except for a material breach of the lease.

(d) Except as may otherwise be provided in this article, a manufacturer may not directly or indirectly, sell, lease, exchange, or convey a new motor vehicle to a retail, buyer or lessee offer for retail sale, lease, exchange, or other conveyance a new motor vehicle; or directly finance the retail sale, lease, exchange, or other conveyance of a new motor vehicle to a retail buyer or lessee in this state, except through a dealer holding a franchise for the line-make covering the new motor vehicle. This subsection does not apply to manufacturer sales of new motor vehicles to charitable organizations, qualified vendors, or employees of the manufacturer.

(e) Except when prevented by an act of God, labor strike, transportation disruption outside the control of the manufacturer, or time of war, a manufacturer or distributor may not refuse or fail to deliver, in reasonable quantities and within a reasonable time, to a dealer having a dealer agreement for the retail sale of any new motor vehicle sold or distributed by the manufacturer, any new motor vehicle or parts or accessories to new motor vehicles that are covered by the dealer agreement if the vehicles, parts, and accessories are publicly advertised as being available for delivery or are actually being delivered.

(f) It is unlawful for any manufacturer, factory branch, distributor, or distributor branch, when providing a new motor vehicle to a dealer for offer, sale, or lease in this state to the public, to fail to provide to the dealer a written disclosure that may be provided to a potential retail buyer or lessee of the new motor vehicle of each accessory or function of the motor vehicle that may be initiated, updated, changed, or maintained by the manufacturer or distributor through over the air or remote means, and the charge to the retail buyer or lessee for the initiation, update change, or maintenance that is known at the time of sale. A manufacturer or distributor may comply with this subdivision by notifying the dealer that the information is available on a website or by other digital means.

(g) A manufacturer or distributor shall not attempt to coerce, threaten, or take any act prejudicial against a new motor vehicle dealer arising from the retail price at which a dealer sells a new motor vehicle.

(h) Notwithstanding the terms of any dealer agreement, or the terms of any program or

WV Legislature

policy, a manufacturer or distributor may not do any of the following if it has a dealer agreement with any dealer in this state and if the manufacturer or distributor permits retail customers the option of reserving the purchase or lease of a vehicle through a manufacturer or distributor reservation system:

(1) Fail to assign any retail vehicle reservation, or request to purchase, or lease received by the manufacturer or distributor from a resident of this state to the dealer authorized to sell that make and model which is designated by the retail buyer or lessee, or if none is designated, to its dealer authorized to sell that make and model located in closest proximity to the retail buyer or lessee's location: *Provided*, That if the retail buyer or lessee does not purchase or lease the vehicle from that dealer within 10 days of the new motor vehicle being received by the dealer, or if the retail buyer or lessee requests that the transaction be assigned to another dealer, then the manufacturer or distributor may assign the transaction to another dealer authorized to sell that make and model;

(2) Prohibit or interfere with a dealer negotiating the final purchase price of the new motor vehicle with a retail buyer or lessee that has reserved the purchase or lease through a manufacturer or distributor reservation system;

(3) Prohibit or interfere with a dealer offering and negotiating directly with the customer retail buyer or lessee the terms of vehicle financing or leasing through all sources available to the dealer for the retail buyer or lessee that has reserved the purchase or lease of a new motor vehicle through a manufacturer or distributor reservation system;

(4) Prohibit or interfere with a dealer's ability to offer to sell or sell any service contract, extended warranty, vehicle maintenance contract, or guaranteed asset protection agreement, or any other vehicle-related products and services offered by the dealer with a retail buyer or lessee that has reserved to purchase or lease through a manufacturer or distributor reservation system: *Provided*, That a manufacturer, distributor, or captive finance source shall not be required to finance the product or service;

(5) Prohibit or interfere with a dealer directly negotiating the trade-in value the retail buyer or lessee will receive, or prohibit the dealer from conducting an on-site inspection of the condition of a trade-in vehicle before the dealer becomes contractually obligated to accept the trade-in value negotiated with a retail buyer or lessee that has reserved to purchase or lease a new motor vehicle through the manufacturer or distributor reservation system;

(6) Use a third party to accomplish what would otherwise be prohibited by this subdivision;

(7) Nothing contained in this subdivision shall:

(A) Require that a manufacturer or distributor allocate or supply additional or supplemental inventory to a dealer located in this state in order to satisfy a retail buyer or lessee's vehicle reservation or request submitted directly to the manufacturer or distributor as provided in this section;

WV Legislature

(B) Apply to the generation of sales leads: *Provided*, That for purposes of this subdivision, the term "sales leads" shall not include any reservation or request to purchase or lease a vehicle submitted directly by a retail buyer or lessee or a potential retail buyer or lessee to a manufacturer or distributor reservation system; or

(C) Apply to a reservation or request to purchase or lease a new motor vehicle through the manufacturer or distributor received from the retail buyer or lessee that is a resident of this state if the retail buyer or lessee designates a dealer outside of this state to be assigned the reservation or request to purchase or lease or if the dealer in closest proximity to the retail buyer or lessee's location is in another state and the manufacturer or distributor assigns the reservation or request to purchase or lease to that dealer.

(i) Notwithstanding the terms of any dealer agreement, or the terms of any manufacturer or distributor program or policy, a manufacturer or distributor may not, if it has a dealer agreement with any dealer in this state, offer new motor vehicles through a subscription directly to a retail buyer or lessee. However, this subsection is not intended to prevent a manufacturer or distributor from providing or offering new motor vehicles through a subscription program through a dealer for sale or lease to a retail buyer or lessee.

(j) Notwithstanding the terms of any dealer agreement, or the terms of any manufacturer or distributor program or policy, a manufacturer or distributor may not, if it has a dealer agreement with any dealer in this state, offer direct financing for the purchase, lease, or other conveyance of a new motor vehicle to a retail buyer or lessee. However, this subsection is not intended to prevent a manufacturer or distributor from providing or offering a financing program through a dealer which is available for retail buyers or lessees.

(k) A manufacturer may not coerce or require any dealer, whether by agreement, program, incentive provision, or provision for loss of incentive payments or other benefits, to amend its dealer agreement or to establish a dealer agreement under which the manufacturer:

(1) Maintains a website or other electronic or digital means of communication for negotiating prices or other binding terms of sale or lease of new motor vehicles directly with retail buyers or lessees, including, but not limited to, agreements between the manufacturer, factory branch, distributor, or distributor branch on prices or other substantive terms for the sale or leasing of new motor vehicles directly with retail buyers or lessees;

(2) Retains ownership of new motor vehicles until they are sold or leased to retail buyers or lessees; except that, a manufacturer or distributor may maintain a common supply of new motor vehicles to which it retains ownership until the new motor vehicles are sold to dealers pursuant to the manufacturer or distributor's allocation policies and procedures, and may maintain a common supply of new motor vehicles from which a dealer may buy vehicles for the dealer's inventory without having reached agreement for sale or lease of any new motor vehicle with a retail buyer or lessee if the manufacturer, factory branch, or distributor, or distributor branch does not otherwise allow its dealers to obtain stock inventory through the new motor vehicle allocation process and pursuant to the manufacturer or distributor's

allocation policies and procedures;

(3) Consigns new motor vehicles to dealers for dealer inventory or for sale to a retail buyer or lessee;

(4) Reserves the right to negotiate binding terms of sale or lease directly with retail buyers or lessees of new motor vehicles; or

(5) Designates dealers to be only delivery agents for new motor vehicles, for which the binding terms of sale or lease are negotiated directly between the manufacturer and the retail buyer or lessee of the new motor vehicle.

WV Legislature

§17A-6A-11. Motor vehicle dealer successorship or change in executive management.

(1) Any designated family member of a new motor vehicle dealer may succeed the dealer in the ownership or operation, or be a designated executive manager of the dealership under the existing dealer agreement if the designated family member gives the manufacturer or distributor written notice of his or her intention to succeed to, or be designated as the executive manager of, the dealership within 120 days after the dealer's death or incapacity or designation of a successor or executive manager, and agrees to be bound by all of the terms and conditions of the dealer agreement, and the designated family member meets the current criteria generally applied by the manufacturer or distributor in qualifying new motor vehicle dealers or executive managers. A manufacturer or distributor may refuse to honor the designation or change with the designated family member only for good cause. In determining whether good cause exists for refusing to honor the agreement, the manufacturer or distributor has the burden of proving that the designated successor is a person who is not of good moral character or does not meet the manufacturer's existing written, reasonable, and uniformly applied standards for business experience and financial qualifications. The designated family member will have a minimum of one year to satisfy that manufacturer's written and reasonable standards and financial qualifications for appointment as the dealer or executive manager.

(2) The manufacturer or distributor may request from a designated family member any information or application reasonably necessary to determine whether the existing dealer agreement should be honored. The designated family member shall supply the personal and financial data promptly upon the request.

(3) If a manufacturer or distributor believes that good cause exists for refusing to honor the succession or designation, the manufacturer or distributor may, within 45 days after receipt of the notice of the designated family member's intent to succeed the dealer in the ownership or the appointment of an executive manager in the operation of the dealership, or within forty-five days after the receipt of the requested personal and financial data, serve upon the designated family member notice of its refusal to approve the succession.

(4) The notice of the manufacturer or distributor provided in subdivision (3) of this section shall state the specific factual and legal grounds for the refusal to approve the succession or designation of an executive manager.

(5) If notice of refusal is not served within the 45 days provided for in subdivision (3) of this section, the dealer agreement continues in effect and is subject to termination only as otherwise permitted by this article.

(6) This section does not preclude a new motor vehicle dealer from designating any person as his or her successor by will or any other written instrument filed with the manufacturer or distributor, and if such an instrument is filed, it alone determines the succession rights to the management and operation of the dealership.

WV Legislature

(7) If the manufacturer challenges the succession in ownership or executive manager designation, it maintains the burden of proof to show good cause by a preponderance of the evidence. If the person or new motor vehicle dealer seeking succession of ownership or executive manager designation files a civil action within 180 days of the manufacturer's refusal to approve or the one year qualifying period set forth in subdivision (1) of this section, whichever is longer, no action may be taken by the manufacturer contrary to the dealer agreement until such time as the civil action and any appeal has been exhausted: *Provided*, That when a motor vehicle dealer appeals a decision upholding a manufacturer's decision to not allow succession based upon the designated person's insolvency or conviction of a crime punishable by imprisonment in excess of one year under the law which the designated person was convicted, the dealer agreement shall remain in effect pending exhaustion of all appeals only if the new motor vehicle dealer establishes that the public interest will not be harmed by keeping the dealer agreement in effect pending entry of final judgment after the appeal.

WV Legislature

§17A-6A-12. Establishment and relocation or establishment of additional dealers.

(1) As used in this section, "relocate" and "relocation" do not include the relocation of a new motor vehicle dealer within four miles of its established place of business or if an existing new motor vehicle dealer sells or transfers the dealership to a new owner and the successor new motor vehicle dealership owner relocates to a location within four miles of the seller's last open new motor vehicle dealership location. The relocation of a new motor vehicle dealer to a site within the area of sales responsibility assigned to that dealer by the manufacturing branch or distributor may not be within six air miles of another dealer of the same line-make.

(2) Before a manufacturer or distributor enters into a dealer agreement establishing or relocating a new motor vehicle dealer within a relevant market area where the same line-make is represented, the manufacturer or distributor shall give written notice to each new motor vehicle dealer of the same line-make in the relevant market area of its intention to establish an additional dealer or to relocate an existing dealer within that relevant market area.

(3) Within 60 days after receiving the notice provided in subdivision (2) of this section, or within 60 days after the end of any appeal procedure provided by the manufacturer or distributor, a new motor vehicle dealer of the same line-make within the affected relevant market area may bring a declaratory judgment action in the circuit court for the county in which the new motor vehicle dealer is located to determine whether good cause exists for the establishing or relocating of the proposed new motor vehicle dealer: *Provided*, That a new motor vehicle dealer of the same line-make within the affected relevant market area shall not be permitted to bring such an action if the proposed relocation site would be further from the location of the new motor vehicle dealer of the same line-make than the location from which the dealership is being moved. Once an action has been filed, the manufacturer or distributor may not establish or relocate the proposed new motor vehicle dealer until the circuit court has rendered a decision on the matter. An action brought pursuant to this section shall be given precedence over all other civil matters on the court's docket. The manufacturer has the burden of proving that good cause exists for establishing or relocating a proposed new motor vehicle dealer.

(4) This section does not apply to the reopening in a relevant market area of a new motor vehicle dealer that has been closed within the preceding two years if the established place of business of the new motor vehicle dealer is within four air miles of the established place of business of the closed or sold new motor vehicle dealer.

(5) In determining whether good cause exists for establishing or relocating an additional new motor vehicle dealer for the same line-make, the court shall take into consideration the existing circumstances, including, but not limited to, the following:

(A) The permanency and amount of the investment, including any obligations incurred by the dealer in making the investment;

WV Legislature

(B) The effect on the retail new motor vehicle business and the consuming public in the relevant market area;

(C) Whether it is injurious or beneficial to the public welfare;

(D) Whether the new motor vehicle dealers of the same line-make in the relevant market area are providing adequate competition and convenient consumer care for the motor vehicles of that line-make in the market area, including the adequacy of motor vehicle sales and qualified service personnel;

(E) Whether the establishment or relocation of the new motor vehicle dealer would promote competition;

(F) The growth or decline of the population and the number of new motor vehicle registrations in the relevant market area; and

(G) The effect on the relocating dealer of a denial of its relocation into the relevant market area.

WV Legislature

§17A-6A-12a. Restriction on motor vehicle dealer's use of dealership property.

(1) A manufacturer shall not require that a new motor vehicle dealer, a proposed new motor vehicle dealer, or any owner of an interest in a dealership facility enter into or agree to a property use agreement as a condition to any of the following:

(a) Awarding a dealer agreement to a prospective new motor vehicle dealer.

(b) Adding a line make or dealer agreement to an existing new motor vehicle dealer.

(c) Renewing a dealer agreement with an existing new motor vehicle dealer.

(d) Approving a relocation of a new motor vehicle dealer's place of business.

(e) Approving a sale or transfer of the ownership of a dealership or a transfer of a dealer agreement to another person.

(2) Subsection (1) of this section does not apply to a property use agreement if any of the following are offered and accepted for that agreement:

(a) Monetary consideration.

(b) Separate and valuable consideration that can be calculated to a sum certain.

(3) If a manufacturer and new motor vehicle dealer are in parties to a property use agreement, the dealer agreement between the manufacturer and new motor vehicle dealer is terminated by a manufacturer or by a successor manufacturer or by operation of law and the reason for the termination is not a reason described in paragraphs (1) through (5), inclusive, subdivision (c), section seven of this article, the property use agreement terminates and ceases to be effective at the time the dealer agreement is terminated.

(4) If any provision contained in a property use agreement entered into on or after the effective date of the amendatory act that added this subsection is inconsistent with this section, the provision is voidable at the election of the affected new motor vehicle dealer, proposed new motor vehicle dealer, or owner of an interest in the dealership facility.

(5) As used in this section, "property use agreement" means any of the following:

(a) An agreement that requires that a new motor vehicle dealer establish or maintain exclusive dealership facilities.

(b) An agreement that restricts the ability of a new motor vehicle dealer, or the ability of the dealer's lessor if the dealer is leasing the dealership facility, to transfer, sell, lease, or change the use of the place of business of the dealership, whether by sublease, lease, collateral pledge of lease, right of first refusal to purchase or lease, option to purchase, option to lease, or other similar agreement, regardless of who the parties to that agreement

WV Legislature

are.

(c) Any similar agreement between a manufacturer and a new motor vehicle dealer and commonly known as a site control agreement or exclusive use agreement.

WV Legislature

§17A-6A-13. Obligations regarding warranties.

(1) Each new motor vehicle manufacturer or distributor shall specify in writing to each of its new motor vehicle dealers licensed in this state the dealer's obligations for preparation, delivery, and warranty service on its products. The manufacturer or distributor shall compensate the new motor vehicle dealer for warranty service required of the dealer by the manufacturer or distributor. The manufacturer or distributor shall provide the new motor vehicle dealer with the schedule of compensation to be paid to the dealer for parts, diagnostic time as applicable, work and service, and the time allowance for the performance of the work, diagnostic time as applicable, and service in a manner in compliance with §17A-6A-8a of this code.

(2) The schedule of compensation shall include reasonable compensation for diagnostic work, as well as repair service and labor. Time allowances for the diagnosis and performance of warranty work and service shall be reasonable and adequate for the work to be performed. In the determination of what constitutes reasonable compensation under this section §17A-6A-8a of this code shall govern: *Provided*, That in the case of a dealer of new motorcycles, motorboat trailers, all-terrain vehicles, utility terrain vehicles, and snowmobiles, the compensation of a dealer for warranty parts is the greater of the dealer's cost of acquiring the part plus 30 percent or the manufacturer's suggested retail price: *Provided, however*, That in the case of a dealer of travel trailers, fold-down camping trailers, and motorhomes, the compensation of a dealer's cost for warranty parts is not less than the dealer's cost of acquiring the part plus 20 percent.

(3) A manufacturer or distributor may not do any of the following:

(A) Fail to perform any warranty obligation;

(B) Fail to include in written notices of factory recalls to new motor vehicle owners and dealers the expected date by which necessary parts and equipment will be available to dealers for the correction of the defects; or

(C) Fail to compensate any of the new motor vehicle dealers licensed in this state for repairs effected by the recall or the manufacturer's or distributor's warranty obligation as provided under §17A-6A-8a of this code.

(4) All claims made by a new motor vehicle dealer pursuant to this section for labor and parts shall be paid within 30 days after their approval. All claims shall be either approved or disapproved by the manufacturer or distributor within 30 days after their receipt on a proper form generally used by the manufacturer or distributor and containing the usually required information therein. Any claim not specifically disapproved in writing within 30 days after the receipt of the form is considered to be approved and payment shall be made within 30 days. The manufacturer has the right to initiate an audit of a claim within twelve months after payment and to charge back to the new motor vehicle dealer the amount of any false, fraudulent, or unsubstantiated claim, subject to the requirements of §17A-6A-8a of this code.

WV Legislature

(5) The manufacturer shall accept the return of any new and unused part, component, or accessory that was ordered by the dealer, and shall reimburse the dealer for the full cost charged to the dealer for the part, component, or accessory if the dealer returns the part and makes a claim for the return of the part within one year of the dealer's receipt of the part, component, or accessory and provides reasonable documentation, to include any changed part numbers to match new part numbers, provided that the part was ordered for a warranty repair.

WV Legislature

§17A-6A-14. Acceptance of vehicles; risk of loss or damage.

(1) Notwithstanding the terms, provisions or conditions of any agreement, a new motor vehicle dealer is solely liable for damages to new motor vehicles after acceptance from the carrier, after a three-day period for proper inspection of the vehicle and before delivery to the ultimate purchaser. Acceptance by the new motor vehicle dealer shall occur when the new motor vehicle dealer signs a delivery receipt for any motor vehicle.

(2) Notwithstanding the terms, provisions or conditions of any agreement, the manufacturer or distributor is liable for all damages or repairs to motor vehicles before delivery to a carrier or transporter and shall indemnify the new motor vehicle dealer for any such damages or repairs.

(3) The new motor vehicle dealer is liable for damages to new motor vehicles after delivery to the carrier only if the dealer selects the method of transportation, mode of transportation and the carrier. In all other instances, the manufacturer or distributor is liable for new motor vehicle damage.

(4) If the new motor vehicle dealer rejects a new motor vehicle pursuant to this section, the manufacturer or distributor shall credit the dealer's account within ten business days after receipt of the notice of rejection.

WV Legislature

§17A-6A-14a. Open account protection.

If there is a dispute between the manufacturer, factory branch, distributor or distributor branch and the dealer with respect to any matter referred to this article, either party may notify, in writing, the other party of its request to challenge, through the manufacturer's appeal process or the circuit courts of the state of West Virginia. A manufacturer, factory branch, distributor, or distributor branch may not collect chargebacks, fully or in part, either through direct payment or by charge to the dealer's account, for warranty parts or service compensation, including service incentives, sales incentives, other sales compensation, surcharges, fees, penalties or any financial imposition of any type arising from an alleged failure of the dealer to comply with a policy of, directive from or agreement with the manufacturer, factory branch, distributor or distributor branch until thirty days following final notice of the amount charged to the dealer following all internal processes of the manufacturer, factory, factory branch, distributor or distributor branch. Within thirty days following receipt of final notice, the dealer may, in writing, request a hearing or seek civil relief from the manufacturer's appeal process or the circuit courts of the state of West Virginia. If a dealer requests a hearing or files a civil action, the manufacturer, factory branch, distributor or distributor branch may not collect the chargeback, fully or in part, either through direct payment or by charge to the dealer's account, until the completion of the hearing or civil action, and all appeal, civil or otherwise, have been exhausted concerning the validity of the chargeback.

WV Legislature

§17A-6A-15. Indemnity.

Notwithstanding the terms of any dealer agreement, a manufacturer or distributor shall indemnify and hold harmless its dealers for any reasonable expenses incurred, including damages, court costs, and attorney's fees, arising out of complaints, claims, or actions to the extent such complaints, claims, or actions relate to the manufacture, assembly, or design of a new motor vehicle, manufacturer's warranty obligations excluding dealer negligence, or other functions by the manufacturer or distributor beyond the control of the dealer, including, without limitation, the selection by the manufacturer or distributor of parts or components for the vehicle, and any damages to merchandise occurring prior to acceptance of the vehicle by the dealer to the dealer if the carrier is designated by the manufacturer or distributor, if the new motor vehicle dealer gives timely notice to the manufacturer or distributor of the complaint, claim, or action.

WV Legislature

§17A-6A-15a. Dealer data, obligation of manufacturer, vendors, suppliers and others; consent to access dealership information; unlawful activities; indemnification of dealer.

(a) Except as expressly authorized in this section, a manufacturer or distributor cannot require a motor vehicle dealer to provide its customer information to the manufacturer or distributor unless necessary for the sale and delivery of a new motor vehicle to a consumer, to validate and pay consumer or dealer incentives, for manufacturer's marketing purposes, for evaluation of dealer performance, for analytics, or to support claims submitted by the new motor vehicle dealer for reimbursement for warranty parts or repairs. Nothing in this section shall limit the manufacturer's ability to require or use customer information to satisfy any safety or recall notice obligation or other legal obligation.

(b) The dealer is only required to provide the customer information to the extent lawfully permissible, and to the extent the requested information relates solely to specific program requirements or goals associated with the manufacturer's or distributor's own vehicle makes. A manufacturer, factory branch, distributor, distributor branch, dealer, data systems vendor, or any third party acting on behalf of any manufacturer, factory branch, distributor, distributor branch or dealer or data systems vendor may not prohibit a dealer from providing a means to regularly and continually monitor, or conduct an audit of, the specific data accessed from or written to the dealer's data systems and from complying with applicable state and federal laws and any rules or regulations promulgated thereunder. These provisions do not impose an obligation on a manufacturer, factory branch, distributor, distributor branch, dealer, vendor, or any third party acting on behalf of any manufacturer, factory branch, distributor, distributor branch, dealer, or data systems vendor to provide that capability.

(c) A manufacturer, factory branch, distributor, distributor branch, dealer, data systems vendor, or any third party acting on behalf of any manufacturer, factory branch, distributor, distributor branch or dealer, or data systems vendor, may not provide access to customer or dealership information maintained in a dealer data systems used by a motor vehicle dealer located in this state, other than a subsidiary or affiliate of the manufacturer factory branch, distributor or distributor branch without first obtaining the dealer's prior express written consent and agreement, revocable by the dealer upon 10 business days written notice, to provide the access.

(d) Upon a written request from a motor vehicle dealer, the manufacturer, factory branch, distributor, distributor branch, dealer, or data systems vendor, or any third party acting on behalf of or through any manufacturer, factory branch, distributor, distributor branch or dealer data systems vendor shall provide to the dealer a written list of all specific third parties other than a subsidiary or affiliate of the manufacturer, factory branch, distributor or distributor branch to whom any data obtained from the dealer has actually been provided within the 12 month period prior to date of dealer's written request. If requested by the dealer, the list shall further describe the scope and specific fields of the data provided. The consent does not change the person's obligations to comply with the terms of this section

WV Legislature

and any additional state or federal laws, and any rules or regulations promulgated thereunder, applicable to them with respect to the access.

(e) A manufacturer, factory branch, distributor, distributor branch, dealer, data systems vendor, or any third party acting on behalf of or through any dealer, or data systems vendor, having electronic access to customer or motor vehicle dealer data in a dealership data system used by a motor vehicle dealer located in this state shall provide notice in a reasonable timely manner to the dealer of any security breach of dealership or customer data obtained through the access.

(f) A manufacturer or distributor or a third party acting on behalf of a manufacturer or distributor may not require a dealer to provide any customer information: Any individual who is not a customer of such manufacturer's or distributor's own vehicle makes; for any purpose other than for reasonable marketing purposes on behalf of that dealer, market research, consumer surveys, market analysis, or dealership performance analysis; if sharing that information would not be permissible under local, state, or federal law; except to the extent the requested information relates solely to specific program requirements or goals associated with such manufacturer's or distributor's own vehicle makes; that is general customer information or other information related to the dealer, unless the requested information can be provided in a manner consistent with dealer's current privacy policies and Gramm-Leach-Bliley Act privacy notice, a dealer may not be required to amend that notice to accommodate data sharing with the manufacturer or distributor.

(g) As used in this section:

(1) "Authorized Integrator" means any third party with whom a dealer has entered into a written contract to perform a specific function for a dealer that permits the third party to access protected dealer data and/or to write data to a dealer data system to carry out the specified function (the "authorized integrator contract").

(2) "Dealer" means a new motor vehicle dealer as defined by §17A-6A-3(11) of this code and any authorized dealer personnel.

(3) "Dealer data system" means any software, hardware, or firmware used by a dealer in its business operations to store, process, or maintain protected dealer data.

(4) "Dealer data systems vendor" means any dealer management system provider, customer relationship management system provider, or other vendor that permissibly stores protected dealer data pursuant to a written contract with the dealer ("dealer data systems vendor contract").

(5) "Data access overcharge" means any charge to a dealer or authorized integrator for integration beyond reimbursement for any direct costs incurred by the dealer data systems vendor for such Integration. If a dealer data systems vendor chooses to seek reimbursement from any dealer or authorized integrator for such direct costs, the direct costs must be

WV Legislature

disclosed to the dealer, and justified by documentary evidence of the costs associated with such Integration or it will be considered a data access overcharge.

(6) "Integration" means access to protected dealer data in a dealer's dealer data system by an authorized integrator, or an authorized integrator writing data to a dealer's dealer data system. Integration does not require access to any copyrighted material but must allow for access to all protected dealer data. Integration may be accomplished by any commercially reasonable means that do not violate this section, but all dealer data vendors must include an option to integrate via a secure open application programming interface (API), which must be made available to dealers and authorized integrators. In the event that APIs are no longer the reasonable commercial or technical standard for secure data integration, a similar open access integration method may be provided, to the extent it provides the same or better secure access to dealers and authorized Integrators as an API.

(7) "Prior express written consent" means written consent provided by the dealer that is contained in a document separate from any other consent, contract, franchise agreement, or other writing that specifically outlines the dealer's consent for the authorized Integrator to obtain the dealer data, as well as the scope and duration of that consent. This consent may be unilaterally revoked by the dealer: (A) without cause, upon 30 days' notice, and (B) immediately for cause.

(8) "Protected dealer data" means any of the following data that is stored in a dealer data system:

(A) Personal, financial, or other data pertaining to a consumer, or a consumer's vehicle that is provided to a dealer by a consumer or otherwise obtained by a dealer: *Provided*, That this subdivision does not give a new motor vehicle dealer any ownership or rights to share or use the motor vehicle diagnostic data beyond what is necessary to fulfill a dealer's obligation to provide warranty, repair, or service work to its customers; or

(B) Any other data regarding a dealer's business operations in that dealer's dealer data system:

(9) "Secure open API" means an application programming interface that allows authorized integrators to integrate with dealer data systems remotely and securely. The APIs must be "open" in that all required information to Integrate via the API (software development toolkit and any other necessary technical or other information) must be made available by a dealer data systems vendor to any authorized integrator upon request by a dealer. The secure open API must include all relevant endpoints to allow for access to all protected dealer data, or as are needed to integrate with protected dealer data, and must provide granularity and control necessary for dealers and authorized integrators to Integrate the data necessary under the authorized integrator contract. "Open" does not mean that the API must be available publicly or at no cost to an authorized integrator, however no data access overcharge may be assessed in connection with a secure open API.

WV Legislature

(10) “Third party” includes service providers, vendors, including dealer data systems vendors and authorized integrators, and any other individual or entity other than the dealer. Third party does not include any manufacturer, factory branch, distributor, distributor branch or governmental entity acting pursuant to federal, state, or local law, or any third party acting pursuant to a valid court order.

(h) Prohibited Action

1. A third party may not:

(A) Access, share, sell, copy, use, or transmit protected dealer data from a dealer data system without the express written consent of a dealer;

(B) Take any action, by contract, by technical means, or otherwise, that would prohibit or limit a dealer’s ability to protect, store, copy, share, or use any protected dealer data. This includes, but is not limited to:

(i) Imposing any data access overcharges or other restrictions of any kind on the dealer or any authorized integrator for integration;

(ii) Prohibiting any third party that the dealer has identified as one of its authorized integrators from integrating with that dealer’s dealer data system;

(iii) Place unreasonable restrictions on integration by any authorized integrator or other third party that the dealer wishes to be an authorized integrator. Examples of unreasonable restrictions include, but are not limited to:

(I) Unreasonable restrictions on the scope or nature of the data shared with an authorized integrator;

(II) Unreasonable restrictions on the ability of the authorized integrator to write data to a dealer data system;

(III) Unreasonable restrictions or conditions on a third party accessing or sharing protected dealer data, or writing data to a dealer data system; and

(IV) Requiring unreasonable access to sensitive, competitive, or other confidential business information of a third party as a condition for access to protected dealer data or sharing protected dealer data with an authorized integrator;

(iv) Prohibiting or limiting a dealer’s ability to store, copy, securely share or use protected dealer data outside the dealer data system in any manner and for any reason; or

(v) Permitting access to or accessing protected dealer data without express written consent by the dealer.

WV Legislature

(i) Nothing in this section shall be interpreted to prevent any dealer or third party from discharging its obligations as a service provider under an agreement or otherwise under federal, state, or local law to protect and secure protected dealer data, or to otherwise limit those responsibilities.

(j) A dealer data systems vendor or authorized integrator is not responsible for any action taken directly by the dealer, or for any action it takes in appropriately following the written instructions of the dealer, to the extent that such action prevents it from meeting any legal obligation regarding the protection of protected dealer data or results in any liability as a consequence of such actions by the dealer.

(k) A dealer is not responsible for any action taken directly by any of its dealer data systems vendors or authorized integrators, or for any action it takes in appropriately following the written instructions of any of its dealer data systems vendors or authorized integrators, to the extent that such action prevents it from meeting any legal obligation regarding the protection of protected dealer data or results in any liability as a consequence of such actions by the dealer data systems vendor or authorized integrator.

(l) Additional responsibilities and restrictions

(1) All dealer data systems vendors must adopt and make available a standardized Integration framework (use of the STAR Standards or a standard compatible with the STAR standards shall be deemed to be in compliance with this requirement) and allow for integration via secure open APIs to authorized integrators. In the event that APIs are no longer the reasonable commercial or technical standard for secure data integration, a similar open access integration method may be provided, to the extent it provides the same or better secure Integration to dealers and authorized integrators as a secure open API.

(2) All dealer data systems vendors and authorized integrators:

(A) May Integrate, or otherwise access, use, store, or share protected dealer data, only as outlined in, and to the extent permitted by their dealer data systems vendor contract or authorized integrator contract;

(B) Must make any dealer data systems vendor contract or authorized integrator contract terminable upon no more than 90 days notice from the dealer;

(C) Must, upon notice of the dealer’s intent to terminate its dealer data systems vendor contract or authorized integrator contract, in order to prevent any risk of consumer harm or inconvenience, work to ensure a secure transition of all protected dealer data to a successor dealer data systems vendor or authorized integrator. This includes, but is not limited to:

(i) Providing unrestricted access to all protected dealer data and all other data stored in the dealer data system in a commercially reasonable time and format that a successor dealer data systems vendor or authorized integrator can access and use; and

(ii) Deleting or returning to the dealer all protected dealer data prior to termination of the contract pursuant to any written directions of the dealer;

(iii) Providing a dealer, upon request, with a listing of all entities with whom it is sharing or has shared protected dealer data, or with whom it has allowed access to protected dealer data; and

(iv) Allowing a dealer to audit the dealer data systems vendor or authorized integrator's access to and use of any protected dealer data.

(m) Notwithstanding the terms or conditions of any consent, authorization, release, novation, franchise, or other contract or agreement, every manufacturer, factory branch, distributor, distributor branch, dealer, data systems vendor, or any third party acting on behalf of or through a manufacturer, factory branch, distributor, distributor branch or dealer, data systems vendor shall fully indemnify, defend, and hold harmless any dealer or manufacturer, factory branch, distributor or distributor branch from all damages, attorney fees, and costs, other costs and expenses incurred by the dealer from complaints, claims, or actions arising out of manufacturer's, factory's branch, distributor's, distributor's branch, dealer data systems vendors, or any third party for its willful, negligent, or impermissible use or disclosure of dealer data or customer data or other sensitive information in the dealer's data system. The indemnification includes, but is not limited to, judgments, settlements, fines, penalties, litigation costs, defense costs, court costs, costs related to the disclosure of security breaches, and attorneys' fees arising out of complaints, claims, civil, or administrative actions.

(n) The rights conferred on motor vehicle dealers in this section are not waivable and may not be reduced or otherwise modified by any contract or agreement.

(o) This section applies to contracts entered into after the effective date of this section.

(p) If any provision of this section or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this section which can be given effect without the invalid provision or application, and to this end the provisions of this section are severable.

(q) A manufacturer, factory branch, distributor, distributor branch, dealer, data management computer systems vendor, or any third party acting on behalf of itself, or through a manufacturer, factory branch, distributor, distributor branch, or dealer data management computer system vendor shall not take an act prejudicial against a new motor vehicle dealer because of a new motor vehicle dealer exercising its rights under this section.

WV Legislature

§17A-6A-15b. Exports; rebuttable presumption on behalf of dealer.

It is unlawful for a manufacturer or distributor to take or threaten to take any adverse action against a dealer pursuant to an export or sale-for-resale prohibition because the dealer sold or leased a vehicle to a customer who either exported the vehicle to a foreign country or resold the vehicle in violation of the prohibition, unless the export or sale-for-resale prohibition policy was provided to the dealer in writing prior to the sale or lease, and the dealer knew or reasonably should have known of the customer's intent to export or resell the vehicle in violation of the prohibition at the time of sale or lease. If the dealer causes the vehicle to be registered in this state or any other state and has determined that the customer is not on a list of known or suspected exporters provided by the manufacturer at the time of sale, a rebuttable presumption is established that the dealer did not have reason to know of the customer's intent to export or resell the vehicle.

WV Legislature

§17A-6A-15c. Manufacturer performance standards; uniform application; prohibited practices.

A manufacturer may not require dealer adherence to a performance standard or standards which are not applied uniformly to other similarly situated dealers. In addition to any other requirements of the law, the following shall apply:

(1) A performance standard, sales objective, or program for measuring dealer performance used by a manufacturer, distributor, or factory branch in determining a dealer's compliance with the dealer agreement shall be reasonable and based on accurate information, including, but not limited to, the dealer's specific local market circumstances and geographical characteristics. A manufacturer, distributor, or factory branch may not impose unreasonable restrictions on a dealer relative to compliance with a sales performance standard or sales objective.

(2) Upon written request from a dealer participating in the program, the manufacturer shall provide in writing the dealer's performance requirement or sales goal or objective, which shall include a reasonable and general explanation of the methodology, criteria, and calculations used.

(3) A manufacturer shall allocate a reasonable and appropriate supply of vehicles to assist the dealer in achieving any performance standards established by the manufacturer and distributor.

(4) The manufacturer or distributor has the burden of proving by a preponderance of the evidence that the performance standard, sales objective, or program for measuring dealership performance complies with this article.

WV Legislature

§17A-6A-16. Actions at law; damages.

(1) If a manufacturer or distributor terminates, cancels, fails to renew or discontinues a dealer agreement for other than good cause as defined in this article, or commits any other violation of this article, the new motor vehicle dealer adversely affected by the actions may bring an action for damages and equitable relief against the manufacturer or distributor. If the new motor vehicle dealer prevails, the dealer may recover, in addition to actual damages, treble damages up to three times the amount of the actual damages awarded, plus reasonable attorney's fees, regardless of the amount in controversy. For the purposes of the award of attorney's fees and costs, whenever the new motor vehicle dealer is seeking injunctive or other relief, the dealer may be considered to have prevailed when a judgment or other final order providing equitable relief is entered in its favor.

(2) A manufacturer or distributor who violates this article is liable for all damages sustained by a new motor vehicle dealer as a result of the violation.

(3) A manufacturer or distributor or new motor vehicle dealer may bring an action for declaratory judgment for determination of any controversy arising pursuant to this article.

(4) Any corporation or association which is primarily owned by or composed of dealers and which primarily represents the interests of dealers has standing to file a petition or cause of action with the court of competent jurisdiction for itself or by, for or on behalf of any, or a group of, new motor vehicle dealers for any violation of this article or for the determination of any rights created by this article.

(5) In addition to any county in which venue is proper in accordance with the Constitution and laws of this state, in any cause of action brought by a new motor vehicle dealer against a manufacturer or distributor for any violation of this article or for the determination of any rights created by the dealer's franchise agreement, venue is proper in the county in which the dealer is engaged in the business of selling the products or services of the manufacturer or distributor.

www.legislature

§17A-6A-17. Injunctive relief.

Upon proper application to the circuit court, a manufacturer or distributor or new motor vehicle dealer may obtain appropriate injunctive relief against termination, cancellation, nonrenewal or discontinuance of a dealer agreement or any other violation of this article. The court may grant injunctive relief or a temporary restraining order without bond.

WV Legislature

§17A-6A-18. West Virginia law to apply.

Notwithstanding the terms, provisions, or requirements of any dealer agreement, contract, or other agreement of any kind between a dealer and a manufacturer or distributor captive finance source, dealer data systems vendor, or any subsidiary, affiliate, or partner of a manufacturer or distributor, or captive finance source or dealer data systems vendor, the provisions of this code apply to all such agreements and contracts listed in this section or governed by this article. Any provisions in the agreements and contracts which violate the terms of this section are null and void.

WV Legislature

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

No person shall engage in the license service business in West Virginia without a license certificate. For purposes of this article, the term "license service or services" shall mean any person processing division of motor vehicle documents for compensation when such service or services are offered to the general public.

Application for a license certificate shall be made on a form prescribed by the commissioner and shall disclose such information the commissioner requires. Such application shall be verified by an oath or affirmation of the applicant, if an individual, or if the applicant is a copartnership or corporation, by a partner or officer thereof.

WV Legislature

§17A-6B-2. 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 shall cause 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 aggregate liability of the surety in no event shall exceed the principal sum of the bond. The surety on such bond shall have the right to cancel such 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 said cancellation.

WV Legislature

§17A-6B-3. Fee required for license certificate; special fund created.

The initial application fee for a certificate to engage in the license service business is $25. The renewal fee for the certificate is $25.

WV Legislature

§17A-6B-4. 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 such investigation, as necessary, to determine the accuracy of any statements contained in the application and the existence of any other facts relevant in considering such application. To facilitate such investigation, the commissioner may withhold issuance or refusal of the license certificate for a period not to exceed twenty days.

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

WV Legislature

§17A-6B-5. 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) So far as can be ascertained, has not complied with and will not comply with the registration and title laws of this state;

(6) Has been guilty of any fraudulent act in connection with the business of licensing service; or

(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.

Then, upon the basis of the application, such findings, and all other information, the commissioner shall make and enter an order denying the application for a license certificate, which denial is final and conclusive unless an appeal is taken. Otherwise, the commissioner shall issue to the applicant the license certificate which shall entitle the licensee to engage in the license service business.

WV Legislature

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

(a) The initial application for a license certificate to engage in a license service business shall be made thirty days prior to January 1, 1991. This license shall be valid for one year.

(b) Any initial application made after January 1, 1991, 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 after review by the commissioner.

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

WV Legislature

§17A-6B-7. Form and display of license certificate; certified copies of license.

(a) The commissioner shall prescribe the form of the license certificate for a license service business. Each license certificate shall have printed thereon the seal of the division, the location of each place of business of the licensee, the year for which the license is issued, the serial number, and such 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, upon application therefor, obtain from the commissioner, for each such place of business, one certified copy of the license certificate. A fee of $1 shall be paid for each such certified copy. Each licensee shall keep his or her license certificate or certified copy thereof conspicuously posted at each place of business.

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

WV Legislature

§17A-6B-8. Changes in business; action required.

Every license service 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 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 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 subdivision (3) change is involved, 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 such 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 shall be required for the issuance of any new license certificate issued as a result of any change specified in this section.

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.

WV Legislature

§17A-6B-9. Investigation; grounds for suspending or revoking license certificate; notice of refusal, suspension or revocation of license certificate; relinquishing license certificate and temporary plates or markers.

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 licensee 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 and regulations 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 which would be cause for refusing a license certificate to such

WV Legislature

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 such 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 shall refuse to issue a license certificate, or shall suspend or revoke a license certificate, or shall suspend the right of a licensee to issue temporary plates or markers under the provisions of section fifteen, article six of this chapter, he or she 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.

(e) Suspensions hereunder shall continue until the cause therefor has been eliminated or corrected. Whenever a license certificate and the right of a licensee to issue temporary registration plates or markers 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 temporary registration plates or markers still in the licensee's possession and issued in conjunction with the issuance of such license service certificate. It is the duty of the licensee to comply with the order. Whenever a licensee fails or refuses to comply with any order herein specified, 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 certificate is suspended or revoked, may appeal such order in accordance with the procedures set by the commissioner.

(g) Revocation of a license certificate shall not preclude application for a new license certificate, which application shall 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 such license certificate.

WV Legislature

§17A-6B-10. Temporary registration plates or markers.

(a) In order to permit a vehicle which is to be titled and registered 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 persons engaged in license service businesses who in turn may, subject to the limitations and conditions hereinafter set forth, issue the same to applicants for title and registration of vehicles, but such applicants must comply with the pertinent provisions of this section.

(b) Application by a license service business to the commissioner for such temporary registration plates or markers shall be made on the form 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. No refund or credit of fees paid by license services 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, license services returning temporary registration plates or markers to the commissioner may petition for and be entitled to a refund or a credit thereof.

(c) Every license service who has made application for and received temporary registration plates or markers shall maintain in permanent form a record of all temporary registration plates or markers delivered to the licensee, a record of all temporary registration plates or markers issued, 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. Each such record shall be kept for a period of at least three years from the date of the making thereof.

Every licensee who issues a temporary registration plate or marker shall, within five working days after the issuance of such plate or marker, send to the division a copy of the temporary registration plate or marker certificate properly executed by the license service and the purchaser.

No temporary registration plates or markers may be delivered to any license service until such license service has fully accounted to the commissioner for the temporary registration plates or markers last delivered to such license service, by showing the number issued to purchasers by such license service and any on hand.

(d) A license service shall not issue, assign, or deliver a temporary registration plate or marker to anyone other than the bona fide applicant for title and registration of the vehicle to be registered. Not more than one temporary registration plate or marker shall be issued to the same bona fide applicant for the same vehicle. A license service shall not 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 license service may issue a temporary registration plate or marker to the bona fide applicant of a vehicle to be registered who possesses an annual registration plate of a different class and makes application to the

WVLegislature

division to exchange such annual registration plate of a different class in accordance with the provisions of §17A-4-1 of this code. A license service shall not 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 license service to issue any temporary registration plate or marker which contains a misstatement of fact or false information.

No license service shall issue, assign, or deliver a temporary registration plate or marker to anyone unless and until the license service has physical possession of the application and appropriate fees and taxes of the vehicle to be titled and registered. Such application, fees, and taxes shall be postmarked to the issuing agency or submitted to the Division of Motor Vehicles within 48 hours after issuance of the temporary plate or marker.

(e) Every license service who issues temporary registration plates or markers shall affix or insert clearly and indelibly on the face of each temporary registration plate or marker the date of issuance and expiration thereof, and the make, model, and 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 license service, he or she may suspend the right of such license service to issue temporary registration plates or markers.

(g) A temporary registration plate or marker shall expire 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 which event occurs first.

(h) A license service may charge a fee not to exceed $5 for issuing a temporary registration plate or marker.

WV Legislature

§17A-6B-11. 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 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.

(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-6B-12. 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 such 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.

WV Legislature

§17A-6B-13. Promulgation of rules.

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

WV Legislature

§17A-6C-1. License certificate required; application form; prohibited acts; reassignment of title; and exemption from privilege tax.

(a) A person, partnership or corporation may not engage in, represent or advertise that he she or it is in the business of conducting automobile auctions without first obtaining a license certificate from the office of the commissioner. The commissioner shall provide an application form for applicants seeking a license certificate. The applicant shall provide full information required by the commissioner on the application form. The applicant, if a person, shall verify the information on the form by oath or affirmation. If the applicant is a partnership or corporation, the oath or affirmation shall be made by a partner or an officer of the corporation.

(b) For the purposes of this article, the term "automobile auction" means an auction or other sale where twenty or more used motor vehicles are offered for sale by auction within a license year, but does not include a sale or auction of surplus vehicles by an agency of this state, a municipality of this state or of the federal government or a sale or auction of repossessed vehicles by a financial institution or a sale or auction by a licensed motor vehicle dealer of vehicles owned by said dealer.

(c) The automobile auction may auction or sell vehicles owned by the auction or may auction vehicles which are owned by others,

(d) When the transferee of a vehicle is an automobile auction which holds the same for resale and lawfully operates the same under Class AA plates, such automobile auction shall not be required to obtain a new registration of said vehicle or be required to forward the certificate of title to the division, but upon transfer of title or interest to another person the automobile auction shall execute and acknowledge an assignment and warranty of title upon the certificate of title and deliver the same not later than sixty days from date of sale to the person to whom such transfer is made.

(e) The tax imposed by section four, article three of this chapter does not apply to the titling of vehicles purchased for resale by an automobile auction.

(f) Notwithstanding any other provision of this article, while the vehicle is in the possession and control of an automobile auction business, its employees may not operate or allow another to operate a vehicle with a salvage or a nonrepairable motor vehicle certificate issued pursuant to section ten, article four of this chapter on the roads and highways of this state. In accordance with the temporary plate provisions and the special dealer plate provisions of this article, an automobile auction may operate or allow another person to operate a vehicle on the roads and highways of this state that has a cosmetic total loss salvage certificate issued pursuant to section ten, article four of this chapter.

WV Legislature

§17A-6C-2. Bonds and insurance.

(a) An application for a license certificate must be accompanied by a bond, issued by a surety corporation authorized to issue bonds in this state, in the penal sum of $25,000, to ensure that the licensee will not make fraudulent representations to the detriment of any purchaser, seller, financial institution 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 aggregate liability of the surety in no event shall exceed the principal sum of the bond. The surety of the bond shall have the right to cancel upon giving thirty days' notice to the commissioner and shall be relieved of liability for any breach of condition occurring after the effective date of the cancellation.

(b) An application for a license certificate must also be accompanied by 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 using any vehicle or vehicles owned by, or in the possession of, the applicant with the expressed or implied permission of the applicant, against loss from the liability imposed by law for damages arising out of the ownership, possession, operation, maintenance or use of such vehicles, subject to minimum limits, exclusive of interest and costs, with respect to each vehicle, as follows: $20,000 because of bodily injury to or death of one person in any one accident and, subject to said 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.

(c) The liability insurance policy shall run concurrently with the license year and shall remain in full force and effect at all times.

(d) All persons conducting business at or through an automobile auction business in this state must obey all Division of Motor Vehicles laws and rules.

(e) Automobile auction businesses shall report any violations of law or any scheme designed to deceive or defraud the automobile buying public and assist in prosecuting those involved in such acts.

WV Legislature

§17A-6C-3. Established place of business requirements.

Each automobile auction shall:

(a) Be located at a permanent site which is owned or leased by the licensee.

(b) Have no other class of dealership operating from the automobile auction location.

(c) Have office space of at least one hundred forty-five square feet, with necessary office furniture, heating and lighting facilities, restroom facilities and a telephone listed in the name of the automobile auction.

(d) Maintain parking space for at least one hundred vehicles.

(e) Display at least one permanent sign that is clearly visible from the nearest street or highway. The sign shall state that automobile auctions are conducted at that site.

WV Legislature

§17A-6C-4. Fee required for license certificate.

(a) The initial application fee for a certificate to engage in the automobile auction business is $250. The renewal fee is $100.

(b) The fee entitles the licensee to one special plate known as the Class AA special plate.

(c) A licensee is also entitled to additional Class AA special plates for a fee of $25 each based on the following formula:

ANNUAL VEHICLE SALES ADDITIONAL AA PLATES

0 - 239 2

240 - 499 4 (Additional)

500 - 999 4 (Additional)

1000- More 4 Plates per 500

vehicles sold.

WV Legislature

§17A-6C-5. Investigation prior to issuance of license certificate; information confidential.

(a) Upon receipt of a completed application, the required bond, certificate of insurance and the application fee, the commissioner may investigate to determine the accuracy of the application and any facts relevant to the application. The commissioner may withhold issuance or refusal of a license for up to twenty days after an application is received.

(b) An application for a license certificate under the provisions of this article and any information submitted are confidential. No person may divulge any information contained in any application or any information submitted except in response to a valid subpoena or subpoena duces tecum.

WV Legislature

§17A-6C-6. Refusal of license certificate.

The commissioner shall deny an application if he or she finds that the applicant:

(a) Has failed to furnish the required bond;

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

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

(d) Has habitually defaulted on financial obligations;

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

(f) Has been refused, or has had revoked, an automobile auction license in any other state or jurisdiction within five years immediately preceding receipt of the application by the commissioner;

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

(h) Has been convicted of any fraudulent act in connection with the business of an automobile auction; or

(i) Has committed any act or has failed or refused to perform any duty for which the license certificate, if issued, could be suspended or revoked.

WV Legislature

§17A-6C-7. Licensing period, renewal and expiration.

(a) A license certificate may not be issued prior to July 1, 1993. Applicants shall apply at least thirty days in advance. License certificates expire on June 30 each year.

(b) License certificates are renewable by the payment of fees by a licensee in good standing with the commissioner. A license certificate may not be transferred, or used by any person other than the licensee, except as provided in section nine of this article.

WV Legislature

§17A-6C-8. Form and display of license certificate; certified copies of license.

(a) The commissioner shall prescribe the form of the license certificate for an automobile auction business. Each license certificate shall have the seal of the division, the location of each place of business of the licensee, the year for which the license is issued, the serial number and other information the commissioner may prescribe printed on it. The license certificate shall be delivered or mailed to the licensee.

(b) When a licensee conducts business at more than one location, he or she shall obtain from the commissioner one certified copy of the license certificate for each place of business for a fee of $1 each. Each licensee shall keep either his or her license certificate or a certified copy conspicuously posted at each place of business.

(c) In the event of the loss or destruction of a license certificate or a certified copy, the licensee shall immediately make application for a certified copy of the lost license certificate. The fee for a replacement copy is $3.

WV Legislature

§17A-6C-9. Changes in business; action required.

Every automobile auction business shall notify the commissioner immediately when any of the following changes in the business occur:

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

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

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

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

(e) A change in ownership of the business;

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

(g) 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 (a), (b), (c), (d), (e) or (f) occurs, an application for a new license certificate shall immediately be filed with the commissioner: Provided, That when a subdivision (c) change is involved, 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 shall be required for the issuance of any new license certificate issued as a result of any change specified in subdivision (a), (b), (c), (d), (e) or (f).

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 takes charge of or operates such business for the purpose of winding up the affairs of such business or protecting the interests of the creditors of such business.

WV Legislature

§17A-6C-10. Investigation; grounds for suspending or revoking license certificate; notice of refusal, suspension or revocation of license certificate; relinquishing license certificate and temporary plates or markers.

(a) The commissioner may investigate whether any provisions of this article have been violated by a licensee. Any investigation conducted by the commissioner shall be confidential and the confidentiality of the investigation shall be maintained by the commissioner, the division, the licensee, any complainant and all other persons until the commissioner suspends or revokes the license certificate of the licensee involved.

(b) 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 requiring notices of transfers; or

(2) Has failed or refused to comply with the provisions of this article and the rules promulgated hereunder.

(c) 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 automobile auction 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 misrepresentation or misleading or deceptive statement of fact, relating to the conduct of the licensed business;

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

(9) Has committed an act for which a certificate could have been refused.

(d) If a licensee fails or refuses to keep the bond or liability insurance required by section two of this article in effect, the license certificate of the licensee shall automatically be suspended unless and until the required bond and certificate of insurance is furnished to the

WV Legislature

commissioner, in which event the suspension shall be vacated.

(e) If the commissioner refuses to issue a license certificate, or suspends or revokes a license certificate, or suspends the right of a licensee to issue temporary plates or markers under the provisions of section eleven, article six of this chapter, he or she shall make and enter an order to that effect and shall cause a copy of this order to be served in person or by certified mail, return receipt requested, on the applicant or licensee.

(f) Suspensions continue until the cause of suspension is eliminated or corrected. If a license certificate and the right of a licensee to issue temporary registration plates or markers 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 temporary registration plates or markers in the licensee's possession and issued in conjunction with the issuance of an automobile auction certificate. If 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.

(g) Any applicant whose request for a license certificate is refused, and any licensee whose license certificate is suspended or revoked, may appeal the suspension or revocation in accordance with the rules promulgated by the commissioner pursuant to this article.

(h) Revocation of a license certificate shall not preclude application for a new license certificate, which shall be processed in the same manner. The license certificate shall be issued or denied 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.

WV Legislature

§17A-6C-11. Temporary registration plates or markers.

(a) In order to permit a vehicle which is to be titled and registered to be operated on the streets and highways pending receipt of the annual registration plate, the commissioner may, subject to the following limitations, deliver temporary vehicle registration plates or markers to persons engaged in the automobile auction business for issuance to applicants for title and registration of vehicles.

(b) An application by an automobile auction business to the commissioner for temporary registration plates or markers shall be made on the form prescribed and furnished by the commissioner and shall be accompanied by a fee of $3 for each temporary registration plate or marker. No refund or credit of fees paid by automobile auction businesses to the commissioner for temporary registration plates or markers is allowed, except in the event the commissioner discontinues the issuance of temporary plates or markers. Automobile auction businesses returning temporary registration plates or markers to the commissioner may petition for and be entitled to a refund or a credit.

(c) Every automobile auction business applying for and receiving temporary registration plates or markers shall maintain in permanent form a record of all temporary registration plates or markers delivered to the licensee, a record of all temporary registration plates or markers issued 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. Each record shall be kept for a period of at least three years from the date issued. Every automobile auction business issuing a temporary registration plate or marker shall send to the division a copy of the temporary registration plate or marker certificate properly executed by the automobile auction business and the purchaser within five working days after the issuance of the plate or marker. No temporary registration plates or markers may be delivered to any automobile auction business until the business has fully accounted to the commissioner for the temporary registration plates or markers last delivered by showing the number issued to purchasers and the number remaining to be issued.

(d) An automobile auction business may not issue, assign, or deliver a temporary registration plate or marker to anyone other than the bona fide applicant for title and registration of the vehicle to be registered. Not more than one temporary registration plate or marker may be issued to the same bona fide applicant for the same vehicle. An automobile auction business may not issue a temporary registration or marker to anyone possessing an annual registration plate for a vehicle which has been sold or exchanged, except an automobile auction business may issue a temporary registration plate or marker to the bona fide applicant who possesses an annual registration plate of a different class and it may make application to the division to exchange the annual registration plate of a different class in accordance with the provisions of §17A-4-1 of this code. An automobile auction business may not lend to anyone or use on any vehicle which it may own, a temporary registration plate or marker. It is unlawful for any automobile auction business to issue any temporary registration plate or marker which contains a misstatement of fact or false information.

WV Legislature

(e) Every automobile auction business issuing temporary registration plates or markers shall affix or insert clearly and indelibly on the face of each temporary registration plate or marker the date of issuance, the date of expiration and the make, model, and serial number of the vehicle.

(f) If the commissioner finds that the provisions of this section or his or her directions are not being complied with by an automobile auction business, the commissioner may suspend the right of the automobile auction business to issue temporary registration plates or markers.

(g) A temporary registration plate or marker expires 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, whichever event occurs first.

WV Legislature

§17A-6C-12. Use of special plates; records to be maintained by automobile auction business; operation of vehicles under special plates; expiration of special plate.

(a) Class AA special plates may be used by the automobile auction business receiving them only for the purpose of transporting or moving consigned or owned motor vehicles to and from the automobile auction in the normal course of business or for purposes of demonstrating vehicles owned by the auction which are offered for sale: Provided, That under no circumstances may a Class AA special plate be used on any work or service vehicle owned by the automobile auction business on any vehicle being operated for personal reasons or on any vehicle sold by or through it to a purchaser.

(b) Every automobile auction business entitled to and issued a special plate or plates under the provisions of this article shall keep a written record of the location of each plate. Every record shall be open to inspection by the commissioner, his or her representative or any law-enforcement officer, when acting in an official capacity.

(c) An automobile auction business licensee who holds on consignment a vehicle or vehicles of the type required to be registered under this chapter may operate or move the same upon the streets and highways without registering each vehicle if the vehicle displays a special plate issued as provided in this article.

(d) Every special plate or plates shall expire at midnight on June 30. A new plate or plates for the ensuing year may be obtained as specified in section four of this article.

WV Legislature

§17A-6C-13. Records must be kept and maintained.

In addition to all other records required to be kept and maintained, the licensee shall keep and maintain a record of the following on forms and for the period of time proscribed by the commissioner:

(a) Every vehicle which is sold at auction by a licensee or received or accepted by the licensee for sale at auction;

(b) The name and address of the person from whom the vehicle was acquired and the date thereof, the name and address of the person to whom the vehicle was sold or auctioned, the date thereof, and a description of each vehicle with name and identifying numbers sufficient to identify it; and

(c) Records as the commissioner may require by reasonable rules promulgated pursuant to this article.

All records required to be kept and maintained shall be kept for a period of at least three years from the date of the making and shall be open to inspection by the commissioner, his or her representative or any law-enforcement officer while acting in an official capacity.

WV Legislature

§17A-6C-14. 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 an automobile auction special plate or plates; relinquishing license certificate, dealer special plate or plates and temporary plates or markers.

(a) If the commissioner refuses to issue a license certificate, or suspends or revokes a license certificate, or suspends the right of an automobile auction business to issue temporary plates or markers under the provisions of section fifteen of this article, or suspends a Class AA special plate or plates, 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.

(b) If 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 or her license certificate and any special Class AA plates and temporary registration plates or markers issued in conjunction with the issuance of the license certificate of the business. If the right of an automobile auction business to issue temporary registration plates or markers is suspended or a Class AA special plate or plates are suspended, 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 the business. It is the duty of the licensee to comply with an order. If a licensee fails or refuses to comply with any order, the commissioner shall proceed as provided in section seven, article nine of this chapter.

WV Legislature

§17A-6C-15. Inspections; violations and penalties.

(a) The commissioner and law-enforcement officers of the state, 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 the provisions of this article. For the purpose of making an inspection, the commissioner and law-enforcement officers are authorized, at reasonable times, to enter the place of business.

(b) Any person who violates any provision of this article or any final order of the commissioner is guilty of a misdemeanor and, is subject to the provisions of article eleven of this chapter.

WV Legislature

§17A-6C-16. Injunctive relief.

(a) If 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 such 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 is 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.

WV Legislature

§17A-6C-17. Promulgation of rules.

The commissioner shall promulgate rules in accordance with chapter twenty-nine-a of this code in order to effect the provisions of this article. Any reference in this article to rules shall be construed to mean rules promulgated in accordance with said chapter.

WV Legislature

§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.

WV Legislature

§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.

WV Legislature

§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.

WV Legislature

§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.

WV Legislature

§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.

WV Legislature

§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.

WV Legislature

§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.

WV Legislature

§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.

WV Legislature

§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.

WV Legislature

§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.

WV Legislature

§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.

WV Legislature

§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

WV Legislature

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.

WV Legislature

§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.

WV Legislature

§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.

WV Legislature

§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.

WV Legislature

§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.

WV Legislature

§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.

WV Legislature

§17A-6E-1. Findings and purpose.

[Repealed.]

WV Legislature

§17A-6E-2. Definitions.

[Repealed.]

WV Legislature

§17A-6E-3. License required.

[Repealed.]

WV Legislature

§17A-6E-4. Eligibility and issuance of license.

[Repealed.]

WV Legislature

§17A-6E-5. Expiration of license, renewal and expired license.

[Repealed.]

WV Legislature

§17A-6E-6. Change of employer.

[Repealed.]

WV Legislature

§17A-6E-7. Change of address, lost or stolen license, duplicate license.

[Repealed.]

WV Legislature

§17A-6E-8. Display of license.

[Repealed.]

WV Legislature

§17A-6E-9. Revocation, suspension, or refusal to renew license.

[Repealed.]

WV Legislature

§17A-6E-10. Administrative due process.

[Repealed.]

WV Legislature

§17A-6E-11. Investigation, matters, confidential.

[Repealed.]

WV Legislature

§17A-6E-12. Injunctive relief.

[Repealed.]

WV Legislature

§17A-6E-13. Authority for rules.

[Repealed.]

WV Legislature

§17A-6E-14. Motor Vehicle Salesperson License Fund.

[Repealed.]

WV Legislature

§17A-6F-1. Scope.

This article is intended to govern the intersection of peer-to-peer car services, the state-regulated business of insurance, and state and local taxation of the business transaction and the airport and airport authorities authority to regulate peer-to-peer car services provided to airport customers This article does not void, abrogate, restrict, or affect any requirements of §17A-6D-1 *et seq*. of this code relating to daily passenger rental car business or §17A-6A-1 *et seq*. of this code relating to motor vehicle dealers, distributors, wholesalers, and manufacturers.

WV Legislature

§17A-6F-2. Definitions.

As used in this article:

"Peer-to-peer car sharing" means the authorized use of a vehicle by an individual other than the vehicle's owner through a peer-to-peer car sharing program. "Peer-to-peer car sharing" is not a "daily passenger rental car business" as licensed by the provisions of §17A-6D-1 *et seq*. of this code.

"Peer-to-peer car sharing program" means a business platform that connects vehicle owners with drivers to enable the sharing of vehicles for financial consideration. "Peer-to-peer car sharing program" does not mean a service provider who is solely providing hardware or software as a service to a person or entity that is not effectuating payment of financial consideration for use of a shared vehicle. For purposes of this section, "hardware" does not mean a motor vehicle as defined by the provisions of §17A-1-1(b). "Peer-to-peer car sharing program" does not mean a "daily passenger rental car business" as licensed by the provisions of §17A-6D-1 *et seq*. of this code. "Peer-to-peer car sharing program" does not include a program provided to a business's own employees.

"Car sharing program agreement" means the terms and conditions applicable to a shared vehicle owner and a shared vehicle driver that govern the use of a shared vehicle through a peer-to-peer car sharing program.

"Shared vehicle" means a vehicle that is available for sharing through a peer-to-peer car sharing program. "Shared vehicle" does not mean a rental car or a rental vehicle as used in a "daily passenger rental car business" licensed by the provisions of §17A-6D-1 *et seq*. of this code.

"Shared vehicle driver" means an individual who has been authorized to drive the shared vehicle by the shared vehicle owner under a car sharing program agreement.

"Shared vehicle owner" means the registered owner, or a person or entity designated by the registered owner, of a vehicle made available for sharing to shared vehicle drivers through a peer-to-peer car sharing program.

"Car sharing delivery period" means the period of time during which a shared vehicle is being delivered to the location of the car sharing start time, if applicable, as documented by the governing car sharing program agreement.

"Car sharing period" means the period of time that commences with the car sharing delivery period or, if there is no car sharing delivery period, that commences with the car sharing start time, and in either case ends at the car sharing termination time.

"Car sharing start time" means the time when the shared vehicle becomes subject to the control of the shared vehicle driver at or after the time the reservation of a shared vehicle is scheduled to begin as documented in the records of a peer-to-peer car sharing program.

WV Legislature

"Car sharing termination time" means the earliest of the following events:

The expiration of the agreed upon period of time established for the use of a shared vehicle according to the terms of the car sharing program agreement if the shared vehicle is delivered to the location agreed upon in the car sharing program agreement;

When the shared vehicle is returned to a location as alternatively agreed upon by the shared vehicle owner and shared vehicle driver as communicated through a peer-to-peer car sharing program, and which alternatively agreed upon location shall be incorporated into the car sharing program agreement; or

When the shared vehicle owner or the shared vehicle owner’s authorized designee, takes possession and control of the shared vehicle.

WV Legislature

§17A-6F-3. Insurance coverage during car sharing period.

(a) A peer-to-peer car sharing program shall assume liability, except as provided in subsection (b) of this section, of a shared vehicle owner for bodily injury or property damage to third parties and uninsured and underinsured motorist losses during the car sharing period in an amount stated in the peer-to-peer car sharing program agreement which amounts may not be less than the minimum of applicable limits required by state law as set forth in §17D-4-2 and §33-6-31 of this code.

(b) Notwithstanding the definition of "car sharing termination time" as defined in this article, the assumption of liability under subsection (a) of this section does not apply to any shared vehicle owner when:

(1) A shared vehicle owner makes an intentional or fraudulent material misrepresentation or omission to the peer-to-peer car sharing program before the car sharing period in which the loss occurred; or

(2) Acting in concert with a shared vehicle driver who fails to return the shared vehicle pursuant to the terms of the car sharing program agreement.

(c) Notwithstanding the definition of "car sharing termination time" as defined in this article, the assumption of liability under subsection (a) of this section would apply to bodily injury, property damage, uninsured and underinsured motorist losses by damaged third parties in the same manner required by §17D-4-2 and §33-6-31 of this code.

(d) A peer-to-peer car sharing program shall ensure that, during each car sharing period, the shared vehicle owner and the shared vehicle driver are insured under a motor vehicle liability insurance policy that provides insurance coverage which amounts may not be less than the amounts set forth in §17D-4-2 and §33-6-31 of this code and either:

(1) Recognizes that the shared vehicle insured under the policy is made available and used through a peer-to-peer car sharing program; or

(2) Does not exclude use of a shared vehicle by a shared vehicle driver.

(e) The insurance described under subsection (d) of this section may be satisfied by motor vehicle liability insurance maintained by:

(1) A shared vehicle owner;

(2) A shared vehicle driver;

(3) A peer-to-peer car sharing program; or

(4) A combination of a shared vehicle owner, a shared vehicle driver, and a peer-to-peer car sharing program.

WV Legislature

(f) The insurance described in subsection (e) of this section that is satisfying the insurance requirement of subsection (d) of this section shall be the primary insurance during each car sharing period. If a claim occurs during the car sharing period in another state with minimum financial responsibility limits higher than required by §17D-4-2 of this code, the coverage maintained under subsection (e) of this section shall satisfy the minimum financial responsibility limits of such other state, up to the applicable policy limits that may exceed the minimum financial responsibility limits.

(g) The insurer, insurers, or peer-to-peer car sharing program providing coverage under subsections (d) and (e) of this section shall assume primary liability for a claim when:

(1) A dispute exists as to who was in control of the shared motor vehicle at the time of the loss, and the peer-to-peer car sharing program does not have available, did not retain, or fails to provide the information required by §17A-6F-6 of this code; or

(2) A dispute exists as to whether the shared vehicle was returned to the alternatively agreed upon location as required by the definition of car sharing termination time as defined in §17A-6F-2 of this code.

(h) The insurer, insurers, or peer-to-peer car sharing program providing coverage under subsection (g) of this section may seek indemnity from a shared vehicle owner if the shared vehicle owner is determined to have been the operator of the shared vehicle at the time of the loss.

(i) If insurance maintained by a shared vehicle owner or shared vehicle driver in accordance with subsection (e) of this section has lapsed or does not provide the required coverage, insurance maintained by a peer-to-peer car sharing program shall provide the coverage required by subsection (d) of this section beginning with the first dollar of a claim and have the duty to defend such claim except under circumstances as set forth in this section.

(j) Coverage under an automobile insurance policy maintained by the peer-to-peer car sharing program shall not be dependent on another automobile insurer first denying a claim nor shall another automobile insurance policy be required to first deny a claim.

(k) Nothing in this article may be interpreted as either limiting or restricting:

(1) The liability of the peer-to-peer car sharing program for any act or omission of the peer-to-peer car sharing program itself that results in injury to any person as a result of the use of a shared vehicle through a peer-to-peer car sharing program; or

(2) The ability of the peer-to-peer car sharing program to, by contract, seek indemnification from the shared vehicle owner or the shared vehicle driver for economic loss sustained by the peer-to-peer car sharing program resulting from a breach of the terms and conditions of the car sharing program agreement.

WV Legislature

§17A-6F-4. Notification of implications of lien.

At the time when a vehicle owner registers as a shared vehicle owner on a peer-to-peer car sharing program, and prior to the time when the shared vehicle owner makes a shared vehicle available for car sharing on the peer-to-peer car sharing program, the peer-to-peer car sharing program shall notify the shared vehicle owner that, if the shared vehicle has a lien against it, the use of the shared vehicle through a peer-to-peer car sharing program, including use without physical damage coverage, may violate the terms of the contract with the lienholder.

WV Legislature

§17A-6F-5. Exclusions for personal vehicle liability insurance policy.

(a) A motor vehicle insurer that writes motor vehicle liability insurance in this state may exclude any and all coverage and the duty to defend or indemnify for any claim afforded under a shared vehicle owner's motor vehicle liability insurance policy, including, but not limited to:

(1) Liability coverage for bodily injury and property damage;

(2) Uninsured and underinsured motorist coverage;

(3) Medical payments coverage;

(4) Comprehensive physical damage coverage; and

(5) Collision physical damage coverage.

(b) Nothing in this article may be construed as invalidating or limiting an exclusion contained in a motor vehicle liability insurance policy, including any insurance policy in use or approved for use that excludes coverage for motor vehicles made available for rent, sharing, or hire, or for any business use.

(c) Nothing in this article may be interpreted as either limiting or restricting an insurer's ability to exclude insurance coverage from any insurance policy or an insurer's ability to underwrite any insurance policy pursuant to § 33-6A-1 *et seq*. of this code.

WV Legislature

§17A-6F-6. Recordkeeping; use of vehicle in car sharing.

(a) A peer-to-peer car sharing program shall collect and verify records pertaining to the use of a vehicle, including, but not limited to, times used, car sharing period pickup and drop-off locations, fees paid by the shared vehicle driver, and revenues received by the shared vehicle owner and provide that information upon request to the shared vehicle owner, the shared vehicle owner's insurer, or the shared vehicle driver's insurer to facilitate a claim coverage investigation, settlement, negotiation, or litigation.

(b) The peer-to-peer car sharing program shall retain the records for a time period not less than the applicable personal injury statute of limitations.

WV Legislature

§17A-6F-7. Exemption; vicarious liability.

A peer-to-peer car sharing program and a shared vehicle owner are exempt from vicarious liability consistent with 49 U.S.C. § 30106 and under any state or local law that imposes liability solely based on vehicle ownership.

WV Legislature

§17A-6F-8. Contribution against indemnification.

A motor vehicle insurer that defends or indemnifies a claim against a shared vehicle that is excluded under the terms of its policy has the right to seek contribution against the motor vehicle insurer of the peer-to-peer car sharing program if the claim is:

(1) Made against the shared vehicle owner or the shared vehicle driver for loss or injury that occurs during the car sharing period; and

(2) Excluded under the terms of its policy.

WV Legislature

§17A-6F-9. Insurable interest.

(a) Notwithstanding any other law, statute, rule, or regulation to the contrary, a peer-to-peer car sharing program has an insurable interest in a shared vehicle during the car sharing period.

(b) Nothing in this section creates liability on a peer-to-peer car sharing program to maintain the coverage mandated by this article.

(c) A peer-to-peer car sharing program may own and maintain as the named insured one or more policies of motor vehicle liability insurance that provides coverage for:

(1) Liabilities assumed by the peer-to-peer car sharing program under a peer-to-peer car sharing program agreement;

(2) Any liability of the shared vehicle owner;

(3) Damage or loss to the shared motor vehicle; or

(4) Any liability of the shared vehicle driver.

WV Legislature

§17A-6F-10. Consumer protections for car sharing programs.

Each car sharing program agreement made in this state shall disclose to the shared vehicle owner and the shared vehicle driver, at a minimum:

(1) Any right of the peer-to-peer car sharing program to seek indemnification from the shared vehicle owner or the shared vehicle driver for economic loss sustained by the peer-to-peer car sharing program resulting from a breach of the terms and conditions of the car sharing program agreement;

(2) That a motor vehicle liability insurance policy issued to the shared vehicle owner for the shared vehicle or to the shared vehicle driver does not provide a defense or indemnification for any claim asserted by the peer-to-peer car sharing program;

(3) That the peer-to-peer car sharing program's insurance coverage on the shared vehicle owner and the shared vehicle driver is in effect only during each car sharing period and that, for any use of the shared vehicle by the shared vehicle driver after the car sharing termination time, the shared vehicle driver and the shared vehicle owner may not have insurance coverage;

(4) The daily rate, fees, and if applicable, any insurance or protection package costs that are charged to the shared vehicle owner or the shared vehicle driver;

(5) That the shared vehicle owner's motor vehicle liability insurance may not provide coverage for a shared vehicle;

(6) An emergency telephone number to personnel capable of fielding roadside assistance and other customer service inquiries; and

(7) If there are conditions under which a shared vehicle driver must maintain a personal automobile insurance policy with certain applicable coverage limits on a primary basis in order to book a shared motor vehicle.

WV Legislature

§17A-6F-11. Driver's license verification and data retention.

(a) A peer-to-peer car sharing program may not enter into a peer-to-peer car sharing program agreement with a driver unless the driver who will operate the shared vehicle:

(1) Holds a driver's license issued pursuant to the provisions of §17B-2-1 *et seq.* of this code, which authorizes the driver to operate a motor vehicle of the class of the shared vehicle; or

(2) Is a nonresident who:

(A) Has a driver's license issued by the state or country of the driver's residence that authorizes the driver in that state or country to drive a motor vehicle of the class of the shared vehicle; and

(B) Is at least the same age as that required of a resident of this state to operate a motor vehicle of the class of the shared vehicle; or

(3) Otherwise is specifically authorized by the applicable provisions of §17B-2-1 *et seq.* of this code to operate a motor vehicle of the class of the shared vehicle.

(b) A peer-to-peer car sharing program shall keep a record of:

(1) The name and address of the shared vehicle driver;

(2) The number of the driver's license of the shared vehicle driver and each other person, if any, who will operate the shared vehicle; and

(3) The place of issuance of the driver's license.

WV Legislature

§17A-6F-12. Responsibility for equipment of a shared vehicle.

A peer-to-peer car sharing program has sole responsibility for any equipment, such as a GPS system or other special equipment that is put in or on the vehicle to monitor or facilitate the car sharing transaction, and shall agree to indemnify and hold harmless the vehicle owner for any damage to or theft of the equipment during the sharing period not caused by the vehicle owner. The peer-to-peer car sharing program may seek indemnity from the shared vehicle driver for any loss or damage to the equipment that occurs during the sharing period.

WV Legislature

§17A-6F-13. Registration, notification, and automobile safety recalls.

(a) At the time when a vehicle owner registers as a shared vehicle owner on a peer-to-peer car sharing program and prior to the time when the shared vehicle owner makes a shared vehicle available for car sharing on the peer-to-peer car sharing program, the peer-to-peer car sharing program shall:

(1) Verify that the shared vehicle does not have any safety recalls on the vehicle for which the repairs have not been made; and

(2) Notify the shared vehicle owner of the requirements of subsection (b) of this section; and

(3) Notify the shared vehicle owner that the shared vehicle owner's personal insurance may exclude peer-to-peer car sharing activity.

(b)(1) If the shared vehicle owner has received an actual notice of a safety recall on the vehicle, a shared vehicle owner may not make a vehicle available as a shared vehicle on a peer-to-peer car sharing program until the safety recall repair has been made.

(2) If a shared vehicle owner receives an actual notice of a safety recall on a shared vehicle while the shared vehicle is made available on the peer-to-peer car sharing program, the shared vehicle owner shall remove the shared vehicle as available on the peer-to-peer car sharing program, as soon as practicably possible after receiving the notice of the safety recall and until the safety recall repair has been made.

(3) If a shared vehicle owner receives an actual notice of a safety recall while the shared vehicle is being used in the possession of a shared vehicle driver, as soon as practicably possible after receiving the notice of the safety recall, the shared vehicle owner shall notify the peer-to-peer car sharing program about the safety recall so that the shared vehicle owner may address the safety recall repair.

WV Legislature

§17A-6F-14. Regulation of peer-to-peer car sharing programs at airports and airport facilities.

(a) Airports or the airport authority in this state may regulate peer-to-peer vehicle rental activity provided to airport customers as set forth in this section.

(b) A peer-to-peer car sharing program shall, upon request of an airport or airport authority in this state, enter into an agreement with the airport or airport authority, which agreement may be a concession agreement, prior to:

(1) Listing shared vehicles parked on airport property or at airport facilities;

(2) Facilitating the use of shared vehicles to transport airport customers to or from airport property or airport facilities, regardless of whether that use is to be initiated or has a car sharing start time which occurs on or off of airport property or airport facilities; or

(3) Promoting or marketing shared vehicles to transport airport customers to or from airport property or airport facilities, regardless of whether that transportation is to be initiated or has a car sharing start time which occurs on or off of airport property or airport facilities.

(c) The agreement required in subsection (a) of this section shall set forth reasonable standards, regulations, procedures, and fees applicable to a peer-to-peer car sharing program that govern the activity of peer-to-peer car sharing on airport property or airport facilities.

WV Legislature

§17A-6F-15. Controlling authority; taxation and other requirements of a peer-to-peer car sharing program.

(a) Licensure, registration and qualification. A municipality, county or other local governmental entity, or special district may not require a peer-to-peer car sharing program to obtain a business license or any other similar authorization to operate within the jurisdiction, or subject a peer-to-peer car sharing program or a shared vehicle owner to any licensure requirement, fee, entry requirement, registration requirement, operating or operational requirement, or any other requirement.

(b) *Duty to collect tax.* A peer-to-peer car sharing program operating in this state pursuant to the provisions of this article shall collect and remit all state and municipal consumer sales and service and use taxes on all taxable sales of services to purchasers in this state. For the purposes of collection of tax required under §11-15A-6 and §11-15A-6b of this code, a "peer-to-peer car sharing program" is a remote seller, marketplace facilitator, or referrer that meets the requirements of §11-15A-1(b) of this code.

(c) A peer-to-peer car sharing program operating in this state pursuant to the provisions of this article is not subject to the collection and remittance requirements of the daily rental car passenger tax in §17A-6D-2 of this code.

(d) A peer-to-peer car sharing program operating in this state pursuant to the provisions of this article may collect the vehicle license cost recovery fee authorized by §17A-6D-16 of this code in the same manner as a daily passenger car rental business.

(e) *Limitations and interpretation*.

(1) No provision of this section or this article may be interpreted to void, abrogate, restrict, or affect imposition of the ad valorem property tax on tangible personal property of a peer-to-peer car sharing program or of a shared vehicle owner by any levying body.

(2) No provision of this section or this article may be interpreted to void, abrogate, restrict, or affect imposition of the state personal income tax or state corporation net income tax on a peer-to-peer car sharing program or a shared vehicle owner.

(3) No provision of this section or this article may be interpreted to void, abrogate, restrict, or affect imposition of the motor fuel excise tax on any taxable motor fuel or alternative fuel purchased by any peer-to-peer car sharing program, shared vehicle owner, or shared vehicle driver.

(4) No provision of this section or this article may be interpreted to void, abrogate, restrict, or affect the requirements of chapter 11 of this code for issuance of a business registration certificate for a peer-to-peer car sharing program.

(5) No provision of this section or this article may be interpreted to void, abrogate, restrict, or affect any requirement of state law with relation to licensure of drivers of motor vehicles.

WV Legislature

(6) Shared vehicle owners may not assert the exemption from the consumer sales and service tax and use tax, for purchases of tangible personal property and services directly used in the provision of services in §11-15-9 of this code.

WV Legislature

§17A-7-1. Operation of vehicles by financial institution or wrecker under special stickers; application and fees; expiration.

The commissioner may upon application issue to a banking institution, insurance company, entity in the business of repossessing motor vehicles, finance company, or other type of lending or financial institution, or a person engaged exclusively in wrecking or dismantling vehicles, a paper sticker or decal to be affixed to the left side of the rear window of a motor vehicle or at a place on any other type vehicle as designated by the commissioner. The sticker or decal shall be of a size to be designated by the commissioner and shall be serially numbered and shall have provision thereon to indicate the date of issuance. The division shall charge a fee of $1 per sticker. The sticker or decal shall be valid for the operation of a vehicle, whether under its own power or while being towed, one time only over the streets or highways of this state, and upon being once affixed to a vehicle shall become invalid for subsequent use on that or any other vehicle. The commissioner may require, as a condition for the issuance of the permit, insurance as he or she determines appropriate.

WV Legislature

§17A-7-2. Operation of motor vehicles by dealers or other persons under special stickers; application and fees.

(a) A member of the West Virginia State Police may at any detachment office, upon application therefor on a form prescribed by the commissioner, issue to a licensed dealer or any other person other than those specified in §17A-7-1 of this code, a paper sticker to be affixed to the left side of the rear window of a motor vehicle or to the left rear of a vehicle which is not self-propelled. Such sticker shall be of a size to be designated by the commissioner and shall be serially numbered and shall indicate the date of issuance thereof.

(b) A fee of $10 per sticker shall be collected. The Division of Motor Vehicles may adjust the fee for each sticker every five years on September 1, based on the U. S. Department of Labor, Bureau of Labor Statistics most current Consumer Price Index: *Provided*, That an increase in such fee may not exceed 10 percent of the total fee amount in a single year. The fees will be dispersed as follows: Half shall be deposited in the State Road Fund and half shall be deposited in the special revenue account within the Division of Highways for the maintenance of the West Virginia welcome centers and rest areas along interstate highways in this state.

(c) The one-movement sticker authorized by this section is valid for 96 hours after its issuance for the operation of a vehicle, whether under its own power or while being towed, one time only over the streets or highways, and upon being once affixed to a vehicle or used for the one-time movement shall become invalid for subsequent use on that or any other vehicle.

(d) Any sticker issued pursuant to this section may be in the form of a sticker, decal, or other form prescribed by the commissioner.

(e) The commissioner shall make one-movement stickers authorized by this section available for purchase online subject to the same requirements and fee set forth in this section: *Provided*, That the fee may be remitted to the division electronically and the sticker may be provided by the division in an electronic format.

(f) A one-movement sticker issued pursuant to this article may not be used as evidence of ownership of a vehicle.

WV Legislature

§17A-7-3. Operation of house trailer under special stickers; application and fees; expiration; issuance of special stickers to holders of Class B registration plates.

Upon application therefor on a form prescribed by him or her the commissioner may issue to the owner of a house trailer a special one-movement sticker of such design and content, as may be prescribed by him or her: Provided, That such special sticker shall not be issued to any house trailer or trailer dealer. Such sticker shall be valid for the movement of a house trailer one time only over the streets and highways of this state, and no more than one such sticker may be issued for the same house trailer while owned by the same person. A fee of $2 shall be received by the department for each special sticker. In order that any holder of a Class B registration plate who is engaged in the business of moving house trailers for hire may move a house trailer at the request of the owner thereof without the delay which would be incident to such owner obtaining a special one-movement sticker, any such holder may from time to time apply to the commissioner for a supply of said special one-movement stickers, and upon proper application therefor on a form prescribed by the commissioner and payment of the fee for each such sticker hereinbefore in this section prescribed, the commissioner shall issue to such holder a supply of serially numbered stickers, not in excess of twenty-five upon any one application. Before moving any such house trailer, the holder of the Class B registration plate who has obtained a supply of such special one-movement stickers shall issue such a sticker to the owner thereof and shall make certain that such sticker is affixed to the house trailer prior to the movement thereof. No refund or credit of fees paid by the holder of any such Class B registration plate for any such special one-movement sticker shall be made or allowed.

WV Legislature

§17A-8-1. Report by police of stolen and recovered vehicles or special mobile equipment.

Every sheriff, chief of police, member of the department of public safety or peace officer upon receiving reliable information that any vehicle registered hereunder or any item of special mobile equipment has been stolen shall immediately report such theft to the department unless prior thereto information has been received of the recovery of such vehicle or item of special mobile equipment. Upon receiving a report of a stolen or embezzled item of special mobile equipment, or the recovery thereof, the department shall immediately report the information to the national crime information center maintained by the federal bureau of investigation. Any said officer upon receiving information that any such vehicle or item of special mobile equipment, which he has previously reported as stolen, has been recovered, shall immediately report the fact of such recovery to the local sheriff's office, police department, or department of public safety and to the department.

WV Legislature

§17A-8-2. Reports by owners or lienors of stolen and recovered vehicles or special mobile equipment.

The owner, or person having a lien or encumbrance upon a registered vehicle or any item of special mobile equipment which has been stolen or embezzled, may notify the department of such theft or embezzlement, but in the event of an embezzlement may make such report only after having procured the issuance of a warrant for the arrest of the person charged with such embezzlement.

Every owner or other person who has given any such notice must notify the department of a recovery of such vehicle or special mobile equipment.

WV Legislature

§17A-8-3. Action by department on report of stolen or embezzled vehicle or special mobile equipment.

The department upon receiving a report of a stolen or embezzled vehicle or any item of special mobile equipment as hereinbefore provided shall file and appropriately index the same and shall, if the same is registered or titled, immediately suspend such registration and/or certificate of title of the vehicle or item of special mobile equipment so reported, and shall not transfer the registration of the same until such time as it is notified in writing that such vehicle or item of special mobile equipment has been recovered.

The department shall at least once each week compile and maintain at its headquarters office a list of all vehicles or items of special mobile equipment which have been stolen or embezzled or recovered as reported to it during the preceding week and such list shall be open to inspection by any peace officer or other person interested in any such vehicle or item of special mobile equipment. A copy of each such weekly list shall be forwarded to the superintendent of the department of public safety.

The department shall publish once a month a list of all vehicles or items of special mobile equipment stolen, embezzled or recovered during the previous month and shall forward a copy of the same to every sheriff and to all police departments in cities of this state with over five thousand inhabitants. Such list shall also be forwarded to the State Police department or other proper official in each state of the United States.

WV Legislature

§17A-8-4. Unlawful taking of vehicle.

(a) Any person who drives a vehicle, not his or her own, without consent of the owner thereof, and with intent temporarily to deprive said owner of his or her possession of such vehicle, without intent to steal the same, is guilty of a misdemeanor. The consent of the owner of a vehicle to its taking or driving shall not in any case be presumed or implied because of such owner's consent on a previous occasion to the taking or driving of such vehicle by the same or a different person. Any person who assists in, or is a party or accessory to or an accomplice in any such unauthorized taking or driving, is guilty of a misdemeanor.

(b) Any person violating the provisions of this section is, for the first offense, guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $500, or confined in the county or regional jail not more than six months, or both; for the second offense, is guilty of a felony and, upon conviction thereof, shall be fined not more than $3,000, or imprisoned in a state correctional facility for not less than one nor more than three years, or imprisoned in a regional jail for not more than one year, or both fined and imprisoned; for third or subsequent offenses, is guilty of a felony and, upon conviction thereof, shall be fined not more than $5,000, or imprisoned in a state correctional facility for not less than one nor more than three years or both.

WV Legislature

§17A-8-5. Receiving or transferring stolen vehicle.

Any person who, with intent to procure or pass title to a vehicle which he knows or has reason to believe has been stolen or unlawfully taken, receives, or transfers possession of the same from or to another, or who has in his possession any vehicle which he knows or has reason to believe has been stolen or unlawfully taken, and who is not an officer of the law engaged at the time in the performance of his duty as such officer, is guilty of a felony.

WV Legislature

§17A-8-6. Injuring or tampering with vehicle or special mobile equipment.

(a) Any person who either individually or in association with one or more persons willfully injures or tampers with any vehicle or breaks or removes any part or parts of or from a vehicle without the consent of the owner is guilty of a misdemeanor.

Any person who with intent to commit any malicious mischief, injury, or other crime climbs into or upon a vehicle whether it is in motion or at rest or with like intent attempts to manipulate any of the levers, starting mechanism, brakes, or other mechanism or device of a vehicle while the same is at rest and unattended or with like intent sets in motion any vehicle while the same is at rest and unattended is guilty of a misdemeanor.

(b) Any person, either individually or in association with one or more persons, who shall willfully injure or damage any item of special mobile equipment or break or remove any parts from an item of special mobile equipment, without the consent of the owner, which injury, damage, or breakage or removal of parts shall be of an amount of $1,000 or more, is guilty of a felony. If the injury, damage, or breakage or removal of parts shall be of an amount which is less than $1,000, such person is guilty of a misdemeanor.

WV Legislature

§17A-8-7. Motor vehicle or special mobile equipment without manufacturer's serial number, motor or engine number or other distinguishing number or identification mark; offenses.

(a) A person who knowingly buys, receives, disposes of, sells, offers for sale, conceals, transports, causes to be transported, or possesses a motor vehicle, or a motor or engine removed from a motor vehicle, from which the manufacturer's serial number, motor or engine number or other distinguishing number or identification mark has been removed, defaced, covered, altered or destroyed for the purpose of concealing or misrepresenting the identity of the motor vehicle or part thereof, is guilty of a felony.

(b) A person who knowingly buys, receives, disposes of, sells, offers for sale, conceals, transports, causes to be transported, or possesses special mobile equipment or special mobile equipment tires from which the manufacturer's serial number, motor or engine number or other distinguishing number or identification mark has been removed, defaced, covered, altered or destroyed, is guilty of a felony.

WV Legislature

§17A-8-8. Altering or changing a manufacturer's serial number, motor or engine number or other distinguishing number or identification mark; offenses.

(a) A person who, with fraudulent intent, removes, defaces, covers, alters or destroys the manufacturer's serial number, motor or engine number or other distinguishing number or identification mark of a motor vehicle or who places or stamps an actual or facsimile manufacturer's serial number, motor or engine number or other distinguishing number or identification mark upon a motor vehicle, except one assigned thereto by the department, is guilty of a felony.

This section shall not prohibit the restoration by an owner of an original manufacturer's serial number, motor or engine number or other distinguishing number or identification mark when such restoration is made under permit issued by the department, nor prevent any manufacturer from placing numbers or marks upon motor vehicles or parts thereof in the ordinary course of business.

(b) A person who removes, defaces, covers, alters or destroys, or causes to be removed, defaced, covered, altered or destroyed, the manufacturer's serial number, motor or engine number or other distinguishing number or identification mark on special mobile equipment or special mobile equipment tires, the property of another, for any reason, is guilty of a felony.

(c) The term "manufacturer's serial number, motor or engine number or other distinguishing number or identification mark", as used in this section and section seven of this article, means a unique number or mark placed on a vehicle or part thereof by the manufacturer so as to identify it particularly and distinguish the vehicle or part from all other such vehicles or parts.

WV Legislature

§17A-8-9. Theft of a rental vehicle; penalty.

(a) A person is guilty of theft of a rental vehicle when:

(1) Such person, under the terms of a written rental or lease agreement, obtains a motor vehicle and, in so doing, makes a false or fraudulent representation or utilizes a false pretense or personation, trick, artifice or device; and

(2) Such person thereafter possesses such motor vehicle with the intent to permanently deprive the owner of such motor vehicle of his property.

(b) Any person who violates the provisions of this section is guilty of a felony, and, upon conviction thereof, shall be imprisoned in the penitentiary not less than one nor more than two years, or, in the discretion of the court, be confined in the county jail not more than one year and shall be fined not more than $500.

(c) For purposes of this section, the making of a false or fraudulent representation or the utilization of a false pretense or personation, trick, artifice or device shall include, but not be limited to, a false representation as to name, residence, employment, or operator's license.

WV Legislature

§17A-8-10. Unlawful retention of rented or leased vehicle after notice.

Any person who, after renting or leasing a motor vehicle under an agreement in writing which provides for the return of said vehicle to a particular place at a particular time, shall fail to return the vehicle to said place within the time specified, and is thereafter served with a written notice, or upon whom oral demand is thereafter personally made, to return said vehicle to the place specified in the written agreement within seventy-two hours from the time of the service of notice or personal communication of such demand, and who fails to return said vehicle to the lessor within said period, shall be guilty of a misdemeanor and, upon conviction, may be confined in jail for a period of not more than one year or be fined not more than $500 or both. The notice hereinabove provided for may be served in the same manner that any other notice may now be served under existing statutes.

WV Legislature

§17A-8-11. Unlawful acts relating to certificates of title, blank certificates of title and blank registration forms; penalty.

Any person who obtains unlawfully or who steals any certificate of title, blank certificate of title or blank registration form, or any person who knowingly buys, receives, disposes of, sells, offers for sale, or has in his possession any of the above which such person knows or has reason to know has been obtained unlawfully or stolen shall be guilty of a felony, and, upon conviction thereof, shall be confined in the penitentiary not less than one year nor more than ten years.

WV Legislature

§17A-8-12. Recovery of special mobile equipment; chain of custody; sale of unclaimed special mobile equipment; penalties.

(a) When an item of special mobile equipment has been lawfully seized and remains in the custody of the law- enforcement authority having seized it, if at any time the true owner thereof shall appear and prove to the satisfaction of such law-enforcement authority his ownership of and entitlement to such item of special mobile equipment, it may be returned to such owner subject to its being made available for use in any criminal prosecution under this article.

(b) The law-enforcement authority shall take reasonable steps to locate the owner, including, but not limited to, notifying local equipment dealer, notifying equipment manufacturer and placing legal advertisements detailing confiscated equipment in newspapers. The law-enforcement authority shall take reasonable precautions to protect the equipment. The owner of the special mobile equipment shall pay the costs incurred by the law-enforcement authority for advertising, transporting and storing such special mobile equipment.

(c) If, after six months, no person has appeared and proved he is the true owner of an item of special mobile equipment seized under this article and prosecution has been instituted, the court in which such prosecution has been instituted may sell said item of special mobile equipment under such terms as are commercially reasonable: Provided, That notice of sale shall be published as a Class I legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area shall be the county in which such prosecution was initially instituted. The proceeds of such sale shall be applied, first, to the payment of any expenses incurred in taking possession, storing and selling such special mobile equipment; and the balance, if any, shall be paid over to the general receiver of the court in the county in which the prosecution was instituted for its application to that county's general revenues.

(d) Notwithstanding the provisions of article eleven of this chapter, any person convicted of a felony under the provisions of subsection (b), section six, subsection (b), section seven or subsection (b), section eight of this article shall be confined in the penitentiary not less than one nor more than ten years and fined not more than $500, or, in the discretion of the court, be confined in the county jail for not more than one year and be fined not more than $500.

Notwithstanding the provisions of article eleven of this chapter, any person convicted of a misdemeanor under the provisions of subsection (b), section six of this article shall be confined in the county jail for a term not to exceed one year or fined not more than $500, or both.

WV Legislature

§17A-8-13. Theft of a motor vehicle offered for sale which had been obtained for temporary use for demonstration purposes; penalty.

(a) A person is guilty of theft of a motor vehicle when:

(1) Such person, under the terms of an oral agreement, obtains, for demonstration purposes, the temporary use of a motor vehicle offered for sale and, in so doing, makes a false or fraudulent representation or utilizes a false pretense or personation, trick, artifice or device; and

(2) Such person thereafter possesses such motor vehicle with the intent to permanently deprive the owner of such motor vehicle of his property.

(b) Any person who violates the provisions of this section is guilty of a felony, and, upon conviction thereof, shall be imprisoned in the penitentiary not less than one nor more than ten years, or, in the discretion of the court, be confined in the county jail not more than one year and shall be fined not more than $500.

(c) For purposes of this section, the making of a false or fraudulent representation or the utilization of a false pretense or personation, trick, artifice or device shall include, but not be limited to, a false representation as to name, residence, employment, or operator's license.

WV Legislature

§17A-9-1. Fraudulent applications.

Any person who fraudulently uses a false or fictitious name in any application for the registration of a vehicle or a certificate of title, or knowingly makes a false statement, or knowingly conceals a material fact, or otherwise commits a fraud in any such application shall be guilty of a misdemeanor and, upon conviction thereof shall be punished by a fine of not more than $1,000 or by imprisonment for not more than one year or both.

WV Legislature

§17A-9-2. Operation of vehicles without evidences of registration; use of temporary facsimile; penalty.

(a) No person shall operate, nor shall an owner knowingly permit to be operated, upon any highway any vehicle required to be registered under this article unless there shall be attached thereto and displayed thereon or shall be in the possession of the operator when and as required by this chapter a valid registration card and registration plate or plates issued therefor by the department for the current registration year, except as otherwise expressly permitted in this chapter.

(b) In the event that the registration plate or plates originally issued are lost, destroyed or stolen, a temporary facsimile of the plate or plates, showing the number of the same, may be attached to the vehicle by the owner for a period of not more than fifteen days, or until a new plate or plates are issued by the department, whichever is earlier: Provided, That no such facsimile shall be used and no such vehicle shall be driven upon the highways of this state, until the owner shall have notified in writing the West Virginia state police of the loss of such registration plate or plates.

(c) Any person violating the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $500; and upon a second or subsequent conviction thereof, shall be fined not more than $500, or confined in the county or regional jail not more than six months, or both.

WV Legislature

§17A-9-3. Improper use of evidences of registration.

No person shall lend to another any certificate of title, registration card, registration plate, special plate, or permit issued to him if the person desiring to borrow the same would not be entitled to the use thereof, nor shall any person knowingly permit the use of any of the same by one not entitled thereto, nor shall any person display upon a vehicle any registration card, registration plates, or permit not issued for such vehicle or not otherwise lawfully used thereon under this chapter. Any violation of this section is a misdemeanor.

WV Legislature

§17A-9-4. False evidences, forgery, etc., of title and registration.

It is a felony for any person to commit any of the following acts:

(1) To alter with fraudulent intent any certificate of title, registration card, registration plate, or permit issued by the department;

(2) To forge or counterfeit any such document or plate purporting to have been issued by the department;

(3) To alter or falsify with fraudulent intent or forge any assignment upon a certificate of title;

(4) To hold or use any such document or plate knowing the same to have been so altered, forged, or falsified.

WV Legislature

§17A-9-5. Authority of division to suspend or revoke registration, certificate, etc.

The division is hereby authorized to suspend or revoke the registration of a vehicle or a certificate of title, registration card or registration plate or any nonresident or other permit in any of the following events:

(1) When the division is satisfied that such registration or that such certificate, card, plate or permit was fraudulently or erroneously issued;

(2) When the division determines that a registered vehicle is mechanically unfit or unsafe to be operated or moved upon the highways;

(3) When a registered vehicle has been dismantled or wrecked;

(4) When a registration card, registration plate or permit is knowingly displayed upon a vehicle other than the one for which issued;

(5) When the division determines that the owner has committed any offense under this article involving the registration or the certificate, card, plate or permit to be suspended or revoked;

(6) When the vehicle is operated by a commercial motor carrier whose authority to operate in interstate commerce has been denied or suspended by the federal Motor Carrier Safety Administration; or

(7) When the division is so authorized under any other provision of law.

WV Legislature

§17A-9-6. References elsewhere to this section shall be read, construed and understood to mean §17A-6-18.

Whenever in this code or elsewhere in law reference is made to this section, such reference shall henceforth be read, construed and understood to mean section eighteen, article six of this chapter.

WV Legislature

§17A-9-7. Surrender of evidence of registration, etc., upon cancellation, suspension or revocation; willful failure or refusal to surrender; fee for reinstatement.

(a) Whenever the registration of a vehicle, a certificate of title, a registration card, registration plate or plates, a temporary registration plate or marker, the right to issue temporary registration plates or markers, any nonresident or other permit or any license certificate or dealer special plates issued under the provisions of article six of this chapter is canceled, suspended or revoked as authorized in this chapter, the owner, holder or other person in possession of the evidences of the registration, title, permit or license or any special dealer plates shall, except as otherwise provided in article six of this chapter, immediately return the evidences of the registration, title, permit or license that was canceled, suspended or revoked, together with any dealer special plates relating to any license certificate, or any dealer special plate or plates if only the dealer special plate is suspended, to the division: Provided, That the owner or holder shall, before reinstatement, pay a fee of $10 in addition to all other fees, which shall be collected by the division and credited to a special revolving fund in the state Treasury to be appropriated to the division for use in enforcement of the provisions of this code: Provided, however, That on and after July 1, 2007, any balance in the special revolving fund and all fees collected pursuant to this section shall be deposited in the Motor Vehicle Fees Fund created in section twenty-one, article two of this chapter.

(b) If any person willfully fails or refuses to return to the division the evidences of the registration, title, permit or license that have been canceled, suspended or revoked, or any dealer special plates, when obligated so to do as provided in this section, the commissioner shall immediately notify the superintendent of the State Police who shall, as soon as possible, secure possession of the evidence of registration, title, permit or license or any special dealer plates and return it to the division. The Superintendent of the State Police shall make a report in writing to the commissioner, within two weeks after being notified by the commissioner, as to the result of his or her efforts to secure the possession and return of the evidences of registration, title, permit or license, or any dealer special plates.

(c) If any commercial motor carrier willfully fails or refuses to return to the division the evidences of the registration that have been suspended or revoked as provided in this section, the commissioner shall immediately notify the Public Service Commission which shall, as soon as possible, secure possession of the evidence of registration and return it to the division. The Public Service Commission shall make a report in writing to the commissioner, within two weeks after being notified by the commissioner, as to the result of its efforts to secure the possession and return of the evidences of registration.

(d) For each registration, certificate of title, registration card, registration plate or plates, temporary registration plate or marker, permit, license certificate or dealer special plate, which the owner, holder or other person in possession of the registration, title, permit or license or any special dealer plates shall have willfully failed or refused, as provided in this section, to return to the division within ten days from the time that the cancellation, suspension or revocation becomes effective, and which has been certified to the

superintendent of the State Police as specified in this section, the owner or holder shall, before the registration, title, permit or license or any special dealer plates may be reinstated, if reinstatement is permitted, in addition to all other fees and charges, pay a fee of $15, which shall be collected by the Division of Motor Vehicles, paid into the state Treasury and credited to the General Fund to be appropriated to the State Police for application in the enforcement of the road laws.

A total of $25 may be collected on each reinstatement for each vehicle to which any cancellation, suspension or revocation relates.

(e) When any motor vehicle registration is suspended for failure to maintain motor vehicle liability insurance the reinstatement fee is $100, and if the vehicle owner fails to surrender the vehicle registration and the orders go to the State Police, an additional fee of $50 shall be required before the motor vehicle registration may be reinstated. A total of $150 may be collected on each reinstatement of any motor vehicle registration canceled, suspended or revoked for failure to maintain motor vehicle liability insurance.

WV Legislature

§17A-10-1. Classification of vehicles for purpose of registration.

Vehicles subject to registration under the provisions of this chapter shall be placed in the following classes for the purpose of registration:

Class A. Motor vehicles of passenger type and trucks with a gross weight of ten thousand pounds or less;

Class B. Motor vehicles designated as trucks with a gross weight of more than ten thousand pounds, truck tractors or road tractors;

Class C. All trailers and semitrailers, except house trailers and trailers or semitrailers designed to be drawn by Class A motor vehicles and having a gross weight of less than two thousand pounds;

Class G. Motorcycles and parking enforcement vehicles;

Class H. Motor vehicles operated regularly for the transportation of persons for compensation under a certificate of convenience and necessity or contract carrier permit issued by the Public Service Commission;

Class J. Motor vehicles operated for transportation of persons for compensation by common carriers, not running over a regular route or between fixed termini;

Class M. Mobile equipment as defined in subdivision (oo), section one, article one of this chapter;

Class R. House trailers;

Class T. Trailers or semitrailers of a type designed to be drawn by Class A vehicles and having a gross weight of less than two thousand pounds; and

Class X. Motor vehicles designated as trucks having a minimum gross weight of more than eight thousand pounds and a maximum gross weight of eighty thousand pounds, used exclusively in the conduct of a farming business, engaged in the production of agricultural products by means of: (a) The planting, cultivation and harvesting of agricultural, horticultural, vegetable or other products of the soil; or (b) the raising, feeding and care of livestock, poultry, bees and dairy cattle. A farm truck may be used only for the transportation of agricultural products produced by the owner of the truck, for the transportation of agricultural supplies used in the production or for private passenger use.

WV Legislature

§17A-10-2. Registration fees of motor vehicles used for transportation of property and persons determined by declared gross weight.

The declared gross weight as stated in the application for registration shall be the basis for determination of fees to be paid for operation of trucks used separately and not in combination with other vehicles in transportation of property.

The basis for determination of fees to be paid for operation of trucks, truck tractors, and road tractors used in combination with other vehicles for the transportation of property shall be the combined declared gross weight of the truck, truck tractor, or road tractor and the vehicle to be drawn by such truck, truck tractor or road tractor; the declared gross weight of the entire combination of truck, truck tractor, or road tractor and the trailer or semitrailer to be drawn by such motive vehicle to be considered as one unit for purpose of determining the fees to be paid for such truck, truck tractor, or road tractor.

The basis for determination of fees to be paid for operation of Class H vehicles shall be the manufacturer's declared weight plus one hundred and fifty pounds for each seat.

WV Legislature

§17A-10-3. Registration fees for vehicles equipped with pneumatic tires.

The following registration fees for the classes indicated shall be paid to the division for the registration of vehicles subject to registration under this chapter when equipped with pneumatic tires:

(a) Registration fees for the following classes shall be paid to the division annually:

(1) Class A. — The registration fee for motor vehicles of this class is $50. The Division of Motor Vehicles may adjust this fee every five years on September 1, based on the U. S. Department of Labor, Bureau of Labor Statistics most current Consumer Price Index: Provided, That an increase in such fee may not exceed ten percent of the total fee amount in a single year: Provided, however, That the registration fees and any other fees required by this chapter for Class A vehicles under the optional biennial staggered registration system shall be multiplied by two and paid biennially to the division.

No license fee may be charged for vehicles owned by churches, or by trustees for churches, which are regularly used for transporting parishioners to and from church services. Notwithstanding the exemption, the certificate of registration and license plates shall be obtained the same as other cards and plates under this article.

(2) Class B. — The registration fee for all motor vehicles of this class is as follows:

(A) For declared gross weights of ten thousand one pounds to sixteen thousand pounds — $28 plus $5 for each one thousand pounds or fraction of one thousand pounds that the gross weight of the vehicle or combination of vehicles exceeds ten thousand pounds.

(B) For declared gross weights greater than sixteen thousand pounds, but less than fifty-five thousand pounds — $78.50 plus $10 for each one thousand or fraction of one thousand pounds that the gross weight of the vehicle or combination of vehicles exceeds sixteen thousand pounds.

(C) For declared gross weights of fifty-five thousand pounds or more — $737.50 plus $15.75 for each one thousand pounds or fraction of one thousand pounds that the gross weight of the vehicle or combination of vehicles exceeds fifty-five thousand pounds.

(3) Class G. — The registration fee for each motorcycle or parking enforcement vehicle is $8: Provided, That the registration fee and any other fees required by this chapter for Class G vehicles shall be for at least one year from the date of registration and under an optional biennial registration system the annual fee shall be multiplied by two and paid biennially to the division.

(4) Class H. — The registration fee for all vehicles for this class operating entirely within the state is $5; and for vehicles engaged in interstate transportation of persons, the registration fee is the amount of the fees provided by this section for Class B, reduced by the amount that the mileage of the vehicles operated in states other than West Virginia bears to the total

WV Legislature

mileage operated by the vehicles in all states under a formula to be established by the Division of Motor Vehicles.

(5) Class J. — The registration fee for all motor vehicles of this class is $85. Ambulances and hearses used exclusively as ambulances and hearses are exempt from the special fees set forth in this section.

(6) Class M. — The registration fee for all vehicles of this class is $17.50.

(7) Class X. — The registration fee for all motor vehicles of this class is as follows:

(A) For farm trucks of declared gross weights of eight thousand one pounds to sixteen thousand pounds — $30.

(B) For farm trucks of declared gross weights of sixteen thousand one pounds to twenty-two thousand pounds — $60.

(C) For farm trucks of declared gross weights of twenty-two thousand one pounds to twenty-eight thousand pounds — $90.

(D) For farm trucks of declared gross weights of twenty-eight thousand one pounds to thirty-four thousand pounds — $115.

(E) For farm trucks of declared gross weights of thirty-four thousand one pounds to forty-four thousand pounds — $160.

(F) For farm trucks of declared gross weights of forty-four thousand one pounds to fifty-four thousand pounds — $205.

(G) For farm trucks of declared gross weights of fifty-four thousand one pounds to eighty thousand pounds — $250: Provided, That the provisions of subsection (a), section eight, article one, chapter seventeen-e of this code do not apply if the vehicle exceeds sixty-four thousand pounds and is a truck tractor or road tractor.

(b) Registration fees for the following classes shall be paid to the division for a maximum period of three years, or portion of a year based on the number of years remaining in the three-year period designated by the commissioner:

(1) Class R. — The annual registration fee for all vehicles of this class is $12.

(2) Class T. — The annual registration fee for all vehicles of this class is $8.

(c) The fees paid to the division for a multiyear registration provided by this chapter shall be the same as the annual registration fee established by this section and any other fee required by this chapter multiplied by the number of years for which the registration is issued.

WV Legislature

(d) The registration fee for all Class C vehicles is $50. All Class C trailers shall be registered for the duration of the owner's interest in the trailer and do not expire until either sold or otherwise permanently removed from the service of the owner: Provided, That a registrant may transfer a Class C registration plate from a trailer owned less than thirty days to another Class C trailer titled in the name of the registrant upon payment of the transfer fee prescribed in section ten of this article.

WV Legislature

§17A-10-3a. Special registration of antique motor vehicles and motorcycles; definition, registration, and use of classic motor vehicles and classic motorcycles; customized antique plates.

(a) The annual registration fee for any antique motor vehicle or motorcycle as defined in this section is $2. As used in this section:

"Antique motor vehicle" means any motor vehicle, regardless of weight, which is more than 25 years old and is owned solely as a collector's item.

“Antique military vehicle” means an antique motor vehicle, regardless of the vehicle's size or weight, that was manufactured for use in any country's military forces, and that is maintained to represent its military design and markings accurately, including a trailer meeting the same requirements, but not including a vehicle or trailer currently in service.

"Antique motorcycle" means any motorcycle which is more than 25 years old and is owned solely as a collector's item.

"Classic motor vehicle" means a motor vehicle which is more than 25 years old and is registered pursuant to §17A-10-3 of this code and is used for general transportation.

"Classic motorcycle" means a motorcycle which is more than 25 years old and is registered pursuant to §17A-10-3 of this code and is used for general transportation.

(b) Except as otherwise provided in this section, antique motor vehicles or motorcycles may not be used for general transportation but may only be used for:

(1) Participation in club activities, exhibits, tours, parades, and similar events;

(2) The purpose of testing their operation, obtaining repairs or maintenance, and transportation to and from events as described in subdivision (1) of this subsection; and

(3) Recreational purposes: *Provided*, That a classic motor vehicle or a classic motorcycle as defined in this section may be registered under the applicable class at the applicable registration fee set forth in §17A-10-3 of this code and may be used for general transportation.

(c) A West Virginia motor vehicle or motorcycle displaying license plates of the same year of issue as the model year of the antique motor vehicle or motorcycle, as authorized in this section, may be used for general transportation purposes if the following conditions are met:

(1) The license plate's physical condition has been inspected and approved by the Division of Motor Vehicles;

(2) The license plate is registered to the specific motor vehicle or motorcycle by the Division of Motor Vehicles;

WV Legislature

(3) The owner of the motor vehicle or motorcycle annually registers the motor vehicle or motorcycle and pays an annual registration fee for the motor vehicle or motorcycle equal to that charged to obtain regular state license plates;

(4) The motor vehicle or motorcycle passes a periodic safety inspection; and

(5) The motor vehicle or motorcycle displays a sticker attached to the license plate, issued by the division, indicating that the motor vehicle or motorcycle may be used for general transportation.

(d) If more than one request is made for license plates having the same number, the division shall accept only the first application.

(e) The commissioner may propose rules for legislative approval in accordance with the provisions of §29A-3-1 *et seq*. of this code as may be necessary or convenient for the carrying out of the provisions of this section.

(f) Upon appropriate application, together with a special annual fee of $40, which is in addition to all other fees required by this chapter, there shall be issued to the owner of an antique motor vehicle a special registration plate for an antique motor vehicle titled in the name of the qualified applicant, bearing a combination of letters or numbers requested by that applicant, subject to the approval by the commissioner, and with the maximum number of letters or numbers to be determined by the commissioner.

(g) Upon proper application pursuant to subsection (f) of this section, the commissioner shall approve an alternative registration insignia for an antique military vehicle that is compatible with the vehicle's original markings, including, but not limited to, the display of the vehicle's unique military identification number not to exceed eight characters on the bumper of the vehicle: *Provided*, That nothing in this section exempts the operator of an antique military vehicle from the requirements set forth in §17A-3-13 of this code. Pursuant to this subsection, an antique military vehicle is exempt from the requirement to display a registration plate if the exemption is necessary to maintain the vehicle's accurate military marking.

(h) The commissioner is hereby authorized to develop an antique fleet plate program to enable an owner of five or more antique motor vehicles to use a single registration plate on multiple antique motor vehicles. The owner is required to register with the Division of Motor Vehicles every antique motor vehicle upon which the plate will be displayed. The annual registration fee for an antique fleet plate is $2 a year per registered antique motor vehicle. The antique fleet plate is valid for one year and must be renewed annually. The antique fleet plate may be used on a newly acquired antique motor vehicle prior to titling: *Provided*, That the owner completes an application for a 30-day temporary digital registration card in the format established by the commissioner and displays such card upon request when operating the vehicle prior to titling and regular registration. The fee for a 30-day temporary digital registration card is $10, and the commissioner is authorized to charge a convenience

www.legislature

fee for electronic submission of the application.

WV Legislature

§17A-10-3b. Motorcycle safety fee.

Upon the annual registration of any motorcycle, the division shall collect a motorcycle safety fee of $6.50, in addition to the registration fee specified in section three of this article. The division shall deposit $5.50 of the motorcycle safety fee into the State Treasury and credit the moneys to the motorcycle safety fund. The division shall deposit the remaining $1 of the motorcycle safety fee into the State Treasury and credit the moneys collected to the motorcycle license examination fund established in section seven-c, article two, chapter seventeen-b of this code.

WV Legislature

§17A-10-3c. Additional registration fees for alternative fuel vehicles.

(a) The annual registration fee for a vehicle fueled with hydrogen or natural gas is $200.

(b) The annual registration fee for a vehicle operating on a combination of electricity and petrochemical fuels is $100.

(c) The annual registration fee for a vehicle operating exclusively on electricity is $200.

(d) The fees imposed by this section are in addition to any other fee set forth in this article.

WV Legislature

§17A-10-4. Registration fees for vehicles equipped with other than pneumatic tires.

Any vehicle subject to registration hereunder which is equipped with tires of a type other than pneumatic tires shall pay double the fee set forth in section three for vehicles of its class.

WV Legislature

§17A-10-5. Public service commission assessment must be paid before vehicle registered; suspension of registration cards and plates issued to motor carriers; privilege to exchange suspended registration cards and plates.

The commissioner shall not register any vehicle subject to economic regulation by the Public Service Commission unless the assessment for such vehicle provided for in section six, article six, chapter twenty-four-a of this code shall have been paid and notice of such payment shall have been received by the commissioner in the manner provided by said section.

The commissioner shall suspend any registration card and registration plate issued by the department under authority of this section for any vehicle subject to economic regulation by the Public Service Commission, pursuant to chapter twenty-four-a of this code, upon receiving certification in writing from the Public Service Commission that said commission has canceled, suspended or revoked the certificate of convenience and necessity, permit or other operating authority of the motor carrier to whom or to which such registration card and registration plate were issued under the authority provided by the first paragraph of this section: Provided, That the motor carrier to whom or to which said registration card and registration plate were issued shall have the privilege of receiving in exchange for any such suspended registration card and registration plate a registration card and registration plate for a vehicle of a different class as provided by section one of article four of this chapter.

WV Legislature

§17A-10-6.

Repealed.

Acts, 1969 Reg. Sess., Ch. 114.

WV Legislature

§17A-10-7. Reduced fees for portion of year.

The registration fees herein prescribed shall be for the entire fiscal year: Provided, That where application for such registration is made between October 1, and December 31, inclusive, in any fiscal year, the charge therefor shall be three quarters of such yearly fee, and when application for such registration is made between January 1, and the thirty-first day of March, inclusive, in any fiscal year, the charges shall be one half of such yearly fee, and where application for such registration is made between April 1 and June 30, inclusive, in any fiscal year, the charges shall be one quarter of such yearly fee.

WV Legislature

§17A-10-8. Vehicles exempt from payment of registration fees.

The following specified vehicles shall be exempt from the payment of any registration fees:

(1) Any vehicle owned or operated by the United States government, the State of West Virginia or any of their political subdivisions. The proper representative of the United States government, the State of West Virginia or any of their political subdivisions shall make an application for registration for the vehicle and the registration plate or plates issued for the vehicle shall be displayed as provided in this chapter;

(2) Any fire vehicle owned or operated by a volunteer fire department organized for the protection of community property;

(3) Any ambulance or any other emergency rescue vehicle owned or operated by a nonprofit, charitable organization and used exclusively for charitable purposes;

(4) Any vehicle owned by a disabled veteran as defined by the provisions of Public Law 663 of the 79th Congress of the United States, or Public Law 187 of the 82nd Congress of the United States, or Public Law 77 of the 90th Congress of the United States; except for vehicles used for hire which are owned by disabled veterans;

(5) Not more than one vehicle owned by a veteran with a hundred percent total and permanent service-connected disability as certified by the Director of the Department of Veterans' Affairs of West Virginia and not used for commercial purposes;

(6) Not more than one Class A or Class G vehicle, as defined in section one of this article, owned by a former prisoner of war and not used for commercial purposes. For purposes of this subdivision, the term "prisoner of war" means any member of the Armed Forces of the United States, including the United States Coast Guard and National Guard, who was held by any hostile force with which the United States was actually engaged in armed conflict during any period of the incarceration; or any person, military or civilian, assigned to duty on the U.S.S. Pueblo who was captured by the military forces of North Korea on January 23, 1968, and thereafter held prisoner; except any person who, at any time, voluntarily, knowingly and without duress, gave aid to or collaborated with or in any manner served any such hostile force;

(7) Not more than one Class A or Class G vehicle, as defined in section one of this article, owned by a recipient of the Congressional Medal of Honor and not used for commercial purposes; and

(8) Vehicles registered in the name of community action agencies and used exclusively for a Head Start program.

WV Legislature

§17A-10-9. Municipalities and other political subdivisions not to levy or charge license tax on motor vehicles.

No license tax shall be levied or charged by any municipality or other political subdivision of the state with respect to motor vehicles and their operation except as provided in chapter eight-a, article five, section four, and also in chapter eight, article four, section twenty-seven of the Code of West Virginia, as amended, but this prohibition shall not prevent municipalities or other political subdivisions of the state from assessing and collecting the regular property tax on such motor vehicle.

WV Legislature

§17A-10-10. Fees upon transfer of registration and issuance of certificates of title.

A fee of $10 shall be paid for a transfer of registration by an owner from one vehicle to another vehicle of the same class or for surrender of registration of one vehicle in exchange for registration of a vehicle of a different class in addition to the payment of any difference in fees as provided in section one, article four of this chapter. The Division of Motor Vehicles may adjust this fee every five years on September 1, based on the U. S. Department of Labor, Bureau of Labor Statistics most current Consumer Price Index: Provided, That an increase in such fee may not exceed ten percent of the total fee amount in a single year.

A fee of $10 shall be paid for the transfer of registration from a deceased person to his or her legal heir or legatee as provided in section five, article four of this chapter. The Division of Motor Vehicles may adjust this fee every five years on September 1, based on the U. S. Department of Labor, Bureau of Labor Statistics most current Consumer Price Index: Provided, That an increase in such fee may not exceed ten percent of the total fee amount in a single year.

A fee of $10 shall be paid for the issuance of a certificate of title. The Division of Motor Vehicles may adjust this fee every five years on September 1, based on the U. S. Department of Labor, Bureau of Labor Statistics most current Consumer Price Index: Provided, That an increase in such fee may not exceed ten percent of the total fee amount in a single year.

WV Legislature

§17A-10-11. Fees for duplicate registration plates, registration cards and certificates of title.

A fee of $10 shall be paid for the issuance of duplicate or substitute registration plates, registration cards or certificates of title. The Division of Motor Vehicles may adjust this fee every five years on September 1, based on the U. S. Department of Labor, Bureau of Labor Statistics most current Consumer Price Index: Provided, That an increase in such fee may not exceed ten percent of the total fee amount in a single year. The provisions of this article enacted in 2017 take effect on July 1, 2017.

WV Legislature

§17A-10-12. When fees returnable.

Whenever any application to the department is accompanied by any fee as required by law and such application is refused or rejected said fee shall be returned to said applicant.

Whenever the department through error collects any fee not required to be paid hereunder the same shall be refunded to the person paying the same upon application therefor made within six months after the date of such payment.

WV Legislature

§17A-10-13. Payment of fees and passenger seat tax to cities or towns.

The holders of a certificate of convenience and necessity authorizing the transportation of property or person for hire wholly within any incorporated city or town and within its adjacent suburban area not exceeding three miles distant from the city boundary shall pay the fees and passenger seat tax provided for in this article, as to such operation wholly within such city or town to such city or town instead of to the department of motor vehicles, provided that any such city or town may collect the fee or tax for the operation wholly within such city or town in lieu of but not greater than the fees and taxes provided in this article.

WV Legislature

§17A-10-14. Registration plate for amateur radio station operators; fees; rules and forms.

(a) Any owner of a motor vehicle who is a resident of the State of West Virginia, and who holds an unrevoked and unexpired official amateur radio station license and/or amateur class operators' license issued by the federal communications commission, may apply for a special registration plate for a Class A motor vehicle which, in lieu of the registration numbers required by this article, shall be inscribed with the official amateur radio call letters of the applicant as assigned by the federal communications commission.

(b) Each application shall be accompanied by proof of ownership of the amateur radio station license; proof of compliance with the motor vehicle laws of the state relative to registration and licensing of motor vehicles; payment of the registration, license and other fees required by law; and payment of a special initial application fee in the amount of $10, which is in addition to all other fees required by law. This special fee shall be collected by the division and deposited into a special revolving fund to be used for the purpose of compensating the Division of Motor Vehicles for additional costs and services required in the issuing of the licenses.

(c) The commissioner shall promulgate rules in accordance with the provisions of chapter twenty-nine-a of this code regarding proper forms to be used in making application for the special license plates authorized by this section.

WV Legislature

§17A-10-15. Additional fee for contribution to the highway litter control fund.

In addition to each fee provided for in this article, an additional $1 fee shall be imposed on the issuance of each certificate of registration and renewal thereof issued pursuant to article three of this chapter. All money collected under this section shall be deposited in the State Treasury and credited to a fund to be established within the department of highways, named the "Highway Litter Control Fund" for litter control maintenance of the highways. The additional fee provided herein shall be imposed for each application for such certificate and renewal thereof made on or after July 1, 1988.

WV Legislature

§17A-10-16. Fee for the A. James Manchin Fund.

In addition to each fee provided for in this article, an additional $5 fee shall be imposed on the issuance of each certificate of title issued pursuant to article three of this chapter. All money collected under this section shall be deposited in the State Treasury and credited to the A. James Manchin Fund to be established within the Division of Highways for waste tire remediation in accordance to the provisions of article fifteen-a, chapter twenty-two of this code. The Commissioner is to work with the Secretary of the Department of Environmental Protection to accomplish the goals of said chapter. The additional fee provided herein shall be imposed for each application for certificate and renewal thereof made on or after July 1, 2000: Provided, That no further collections or deposits shall be made after the Commissioner certifies to the Governor and the Legislature that the remediation of all waste tire piles that were determined by the Commissioner to exist on June 1, 2001, has been completed.

WV Legislature

§17A-10-17. Fee for West Virginia Parkways Authority Single Fee Program.

In addition to each fee provided in this article, an additional fee for any single fee program that may be implemented by the West Virginia Parkways Authority pursuant to section six, article sixteen-a, chapter seventeen of this code shall be payable upon the issuance of each certificate of registration and renewal thereof issued pursuant to article three of this chapter. The Division shall collect and deposit all the additional fees into the West Virginia Parkways Authority Single Fee Program Fund created in section eleven-a, article sixteen-a, chapter seventeen of this code. The additional fee provided herein may be imposed for each application for such certificate and renewal thereof made on or after July 1, 2017.

WV Legislature

§17A-11-1. Violations of chapter; penalty for misdemeanor.

It is a misdemeanor for any person to violate any of the provisions of this chapter unless such violation is by this chapter or other law of this state declared to be a felony.

Unless another penalty is in this chapter or by the laws of this state provided, every person convicted of a misdemeanor for the violation of any provisions of this chapter shall be punished by a fine of not more than $500, or by imprisonment for not more than six months, or by both such fine and imprisonment.

WV Legislature

§17A-11-2. Penalty for felony.

Any person who is convicted of a violation of any of the provisions of this chapter herein or by the laws of this state declared to constitute a felony shall be punished by imprisonment for not less than one year not more than five years, or by a fine of not less than $500 nor more than $5,000, or by both such fine and imprisonment.

WV Legislature

§17A-11-3. Jurisdiction of crimes by justices.

Justices of the peace shall have concurrent jurisdiction with the circuit, criminal and intermediate courts to enforce the misdemeanor penalties prescribed by this chapter.

WV Legislature

§17A-11-4. Authority of members of official highway department weighing crews and Public Service Commission, motor carrier employees.

Employees of the department of highways designated by the commissioner of highways as weight enforcement officers and employees of the Public Service Commission designated by the chairman as commercial vehicle enforcement officers, shall, during the course of their normal duties, have concurrent jurisdiction with police officers in the enforcement of article nine of this chapter.

WV Legislature

§17A-12-1. Severability.

If any part or parts of this chapter shall be held to be unconstitutional or invalid such unconstitutionality or invalidity shall not affect the Constitutionality or validity of the remaining part or parts of this chapter. The Legislature hereby declares that it would have passed the remaining part or parts of this chapter if it had known that such part or parts thereof would be declared unconstitutional or invalid.

WV Legislature

§17A-12-2. Repeal of inconsistent provisions.

The provisions of any acts or parts of acts, or of the Code of West Virginia, 1931, as amended, which are inconsistent with the provisions of this chapter, are hereby repealed to the extent of such inconsistency.

WV Legislature

§17A-13-1. Street-legal special purpose vehicles; operation on highways; registration procedures; licensing requirements; equipment requirements.

(a) Except as required in subsection (c) of this section, an individual may operate a "street-legal special purpose vehicle" on a street or highway.

(b) For the purposes of this section:

(1) "Special purpose vehicle" includes all-terrain vehicles, utility terrain vehicles, mini-trucks, pneumatic-tired military vehicles, and full-size special purpose-built vehicles, including those self-constructed or built by the original equipment manufacturer and those that have been modified.

(2) "Street-legal special purpose vehicle" is a special purpose vehicle that meets the requirements of this section.

(c) An individual may not operate a special purpose vehicle as a street-legal special purpose vehicle on a highway if:

(1) The highway is a controlled-access system, including, but not limited to, interstate systems; or

(2) The county, municipality, or the Division of Natural Resources where the highway is located prohibits special purpose vehicles.

(d) Street-legal special purpose vehicles are prohibited from traveling a distance greater than 20 miles on a highway displaying centerline pavement markings.

(e) All street-legal special purpose vehicles are subject to the certificate of title provisions of §17A-1-1 *et seq.* of this code.

(f) Nothing in this section authorizes the operation of a street-legal special purpose vehicle in an area that is not open to motor vehicle use.

(g) A street-legal special purpose vehicle may be registered in the same manner as provided for motorcycles pursuant to this chapter.

(h) Upon registration of any street-legal special purpose vehicle pursuant to this section, the Division of Motor Vehicles shall issue a registration plate that is of the same size as Class G special registration plates for motorcycles.

(i) Except as otherwise provided in this section, a street-legal special purpose vehicle shall comply with the Division of Motor Vehicles' licensing, fee, and other requirements pursuant to this chapter.

(j) The owner of a special purpose vehicle being operated as a street-legal special purpose

WV Legislature

vehicle shall ensure the vehicle is equipped with:

(1) One or more headlamps;

(2) One or more tail lamps;

(3) One or more brake lamps;

(4) A tail lamp or other lamp constructed and placed to illuminate the registration plate with a white light;

(5) One or more red reflectors on the rear;

(6) Amber electric turn system, one on each side of the front;

(7) Amber or red electric turn signals;

(8) A braking system, other than a parking brake;

(9) A horn or other warning device;

(10) A muffler and, if required by an applicable federal statute or rule, an emission control system;

(11) Rearview mirrors on the right and left side of the driver;

(12) A windshield, unless the operator wears eye protection while operating the vehicle;

(13) A speedometer, illuminated for nighttime operation;

(14) For vehicles designed by the manufacturer for carrying one or more passengers, a seat designed for passengers; and

(15) Tires that have at least 2/32 inches or greater tire tread.

(16) When owners of a street-legal special purpose vehicle have ensured that such vehicles are equipped as required by this subsection, and those owners obtain a valid registration card and certificate of insurance for such vehicles, those vehicles are eligible to apply for a motorcycle trailer sticker.

(k) Mini-trucks may not be operated as street-legal special purpose vehicles on highways that have been constructed pursuant to a federal highways program.

(l) Low-speed vehicles as defined in §17A-1-1 of the code are not considered special purpose vehicles or street-legal special purpose vehicles under this section. However, low-speed vehicles may cross state routes at traffic lights when the state route does not have a posted speed limit greater than 40 miles per hour.

WV Legislature

(m) The Division of Motor Vehicles shall propose rules for legislative approval in accordance with §29A-3-1 *et seq*. of this code to implement this section.

WV Legislature