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WEST VIRGINIA LEGISLATURE  
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# WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1996



# ENROLLED

HOUSE BILL No. 4207

(By Delegates *Gallagher, Adkins, Walters,  
Hutchins, Thompson and Green*)



Passed March 9, 1996

In Effect From Passage

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OFFICE OF THE CLERK  
OF THE HOUSE OF DELEGATES

## ENROLLED

# H. B. 4207

(BY DELEGATES GALLAGHER, ADKINS, WALTERS, HUTCHINS,  
THOMPSON AND GREER)

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[Passed March 9, 1996; in effect from passage.]

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AN ACT to amend chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article twenty-six-b, relating to the establishment of a health maintenance organization guarantee association to protect residents of this state against the failure of a domestic health maintenance organization to fulfill its contractual obligations due to insolvency, and to be funded by domestic health maintenance organizations; short title; purpose; scope; construction; definitions; creation of association; board of directors; powers and duties of association; assessments; plan of operation; powers and duties of the commissioner; records; annual report of the association; tax exemptions; immunity; and prohibited advertisements.

*Be it enacted by the Legislature of West Virginia:*

That chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article twenty-six-b, to read as follows:

**ARTICLE 26B. WEST VIRGINIA HEALTH MAINTENANCE ORGANIZATION GUARANTY ASSOCIATION.**

**§33-26B-1. Short title.**

1        This article shall be known and may be cited as the

2 "West Virginia Health Maintenance Organization Guaranty  
3 Association Act."

**§33-26B-2. Purpose.**

1 The purpose of this article is to protect, subject to  
2 certain limitations, covered individuals against the failure  
3 or inability of a health maintenance organization to per-  
4 form its contractual obligations due to its insolvency.

**§33-26B-3. Scope.**

1 This article shall provide prospective coverage for any  
2 individual resident of this state who is entitled to receive  
3 health care services under a policy, certificate or contract,  
4 other than one purchased under this state's medicaid pro-  
5 gram, which has been issued by a health maintenance  
6 organization possessing a valid certificate of authority  
7 issued by the commissioner pursuant to article  
8 twenty-five-a of this chapter.

**§33-26B-4. Construction.**

1 This article shall be liberally construed to effect its  
2 purpose as set forth in section two of this article, which  
3 shall constitute an aid and guide to its interpretation.

**§33-26B-5. Definitions.**

1 (a) As used in this article:

2 (1) "Association" means the West Virginia health  
3 maintenance organization guaranty association created by  
4 section six of this article.

5 (2) "Board of directors" means the board of directors  
6 of the association, formed pursuant to section seven of this  
7 article.

8 (3) "Commissioner" means the commissioner of insur-  
9 ance or his designee.

10 (4) "Contractual obligation(s)" means any and all  
11 obligations to covered individuals under a covered health  
12 care policy.

13 (5) "Covered health care policy" means any policy,  
14 certificate or contract issued by an health maintenance  
15 organization for health care services.

16 (6) "Covered individual" means a subscriber, enrollee  
17 or member of an insolvent health maintenance organiza-  
18 tion who is a resident of this state, but shall not include an  
19 individual enrolled in such health maintenance organiza-  
20 tion under this state's medicaid program.

21 (7) "Date of insolvency" means the date upon which  
22 an order of liquidation is entered by a court of competent  
23 jurisdiction, even if such order has not become final by  
24 the exhaustion of appellate reviews, or if the health main-  
25 tenance organization is incorporated in another state, the  
26 date upon which the commissioner enters an order revok-  
27 ing the health maintenance organization's certificate of  
28 authority as described in subdivision nine of this subsec-  
29 tion.

30 (8) "Health maintenance organization" means a health  
31 maintenance organization possessing a valid certificate of  
32 authority issued by the commissioner pursuant to article  
33 twenty-five-a of this chapter, but shall not include any  
34 health maintenance organization with one hundred per-  
35 cent of its enrollees participating in the health mainte-  
36 nance organization under this state's medicaid program or  
37 any health maintenance organization which is not re-  
38 quired, as a condition of being allowed to transact business  
39 as an health maintenance organization in this state, to  
40 maintain at least two million dollars of either surplus or of  
41 surplus and fully paid in capital stock.

42 (9) "Insolvent health maintenance organization" or  
43 "insolvent" means an health maintenance organization  
44 against which an order of liquidation has been entered by  
45 a court of competent jurisdiction, even if such order has  
46 not become final by the exhaustion of appellate reviews,  
47 or an health maintenance organization which is incorpo-  
48 rated in another state and which has had its certificate of  
49 authority revoked by an order of the commissioner con-  
50 taining a finding by the commissioner that the health  
51 maintenance organization either is no longer financially  
52 responsible and may reasonably be expected to be unable  
53 to meet its obligations to its enrollees, or is in a hazardous  
54 financial condition.

55 (10) "Person" means any individual, corporation, part-

56 nership, association, or voluntary organization, or any  
57 other legal entity.

58 (b) Words and phrases which are not defined in this  
59 section, but are defined in article twenty-five-a of this  
60 chapter, shall have the meanings established in that article  
61 unless the context in which a word or phrase appears  
62 clearly requires otherwise.

**§33-26B-6. Creation of association.**

1 There is created a nonprofit legal entity to be known  
2 as the West Virginia health maintenance organization  
3 guaranty association. All health maintenance organiza-  
4 tions shall be and must remain members of the association  
5 as a condition of the continuation of their certificates of  
6 authority to transact business in this state as health mainte-  
7 nance organizations. The association shall perform its  
8 functions under the plan of operation to be established  
9 and approved pursuant to the provisions of section ten of  
10 this article and shall exercise its powers through a board of  
11 directors to be established and approved pursuant to the  
12 provisions of section seven of this article. The association  
13 shall come under the immediate supervision of the com-  
14 missioner.

**§33-26B-7. Board of directors.**

1 (a) The board of directors of the association shall  
2 consist of not less than five nor more than nine individuals  
3 serving terms as established in the plan of operation. The  
4 members of the board of directors shall be selected by a  
5 vote of the health maintenance organizations, subject to  
6 the approval of the commissioner, with each health main-  
7 tenance organization being entitled to one vote. Vacan-  
8 cies on the board of directors shall be filled for the re-  
9 maining period of the term in the same manner as initial  
10 appointments.

11 (b) To allow for the selection the original board of  
12 directors and the organization of the association, the com-  
13 missioner shall give notice to all health maintenance orga-  
14 nizations of the time and place of an organizational meet-  
15 ing. If the health maintenance organizations have not  
16 selected a suitable board of directors within sixty days

17 following the organizational meeting, the commissioner  
18 may appoint the initial members of the board of directors.

19 (c) In approving or appointing members to the board  
20 of directors, the commissioner shall consider, among other  
21 things, whether all health maintenance organizations are  
22 fairly represented.

23 (d) Members of the board of directors may be reim-  
24 bursed from the assets of the association for reasonable  
25 expenses incurred by them as members of the board of  
26 directors, but shall not otherwise be compensated by the  
27 association for their services.

**§33-26B-8. Powers and duties of the association.**

1 (a) Upon being notified by the commissioner that an  
2 health maintenance organization is insolvent, the associa-  
3 tion, with the approval of the commissioner, shall appoint  
4 one or more health maintenance organizations to enroll  
5 covered individuals.

6 (1) Except as otherwise provided in this article, an  
7 health maintenance organization operating in a given  
8 service area shall be appointed to enroll covered individu-  
9 als within that service area. If more than one health main-  
10 tenance organization is operating in a given service area,  
11 the association shall allocate the covered individuals within  
12 that service area among those health maintenance organi-  
13 zations. The ratio of covered individuals allocated to each  
14 health maintenance organization shall approximate the  
15 ratio of that health maintenance organization's subscribers  
16 in the service area to the total number of health mainte-  
17 nance organization subscribers in the service area. In com-  
18 puting the latter ratio, the association shall use the most  
19 recent membership data filed with the commissioner by  
20 the health maintenance organizations and shall exclude  
21 from the computation all covered individuals.

22 (2) If no health maintenance organization is operating  
23 within a given service area, the association shall appoint to  
24 enroll covered individuals within that service area the  
25 health maintenance organization(s) that it deems best  
26 suited to provide health care services to those individuals.  
27 In determining which health maintenance organization(s)

28 are best suited, the association shall consider the health  
29 care delivery systems and financial resources of all candi-  
30 date health maintenance organizations.

31 (3) An health maintenance organization appointed by  
32 the association shall enroll covered individuals under its  
33 own contract containing terms which are, in the opinion of  
34 the association, comparable to those which were extended  
35 to the covered individuals by the insolvent health mainte-  
36 nance organization. The rate for said contract shall be  
37 determined by the health maintenance organization's rate  
38 methodology for the contract. In selecting a contract of  
39 the appointed health maintenance organization to be used  
40 to provide services to covered individuals, the association  
41 shall consider the services, benefits, and exclusions under  
42 the contract.

43 (4) An health maintenance organization appointed by  
44 the association shall not exclude from coverage a preexist-  
45 ing condition which was not excluded under the covered  
46 individual's policy with the insolvent health maintenance  
47 organization.

48 (5) Except as specifically provided elsewhere in this  
49 section, an health maintenance organization appointed by  
50 the association may not terminate the coverage of a cov-  
51 ered individual for any reason other than:

52 (A) Nonpayment of premiums;

53 (B) Attainment of medicare or medicaid eligibility;

54 (C) Nonresidency in the service area;

55 (D) Fraud;

56 (E) Termination of eligibility.

57 (6) If the association appoints an health maintenance  
58 organization to enroll covered individuals residing in a  
59 service area in which the health maintenance organization  
60 is not currently functioning, the association, at the request  
61 of the health maintenance organization and with the ap-  
62 proval of the commissioner, shall transfer to the health  
63 maintenance organization some or all of the contracts  
64 existing between the insolvent health maintenance organi-

65 zation and providers or other participating entities. Such  
66 transfers shall be prospective only, and the health mainte-  
67 nance organization receiving the contract shall not be  
68 subject to liability, of any type whatsoever, which is based  
69 upon the contract and arose before its transfer.

70 (7) The liability of a health maintenance organization  
71 appointed to enroll covered individuals under this subsec-  
72 tion shall be based only upon the policy issued by the  
73 health maintenance organization, as limited by this article.  
74 In no event shall the health maintenance organization be  
75 subject to liability, of any kind whatsoever, that is based  
76 upon the covered policy issued by the insolvent health  
77 maintenance organization or upon a statement, act or  
78 omission of the insolvent health maintenance organiza-  
79 tion. The liability of the health maintenance organization  
80 shall be strictly limited by the terms of its contract with the  
81 covered individual and shall not include any liability for  
82 any amount or obligation in excess of the applicable limits  
83 of coverage for contractually covered matters, and as lim-  
84 ited by the terms of this article.

85 (8) Notwithstanding any other provision of this chap-  
86 ter, a covered individual shall not be entitled to convert or  
87 renew a contract which has been issued by an health main-  
88 tenance organization pursuant to this subsection unless the  
89 health maintenance organization, in its discretion, agrees  
90 to the conversion or renewal.

91 (b) Notwithstanding any other provision of this article,  
92 coverage provided to a covered individual under this sec-  
93 tion shall terminate when the value of the benefits provid-  
94 ed to the covered individual exceeds one hundred thou-  
95 sand dollars. If the value of the benefits is less than this  
96 amount, coverage nonetheless shall terminate one year  
97 from the insolvent health maintenance organization's date  
98 of insolvency or upon the expiration of the policy issued  
99 by the insolvent health maintenance organization, which-  
100 ever is earlier, but in no event prior to one hundred and  
101 eighty days from the insolvent health maintenance organi-  
102 zation's date of insolvency. When the value of the benefits  
103 provided do not exceed one hundred thousand dollars, no  
104 covered individual may be terminated under the provi-



105 sions of this subsection if, at the time such coverage could  
106 otherwise be terminated:

107 (1) The individual is undergoing treatment for an  
108 acute injury which occurred while the individual was cov-  
109 ered, in which case coverage shall last until such treatment  
110 is completed, but shall be limited to such treatment; or

111 (2) The individual is undergoing treatment for an  
112 acute illness which was diagnosed while the individual was  
113 covered, in which case coverage shall continue until such  
114 treatment is completed, but shall be limited to such treat-  
115 ment; or

116 (3) The individual is undergoing a course of inpatient  
117 treatment which began while the individual was covered, in  
118 which case coverage shall continue until such treatment is  
119 completed, but shall be limited to such treatment.

120 (c) If the association fails to appoint an health mainte-  
121 nance organization to enroll a covered individual within a  
122 reasonable period of time, the commissioner, in his or her  
123 discretion, may appoint an health maintenance organiza-  
124 tion on behalf of the association.

125 (d) At the request of a covered individual, the associa-  
126 tion shall defend any suit brought against that covered  
127 individual contrary to the provisions of section seven-a,  
128 article twenty-five-a of this chapter. If the association  
129 prevails in such a suit, it shall be entitled to recover its  
130 costs and attorney's fees from the plaintiff.

131 (e) The association shall render assistance and advice  
132 to the commissioner, upon his or her request, in any delib-  
133 eration, proceeding, inquiry or presentation which con-  
134 cerns an insolvent health maintenance organization.

135 (f) The association shall have standing to appear be-  
136 fore any court which has jurisdiction over an insolvent  
137 health maintenance organization. Such standing shall  
138 extend to all matters germane to the powers and duties of  
139 the association including, but not limited to, the liquida-  
140 tion of the health maintenance organization, and the deter-  
141 mination or transfer of the contractual obligations, assets  
142 or liabilities of the health maintenance organization.

143 (g) In addition to exercising such other powers as may  
144 be granted or implied elsewhere in this article, the associa-  
145 tion may:

146 (1) Enter into contracts or perform such other actions  
147 as are necessary and appropriate to carry out its duties  
148 under this article.

149 (2) Take any legal actions as are necessary and appro-  
150 priate including, but not limited to, actions for the recov-  
151 ery of any unpaid assessments made under section nine of  
152 this article.

153 (3) Borrow money as necessary to effectuate the pur-  
154 poses of this article and issue evidence of such indebted-  
155 ness, which if not in default, shall be treated as legal invest-  
156 ments for domestic insurers or health maintenance organi-  
157 zations and may be carried by a domestic insurer or health  
158 maintenance organization as an admitted asset.

159 (4) Employ or retain such persons to handle the finan-  
160 cial transactions of the association and to perform such  
161 other functions as become necessary or appropriate; and

162 (5) Negotiate and contract with any liquidator, conser-  
163 vator, or ancillary receiver of an insolvent health mainte-  
164 nance organization.

**§33-26B-9. Assessments.**

1 (a) For the purpose of providing the funds necessary  
2 for the association to carry out its duties under this article,  
3 the initial assessment of health maintenance organizations  
4 shall be as follows:

5 (1) Each health maintenance organization possessing a  
6 valid certificate of authority issued by the commissioner  
7 on or before the effective date of this article shall pay an  
8 initial assessment of five thousand dollars.

9 (2) Prior to and as a condition of first receiving a  
10 certificate of authority from the commissioner after the  
11 effective date of this article, an health maintenance organi-  
12 zation shall pay an initial assessment of five thousand  
13 dollars.

14 (b) To obtain funds to pay administrative expenses,

15 including but not limited to legal costs, the association  
16 may make additional assessments. The association shall  
17 make only such assessments as are necessary to pay ex-  
18 penses or debts which have been incurred by the associa-  
19 tion, or are reasonably foreseeable. Assessments shall be  
20 based on the annual earned premium revenue for  
21 non-medicare and non-medicaid contracts allocated to  
22 West Virginia in the preceding calendar year unless the  
23 association, in its discretion, substitutes such other amount  
24 that more accurately reflects an health maintenance orga-  
25 nization's current activity within this state. The rate used to  
26 compute the assessment shall be the same for all health  
27 maintenance organizations.

28 (c) Assessments shall be made by issuing written no-  
29 tice of the assessment to the health maintenance organiza-  
30 tions, and shall be due thirty days after the issuance of  
31 such written notice. Assessments which are not paid when  
32 due shall accrue interest at a reasonable rate to be set by  
33 the association, subject to the approval of the commission-  
34 er.

35 (d) With the approval of the commissioner, the associ-  
36 ation may abate or defer, in whole or in part, the assess-  
37 ment of an health maintenance organization if, in the  
38 opinion of the association, immediate payment of the  
39 assessment would materially impair the health mainte-  
40 nance organization's ability to fulfill its contractual obliga-  
41 tions. The amount by which an assessment is abated or  
42 deferred may be assessed against the other health mainte-  
43 nance organizations in addition to all other assessments  
44 called for by this section.

45 (e) The association may, by an equitable method es-  
46 tablished in its plan of operation, refund to health mainte-  
47 nance organizations all or part of an assessment which the  
48 association determines is unnecessary to carry out its du-  
49 ties. Refunds shall be proportional to the amounts actual-  
50 ly paid by the health maintenance organizations to satisfy  
51 the assessment.

52 (f) It shall be proper for any health maintenance orga-  
53 nization, in determining its premium rates, to consider the  
54 amount reasonably necessary to meet its assessment obli-  
55 gations under this article.

56 (g) The association shall issue to each health mainte-  
57 nance organization paying an assessment under this arti-  
58 cle, a certificate of contribution for the amount paid. All  
59 outstanding certificates shall be of equal dignity and pri-  
60 ority without reference to amounts or dates of issue. For  
61 purposes of determining the financial condition of the  
62 health maintenance organization, a certificate of contribu-  
63 tion shall be treated as an asset of such form, amount and  
64 duration as the commissioner may prescribe.

**§33-26B-10. Plan of operation.**

1 (a) The association shall submit to the commissioner a  
2 proposed plan of operation and all subsequent amend-  
3 ments thereto to assure the equitable, efficient administra-  
4 tion of the association. The proposed plan of operation  
5 and any amendments thereto shall become effective upon  
6 approval by the commissioner.

7 (b) If the association fails to submit a suitable pro-  
8 posed plan of operation within one hundred and eighty  
9 days following the effective date of this article, or if at any  
10 time thereafter, the association fails to submit suitable  
11 amendments to the plan of operation within a reasonable  
12 time, the commissioner, after notice and hearing, shall  
13 promulgate by order such plan provisions as he deems  
14 necessary or appropriate. Plan provisions promulgated by  
15 the commissioner shall continue in force until modified  
16 by the commissioner or superseded by a plan or amend-  
17 ments thereto which has been submitted by the association  
18 and approved by the commissioner.

19 (c) All health maintenance organizations shall comply  
20 with the plan of operation.

21 (d) In addition to such requirements as are set forth  
22 elsewhere in this article, the plan of operation shall:

23 (1) Establish procedures for handling the assets of the  
24 association;

25 (2) Establish the amount and method of reimbursing  
26 members of the board of directors for reasonable expens-  
27 es;

28 (3) Provide for regular meetings of the board of direc-

29 tors and establish methods by which meetings of the board  
30 of directors may be conducted, including but not limited  
31 to telephone conferences.

32 (4) Establish procedures for keeping records of all  
33 financial transactions of the association, its agents, and the  
34 board of directors;

35 (5) Establish criteria for board members, and proce-  
36 dures for selecting board members and submitting such  
37 selections to the commissioner;

38 (6) Establish procedures for making assessments un-  
39 der this article;

40 (7) Contain additional provisions necessary for the  
41 exercise of the association's powers and the fulfillment of  
42 the association's duties.

43 (e) The plan of operation may provide that any or all  
44 powers of the association, except those set forth in subsec-  
45 tion (f), section eight of this article, and in subdivision two,  
46 subsection (g), section eight of this article, and in section  
47 nine of this article, may be delegated to an administrator,  
48 which may be a corporation, association, or other organi-  
49 zation, and which performs or will perform functions  
50 similar to those of the association, or its equivalent. Such a  
51 delegation shall take effect only with the approval of the  
52 commissioner, who may revoke such delegation at any  
53 time. The administrator shall be reimbursed for any pay-  
54 ments it makes on behalf of the association and shall be  
55 paid for the services it renders to the association. The  
56 delegation of powers to an administrator shall not absolve  
57 the association of any duty imposed upon it by this article.

58 (f) If the plan of operation provides for the delegation  
59 of powers to an administrator, the association shall select  
60 an administrator, with the approval of the commissioner.  
61 The selection of an administrator shall be exempt from the  
62 competitive bidding process which may apply to certain  
63 state agencies. The association shall evaluate potential  
64 administrators based upon reasonable criteria, which shall  
65 include, but not be limited to:

66 (1) The administrator's proven ability to manage large

67 group health insurance plans or health maintenance orga-  
68 nizations;

69 (2) The efficiency of the administrator's procedures;

70 (3) An estimate of the administrator's charges for  
71 services rendered to the association.

**§33-26B-11. Powers and duties of the commissioner.**

1 (a) The commissioner may suspend or revoke, after  
2 notice and hearing, the certificate of authority of an health  
3 maintenance organization for:

4 (1) Failure to pay an assessment when due; or

5 (2) Failure to comply with the plan of operation; or

6 (3) Failure either timely to comply with or timely to  
7 appeal its appointment under section eight of this article.

8 (b) Any action of the board of directors may be ap-  
9 pealed to the commissioner by any health maintenance  
10 organization within thirty days of the action. The resulting  
11 action or order of the commissioner shall be subject to  
12 judicial review in a court of competent jurisdiction.

13 (c) The commissioner may require the association to  
14 notify the enrollees of an insolvent health maintenance  
15 organization, and any other interested parties, of the deter-  
16 mination of insolvency and of their rights under this arti-  
17 cle. Such notification shall be by mail at their last known  
18 addresses, or by publication in a newspaper of general  
19 circulation, if sufficient information for notification by  
20 mail is not available.

21 (d) Powers of the commissioner established in this  
22 section are in addition to those granted or implied else-  
23 where in this chapter, and this section shall not be con-  
24 strued to diminish or eliminate those other powers.

**§33-26B-12. Records.**

1 The association shall keep records of all meetings of  
2 the board of directors and of all transactions by which the  
3 association or its representatives carry carries out its duties.  
4 All records shall be made available to the commissioner  
5 upon his or her request.

**§33-26B-13. Annual report of the association.**

1 The association shall be subject to examination and  
2 regulation by the commissioner. The board of directors  
3 shall submit to the commissioner, not later than the first  
4 day of May of each year and in a form approved by the  
5 commissioner, a financial report for the preceding calen-  
6 dar year and a report of its activities during the preceding  
7 calendar year.

**§33-26B-14. Tax exemptions.**

1 The association shall be exempt from payment of all  
2 fees and all taxes levied by this state or any of its subdivi-  
3 sions except ad valorem taxes.

**§33-26B-15. Immunity.**

1 There shall be no liability on the part of and no cause  
2 of action of any nature shall arise against the association,  
3 members of the board of directors, the commissioner, or  
4 the representatives, agents or employees of the aforemen-  
5 tioned persons for statements made or actions taken or not  
6 taken in the good faith exercise of their powers under this  
7 article, or for the statements, acts or omissions of an health  
8 maintenance organization appointed pursuant to section  
9 eight of this article or an insolvent health maintenance  
10 organization.

**§33-26B-16. Prohibited advertisements.**

1 No person shall make, publish, disseminate, circulate  
2 or place before the public, or cause, directly or indirectly,  
3 to be made, published, disseminated, circulated, or placed  
4 before the public, in any newspaper, magazine, or other  
5 publication, or in the form of a notice, circular, pamphlet,  
6 letter, or poster, or over any radio station or television  
7 station, or in any other way, an advertisement, announce-  
8 ment, or statement which uses the existence of the associa-  
9 tion or of this article for the purpose of soliciting sub-  
10 scriptions to an health maintenance organization: *Provid-*  
11 *ed,* That this section shall not apply to the association.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

*Randy Schomover*  
Chairman Senate Committee

*Rudy Deaunt*  
Chairman House Committee

Originating in the House.

Takes effect from passage.

*Darrell K. Ashes*  
Clerk of the Senate

*Bragoy M. Bay*  
Clerk of the House of Delegates

*Carl Ray Tomblin*  
President of the Senate

*Rob Clevinger*  
Speaker of the House of Delegates

The within *is approved* this the *1st*  
day of *April*, 1996.

*Easton Capenator*  
Governor



PRESENTED TO THE

GOVERNOR

Date 3/28/46

Time 10:01 am