WEST VIRGINIA CODE CHAPTER 17c ARTICLE 17A

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§17C-17A-1. Legislative findings and creation of program.

(a) The Legislature finds and declares that:

(1) No other economic undertaking in the history of West Virginia has had a greater impact upon the citizens of this state, providing such an economic force and affecting the social construct and day-to-day life and environment of the people and communities of this state, than the activities associated with the extraction, transportation and consumption of coal or its byproducts. In areas of this state where the coal industry exists, the economic benefits of coal production are an indispensable part of the local community's vitality.

(2) The historic progression of the coal industry has resulted in an increasing use of the public highways of this state for the transportation of coal to river ports, power generators or rail loading facilities. Roads where coal is transported are mainly two-lane rural roads and highways of varying grades and conditions. The daily presence of large commercial motor vehicles on these roads and highways causes significant impact to local communities and the local transportation infrastructure. Local residents are exposed on a daily basis to the dangers associated with sharing the road with a large number of these vehicles.

(3) The increased capacity and ability of coal-hauling vehicles, tied with increased economic pressures to reduce industry transportation costs, have created economic incentives for transporting coal at higher than legal limits and for drivers to drive long hours and operate these vehicles at higher rates of speed. Consequently, average vehicle weights have increased and many coal transport vehicles regularly exceed the lawful limit by more than one hundred percent. The excessive weights of these vehicles have also resulted in the rapid deterioration of state roads and bridges, creating significant costs to the state of millions of dollars in lost road and bridge use and life.

(4) Advances in truck stability, braking and safety technology have made modern coal transporters much safer conveyances than those used by the industry when the state's current weight laws were enacted. Further advances in technology have made tracking and recording individual vehicles, their operators and loads significantly more efficient.

(5) Enforcement of truck safety and driver safety laws has been divided between various jurisdictions such as local and state law enforcement, the Division of Highways and the Public Service Commission. As a result, local and state enforcement of those comprehensive laws has not been uniform, with the result that many of these laws have not been enforced.

(6) The resulting need for a remedy for hauling these additional amounts of coal is most severe in a limited and discrete geographic area of the state where the limited access to rail and river transportation options and economic conditions require a regulatory program that allows a greater weight allowance for coal-hauling vehicles to address the unique economic circumstances of that region.

(7) That this limited highway system must include additional safety protections for the public

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sharing the roads with a large coal-hauling vehicle fleet and specialized training for operators of these vehicles, requiring the program be designed to assure that state weight and safety requirements be effectively administered and enforced.

(b) A special regulatory program with administrative enforcement authority over all vehicles hauling coal in West Virginia is created. This program is designed to address the economic needs of the state coal industry within the confines of the ability of the transportation infrastructure to accommodate these needs and in careful consideration for road safety and maintenance requirements of these vehicles by providing for coal truck weight reporting requirements on coal resource transportation roads and allowing a limited statewide increase in weights for commercial vehicles and an additional, limited increase for vehicles hauling coal where the greater increase is required.

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§17C-17A-2. Definitions.

For purposes of this article:

(a) A "coal resource transportation road" means a road designated by the Department of Transportation as safe and sufficient to allow vehicles hauling coal to carry a greater gross and axle weight of up to one hundred and twenty thousand pounds, with a five percent variance.

(b) "Coal" or "coal by-products" means the mineral in raw or clean state and includes synthetic fuel manufactured or produced for which credit is allowable under 26 U.S.C. §29 of the Internal Revenue Code (1996).

(c) "Commission" means the Public Service Commission of West Virginia.

(d) "Division" means the Division of Highways within the Department of Transportation.

(e) "Mining operation" means any activity related to extraction of coal regulated under the provisions of this code.

(f) "Operator" means the person driving a commercial motor vehicle transporting coal on any public highway of this state.

(g) "Person" means any individual, partnership, firm, society, association, trust, corporation, other business entity or any agency, unit or instrumentality of federal, state or local government.

(h) "Shipper" means the person who loads coal or causes coal to be loaded into any commercial motor vehicle that will operate on any public highway in this state.

(i) "Receiver" means the person who accepts for unloading coal from any vehicle that has operated on any public highway in this state.

(j) "Vehicle owner" means the person who as owner of a commercial motor vehicle employs, contracts or otherwise directs a driver to operate that vehicle on a public highway of this state for the purpose of transporting coal.

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§17C-17A-3. Authority of the Division of Highways and Public Service Commission generally.

(a) The Division of Highways shall establish all legal vehicle weight limits for all public highways including roads within the coal resource transportation road system. Public highways shall be designated as coal resource transportation roads by the Commissioner of the Division of Highways pursuant to this article. Only state-maintained roads and public highways found in the following areas: Boone, Fayette, Lincoln, Logan, McDowell, Mercer, Mingo, Raleigh, Wayne and Wyoming counties; in Braxton county, Braxton county route 19/29 from Mine 5 haulroad to intersection of county route 36/1, county route 36/1 to intersection of county route 36 and county route 36 to the Webster County line (Webster County route 9); in Ohio County, county route 1 from the intersection of county route 7 to intersection of Riley Delaplaine Road; in Greenbrier County, routes west of Sam Black Church and southwest to the Summers County line; in Clay County, routes 4 and 16; in Nicholas County, routes 1/11, 16, 19, 19/2, 19/40, 20, 39, 41, 55 and 82; in Webster County, routes 9, 9/1, 9/2, 20, 32 and 82; and all state-maintained roads and public highways found in Washington, Malden, Louden and Cabin Creek districts, Kanawha County, are eligible to qualify as part of the coal resource transportation road system. The division shall post signs on roads informing the public of the designation and shall also list a toll-free telephone line for public reporting of poor driving or law violations by special permit operators. The division shall provide periodic reports to the commercial motor vehicle weight and safety enforcement advisory committee as established in section two, article one-a, chapter twenty-four-a of this code relating to the study of coal resource transportation roads. The periodic reports shall include the following at a minimum: (1) Citations issued for violations of this chapter; (2) disposition of the violations; (3) road conditions and maintenance; and (4) the amount of undue road damage attributable to coal resource transportation road system permit use.

(b) The Public Service Commission shall administer the coal resource transportation road permitting program and otherwise enforce the provisions of this article. The commission shall establish requirements for vehicle operators holding coal resource transportation road permits pursuant to section five of this article consistent with federal statutory and regulatory requirements.

(1) The commission may, during normal business hours, conduct inspections of all trucking-related records of shippers, vehicle operators, vehicle owners and receivers engaged in the transportation of coal. Copies of records shall be provided to commission employees upon request. This provision may not be construed to authorize the commission to reveal trade secrets or other confidential financial information of those persons inspected; however the commission may use any weight measurement records as evidence of a violation of this article.

(2) The commission shall establish and maintain a toll-free telephone line for public reporting of poor driving or law violations by special permit operators. In addition, the commission shall require all vehicles operating under a permit issued pursuant to the

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provisions of this article to clearly display on the vehicle the toll-free telephone number.

(3) The commission shall implement a study of commercial vehicle safety-related issues, including using higher education institutions and other research organizations. The commission shall provide periodic reports to the commercial motor vehicle weight and safety enforcement advisory committee as established in section two, article one-a, chapter twenty-four-a of this code relating to the study of motor vehicle weight and safety enforcement.

(4) The commission shall establish procedures to use electronic real time reporting of coal vehicle weights on coal resource transportation roads by shippers and receivers. The commission may require daily certified reports from shippers or receivers if electronic reporting methods are not used. The commission may authorize alternative measures of reporting that require same-day reporting of weight measurements by shippers and receivers.

(5) The commission shall impose and collect from shippers of coal on the coal resource transportation road system through the use of the special permit, issued pursuant to section five of this article, for the privilege of loading coal in excess of eighty-eight thousand pounds for transport on a coal resource transportation road. The fee shall be assessed in the amount of 5¢ per ton of coal hauled over the road. Revenue from the fees shall be deposited in the coal resource transportation fund created in said section.

(c) Notwithstanding the provisions of section three, article one, chapter twenty-nine-a of this code, the commission and the division shall each propose legislative rules for promulgation in accordance with the provisions of article three of said chapter to carry out their duties and responsibilities pursuant to the provisions of this article.

(d) Notwithstanding any provisions of this code to the contrary, the division may propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code which would provide a process for approval by the commissioner of the division of a special crossing permit and renewals thereof. Special crossing permits authorized by this subsection would authorize the holder of the permit to operate or move a vehicle or combination of vehicles which exceed the maximum weight allowance specified in this chapter or are otherwise not in conformity with the provisions of this chapter on limited sections of public highways under specific circumstances specified in the permit: Provided, That no special crossing permit may allow the operation or movement of any vehicle or combination of vehicles on a public highway for more than one-half of a mile: Provided, however, That no special crossing permit may allow the operation or movement of any vehicle or combination of vehicles on a public highway if the Commissioner of the Division of Highways determines there is an existing alternate off-road route available. Each special crossing permit shall contain the specific section or mileage of the public highway where operation is authorized. Special crossing permits may not exceed a three-year period and may be renewed upon approval by the Commissioner of the Division of Highways as specified in legislative rule. The Commissioner of the Division may provide for fees for the processing of applications for special crossing permits. As a condition of approval of a

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special crossing permit, an applicant shall agree to pay for all actual expenditures incurred by the Department of Transportation for the upgrading or repair of the public highway, including traffic control devices, for which the applicant seeks the special crossing permit. In addition, all holders of special crossing permits shall pay for the restoration of the public highway to its original condition after the permit has expired. The initial rule filed by the Division pursuant to this subsection shall be filed as an emergency rule.

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§17C-17A-4. Special permit issuance; and promulgation of rules.

(a) The commission may issue permits to authorize the hauling of coal of a greater gross and axle weight than otherwise authorized by state law on roads designated by the commissioner of highways as coal resource transportation roads.

(b) Notwithstanding the provisions of section three, article one, chapter twenty-nine-a of this code, the commission shall promulgate emergency and legislative rules to effectuate purposes of this section, which shall provide, at a minimum, the following:

(1) Twenty-four hours' mandatory specialized training requirements for commercial vehicles operators with less than two years of commercial driving experience;

(2) Requirements for random drug and alcohol testing; and

(3) Requirements for daily records consistent with the provisions of any applicable federal statutory or regulatory requirements.

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§17C-17A-5. Operation of coal trucks under special permits; weight limitations; payment of permit fees.

(a) Any vehicle, when transporting coal over certain public highways, designated as coal resource transportation roads by the commissioner of the department of highways, may be operated at the weights as set forth in this section in excess of the maximum gross weight prescribed in section nine, article seventeen of this chapter and any other maximum weight limitations on any public highway by paying the corresponding special permit fee and otherwise complying with the provisions of this article.

(b) Special permits shall be issued subject to the following requirements:

(1) A single unit truck having one steering axle and two axles in tandem shall be limited to a maximum gross weight of eighty thousand pounds with a tolerance of five percent and pay a special permit fee annually of $100;

(2) A single unit truck having one steering axle and three axles in tridem arrangement shall be limited to a maximum gross weight of ninety thousand pounds with a tolerance of five percent and pay a special permit fee annually of one hundred $60;

(3) A tractor-semitrailer combination with five axles shall be limited to a maximum gross weight of one hundred ten thousand pounds with a tolerance of five percent and pay a special permit fee annually of $300;

(4) A tractor-semitrailer combination with six or more axles shall be limited to a maximum gross weight of one hundred twenty thousand pounds with a tolerance of five percent and pay a special permit fee annually of $500.

(c) The axle loads set forth in subsection (b) of this section may in no event exceed the maximum axle load allowable based upon the minimum axle spacings as determined by the Division of Highways in accordance with generally accepted industry standards and bridge loading analysis.

(d) In order to qualify for issuance of a special permit, the applicant shall provide information that demonstrates that the vehicle, as configured, has a total combined axle rating capacity equal to or greater than the maximum amount of weight for which a special permit is sought. The information may include, but not be limited to, the manufacturer's rated capacity. In the event that manufacturer's rated capacity is not available, any other information reasonably determined by the secretary of the Department of Transportation to give evidence of adequate combined axle rating capacity may be submitted.

(e) Special permits authorized by this section shall be issued by the commission on forms prescribed and furnished by it. The special permit indicium shall be permanently affixed immediately below the window glass on the top of the door on the driver's side of the vehicle. Lost, destroyed, stolen or otherwise unusable special permits indicia shall be

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replaced in accordance with legislative rules to be promulgated by the commission. The special permit indicium shall be issued to a particular vehicle and shall remain with the vehicle upon transfer of possession or ownership of the vehicle.

(f) Special permits issued pursuant to the provisions of this article are valid for a period of one year from the date of purchase: Provided, That no renewal permits shall be issued to any permittee who, at the time of the renewal, has any administrative or criminal actions pending relating to the operation of commercial motor vehicles in this or other states.

(g) For purposes of this section, the dimensional requirements of motor vehicles shall conform to all applicable federal laws and regulations. Nothing in this section may be construed or administered to jeopardize the receipt of federal funds for highway purposes.

(h) Any operator of a vehicle with a special permit issued under the provisions of this article shall submit the vehicle or combination of vehicles to weighing with portable or stationary weighing devices as required by section ten, article seventeen of this chapter. Any driver or owner of a vehicle or combination of vehicles operating under the provisions of this section who fails or refuses to comply with any requirement of section ten, article seventeen of this chapter forfeits all privileges granted by the special permits.

(i) Any vehicle or combination of vehicles transporting coal pursuant to the provisions of this article shall be securely covered to prevent the escape of the load on any trip exceeding a total distance of one mile on any public highway.

(j) As a condition of receipt of a special permit, vehicle owners and operators shall submit permitted vehicles to safety checks and other vehicle inspection requirements as required by legislative rules of the commission. The commission may impose additional vehicle operation and maintenance requirements by rule as the commission deems appropriate to assure the safe operation of vehicles issued a special permit.

(k) The commission shall propose rules in accordance with the provisions of article three, chapter twenty-nine-a of this code regarding the implementation of the requirements of this section. The rules shall be initially promulgated as emergency rules pursuant to the provisions of said article by no later than October 1, 2003.

(l) The payment of the special permit fee is in addition to any state registration fee, user fee or other decal fee.

(m) All revenues generated pursuant to this section shall be credited to a special account within the road fund which is created and shall be designated as the "coal resource transportation road fund". Moneys of the fund shall be used by the Division of Highways for construction, maintenance and repair of public highways and bridges over which substantial quantities of coal are transported.

(n) For periods of less than one year, the permit fee imposed by subsection (b) of this section

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shall be prorated to the nearest month.

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§17C-17A-6. Reporting requirements for shippers, vehicle owners and receivers of coal transported on public highways.

(a) Every shipper of coal for transport on a coal resource transportation road in this state that loads vehicles shall be required to report to the commission weight and other transport-related data as required in this article. The commission shall by rule establish special recording and reporting methods for timely and accurate disclosure of all shipments of coal made upon any coal resource transportation road of this state. The rules shall provide for administrative penalties to be imposed for failure to timely or accurately report weight or other required data.

(b) Every vehicle owner who transports coal on a coal resource transportation road of this state is subject to the provisions of this article and any rules established by the commission requiring reporting, monitoring or removal from service of any unsafe vehicle or driver.

(c) Every receiver of coal transported on a coal resource transportation road in this state that unloads or causes to be unloaded any shipment of coal shall report to the commission the weight of the shipment and other data related to the shipment as required by rules promulgated by the commission. The rules shall provide for administrative penalties to be imposed for failure to timely or accurately report the weight or other data. Compliance with the reporting requirements shall cause the receiver to be immune from any and all criminal, civil and administrative liability, damages, costs, fines and penalties based on, arising out of or resulting from the receiver's receipt or acceptance of the shipment.

(d) The commission shall by rule establish special recording and reporting methods for timely and accurate disclosure of all shipments of coal made by commercial motor vehicles upon a coal resource transportation road of this state.

(e) Any receiver receiving any vehicle transporting coal in excess of eighty-eight thousand pounds on any noncoal transportation highways shall file a report with the Public Service Commission, identifying the vehicle and its driver within twenty-four hours of being received. The reports shall be subject to freedom of information requests in accordance with chapter twenty-nine-b of this code. Nothing contained in this subsection shall be construed to restrict application of any other provision of this chapter or any rules promulgated pursuant to this chapter.

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§17C-17A-7. Permit application procedure.

The commission shall propose in accordance with provisions of article three, chapter twenty-nine-a of this code by emergency and legislative rules, filed no later than October 1, 2003, a permit application procedure for the issuance of permits pursuant to the authority contained within this article: Provided, That the commission shall take final action upon all completed permit applications within thirty days of receipt if the application is uncontested, or within ninety days if the application is contested.

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§17C-17A-8. Powers and duties of the commission.

In addition to all other powers, duties, responsibilities and authority granted and assigned to the commission in this code and elsewhere prescribed by law, notwithstanding any provision of the code to the contrary:

(1) The commission shall promulgate rules in accordance with the provisions of article three, chapter twenty-nine-a of this code to carry out the provisions of this article including modifying any existing rules and establishing permit application fees up to an amount sufficient to defray the costs of permit review;

(2) The commission or any authorized representative, employee or agent may, at reasonable times, enter onto any coal shipping or receiving facility in the state for the purpose of making an inspection or investigation;

(3) The commission may also perform or require a person, by order, to perform any and all acts necessary to carry out the provisions of this article or the rules promulgated under this article;

(4) The commission, its authorized representative, employee or agent shall make periodic inspections at coal shipping or receiving facilities to effectively implement and enforce the requirements of this article or its rules and may conduct at weigh stations or any other adequate site or facility inspections of coal in transit.

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§17C-17A-9. Administrative sanctions.

(a) This section imposes administrative sanctions for violations occurring on the coal resource transportation road system. It is the intent of the Legislature to impose administrative sanctions in addition and separate from any criminal or civil penalties upon any person violating or assisting in the violation of the provisions of this article.

(b) For a particular violation, the commission may take administrative notice of criminal convictions, or a plea of nolo contendere, for a violation for purposes of imposing the administrative sanctions in this section in lieu of the procedure provided in subsection (f) of this section. After providing notice and an opportunity to show cause why penalties should not be imposed for the violation of provisions of this article, the commission shall impose sanctions upon an operator, shipper, receiver or truck owner when a violation is found to have occurred. Lack of intent is not a defense to a violation except as it applies to receivers.

(c) Administrative sanctions for violations shall be imposed as follows:

(1) Every shipper of coal for transport on the public roads or highways of this state which loads coal in an amount which results in gross vehicle weight to be in excess of the weight limits established in this article shall be subject to an administrative penalty per pound in excess of the lawful weight pursuant to the penalty schedule established in section ten of this article;

(2) It is unlawful for any person to operate a commercial motor vehicle engaged in the transportation of coal with a gross vehicle weight for nonpermitted vehicles in excess of the lawful maximum weight on a coal resource transportation road without a permit required by section five of this article. Any person violating this subsection shall have his or her driver's license suspended by the commissioner of the Division of Motor Vehicles for a period of ninety days for the first offense, six months for the second offense, and one year for the third offense: Provided, That in the case of a permit, expired for less than thirty days, the operator my present a valid permit to the commission within five days of the date of the offense in order to avoid the penalty;

(3) Any owner of a commercial motor vehicle engaged in the transportation of coal operating without an excess weight hauling permit and bearing a gross vehicle weight in excess of the lawful maximum weight for the public highway for nonpermitted vehicles who allows the operation of that vehicle upon a coal resource transportation road of this state shall have any state-issued hauling permit then in force suspended by the commission for a period of ninety days for the first offense, six months for the second offense, and revoked for the third offense: Provided, That in the case of a permit, expired for less than thirty days, the operator my present a valid permit to the commission of motor vehicles within five days of the date of the offense in order to avoid the penalty: Provided, however, That should there be no state-issued hauling permit then in force, the owner shall have his or her vehicle registration suspended by the commission of motor vehicles for a period of ninety days for the first offense, six months for the second offense and revoked for the third offense;

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(4) Any operator who operates a vehicle engaged in the transportation of coal that has been issued a special permit by the division upon the coal resource transportation road system and who operates the vehicle with a gross vehicle weight that is in excess of the lawful maximum weight allowed pursuant to the permit shall have his or her driver's license suspended by the commissioner of the Division of Motor Vehicles for a period of three days for the first offense, thirty days for the second offense and six months for the third offense;

(5) Any owner of a vehicle engaged in the transportation of coal that has been issued a special permit by the commission who allows the operation of that vehicle upon the coal resource transportation road system with a gross vehicle weight that is in excess of the lawful maximum weight allowed pursuant to the permit shall have the special permit suspended by the commission for a period of three days for the first offense, thirty days for the second offense and revoked for the third offense;

(6) Any operator who operates a vehicle engaged in the transportation of coal with a suspended excess weight hauling permit at a weight in excess of the limits imposed by article seventeen of this chapter upon the coal resource transportation road system shall have his or her driver's license suspended by the commissioner of the Division of Motor Vehicles for a period of six months for the first offense, twelve months for the second offense, and two years for the third offense: Provided, That if the operator is also the owner of the vehicle, the owner penalties set forth in subdivision (5) of this subsection also apply;

(7) Any owner of a vehicle engaged in the transportation of coal with a suspended excess weight hauling permit who allows the operation of that vehicle upon the roads or highways of this state during a period of permit suspension at a weight in excess of the limits imposed by article seventeen of this chapter shall have all state-issued hauling permits then in force suspended by the commission or, if applicable, the commissioner of highways for a period of twelve months for the first offense, two years for the second offense and revoked for the third offense;

(8) Any operator who operates a vehicle engaged in the transportation of coal that has been issued a special permit by the commission under the provisions of section five of this article and who is charged with a violation of section one, article six, chapter seventeen-c of this code upon a road or highway of this state designated by the commissioner of Division of Highways as a part of the coal resource transportation road system shall have his or her driver's license suspended by the commissioner of the Division of Motor Vehicles for a period of three days for the first offense, thirty days for the second offense and revoked for the third offense;

(9) Any person who falsifies information relating to the acquisition of a hauling permit shall have his or her driver's license suspended by the commissioner of the Division of Motor Vehicles for a period of sixty days for the first offense, one hundred twenty days for the second offense and six months for the third offense;

(10) Any person regulated pursuant to this article that falsifies information relating to the

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acquisition of a hauling permit shall have its state-issued business license suspended by the commissioner of the state Tax Division for a period of six months for the first offense, one year for the second offense and two years for the third offense;

(11) Any person who fabricates or displays an altered, forged or counterfeited permit shall have his or her driver's license suspended by the commissioner of the Division of Motor Vehicles for a period of sixty days for the first offense, one hundred twenty days for the second offense and revoked for the third offense;

(12) Any person that bribes or attempts to bribe an employee of the State of West Virginia or who gives an employee of the State of West Virginia a gift, gratuity, entertainment, loan, favor or other thing of monetary value for the purpose of avoiding any penalties permitted under this article shall have his or her state-issued hauling permit then in force suspended by the commission for a period of sixty days for the first offense, one hundred twenty days for the second offense and revoked for the third offense;

(13) In the case of multiple violations by a permittee, shipper, operator or receiver, the commission may direct that the imposed suspension be served concurrently or consecutively, taking into account the frequency of violations committed during the inclusive time periods, or in the same course of misconduct if the commission determines that sufficient mitigating or aggravating circumstances are present;

(14) Any person who aids or abets another person's attempt to avoid suspension shall have his or her driver's license suspended by the commissioner of the Division of Motor Vehicles for a period of sixty days for the first offense, one hundred twenty days for the second offense and six months for the third offense; and

(15) Any person that aids or abets a person's attempt to avoid suspension shall have its state-issued business license suspended by the Tax Commissioner for a period of three months for the first offense, six months for the second offense and one year for the third offense.

(d) Without providing a hearing, the commission may immediately suspend a person from obtaining permits or operating under permit authority for failure to pay a fee required under this article until proper payment is received. Upon the completion of all administrative appeals of any violation that results in a license suspension, the commission shall notify the Division of Motor Vehicles which shall act accordingly.

(e) Without providing a hearing, the commission and law-enforcement personnel may immediately confiscate an altered, forged or counterfeited permit, or a permit used in violation of its terms and conditions. Upon issuance of a citation alleging a violation of this subsection, the vehicle and its load shall be impounded by law-enforcement personnel until such time as a hearing on the matter is conducted by the division.

(f) Administrative sanctions may be imposed pursuant to the following procedures:

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(1) No administrative sanction may be imposed until after the person has been notified by certified mail or personal service. The notice shall include: A reference to the section of statute, rule, order, or permit violated; a concise statement of the facts alleged to constitute a violation; a statement of the administrative penalties to be imposed; and a statement of the person's right to a hearing. The person has twenty days from receipt of the notice within which to deliver to the commission a written request for a hearing.

(2) Subsequent to the hearing and upon finding that a violation has occurred, the commission shall issue a final order. If no hearing is requested, the notice shall become a final order upon the expiration of the twenty-day period.

(3) For purposes of the enhanced penalty provisions of this section, the second and subsequent offenses shall be calculated on a per-year basis.

(4) In addition to the imposition of an administrative sanction, the commission or division may, by administrative order and upon an appropriate finding, assess a violator for the reasonable costs, as established by rules of any investigation, inspection or monitoring survey which led to the establishment of the violation.

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§17C-17A-10. Penalties for violation of weight laws; impounding vehicles.

(a) Any owner, lessee or borrower of a commercial motor vehicle or combination of vehicles transporting coal who operates or permits to be operated on any highway the vehicle or combination of vehicles with a total gross weight load imposed upon the highway by any one group of two or more consecutive axles in excess of that permitted by section five of this article is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine based on the number of pounds in excess of the registered weight, or in excess of allowable weights for single axle, or in excess of allowable weights for groups of two or more consecutive axles, in accordance with the following schedule:

Excess Weight Amount of Fine

1 to 4,000 pounds. 1 cent per overweight pound

4,001 to 8,000 pounds. 3 cents per overweight pound

8,001 to 12,000 pounds. 7 cents per overweight pound

12,001 to 16,000 pounds 10 cents per overweight pound

16,001 to 20,000 pounds 15 cents per overweight pound

20,001 to 40,000 pounds 30 cents per overweight pound

40,001 pounds or more 45 cents per overweight pound

(b) Upon a second or subsequent conviction within two years thereafter, the owner, lessee or borrower shall be punished by a fine according to the following schedule:

Excess Weight Amount of Fine

1 to 4,000 pounds 1 cent per overweight pound

4,001 to 8,000 pounds 5 cents per overweight pound

8,001 to 12,000 pounds 10 cents per overweight pound

12,001 to 16,000 pounds 15 cents per overweight pound

16,001 to 20,000 pounds 20 cents per overweight pound

20,001 to 40,000 pounds 40 cents per overweight pound

40,001 pounds or more 80 cents per overweight pound

(c) The fines specified in subsections (a) and (b) of this section are mandatory and may not

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be waived or reduced by any judicial officer.

(d) In the event any owner, lessee or borrower of a vehicle is charged with violating this section, the vehicle charged to have been overloaded shall be impounded by the arresting officer. The vehicle shall not be released to the alleged offender or the owner unless and until he or she either has: (1) Been acquitted of the charge; (2) been found guilty of the charge and paid any fine assessed under subsection (a) or (b) of this section; or (3) furnished cash or surety bond in at least double the amount of the fine which may be assessed the offender under subsection (a) or (b) of this section conditioned upon the payment of any fine and costs assessed for the violation. The offender is liable for any reasonable storage costs incurred in storing impounded vehicles: Provided, That if the owner of the vehicle is a resident of or has a principal place of business located in this state and the vehicle has been duly licensed in the state, then the vehicle may not be impounded by the arresting officer who shall deliver to the operator a written notice of the violation; the place, date and time of violation; the license number of the vehicle; the title number and name and address of the owner; the driver's name, address and the number of his or her commercial driver's license; and the court, place, date and time for hearing, which shall be within ten days of the violation, Saturdays, Sundays and holidays excluded. A copy of the notice shall be mailed to the owner of the vehicle within forty-eight hours. If the owner or his her or its agent fails to appear at the designated place and time or, if convicted, fails to pay the fine and costs assessed for the violation, the court shall order the owner to post a bond or the impounding of the vehicle as provided in this section.

(e) Any shipper or receiver who directs or knowingly permits a commercial motor vehicle to be loaded in excess of registered weight, allowable weights for single axle or allowable weights for groups of two or more consecutive axles is also guilty of a misdemeanor and, upon conviction, shall be punished by a fine equal to that which may be imposed on the owner, lessee or borrower of a commercial motor vehicle under subsection (a) of this section.

(f) The penalties and fees specified in this section are in addition to any other liability that may be legally fixed against the owner, operator or other person charged with a weight violation.

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§17C-17A-11. Effective date.

Criminal and administrative penalties imposed by this article take effect on October 1, 2003.

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§17C-17A-12. Designating special coal resource transportation roads, highways and bridges.

(a) From those counties and districts described in subsection (a), section three of this article, the Commissioner of the Division of Highways shall identify those public roads, highways and bridges used during the previous twelve-month period for transportation of quantities of coal in excess of fifty thousand tons or projected to be used for transporting quantities of coal in excess of fifty thousand tons during the ensuing year. The identification process shall include the following as to each discretely identifiable section of the public highway:

(1) The current condition of the public roads, highways and bridges;

(2) The estimated quantities of coal transported;

(3) Any planned or necessary maintenance or improvement;

(4) The number of truck loads of coal transported in an average day;

(5) Any anticipated increase or decrease in the quantity of coal being transported; and

(6) Other information determined by the Commissioner to be relevant.

(b) Upon completion of the identification process, but in no event later than July 1, 2003, the Commissioner shall designate by order an interim coal resource transportation road system consisting of those public roads, highways, bridges or segments thereof which may be used as special coal haulage roads consistent with the authority contained in this article. The Commissioner shall establish a process for the receipt and evaluation of public comment on the designations contained within the interim coal resource transportation road system, and designate weight limits and other conditions for use of the coal resource transportation road system as public interest so provides. The Commissioner shall publish a directory, including supporting maps and other documents, of the interim coal resource transportation road system.

(c) By no later than January 1, 2004, the Commissioner shall designate by order the coal resource transportation road system and shall publish a directory, including supporting maps and other documents, of that road system.

(d) The Commissioner shall establish a process for periodic evaluation of the designations contained in the coal resource transportation road system in order to add to or delete from the road system certain additional sections of public highways: Provided, That the evaluations and modifications of the road system shall be completed at a minimum on an annual basis.

(e) Effective July 1, 2005, there is created the coal resource transportation designation committee, the purpose of which is to approve the designation of additional coal resource transportation roads pursuant to the provisions of this section: Provided, That the committee

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may only consider those applications for designation of roads, highways and bridges not located within those whole counties identified in section three of this article.

(f) The committee consists of the following members:

(1) The Commissioner of Highways, or his or her designee;

(2) The Superintendent of the State Police, or his or her designee;

(3) One member who is representative of the coal industry, to be appointed by the Governor;

(4) One citizen member from the largest citizen action group, to be appointed by the Governor; and

(5) One member of the largest organization representing coal miners, to be appointed by the Governor.

(g) The Governor shall appoint members with the advice and consent of the Senate. Appointed members shall serve for terms of three years. No member may be appointed to serve more than two consecutive terms. The committee shall annually nominate from its members a chair, who shall hold office for one year.

(h) The public members of the committee may receive compensation for attendance at official meetings, not to exceed the amount paid to members of the Legislature for their interim duties as recommended by the citizens Legislative Compensation Commission and authorized by law. Committee members may be reimbursed for actual and necessary expenses incurred for each day or portion of a day engaged in the discharge of committee duties in a manner consistent with guidelines of the travel management office of the Department of Administration.

(i) The committee shall accept applications from any person for designation or decertification of public roads, highways and bridges, or segments thereof in any county in the state, which may be used as special coal haulage roads consistent with the authority contained in this article. The committee shall establish a process for the receipt and evaluation of public comment on the designations contained in applications: Provided, That, prior to any designation the committee shall first have held a public hearing in the county wherein the public road, highway or bridge is located: Provided, however, That, where a public road, highway or bridge is located in more than one county, the hearing shall be conducted in the county containing the longest mileage under designation: Provided further, That prior to any public hearing the applicant shall cause notice of such public hearing or hearings by Class I legal advertisement.

(j) Once an application has been approved by the committee and the public road, highway or bridge has become part of the coal resource transportation road system, such route must be used for coal haulage pursuant to the provisions of this article within one year of its designation. In the event any public road, highway or bridge that is part of the coal resource

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transportation road system ceases to be used for coal haulage for a period of time exceeding one year, then such route may be decertified by the committee upon application by any person: Provided, That prior to any decertification the committee shall first have held a public hearing in the county wherein the public road, highway, or bridge is located: Provided, however, That where a public road, highway or bridge is located in more than one county, the hearing shall be conducted in the county containing the longest mileage under decertification: Provided further, That prior to any public hearing the applicant shall cause notice of such public hearing or hearings by Class I legal advertisement.

(k) Prior to rendering a final decision on any application for designation or decertification of a coal resource transportation road, the committee shall first report its findings and recommendations on each pending application to the Joint Committee on Government and Finance. The Joint Committee on Government and Finance may comment on the application which comments shall be considered by the committee. The committee may not make final any designation or decertification before thirty days after reporting its findings and recommendations on an application to the Joint Committee on Government and Finance.

(l) The coal resource transportation designation committee created in this section shall report its activities to the Secretary of Transportation who will provide the necessary staff to assist the committee in the discharge of its functions pursuant to this section.

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§17C-17A-13. Authority of the commissioner of the division of highways relating to road and bridge repair on designated coal resource transportation roads.

(a) In addition to all other powers provided by law to the commissioner of highways, he or she may enter into agreements with coal shippers, motor vehicle operators or owners holding or applying for permits issued pursuant to this article, or with any other persons, for the purpose of replacing, repairing, widening, reconstructing, altering, improving or maintaining public highways used for coal resource transportation. These agreements shall contain necessary criteria to assure any damages associated with the transport of coal upon the respective public highways are ameliorated.

(b) All moneys collected by the commissioner shall be deposited in a special account created within the state road fund, known as the coal resource transportation fund, to be expended for the purposes set forth in subsection (a) of this section.

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§17C-17A-14. Exclusion of off-road vehicles.

Notwithstanding any other provisions of state law to the contrary, the provisions of this article shall not apply to coal hauling vehicles operating off-road or vehicles designed for off-road.

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§17C-17A-15. Exclusion of interstate highways.

Notwithstanding any other provisions of this code to the contrary, the provisions of this article shall not apply to the interstate highways in this state.

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§17C-17A-16. Spotting unlawful; penalties.

It is unlawful for any person to intentionally assist an owner or operator of a commercial motor vehicle engaged in the transportation of coal to avoid a road, safety or other lawful inspection or enforcement activity by any law or weight enforcement officer through electronic communications or other means intended to give the commercial vehicle driver knowledge of the location of the officers. Any person who violates this section is guilty of a misdemeanor and, shall, upon conviction, be fined not less than $1,000 and upon a second or subsequent conviction, fined not less than $2,000.

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