WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1996

ENROLLED
Com. Sub. for
HOUSE BILL No. 4490

(By Delegates Talbott, Gallagher, Cline, Trump, Price, Kelley and Kailoo)

Passed March 9, 1996
In Effect Ninety Days from Passage
ENROLLED

COMMITTEE SUBSTITUTE

FOR

H. B. 4490

(BY DELEGATES TALBOTT, GALLAGHER, CLEMENTS, TRUMP, PREECE, KELLEY AND KALLAI)

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

AN ACT to amend and reenact section three, article three, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section seven, article nine of said chapter; to amend and reenact section nine, article three, chapter seventeen-b of said code; to amend and reenact section six, article two-a, chapter seventeen-d of said code; and to amend and reenact section one, article six-a, chapter thirty-three of said code, all relating to surrender of registration plate or notification upon cancelling insurance coverage; establishing a verification process; changing random sample methods; misdemeanor penalties; suspension of motor vehicle registration; judicial review of suspension; reinstatement fees; providing that courts require current documentation of insurance; and requiring notice of insurance cancellation by registered or certified mail.

Be it enacted by the Legislature of West Virginia:

That section three, article three, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that section seven, article nine of said chapter be amended and reenacted; that section nine, article three, chapter seventeen-b of said code be amended and
reenacted; that section six, article two-a, chapter seventeen-d of said code be amended and reenacted; and that section one, article six-a, chapter thirty-three of said code be amended and reenacted, all to read as follows:

CHAPTER 17A. MOTOR VEHICLE ADMINISTRATION, REGISTRATION, CERTIFICATE OF TITLE, AND ANTITHEFT PROVISIONS.

ARTICLE 3. ORIGINAL AND RENEWAL OF REGISTRATION; ISSUANCE OF CERTIFICATES OF TITLE.

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

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

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

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

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

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

(d) Each applicant shall state whether the vehicle is or is not to be used in the public transportation of passengers or property, or both, for compensation, and if used for compensation, or to be used, the applicants shall certify that the vehicle is used for compensation, and shall, as a condition precedent to the registration of such vehicle, obtain a certificate of convenience, or permit from the public service commission.

(e) A statement under penalty of false swearing that liability insurance is in effect and will continue to be in effect through the entire term of the vehicle registration period within limits which shall be no less than the requirement of section two, article four, chapter seventeen-d of this code, which shall contain the name of the applicant's insurer, the name of the agent or agency which issued the policy and the effective date of the policy, and such other information as may be required by the commissioner of motor vehicles, or that the applicant has qualified as a self-insurer meeting the requirements of section two, article six, chapter seventeen-d of the code and that as a self-insurer he or she has complied with the minimum security requirements as established in section two, article four, chapter seventeen-d, or that the applicant has submitted bond or other security approved by the commissioner of motor vehicles which shall provide the equivalent of the
(1) Intentional lapses of insurance coverage.

(A) In the case of a periodic use or seasonal vehicle, as defined in section three, article two-a, chapter seventeen-d of this code, the owner may provide, in lieu of other statements required by this section, a statement, under penalty of false swearing, that liability insurance is in effect during the portion of the year the vehicle is in actual use, within limits which shall be no less than the requirements of section two, article four, chapter seventeen-d of this code, and other information relating to the seasonal use, on a form designed and provided by the division.

(B) Any registrant who prior to expiration of his or her vehicle registration drops or cancels insurance coverage for any reason other than periodic or seasonal use shall either surrender the registration plate or, shall by certified mail notify the division of the cancellation. The notice shall contain a statement under penalty of false swearing that the vehicle will not be operated on the roads or highways of this state.

(C) The registration of any vehicle upon which insurance coverage has been dropped or canceled under paragraph (B) shall be reinstated upon submission of current proof of insurance and payment of the duplicate plate fee prescribed by this chapter.

(2) Verification Process.

The division shall select no fewer than one percent of the total number of motor vehicles registered annually for a random sample verification of current insurance coverage. The division may also select an owners statement of insurance submitted at the time of registration or registration renewal for verification.

Random sample verification of current insurance coverage shall be conducted on a monthly basis. The basis
for each sample shall be the entire registered motor vehicle base. The selection of a registration for random sample verification shall not preclude the registration from being selected again in any subsequent month.

The division shall notify the registrant by regular mail that he or she has twenty days to provide the division with proof of insurance indicating current insurance coverage on the indicated vehicle as of the date of the notice. The information shall be verified with the indicated insurance company as provided in this section or in the case of a verification of the original owner's statement of insurance, proof of insurance as of the date of submission of the owner's statement.

When a statement or registration is selected for verification, the division shall forward the information provided by the registrant to the listed insurer. The insurer shall notify the division, on a form required by the commissioner, within twenty calendar days if the liability insurance is or is not in effect, as required by this section.

The division may select for verification any statement of liability insurance submitted by a person who has previously been convicted or whose registration or driver's license has been suspended for violating the provisions of section three, article two-a, chapter seventeen-d of this code, or whose statements of liability insurance have previously been found to be incorrect. The division may also determine the correctness of information relating to proof of other security satisfying the requirements of this section.

Following the twenty-day period, if the registrant has not responded, or the division determines through the verification process with the insurance company that there is or was no liability insurance in effect, and the registrant has not complied with the provisions of intentional lapse of insurance then the commissioner shall send a notice of pending suspension of the motor vehicle registration and the suspension of the owner or owner's driver's license to the registrant by certified mail. The notice of pending suspension shall grant the registrant an additional twenty days from the date of the mailing to provide current proof
of insurance as of the original notice date or other requested information to the commissioner. Following this additional twenty-day period, if the registrant fails to provide proof of current insurance coverage as of the date of the original notice, an order of suspension shall be directed to the superintendent by the commissioner as provided in section seven, article nine of this chapter.

The commissioner shall suspend the motor vehicle registration until current proof of insurance is received and shall suspend the driver's license of the owner or owners of the motor vehicle for a period of ninety days: Provided, That whenever the commissioner determines that the vehicle was actually insured despite the receipt of a notice from the insurer, or the license plate was surrendered to the division upon cancellation of coverage or that the registrant complied with the intentional lapse of coverage notice provisions, the suspension shall be withdrawn and any fees collected by the state shall be returned.

Upon the timely written request of a person whose vehicle registration or driver's license is suspended under the provisions of this section, the commissioner shall stay the suspension, and afford the person an opportunity to be heard. The written request must be filed with the commissioner in person or by registered or certified mail, return receipt requested, within ten days after receipt of a copy of the order of suspension.

If the commissioner finds that the person whose vehicle registration or driver's license was suspended was not in violation of the provisions of this section, the commissioner shall rescind his or her earlier order of suspension.

A copy of the commissioner's order made and entered following the hearing shall be served on the person by registered or certified mail, return receipt requested. During the pendency of any hearing, the revocation of the person's license to operate a motor vehicle in this state shall be stayed. If the commissioner shall, after hearing, make and enter an order affirming the commissioner's earlier order of revocation, the person shall be entitled to judicial review as set forth in chapter twenty-nine-a of this code. The commissioner shall not stay enforcement of the
order during the appeal. Pending the appeal, the court may grant a stay or supersedeas of the order only upon motion and hearing, and a finding by the court upon the evidence presented, that there is a substantial probability that the appellant shall prevail upon the merits, and the appellant will suffer irreparable harm if the order is not stayed: Provided, That in no event shall the stay or supersedeas of the order exceed thirty days.

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

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

(g) Each such application for registration shall be accompanied by the fees provided in this article, and an additional fee of fifty cents for each motor vehicle for which the applicant seeks registration, the fee to be deposited in a special revolving fund for the operation by the division of its functions established by the provisions of article two-a, chapter seventeen-d of this code.

ARTICLE 9. OFFENSES AGAINST REGISTRATION LAWS AND SUSPENSION OR REVOCATION OF REGISTRATION.

§17A-9-7. Surrender of evidences of registration, etc., upon cancellation, suspension or revocation; willful failure or refusal to surrender; fee for reinstatement.
Whenever the registration of a vehicle, a certificate of title, a registration card, registration plate or plates, a temporary registration plate or marker, the right to issue temporary registration plates or markers, any nonresident or other permit, or any license certificate or dealer special plates issued under the provisions of article six of this chapter, is canceled, suspended or revoked as authorized in this chapter, the owner, holder or other person in possession of the evidences of the registration, title, permit or license or any special dealer plates shall, except as otherwise provided in article six of this chapter, immediately return the evidences of the registration, title, permit or license that was canceled, suspended or revoked, together with any dealer special plates relating to any license certificate, or any dealer special plate or plates if only the dealer special plate is suspended, to the division: Provided, That the owner or holder shall, before reinstatement, pay a fee of ten dollars in addition to all other fees, which shall be collected by the division and credited to a special revolving fund in the state treasury to be appropriated to the division for use in enforcement of the provisions of this code.

If any person willfully fails or refuses to return to the division the evidences of the registration, title, permit or license that have been canceled, suspended or revoked, or any dealer special plates, when obligated so to do as provided in this section, the commissioner shall immediately notify the superintendent of the state police who shall, as soon as possible, secure possession of the evidence of registration, title, permit or license or any special dealer plates and return it to the division. The superintendent of the state police shall make a report in writing to the commissioner, within two weeks after being notified by the commissioner, as to the result of his or her efforts to secure the possession and return of the evidences of registration, title, permit or license, or any dealer special plates.

For each registration, certificate of title, registration card, registration plate or plates, temporary registration plate or marker, permit, license certificate or dealer special plate, which the owner, holder or other person in possession of the registration, title, permit or license or any spe-
cial dealer plates shall have willfully failed or refused, as
provided in this section, to return to the division within ten
days from the time that the cancellation, suspension or
revocation becomes effective, and which has been certified
to the superintendent of the state police as specified in this
section, the owner or holder shall, before the registration,
title, permit or license or any special dealer plates may be
reinstated, if reinstatement is permitted, in addition to all
other fees and charges, pay a fee of fifteen dollars, which
shall be collected by the division of motor vehicles, paid
into the state treasury and credited to the general fund to
be appropriated to the state police for application in the
enforcement of the road laws.

A total of twenty-five dollars may be collected on each
reinstatement for each vehicle to which any cancellation,
suspension or revocation relates: Provided, That when
any motor vehicle registration is suspended for failure to
maintain motor vehicle liability insurance the reinstatement
fee is one hundred dollars, and if the vehicle owner
fails to surrender the vehicle registration and the orders go
to the state police, an additional fee of fifty dollars shall be
required before the motor vehicle registration may be
reinstated. A total of one hundred fifty dollars may be
collected on each reinstatement of any motor vehicle reg-
istration canceled, suspended or revoked for failure to
maintain motor vehicle liability insurance.

CHAPTER 17B. MOTOR VEHICLE DRIVER LICENSES.

ARTICLE 3. CANCELLATION, SUSPENSION OR REVOCATION
OF LICENSES.

§17B-3-9. Surrender and return of license not required.

The division, upon suspending or revoking a license,
shall not require that the license be surrendered to and be
retained by the division. The surrender of a license shall
not be a precondition to the commencement and tolling of
any applicable period of suspension or revocation: Pro-
vided, That before the license may be reinstated, the li-
censee shall pay a fee of fifteen dollars, in addition to all
other fees and charges, which shall be collected by the
division and deposited in a special revolving fund to be
appropriated to the division for use in the enforcement of the provisions of this section: Provided, however, That when any license is suspended for failure to maintain motor vehicle liability insurance, the reinstatement fee is fifty dollars.

CHAPTER 17D. MOTOR VEHICLE SAFETY RESPONSIBILITY LAW.

ARTICLE 2A. SECURITY UPON MOTOR VEHICLES.

§17D-2A-6. Investigation by duly authorized law-enforcement officer to include inquiry regarding required security; notice to division of motor vehicles.

At the time of investigation of a motor vehicle offense or accident in this state by the state police or other law-enforcement agency or when a vehicle is stopped by a law-enforcement officer for reasonable cause, the officer of the agency making the investigation shall inquire of the operator of any motor vehicle involved as to the existence upon the vehicle of the proof of insurance or other security required by the provisions of this code. Upon a finding by the investigating law-enforcement agency, officer or agent of the motor vehicle offense or accident that the security required by the provisions of this article is not in effect, as to any vehicle, he or she shall notify the division of motor vehicles of his or her finding within five days, if no citation requiring a court appearance is issued:

Provided, That the law-enforcement officer or agent shall not stop vehicles solely to inquire as to the certificate of insurance.

A defendant, who is charged with a traffic offense that requires an appearance in court, shall present the court at the time of his or her appearance or subsequent appearance with proof that the defendant had security in effect at the time of the traffic offense as required by this article. The court shall not base its decision solely on the presentation of a certificate of insurance as defined in section four, article twenty-four of this chapter. The court shall require current documentation from the defendant's insurance company or agent that the defendant in fact was
insured at the time of the offense. If, as a result of the
defendant's failure to show proof, the court determines
that the defendant has violated this article, it shall notify
the division of motor vehicles within five days.

CHAPTER 33. INSURANCE.

ARTICLE 6A. CANCELLATION OR NONRENEWAL OF AUTO­MOBILE LIABILITY POLICIES.

§33-6A-1. Cancellation prohibited except for specified reasons; notice.

No insurer once having issued or delivered a policy
providing automobile liability insurance in this state insur­
ing a private passenger automobile shall, after the policy
has been in effect for sixty days, or in case of renewal
effective immediately, issue or cause to issue a notice of
cancellation during the term of the policy except for one
or more of the reasons specified in this section:

(a) The named insured fails to discharge when due any
of his or her obligations in connection with the payment
of premium for the policy or any installment of the pre­mium;

(b) The policy was obtained through material misrep­resent­ation;

(c) The insured violates any of the material terms and
conditions of the policy;

(d) The named insured or any other operator, either
resident in the same household or who customarily oper­ates an automobile insured under the policy:

(1) Has had his or her operator's license suspended or
revoked during the policy period including suspension or
revocation for failure to comply with the provisions of
article five-a, chapter seventeen-c of this code, regarding
consent for a chemical test for intoxication: Provided,
That when a license is suspended for sixty days by the
commissioner of motor vehicles because a person did
drive a motor vehicle while under the age of twenty-one
years with an alcohol concentration in his or her blood of
two hundredths of one percent or more, by weight, but less
than ten hundredths of one percent, by weight, pursuant to subsection (1), section two, article five-a, chapter seventeen-c of this code, the suspension shall not be grounds for cancellation; or

(2) Is or becomes subject to epilepsy or heart attacks, and the individual cannot produce a certificate from a physician testifying to his or her ability to operate a motor vehicle.

(e) The named insured or any other operator, either resident in the same household or who customarily operates an automobile insured under such policy is convicted of or forfeits bail during the policy period for any of the following:

(1) Any felony or assault involving the use of a motor vehicle;

(2) Negligent homicide arising out of the operation of a motor vehicle;

(3) Operating a motor vehicle while under the influence of alcohol or of any controlled substance or while having an alcohol concentration in his blood of ten hundredths of one percent or more, by weight;

(4) Leaving the scene of a motor vehicle accident in which the insured is involved without reporting as required by law;

(5) Theft of a motor vehicle or the unlawful taking of a motor vehicle;

(6) Making false statements in an application for a motor vehicle operator's license;

(7) A third violation, committed within a period of twelve months, of any moving traffic violation which constitutes a misdemeanor, whether or not the violations were repetitious of the same offense or were different offenses. Notwithstanding any of the provisions of this section to the contrary, no insurance company may cancel a policy of automobile liability insurance without first giving the insured thirty days' notice, by registered or certified mail, of its intention to cancel: Provided, That cancellation of
the insurance policy by the insurance carrier for failure of consideration to be paid by the insured upon initial issuance of the insurance policy is effective upon the expiration of ten days' notice of cancellation to the insured.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

**Randy Schoonover**
Chairman Senate Committee

**Randy Beamer**
Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

**Brian Miller**
Clerk of the Senate

**Gregory M. Kay**
Clerk of the House of Delegates

**Earl Ray Tomlin**
President of the Senate

**Mary Lou Clutter**
Speaker of the House of Delegates

The within (as approved) this the 1st day of April, 1996.

** Gaston Caperton**
Governor
PRESENTED TO THE
GOVERNOR

Date 3/25/46
Time 10:00 A.M.