WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1990

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ENROLLED

HOUSE BILL No. 4540

(By Delegate Andeson

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Passed March 10, 1990

In Effect 90 Days from Passage

C-541
ENROLLED

H. B. 4540
(By Delegate Anderson)

[Passed March 10, 1990; in effect ninety days from passage.]

AN ACT to amend and reenact section ten, article four, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections one, four, five, ten and fifteen, article six of said chapter; and to further amend said chapter by adding thereto a new article, designated article six-b, relating to motor vehicle administration; transfers of title; providing a definition of a total loss vehicle; providing for inspection of rebuilt motor vehicles by an inspector from the department of motor vehicles; setting fees; criminal penalties; licensing of wreckers/dismantlers/rebuilder; providing definitions; authorizing a special plate; setting fees; motor vehicles; licensing of license service businesses to issue temporary registration plates; requiring a bond; fees; creating a special fund; procedure for refusal to issue; form of license certificate; certified copies; license good for one year; renewals; investigations and confidentiality; suspension and revocation; violations and criminal penalties; injunctive relief; and promulgation of rules.

Be it enacted by the Legislature of West Virginia:

That section ten, article four, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that sections one, four, five, ten and fifteen, article six of said chapter be amended and reenacted; and that said chapter be further amended by
adding thereto a new article, designated article six-b, all to read as follows:

ARTICLE 4. TRANSFERS OF TITLE OR INTEREST.

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

1. In the event a motor vehicle is determined to be a total loss or otherwise designated as "totaled" by any insurance company or insurer, and upon payment of an agreed price as a claim settlement to any insured or claimant owner for the purchase of the vehicle, the insurance company or the insurer shall receive the certificate of title and the vehicle. The insurance company or insurer shall within ten days surrender the certificate of title and a copy of the claim settlement to the department of motor vehicles. The department shall issue a "salvage certificate," on a form prescribed by the commissioner, in the name of the insurance company or the insurer. Such certificate shall contain on the reverse thereof spaces for one successive assignment before a new certificate at an additional fee is required. Upon the sale of the vehicle the insurance company or insurer shall endorse the assignment of ownership on the salvage certificate and deliver it to the purchaser. The vehicle shall not be titled or registered for operation on the streets or highways of this state unless there is compliance with subsection (b) of this section. In the event a motor vehicle is determined to be damaged in excess of seventy-five percent of its retail price as described in the national automobile dealers association official used car guide, a junk card will be issued in lieu of a salvage certificate.

(a) Any owner, who scraps, compresses, dismantles or destroys a vehicle for which a certificate of title or salvage certificate has been issued, shall, within twenty days, surrender the certificate of title or salvage certificate to the department for cancellation. Any person who purchases or acquires a vehicle as salvage or scrap, to be dismantled, compressed or destroyed, shall within twenty days surrender the certificate to the department. Should a vehicle less than eight years old
be determined to be a complete fire, flood or basket, a photograph of the vehicle shall accompany the surrendered certificate: Provided, That the term "basket" means a vehicle which has been damaged more than seventy-five percent of the retail price as described in the national automobile dealers association official used car guide. If the vehicle is to be reconstructed, the owner must obtain a salvage certificate and comply with the provisions of subsection (b) of this section.

(b) If the motor vehicle is a "reconstructed vehicle" as defined in section one, article one of this chapter, it may not be titled or registered for operation until it has been inspected by an official state inspection station and by a representative of the department of motor vehicles who has been designated by the commissioner as an investigator. Following an approved inspection, an application for a new certificate of title may be submitted to the department; however, the applicant shall be required to retain all receipts for component parts, equipment and materials used in the reconstruction. The salvage certificate must also be surrendered to the department before a certificate of title may be issued.

c) The department shall charge a fee of fifteen dollars for the issuance of each salvage certificate but shall not require the payment of the five percent privilege tax. However, upon application for a certificate of title for a reconstructed vehicle, the department 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 is exempt from the five percent privilege tax upon titling a reconstructed vehicle. The department shall collect a fee of thirty-five dollars 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 department to carry out the provisions of this article. Licensed wreckers/dismantler/rebuilders may charge a fee not to exceed twenty-five dollars for
all vehicles owned by private rebuilders which are inspected at the place of business of a wrecker/dismantler/rebuilder.

(d) A certificate of title issued by the department for a reconstructed vehicle shall contain markings in bold print on the face of the title that it is for a reconstructed vehicle: *Provided,* That if the application for a certificate of title is accompanied a certificate of inspection certifying that no more than two major components (as that term is defined in section one of article six of this chapter) were replaced, the boldface markings "reconstructed vehicle" shall not appear on the title.

Any person who violates the provisions of this section shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than five hundred dollars nor more than one thousand dollars, or imprisoned in the county jail for not more than one year, or both fined and imprisoned.

ARTICLE 6. LICENSING OF DEALERS AND WRECKERS OR DISMANTLERS; SPECIAL PLATES; TEMPORARY PLATES OR MARKERS, ETC.

PART I. DEFINITIONS; LEGISLATIVE FINDINGS AND PUBLIC POLICY.

§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 his agents and employees, if any, while acting within the scope of their authority or employment), engaged in, or who holds himself 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 his agents and employees, if any, while acting within the scope of their authority or employment), engaged in, or holds himself out to the public to
be engaged in, the business in this state of selling five
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 his agents and employees, if any, while acting
within the scope of their authority or employment),
engaged in, or who holds himself out to the public to be
engaged in, the business in this state of selling new
and/or used house trailers, or new and/or used house
trailers and trailers.

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

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

(6) “Used parts dealer” means every person (other
than his agents and employees, if any, while acting
within the scope of their authority or employment),
engaged in, or who holds himself 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 his agents and employees, if any,
while acting within the scope of their authority or
employment), engaged in, or who holds himself 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 are in the business
of rebuilding salvage motor vehicles for the purpose of
resale to the public.

(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 or intended for human occupancy and commonly referred to as mobile homes or house trailers, but shall not include fold down camping and travel trailers.

(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" shall, in addition to the ordinary definitions of such terms, include 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" shall, in addition to the ordinary definition of that term, also include 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” shall, in the case of a new motor vehicle dealer, mean 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, 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 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 such dealer with respect to motor vehicles sold by him, which shall be easily accessible to the public, which shall conform to all applicable laws of the state of West Virginia and the ordinances of the municipality in which it is located, if any, which shall display thereon at least one permanent sign, clearly visible from the principal public street or highway nearest said location and clearly stating the business which is or shall be conducted thereat, and which shall have adequate facilities to keep, maintain and preserve records, papers and documents necessary to carry on such business and to make the same available to inspection by the commissioner at all reasonable times: Provided, That the requirement of exclusive use shall be met even though (i) some new and any used motor vehicles sold or to be sold by such 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 such location is or is to be served by other facilities and space of such dealer for the servicing and repair of at least one motor vehicle, adequate and suitable as aforesaid, and each such 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; (ii) house trailers, trailers and/or motorcycles are sold or are to be sold thereat, if, subject to the provisions of section five of this article,
a separate license certificate is obtained for each such type of vehicle business, which license certificate remains unexpired, unsuspended and unrevoked; (iii) farm machinery is sold thereat; and (iv) accessory, gasoline and oil, or storage departments are maintained thereat, if such departments are operated for the purpose of furthering and assisting in the licensed business or businesses.

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

(19) "Established place of business" shall, in the case of a used motor vehicle dealer, mean 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, as the case may be, which is or is to be used exclusively 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 such dealer with respect to used motor vehicles sold by him, which shall be easily accessible to the public, shall conform to all applicable laws of the state of West Virginia, and the ordinances of the municipality in which it is located, if any, which shall display thereon at least one permanent sign, clearly visible from the principal public street or highway nearest said location and clearly stating the business which is or shall be conducted thereat, and which shall have adequate facilities to keep, maintain and preserve records, papers and documents necessary to carry on such business and to make the same 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 such servicing and repair services and space in like manner as if said servicing and repair facilities and space were located in or on said dealer's place of business, then, so long as such an agreement or agreements are in effect, it shall not be necessary for such dealer to maintain such servicing and repair facilities and space at his place of business in order for such place of business to be an established place of business as herein defined: Provided, however, that the requirement of exclusive use shall be met even though (i) house trailers, trailers and/or motorcycles are sold or are to be sold thereat, if, subject to the provisions of section five of this article, a separate license certificate is obtained for each such type of vehicle business, which license certificate remains unexpired, unsuspended and unrevoked; (ii) farm machinery is sold thereat; and (iii) accessory, gasoline and oil, or storage departments are maintained thereat, if such departments are operated for the purpose of furthering and assisting in the licensed business or businesses.

(20) “Established place of business” shall, in the case of a house trailer dealer, trailer dealer, recreational vehicle dealer, motorcycle dealer, used parts dealer and wrecker or dismantler, mean 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, as the case may be, which shall be easily accessible to the public, which shall conform to all applicable laws of the state of West Virginia and the ordinances of the municipality in which it is located, if any, which shall display thereon at least one permanent sign, clearly visible from the principal public street or highway nearest said location and clearly stating the business which is or shall be conducted thereat, and which shall have adequate facilities to keep, maintain and preserve records, papers and documents necessary to carry on such business and to make the same available to inspection by the commissioner at all reasonable times.

(21) “Manufacturer” means every person engaged in the business of reconstructing, assembling or reassem-
bling vehicles with a special type body required by the purchaser if said vehicle is subject to the title and registration provision of the 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 his agents and employees, if any, while acting within the scope of their authority or employment), engaged in, or who holds himself out to the public to be engaged in, the business in this state of selling new and/or used recreational vehicles.

(24) “Motorboat” means any vessel propelled by an electrical, steam, gas, diesel or other fuel propelled or driven motor, whether or not such motor is the principal source of propulsion, but shall 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.

(26) “All-terrain vehicle” (ATV) means any motor vehicle designed for off-highway use and designed for operator use only with no passengers, having a seat or saddle designed to be straddled by the operator, and handlebars for steering control.

(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 four hundred 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 recrea-
(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 or snowmobile.

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

(b) Under no circumstances whatever shall 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 shall come in possession or ownership of, or acquire contract rights, or security interests in or to, any vehicle or vehicles or any part thereof and shall sell such vehicle or vehicles or any part thereof for purposes other than engaging in and holding himself or itself 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” shall have the meaning ascribed to it in subsection (a) of this section.

§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 such form as may be 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 such named insured, against loss from the liability imposed by law for damages arising out of the ownership, operation, maintenance or use of such vehicle or vehicles, subject to minimum limits, exclusive of interest and costs, with respect to each such vehicle, as follows: Twenty thousand dollars because of bodily injury to or death of one person in any one accident and, subject to said limit for one person, forty thousand dollars because of bodily injury to or death of two or more persons in any one accident, and ten thousand dollars 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, such application shall disclose, but not be limited to, the following:

(1) The type of business for which a license certificate
(2) If the applicant be an individual, the full name and address of the applicant and any trade name under which he will engage in said business;

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

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

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

(6) Whether the applicant, any partner, officer or director thereof has previously engaged in said 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 thereof 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 such 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 past history of the applicant; and

(9) Such other information as 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 said 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 certif-
icate to engage in the business of new motor vehicle dealer, such 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 motor vehicles, if any, sold at retail in this state by such applicant or his predecessor, if any, during the preceding fiscal year, and if no new motor vehicles were sold at retail in this state by such applicant or his predecessor, if any, during the preceding fiscal year, the number of new motor vehicles the applicant reasonably expects to sell at retail in this state 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, such 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 in this state by such applicant or his predecessor, if any, during the preceding fiscal year, and if no used motor vehicles were sold at retail in this state by such applicant or his predecessor, if any, during the preceding fiscal year, the number of used motor vehicles the applicant reasonably expects to sell at retail in this state 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, such application shall disclose such information as the commissioner may reasonably require.

(f) Such 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. Such application must be accompanied by a bond of the applicant in the penal sum of two thousand dollars, in such form as may be prescribed by the commissioner, conditioned that the applicant will not in the conduct of his 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 autho-
rized to do business in this state, which bond shall be
effective as of the date on which the license certificate
sought is issued.

(g) Upon receipt of any such fully completed applica-
tion, together with any bond required as aforesaid, the
certificate of insurance as aforesaid and the appropriate
fee as hereinafter provided in section ten of this article,
the commissioner may conduct such investigation, as he
deems necessary to determine the accuracy of any
statements contained in such application and the
existence of any other facts which he deems relevant in
considering such application. To facilitate such investi-
gation, 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
therewith shall be confidential for the use of the
department. No person shall divulge any information
contained in any such application or any information
submitted therewith except in response to a valid
subpoena or subpoena duces tecum issued pursuant to
law.

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

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.

PART III. FEES AND DEALER SPECIAL
PLATES GENERALLY.
§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 shall be two hundred and fifty dollars: Provided, That if an application for a license certificate is denied or refused in accordance with section six of this article, one hundred twenty-five dollars shall be refunded to the applicant. The initial application fee shall entitle 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 shall be one hundred dollars. This fee shall also entitle such licensee to one dealer's special plate which shall be known as a Class D special plate. Up to nine additional Class D special plates shall be issued to any such licensee upon application therefor on a form prescribed by the commissioner for such purpose and the payment of a fee of five dollars for each additional Class D special plate. Any such licensee who obtains a total of ten Class D special plates as aforesaid shall be entitled to receive additional Class D special plates on a formula basis, that is, one additional Class D special plate per twenty new motor vehicles sold at retail in this state by such licensee or his predecessor 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 five dollars for each such additional Class D special plate: Provided, that in the case of a licensee who did not own or operate such business during such preceding fiscal year and who has no predecessor who owned or operated such business during the preceding fiscal year, additional Class D special plates shall be issued, for the ensuing fiscal year only, on a formula basis of one additional Class D special plate per twenty new motor vehicles which such licensee estimates on his application for his license certificate he
will sell at retail in this state during said ensuing fiscal year. Any such licensee may obtain Class D special plates in addition to the ten plates authorized above and any authorized on a formula basis, but the cost of each such Class D special plate shall be thirty dollars.

(c) The annual renewal fee required for a license certificate to engage in the business of used motor vehicle dealer shall be one hundred dollars. This fee shall also entitle such licensee to one dealer's special plate which shall be known as a Class D-U/C special plate. Up to four additional Class D-U/C special plates shall be issued to any such licensee upon application thereon a form prescribed by the commissioner for such purpose and the payment of a fee of five dollars for each additional Class D-U/C special plate. Any such licensee who obtains a total of five Class D-U/C special plates as aforesaid shall be 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 thirty used motor vehicles sold at retail in this state by such licensee or his predecessor during the preceding fiscal year, upon application thereon a form prescribed by the commissioner for such purpose and the payment of a fee of five dollars for each such additional Class D-U/C special plate: Provided, That in the case of a licensee who did not own or operate such business during such preceding fiscal year and who has no predecessor who owned or operated such business during the preceding fiscal year, additional Class D-U/C special plates shall be issued, for the ensuing fiscal year only, on a formula basis of one additional Class D-U/C special plate per thirty used motor vehicles which such licensee estimates on his application for his license certificate he will sell at retail in this state during said ensuing fiscal year. Any such licensee may obtain Class D-U/C special plates in addition to the five plates authorized above and any authorized on a formula basis, but the cost of each such Class D-U/C special plate shall be thirty dollars.

(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, shall be
twenty-five dollars. This fee shall also entitle such
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 such licensee
upon application therefor on a form prescribed by the
commissioner for such purpose and the payment of a fee
of five dollars 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 shall be one hundred dollars. This fee
shall also entitle such 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 such licensee upon application therefor on
a form prescribed by the commissioner for such purpose
on the payment of a fee of twenty-five dollars for each
such 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
shall be ten dollars. This fee shall also entitle such
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 such dealer upon
application therefor on a form prescribed by the
commissioner for such purpose and the payment of a fee
of five dollars for each such additional Class F special
plate.

(g) The annual renewal fee required for a license
certificate to engage in the business of
wrecker/dismantler/rebuilder, shall be fifteen dollars.
Upon payment of the fee for said license certificate, a
licensee shall be entitled to up to four special license
plates which shall be known as Class WD special plates.
Such plates shall be issued to any such licensee upon
application therefor on a form prescribed by the
commissioner for such purpose and the payment of a fee
of twenty-five dollars for each such plate. Such 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 twenty-five dollar 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 contain such other distinguishing marks or characteristics as the commissioner may prescribe.

§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 department 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 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 three dollars for each such temporary registration plate or marker. 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 permanent form a record of all temporary
registration plates or markers delivered to him, a record of all temporary registration plates or markers issued by him, 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 dealer who issues a temporary registration plate or marker shall, within five working days after he issues such plate or marker, send to the department a copy of the temporary registration plate or marker certificate properly executed by such dealer and the purchaser. 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 shall 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 shall a dealer issue a temporary registration plate or marker to anyone possessed of 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 department to exchange such annual registration plate of a different class in accordance with the provisions of section one, article four of this chapter; nor shall a dealer lend to anyone, or use on any vehicle which he may own, a temporary registration plate or marker. It shall be 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.

(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 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 directions are not being complied with by
a dealer, he 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 department: Provided,
That if the annual registration plate is not received
within sixty days of the issuance of the temporary
registration plate or marker, the owner shall, notwith-
standing 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 department or upon the
rescission of the contract to purchase the vehicle in
question, or upon the expiration of sixty 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.

ARTICLE 6B. LICENSE SERVICES.

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

1 No person shall engage in the license service business
2 in West Virginia without a license certificate. For
3 purposes of this article, the term “license service or
4 services” shall mean any person processing department
5 of motor vehicle documents for compensation when such
6 service or services are offered to the general public.

7 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.

§17A-6B-2. Applicant must be bonded.

An application for a license certificate must be
accompanied by a bond in the penal sum of twenty-five
thousand dollars and have a corporate surety authorized
to do business in this state, to insure 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.

§17A-6B-3. Fee required for license certificate; special
fund created.

(a) The initial application fee for a certificate to
engage in the license service business is twenty-five
dollars. The renewal fee for such certificate is twenty-
five dollars.

(b) There is hereby created in the treasury a special
fund, named the “motor vehicle license service admin-
istration fund,” into which shall be paid all of the initial
licensing fees, the renewal licensing fees, and certified
copies fees. The commissioner of motor vehicles shall use
the moneys in this account to administer and enforce the
provisions of this article.

§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 department. 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.

§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.

§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 the first day of January, one thousand nine hundred ninety-one. This license shall be valid for one year.

(b) Any initial application made after the first day of January, one thousand nine hundred ninety-one, and any year thereafter, shall expire on the thirty-first day of December 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.

§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 department, 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 one dollar 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 one dollar shall be required for any such certified copy.

§17A-6B-8. Changes in business; action required.

1 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:

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

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

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

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

10 (5) A change in ownership of the business;

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

14 (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.

§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 department, 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 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 of 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 department 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.

§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 department 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 three dollars for each such temporary registration plate or marker. No refund or credit of fees paid by license services to the commis-
sioner for temporary registration plates or markers shall be allowed, except that in the event the commis-
sioner 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 department 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 possessed of 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 department to exchange such annual registration plate of a different class in accordance with the provisions of section one, article four of this chapter. A license service shall not lend to anyone, or use on any vehicle which he 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 department of motor vehicles within forty-eight 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 department, or upon the rescission of the contract to purchase the vehicle in question, or upon the
expiration of sixty days from the date of issuance, depending upon which event occurs first.

(h) A license service may charge a fee not to exceed five dollars for issuing a temporary registration plate or marker.

§ 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.

§ 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.


1 The commissioner shall promulgate rules in accordance with chapter twenty-nine-a of this code in order to effect the provisions of this article.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Frederick I. Panken
Chairman Senate Committee

Bernard V. Kelly
Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

Jarrell E. Land
Clerk of the Senate

Donald G. Kopp
Clerk of the House of Delegates

Kethan Sandelin
President of the Senate

James C. track
Speaker of the House of Delegates

The within is approved this the 30th day of March, 1990.

Morton Capitol
Governor