WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1996

ENROLLED

SENATE BILL NO. 380

(By Senator Moore)

PASSED March 9, 1996
In Effect NINETY DAYS FROM PASSAGE
AN ACT to amend and reenact section eighteen, article six, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto two new sections, designated sections eighteen-a and twenty-five-a, all relating to motor vehicle dealers, license services and automobile auctions; investigation of licensees; disclosure of information to the motor vehicle dealers advisory board; revocation and suspension of licenses and plates; adding new offense to the grounds for suspending or revoking a license certificate; creating a motor vehicle dealers advisory board; composition of
board; terms of board members; requiring commissioner to consult with the board; adding provisions for civil penalties for violations by vehicle dealers, license services and automobile auctions; providing for coviolator penalties; providing for hearings on civil penalties; and providing for judicial review.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 6. LICENSING OF DEALERS AND WRECKERS; ETC.

§17A-6-18. Investigation; matters confidential; grounds for suspending or revoking license or imposing fine; suspension and revocation generally.

1. (a) The commissioner may conduct an investigation to determine whether any provisions of this chapter have been or are about to be violated by a licensee. Any investigation shall be kept in strictest confidence by the commissioner, the division, the licensee, any complainant and all other persons, unless and until the commissioner suspends or revokes the license certificate of the licensee involved or fines the licensee: Provided, That the commissioner may advise the motor vehicle dealers advisory board of pending actions and may disclose to the motor vehicle dealers advisory board such information as may enable it to perform its advisory function in imposing penalties. The commissioner may suspend or revoke a license certificate, suspend a special dealer plate or plates, impose a fine or take any combination of these actions, if the commissioner finds that the licensee:

1 (1) Has failed or refused to comply with the laws of this state relating to the registration and titling of vehicles and the giving of notices of transfers, the provisions and requirements of this article, or any reasonable rules
authorized in section nine, article two of this chapter
and promulgated to implement the provisions of this
article by the commissioner in accordance with the
provisions of article three, chapter twenty-nine-a of this
code;

(2) Has given any check in the payment of any fee
required under the provisions of this chapter which is
dishonored;

(3) In the case of a dealer, has knowingly made or
permitted any unlawful use of any dealer special plate or
plates issued to him or her;

(4) In the case of a dealer, has a dealer special plate or
plates to which he or she is not lawfully entitled;

(5) Has knowingly made false statement of a material
fact in his or her application for the license certificate
then issued and outstanding;

(6) Has habitually defaulted on financial obligations;

(7) Does not have and maintain at each place of busi-
ness (subject to the qualification contained in subdivi-
sion (17), subsection (a), section one of this article with
respect to a new motor vehicle dealer) an established
place of business as defined for the business in question
in section one of this article;

(8) Has been guilty of any fraudulent act in connection
with the business of new motor vehicle dealer, used
motor vehicle dealer, house trailer dealer, trailer dealer,
motorcycle dealer, used parts dealer, or wrecker or
dismantler;

(9) Has defrauded or is attempting to defraud any
buyer or any other person, to the damage of the buyer or
such other person, in the conduct of the licensee's
business;

(10) Has defrauded or is attempting to defraud the
state or any political subdivision of the state of any taxes
or fees in connection with the sale or transfer of any
vehicle;
(11) Has committed fraud in the registration of a vehicle;
(12) Has knowingly purchased, sold or otherwise dealt in a stolen vehicle or vehicles;
(13) Has advertised by any means, with intent to defraud, any material representation or statement of fact which is untrue, misleading or deceptive in any particular relating to the conduct of the licensed business;
(14) Has willfully failed or refused to perform any legally binding written agreement with any buyer;
(15) Has made a fraudulent sale or purchase;
(16) Has failed or refused to assign, reassign or transfer a proper certificate of title;
(17) Has a license certificate to which he or she is not lawfully entitled; or
(18) Has misrepresented a customer's credit or financial status to obtain financing.

The commissioner shall also suspend or revoke the license certificate of a licensee if he or she finds the existence of any ground upon which the license certificate could have been refused, or any ground which would be cause for refusing a license certificate to the licensee were he or she then applying for the license certificate.

(b) Whenever a licensee fails or refuses to keep the bond or liability insurance required by section four of this article in full force and effect the commissioner shall automatically suspend the license certificate of the licensee unless and until a bond or certificate of insurance as required by section four of this article is furnished to the commissioner. When the licensee furnishes the bond or certificate of insurance to the commissioner, the commissioner shall vacate the suspension.
§17 A - 6 - 18a. Motor vehicle dealers advisory board.

(a) There is created a motor vehicle dealers advisory board to assist and to advise the commissioner on the administration of laws regulating the motor vehicle industry; to work with the commissioner in developing new laws, rules or policies regarding the motor vehicle industry; and to give the commissioner such further advice and assistance as he or she may from time to time require.

The board shall consist of nine members and the commissioner of motor vehicles, or his or her representative, who shall be an ex officio member. Two members shall represent new motor vehicle dealers, with one of these two members representing dealers that sell less than one hundred new vehicles per year; one member shall represent used motor vehicle dealers; one member shall represent wrecker/dismantler/rebuilders; one member shall represent automobile auctions; one member shall represent recreational dealers; one member shall represent the West Virginia attorney general's office; and two members shall represent consumers. All of the representatives, except the attorney general representative who shall be designated by the attorney general, shall be appointed by the governor with the advice and consent of the Senate, with no more than five
The terms of the board members shall be for three years commencing the first day of July, one thousand nine hundred ninety-six. Two members shall be appointed to serve one year, two members shall be appointed to serve two years and five members shall be appointed to serve three years. Successive appointments shall be for the full three years. The attorney general representative shall serve continuously.

The board shall meet at least four times annually and at the call of the commissioner.

Notwithstanding the provisions of article ten, chapter four of this code, the motor vehicle dealers advisory board shall continue until the first day of July, two thousand one.

(b) The commissioner shall consult with the board before he or she takes any disciplinary action against a dealer, an automobile auction or a license service to revoke, or suspend a license, place the licensee on probation or levy a civil penalty, unless the commissioner determines that the consultation would endanger a criminal investigation.

(c) The commissioner may consult with the board by mail, by facsimile, by telephone or at a meeting of the board, but the commissioner is not bound by the recommendations of the board. The commissioner shall give members seven days from the date of a mailing or other notification to respond to proposed actions, except in those instances when the commissioner determines that the delay in acting creates a serious danger to the public’s health or safety or would unduly compromise the effectiveness of the action.

(d) No action taken by the commissioner shall be subject to challenge or rendered invalid on account of his or her failure to consult with the board.
§17A-6-25a. Civil penalties.

(a) In addition to any other remedy or penalty provided by law, the commissioner may levy and collect a civil fine, in an amount not to exceed one thousand dollars for each first violation, against any person who violates the provisions of this article, article six-b or article six-c of this chapter, any of the rules or policies implemented to enforce those articles, or any lawful order of the commissioner pursuant to authority set forth in those articles. Every transaction which violates this article, article six-b or article six-c of this chapter shall be considered a separate violation. For a second violation, being any violation occurring within three years following any previous violation for which the violator has been disciplined pursuant to section eighteen, article six of this chapter, the commissioner may levy and collect a fine in an amount not to exceed twenty-five hundred dollars, and for a third and subsequent violation occurring within the three-year period following the first violation the commissioner may levy and collect a fine in an amount not to exceed five thousand dollars.

(b) A fine assessed under this section shall not take effect until the commissioner sends to the person against whom the penalty is assessed by certified mail, return receipt requested, a notice of violation finding that the person has committed an offense. The notice shall contain:

(1) A statement of the offense the person committed;
(2) A summary of the facts on which the finding of a violation was made;
(3) The amount of the fine which is being levied; and
(4) An order that the person:
(A) Cease and desist from all future violations and pay the fine; or
(B) Protest in writing the findings of the commissioner or the amount of the assessed fine and request a hearing.
Any request for a hearing must be received by the commissioner within thirty days after the mailing date of the notice of violation. The notice of violation may be sent to any address which the person has used on any title or license application, or other filing or record which the commissioner believes is current. Failure of any person to receive a notice of violation does not preclude the fine from taking effect. However, the commissioner shall accept as timely a request for hearing from any person who, within one year of the date the notice of violation was sent, provides satisfactory proof that he or she did not receive the notice of violation and that good cause exists to excuse his or her failure to receive the notice of violation and that he or she wishes in good faith to assert a protest to the notice of violation. The pendency of the one-year period shall not keep any penalty from taking effect, but the commissioner shall stay enforcement of the fine upon his or her acceptance of any notice filed after the thirty-day period pending the outcome of the appeal.

(c) Upon receipt of a timely request the commissioner shall afford the person a hearing in accordance with the rules of the division of motor vehicles. The commissioner, in addition to considering the evidence relied upon to prove or defend against a finding of a violation, shall also evaluate the appropriateness of the amount of the civil penalty. In making such evaluation, the commissioner shall consider:

1. The severity of the violation and its impact on the public;
2. The number of similar or related violations;
3. Whether the violations were willful or intentional; and
4. Any other facts considered appropriate.

(d) In addition to any other findings of fact or conclusions of law, the commissioner may reduce the civil penalty to a stated amount. The appellant may, at any
time during the pendency of the appeal, enter into a settlement agreement with the commissioner. The settlement agreement may provide for a reduction in the penalty and may provide that the appellant does not admit a violation. The entry into a settlement agreement or the payment of any fine pursuant to a settlement agreement which states that the appellant does not admit a violation shall not amount to an admission of guilt for purposes of any criminal prosecution.

(e) Upon the expiration of all periods for protest or appeal of a notice of violation, including judicial review pursuant to section four, article five, chapter twenty-nine-a of this code, the notice of violation shall have the same force and effect and be enforceable as a judgment entered by any court of law of this state.

(f) If a corporation is found to have committed a violation against which a penalty may be assessed under this section, any officer of the corporation who is found to have knowingly and intentionally committed the violation, to have knowingly and intentionally directed another to commit the violation or to have knowingly and intentionally failed to take reasonable steps to prevent another from committing the violation, may be individually found to be a coviolator and assessed a civil penalty as provided by this section.
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.
In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

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

Governor
PRESENTED TO THE
GOVERNOR
Date 3/28/46
Time 9:59 AM