

# WEST VIRGINIA LEGISLATURE

SECOND REGULAR SESSION, 1998



# ENROLLED

## House Bill No. 4713

(By Delegates Warner, Michael, Beane, Kelley,  
Lund, Proudfoot and Miller)



Passed March 12, 1998

In Effect from Passage

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**ENROLLED**

**H. B. 4713**

(BY DELEGATES WARNER, MICHAEL, BEANE, KELLEY,  
LAIRD, PROUDFOOT AND MILLER)

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[Passed March 12, 1998; in effect from passage.]

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AN ACT to amend and reenact section one, article six, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to further amend said article by adding thereto a new section, designated section seven-b; to further amend said chapter by adding thereto a new article, designated article six-~~d~~<sup>f</sup>; and to amend and reenact sections ten and ten-a, article two, chapter seventeen-a of said code, all relating generally to assessment of public service businesses; returns of property to board of public works; valuation of certain classes intrastate public service corporation motor vehicle businesses either registered or not registered under a proportional registration agreement; assessment of interstate public service corporation motor vehicle businesses registered under a proportional registration agreement; valuation of certain classes intrastate public service corporation motor vehicle businesses either registered or not registered under a proportional registration agreement; interstate public service motor vehicle business; calculation of tax; form and manner of making disclosure; failure to make disclosure; criminal penalty; compelling disclosure; procuring information and tentative disclosure; failure to give information required by motor vehicles commissioner; criminal penalty; adjustment of valuation by interstate commerce appeals board; appeal from valuation by board; certification of levies to auditor; failure of officers to

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perform duties as to property of interstate motor vehicle corporations; injunction to restrain collection of tax; payment of assessment by owner or operator; no release of taxes assessed against such corporations; accounting for levies against interstate commercial motor vehicle corporations; certification by auditor of amount chargeable to sheriff from levies against interstate motor vehicles; payment of amount due municipality; lien of taxes; notice; collection by suit; operating fund for interstate commerce assessment division in auditor's office; motor vehicles commissioner — reciprocal agreements with other states; severability; authorizing the entry of this state into reciprocal proportional registration agreements; payment of taxes; issuance of registration plates or markers; promulgation of rules; interagency cooperation; requirement that all registrants pay tax; intermittent interstate commerce and promulgation of rules; proportional registration agreement prevails.

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

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

## **CHAPTER 11. TAXATION.**

### **ARTICLE 6. ASSESSMENT OF PUBLIC SERVICE BUSINESSES.**

#### **§11-6-1. Returns of property to board of public works.**

- 1 (a) On or before the first day of May in each year a
- 2 return in writing shall be filed with the board of public
- 3 works: (1) By the owner or operator of every railroad,
- 4 wholly or in part, within this state; (2) by the owner or
- 5 operator of every railroad bridge upon which a separate
- 6 toll or fare is charged; (3) by the owner or operator of
- 7 every car or line of cars used upon any railroad within the
- 8 state for transportation or accommodation of freight or

9 passengers, other than the owners or operators as may own  
10 or operate a railroad within the state; (4) by the owner or  
11 operator of every express company or express line, wholly  
12 or in part, within this state, used for the transportation by  
13 steam or otherwise of freight and other articles of  
14 commerce; (5) by the owner or operator of every pipeline,  
15 wholly or in part, within this state, used for the  
16 transportation of oil or gas or water, whether the oil or gas  
17 or water be owned by the owner or operator or not, or for  
18 the transmission of electrical or other power, or the  
19 transmission of steam or heat and power or of articles by  
20 pneumatic or other power; (6) by the owner or operator of  
21 every telegraph or telephone line, wholly or in part, within  
22 this state, except private lines not operated for  
23 compensation; (7) by the owner and operator of every gas  
24 company and electric lighting company furnishing gas or  
25 electricity for lighting, heating or power purposes; (8) by  
26 the owner or operator of hydroelectric companies for the  
27 generation and transmission of light, heat or power; (9) by  
28 the owner or operator of water companies furnishing or  
29 distributing water; (10) by the owner or operator of all  
30 other public service corporations or persons engaged in  
31 public service business whose property is located, wholly  
32 or in part, within this state; and (11) on or before the first  
33 day of May, one thousand nine hundred ninety-eight,  
34 and on or before the first day of May, each year  
35 thereafter, by the owner or operator of every truck or  
36 semitrailer used as a commercial motor vehicle in the  
37 transportation of property exclusively within this state by  
38 commercial motor vehicles. For the purposes of this  
39 article, commercial motor vehicle is defined as those  
40 vehicles that would otherwise be subject to registration  
41 under a proportional registration agreement as provided in  
42 section ten-a except that the vehicle is only engaged in  
43 intrastate commerce.

44 (b) The words "owner or operator," as applied herein  
45 to railroad companies, shall include every railroad  
46 company incorporated by or under the laws of this state  
47 for the purpose of constructing and operating a railroad,  
48 or of operating part of a railroad within this state, whether  
49 the railroad or any part of it be in operation or not; and

50 shall also include every other railroad company, or  
51 persons or associations of persons, owning or operating a  
52 railroad or part of a railroad in this state on which freight  
53 or passengers, or both, are carried for compensation. The  
54 word "railroad," as used herein includes every street, city,  
55 suburban or electric or other railroad or railway.

56 (c) The words "owner or operator," as applied herein  
57 to express companies, shall include every express  
58 company incorporated by or under the laws of this state,  
59 or doing business in this state, whether incorporated or  
60 not, and any person or association of persons, owning or  
61 operating any express company or express line upon any  
62 railroad or otherwise, doing business partly or wholly  
63 within this state.

64 (d) The words "owner or operator," as applied herein  
65 to trucks or semitrailers used as a commercial motor  
66 vehicle in the transportation of property, shall include  
67 every company incorporated by or under the laws of this  
68 state, or doing business in this state, whether incorporated  
69 or not, and any person or association of persons, owning  
70 or operating any truck or semitrailer used as a commercial  
71 motor vehicle in the transportation of property doing  
72 business wholly within this state.

73 (e) The return shall be signed and sworn to by the  
74 owner or operator if a natural person, or, if the owner or  
75 operator shall be a corporation, shall be signed and sworn  
76 to by its president, vice president, secretary or principal  
77 accounting officer.

78 (f) The return required by this section of every owner  
79 or operator shall cover the year ending on the thirty-first  
80 day of December, next preceding, and shall be made on  
81 forms prescribed by the board of public works, which  
82 board is hereby invested with full power and authority and  
83 it is hereby made its duty to prescribe the forms as will  
84 require from any owner or operator herein mentioned  
85 information as in the judgment of the board may be of  
86 use to it in determining the true and actual value of the  
87 properties of the owners or operators.

**§11-6-7b. Valuation of certain classes intrastate public service corporation motor vehicle businesses either registered or not registered under a proportional registration agreement.**

1       On or before the first day of September, one thousand  
2       nine hundred ninety-eight, the tax commissioner shall  
3       propose a legislative rule for submission to the Legislature  
4       pursuant to the provisions of article three, chapter twenty-  
5       nine-a of this code, which rule shall describe in detail the  
6       methods whereby the tax commissioner will determine the  
7       market value of the following property:

8       (a) Intrastate public service corporation motor vehicle  
9       businesses which may or may not be registered under a  
10      proportional registration agreement but which nonetheless  
11      is operated exclusively within the state of West Virginia.

12      (b) A trailer, semitrailer or road tractor operated  
13      exclusively in this state or a trailer or trailer of a West  
14      Virginia based interstate commerce motor vehicle business  
15      registered under the provisions of section ten-a, article two,  
16      chapter seventeen-a of this code, the tax shall be  
17      determined by multiplying the appraised value by sixty  
18      percent to obtain the assessed value which shall be  
19      multiplied by the tax rate to obtain the amount of the tax.

20      (c) For purposes of equitably assessing the valuations  
21      between and among interstate commercial motor vehicles  
22      and intrastate commercial motor vehicles as defined in  
23      section ten-a, article two, chapter seventeen-a, of this code,  
24      the levy rate applied to both intrastate commercial motor  
25      vehicles and interstate motor vehicles shall run one year in  
26      arrears in order for the commissioner of motor vehicles to  
27      provide adequate notice to the facilitator of the  
28      proportional registration agreement and other jurisdictions  
29      of the assessments due and for counties to supply their  
30      levy rates to the state auditor.

31      As soon as such assessment is made, the secretary of  
32      the board shall notify the owner or operator affected  
33      thereby of the amount thereof by written notice deposited  
34      in the United States post office, addressed to such owner  
35      or operator at the principal office or place of business of

36 such owner or operator. Such assessment and valuation  
37 shall be final and conclusive, unless the same be appealed  
38 from in the manner following, within fifteen days after  
39 such notice is so deposited.

40 (d) Notwithstanding any other provision of the code to  
41 the contrary, the department of tax and revenue is hereby  
42 authorized to promulgate an emergency rule for the  
43 implementation of this section.

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<sup>ε</sup>  
**ARTICLE ~~6D~~. ASSESSMENT OF INTERSTATE PUBLIC SER-**  
**VICE CORPORATION MOTOR VEHICLE**  
**BUSINESSES REGISTERED UNDER A PRO-**  
**PORTIONAL REGISTRATION AGREEMENT.**

<sup>ε</sup>  
**§11-~~6D~~-1. Valuation of certain classes intrastate public service**  
**corporation motor vehicle businesses either**  
**registered or not registered under a proportional**  
**registration agreement.**

1 On or before the first day of September, one thousand  
2 nine hundred ninety-eight, the tax commissioner shall  
3 propose a legislative rule for submission to the Legislature  
4 pursuant to the provisions of article three, chapter twenty-  
5 nine-a of this code, which rule shall describe in detail the  
6 methods whereby the tax commissioner will determine the  
7 market value of the following property:

8 (a) Intrastate public service corporation motor vehicle  
9 businesses which may or may not be registered under a  
10 proportional registration agreement but which nonetheless  
11 is operated exclusively within the state of West Virginia.

12 (b) A trailer, semitrailer or road tractor operated  
13 exclusively in this state or a trailer or trailer of a West  
14 Virginia based interstate motor vehicle business registered  
15 under the provisions of section ten-a, article two, chapter  
16 seventeen-a of this code, the tax shall be determined by  
17 multiplying the appraised value by sixty percent to obtain  
18 the assessed value which shall be multiplied by the tax rate  
19 to obtain the amount of the tax.

20 (c) For purposes of equitably assessing the valuations  
21 between and among interstate commercial motor vehicles  
22 and intrastate commercial motor vehicles as defined in

23 section ten-a, article two, chapter seventeen-a, of this code,  
24 the levy rate applied to both intrastate commercial motor  
25 vehicles and interstate motor vehicles shall run one year in  
26 arrears in order for the commissioner of motor vehicles to  
27 provide adequate notice to the facilitator of the  
28 proportional registration agreement and other jurisdictions  
29 of the assessments due and for counties to supply their  
30 levy rates to the state auditor.

31 As soon as such assessment is made, the secretary of  
32 the board shall notify the owner or operator affected  
33 thereby of the amount thereof by written notice deposited  
34 in the United States post office, addressed to such owner  
35 or operator at the principal office or place of business of  
36 such owner or operator. Such assessment and valuation  
37 shall be final and conclusive, unless the same be appealed  
38 from in the manner following, within fifteen days after  
39 such notice is so deposited.

40 (d) Notwithstanding any other provision of the code to  
41 the contrary, the department of tax and revenue is hereby  
42 authorized to promulgate an emergency rule for the  
43 implementation of this section.

<sup>ε</sup>  
**§11-6~~0~~-2. Disclosure of required information to the tax  
commissioner.**

1 (a) "Interstate motor vehicle", for purposes of this  
2 article, is defined as every truck, road tractor or semitrailer  
3 used as an interstate public service corporation motor  
4 vehicle registered under a proportional registration  
5 agreement.

6 (b) The procedure for determining the value thereof is  
7 exclusively provided for under section two of this article.

8 (c) The words "owner or operator," as applied herein  
9 to trucks or semitrailers used as an interstate motor vehicle  
10 in the transportation of property, shall include every  
11 company incorporated by or under the laws of this state,  
12 or doing business in this state, whether incorporated or  
13 not, and any person or association of persons, owning or  
14 operating any truck or semitrailer used as a interstate



15 motor vehicle in the transportation of property doing  
16 business partly or wholly within this state.

17 (d) Every interstate commercial motor vehicle covered  
18 by this article shall pay such taxes based upon the  
19 assessments as are required by law pursuant to rules and  
20 regulations promulgated by the tax commissioner.

§11-6~~0~~-3. Interstate public service motor vehicle business;  
calculation of tax.

1 (a) In the case of interstate public service motor  
2 vehicles used for the transportation of property and which  
3 are registered under a proportional registration agreement,  
4 pursuant to the provisions of section ten-a, article two,  
5 chapter seventeen-a of this code, the owners, operator or  
6 operators, for each interstate motor vehicle, on forms  
7 prescribed by the commissioner of motor vehicles, shall  
8 disclose the total miles driven in West Virginia and the  
9 total miles driven in any other states as reported in the  
10 most recent taxable year to the division of motor vehicles  
11 pursuant to any proportional registration agreement on  
12 file therewith. The return shall, additionally, show the  
13 gross capital cost of the interstate motor vehicle to the  
14 purchaser thereof and the year the purchaser acquired the  
15 interstate motor vehicle.

16 (b) Ad valorem taxes provided for in this chapter shall,  
17 notwithstanding the provisions of section five, article one-c  
18 of this chapter, be determined as follows for: (1) The  
19 gross capital cost of an interstate motor vehicle shall be  
20 multiplied by a percentage factor representing the  
21 remainder of the vehicle's value after depreciation  
22 according to a depreciation schedule established by the  
23 tax commissioner, which calculation shall yield the  
24 appraised value of the vehicle; (2) for the interstate truck,  
25 road tractor, or power unit, registered in this state as part  
26 of a fleet registered under any proportional registration  
27 agreement under the provisions of section ten-a, article  
28 two, chapter seventeen-a of this code, the appraised value  
29 shall be multiplied by the fraction comprised of a  
30 numerator representing the total miles driven in West  
31 Virginia (regardless whether property is being transported  
32 for commercial purposes) in the taxable year and a

33 denominator representing the total miles driven in the  
34 taxable year by the interstate motor vehicle operator  
35 during times property was being transported for  
36 commercial purposes, as reported to the division of motor  
37 vehicles pursuant to any proportional registration  
38 agreement on file therewith to obtain the apportioned  
39 value, which apportioned value shall be multiplied by sixty  
40 percent to yield the assessed value which shall be  
41 multiplied by the applicable rate of tax.

<sup>ξ</sup>  
**§11-6D-4. Form and manner of making disclosure; failure to  
make disclosure; criminal penalty.**

1 All disclosures to be made to the motor vehicles  
2 commissioner, under this chapter, shall be made in  
3 conformity with any reasonable requirement of the motor  
4 vehicles commissioner of which the person making the  
5 disclosure shall have had notice, and shall be made upon  
6 forms which may be furnished by the motor vehicles  
7 commissioner, and according to instructions which the  
8 motor vehicles commissioner may give relating thereto,  
9 and to the description and itemizing of the property.  
10 Such owner or operator, whether a natural person, or a  
11 corporation or company, failing to make such disclosure  
12 as herein required shall be guilty of a misdemeanor and,  
13 fined one thousand dollars for each month such failure  
14 continues.

<sup>ε</sup>  
**§11-6D-5. Compelling such disclosure; procuring information  
and tentative assessments by motor vehicles  
commissioner.**

1 (a) If any owner or operator fails to make such  
2 disclosure within the time required by section one of this  
3 article, it shall be the duty of the commissioner of motor  
4 vehicles to take such steps as may be necessary to compel  
5 such compliance, and to enforce any and all penalties  
6 imposed by law for such failure, pursuant to his or her  
7 authority under this article as well as section ten, article  
8 two, chapter seventeen-a, and section ten-a, article two,  
9 chapter seventeen-a of this code.

10 (b) The disclosure delivered to the motor vehicles  
11 commissioner shall be examined by him, and if it be

12 found insufficient in form or in any respect defective,  
13 imperfect or not in compliance with law, he shall compel  
14 the person required to make it to do so in proper and  
15 sufficient form, and in all respects as required by law.

16 (c) If any such owner or operator fails to make such  
17 disclosure, the motor vehicles commissioner shall proceed,  
18 in such manner as to him may seem best, to obtain the  
19 facts and information required to be furnished by such  
20 disclosures.

21 (d) The motor vehicles commissioner may send for  
22 persons and papers, and may compel the attendance of  
23 any person and the production of any paper necessary, in  
24 the opinion of said motor vehicles commissioner, to  
25 enable him to obtain the information required for the  
26 proper discharge of his duties under this section.

27 (e) The motor vehicles commissioner shall arrange,  
28 collate and tabulate such disclosures and all pertinent  
29 information and data contained therein, such further  
30 evidence or information as may be required by the motor  
31 vehicles commissioner of such owner or operator, and all  
32 other pertinent evidence, information and data he has been  
33 able to procure, upon suitable work sheets, so that they  
34 may be conveniently considered, and shall on or before  
35 the fifteenth day of September, lay such disclosures and  
36 work sheets, together with his recommendations in the  
37 form of a tentative assessment of the property of each  
38 such owner or operator, before the motor vehicles  
39 commissioner. And as soon as the motor vehicles  
40 commissioner has completed the preparation of such work  
41 sheets and tentative assessments, he shall notify the owner  
42 or operator affected thereby of the amount of such  
43 tentative assessment by written notice deposited in the  
44 United States post office, addressed to such owner or  
45 operator at the principal office or place of business of  
46 such owner or operator, and the motor vehicles  
47 commissioner shall retain in his office true copies of such  
48 work sheets which shall be available for inspection by any  
49 such owner or operator or his duly authorized  
50 representative.

<sup>ξ</sup>  
**§11-6~~D~~-6. Failure to give information required by motor vehicles commissioner; criminal penalty.**

1 If any person shall refuse to appear before the motor  
2 vehicles commissioner when required to do so, as  
3 aforesaid, or shall refuse to testify before the motor  
4 vehicles commissioner in regard to any matter as to which  
5 the motor vehicles commissioner may require him to  
6 testify, or if any person shall refuse to produce any paper  
7 in his possession or under his control, which the motor  
8 vehicles commissioner may require him to produce, every  
9 such person shall be guilty of a misdemeanor and fined  
10 five hundred dollars, and may be imprisoned not less than  
11 one nor more than six months, at the discretion of the  
12 court.

<sup>ξ</sup>  
**§11-6~~D~~-7. Adjustment of valuation by interstate commerce appeals board.**

1 There is hereby created the interstate commerce  
2 appeals board the membership of which shall be  
3 comprised of the tax commissioner or his or her designee,  
4 the motor vehicles commissioner or his or her designee,  
5 and the state auditor or his or her designee. The interstate  
6 commerce appeals board shall meet the first Monday in  
7 July, unless the first Monday is a holiday at which time the  
8 interstate commerce appeals board shall meet upon the  
9 first business day thereafter. In the event of an  
10 emergency, the interstate commerce appeals board may be  
11 convened upon the agreement of two of the three  
12 members of the board. Any time before an owner or  
13 operator appeals a valuation to circuit court, as provided  
14 for in section eight of this article, the interstate commerce  
15 appeals board may, after consideration of all relevant facts  
16 and evidence, adjust the valuation made by the interstate  
17 commerce appeals board pursuant to section eleven of this  
18 article.

<sup>ξ</sup>  
**§11-6~~D~~-8. Appeal from valuation by board.**

1 Any owner or operator claiming to be aggrieved by  
2 any such decision may, within the time aforesaid, apply by  
3 petition in writing, duly verified, to the circuit court of  
4 Kanawha County, and jurisdiction is hereby conferred

5 upon and declared to exist in such court, in which such  
6 application is filed, to grant, docket and hear such appeal;  
7 and such appeal, as to all of the property so charged,  
8 forthwith be allowed by such court so applied to, and be  
9 heard by such court as to all of such property as soon as  
10 possible after the appeal is docketed, but notice in writing  
11 of such petition shall be given to the motor vehicles  
12 commissioner, by mailing a copy of the petition for an  
13 appeal filed as aforesaid, which said petition shall recite  
14 the fact that copies of such petition have been sent by  
15 registered mail. Notice in writing of the hearing shall be  
16 given by the motor vehicles commissioner to the state tax  
17 commissioner and the state auditor at least fifteen days  
18 beforehand. Upon such hearing the court shall hear all  
19 such legal evidence as shall be offered on behalf of the  
20 state or any other county, district or municipal corporation  
21 interested, or on behalf of the appealing owner or  
22 operator. If the court be satisfied that the value so  
23 charged by the motor vehicles commissioner and affirmed  
24 or determined by the interstate commerce appeals board,  
25 is correct, it shall confirm the same, but if it be satisfied  
26 that the value so fixed by the board or the motor vehicles  
27 commissioner is either too high or too low, subject to the  
28 assessment valuations provided for in subsection (b),  
29 section eleven of this article, the court shall correct the  
30 valuation so made and shall ascertain and fix the true and  
31 actual value of such property according to the facts  
32 proved, and shall certify such value to the auditor, motor  
33 vehicles commissioner and to the tax commissioner. The  
34 state or the owner or operator may appeal to the supreme  
35 court of appeals if the proportional assessed value of the  
36 property be fifty thousand dollars or more.

37 If the court to which an application for appeal would  
38 properly be made as aforesaid shall not be in session, the  
39 judge thereof in vacation shall forthwith allow the appeal,  
40 and if the judge thereof be disqualified or for any reason  
41 not be available, the filing of the aforesaid petition in the  
42 office of the clerk of the circuit court of Kanawha County,  
43 within the time of aforesaid, shall constitute sufficient  
44 compliance with this section, and the appeal shall

45 thereafter be proceeded with as otherwise provided in this  
46 section.

<sup>£</sup>  
**§11-6~~D~~-9. Certification of levies to auditor.**

1 (a) The clerk of the county commission of every  
2 county in which any property lies which was so assessed  
3 shall, within thirty days after the county and district levies  
4 are laid by such commission, certify to the auditor the  
5 amount levied upon each one hundred dollars' value of  
6 the property of each class in the county for county  
7 purposes, and on each one hundred dollars of the value of  
8 the property of each class in each magisterial district for  
9 the district purposes. It shall be the duty of the secretary  
10 of the board of education of every school district and  
11 independent district in which any part of the property lies,  
12 within thirty days after the levies are laid therein for free  
13 school and building purposes, or either, to certify to the  
14 auditor the amount so levied on each one hundred dollars'  
15 value of the property of each class therein for each of  
16 such purposes; and it shall be the duty of the recorder,  
17 clerk or other recording officer of every municipal  
18 corporation in which any part of the property lies, within  
19 the same time, after levies are laid therein for any of the  
20 purposes authorized by law, to certify to the auditor the  
21 amount levied upon each one hundred dollars' value of  
22 the property of each class therein for each and every  
23 purpose.

24 (b) Such county levy rates shall be reported to the  
25 auditor for use in the following taxable year's assessment  
26 pursuant to the provisions of section eleven, article six-d  
27 of this chapter.

28 (c) For purposes of establishing the valuation rate to  
29 be supplied to the motor vehicles commissioner by the  
30 auditor and the tax commissioner, the auditor shall use  
31 such figures and amounts as are certified to him or her  
32 under section nine, article six-<sup>£</sup>~~d~~, chapter eleven of this  
33 code one year in arrears. *Enr*

<sup>£</sup>  
**§11-6~~D~~-10. Failure of officers to perform duties as to property  
of interstate motor vehicle corporations.**

1 Any clerk of a county commission, secretary of the  
2 board of education, or recorder, clerk or other recording  
3 officer of a municipal corporation, who shall fail to  
4 perform any of the duties herein required of him shall be  
5 guilty of a misdemeanor, and, upon conviction thereof,  
6 fined not less than one hundred nor more than five  
7 hundred dollars. In case of the failure of any such  
8 officers to furnish to the auditor the certificate herein  
9 required, the auditor may obtain the rate of taxation for  
10 any of said purposes from the copies of the land books on  
11 file in his office, if the same be found in such books, if  
12 not, in such other way or manner as he may deem  
13 necessary or proper for the purpose.

~~£~~  
**§11-6~~0~~-11. Injunction to restrain collection of tax.**

1 No injunction shall be awarded by any court or judge  
2 to restrain the collection of the taxes, or any part of them,  
3 so assessed upon the property of such owner or operator,  
4 except upon the ground that the assessment thereof was in  
5 violation of the constitution of the United States, or of this  
6 state; or that the same were fraudulently assessed, or that  
7 there was a mistake made in the amount of taxes properly  
8 chargeable on the property of such owner or operator;  
9 and in the latter case no such injunction shall be awarded  
10 unless application be first made to the interstate commerce  
11 appeals board to correct the mistake claimed, and such  
12 board shall refuse to do so, which fact shall be stated in the  
13 bill, nor unless the complainant pay into the treasury of  
14 the state all taxes appearing by the bill of complaint to be  
15 owing.

~~£~~  
**§11-6~~0~~-12. Payment of assessment by owner or operator.**

1 Beginning on the first day of July, one thousand nine  
2 hundred ninety-nine, it shall be the duty of such owner or  
3 operator, so assessed and charged, to pay annually the  
4 amount of such taxes, and such registration fees as are set  
5 by the motor vehicles commissioner as are required into  
6 the treasury of the state by delivering payment of the same  
7 to the commissioner of motor vehicles in the form and  
8 manner prescribed by him or her. If such owner or  
9 operator fail to pay such taxes, and registration fees when  
10 due, as prescribed, then interest thereon at the rate of nine

11 per centum per annum until paid shall be added to any  
12 and all other penalties imposed by the motor vehicles  
13 commissioner. The payment of such taxes by any such  
14 owner or operator shall not prejudice or affect the right of  
15 such owner or operator to obtain relief against the  
16 assessment or valuation of its property in proceedings now  
17 pending or hereafter brought under the provisions of  
18 section eight of this article, or in any suit, action or  
19 proceeding in which such relief may be obtainable; and if  
20 under the provisions of said section eight or in any suit,  
21 action or proceeding, it be ascertained that the assessment  
22 or valuation of the property of such owner or operator is  
23 too high and the same is accordingly corrected, it shall be  
24 the duty of the auditor of the state to issue to the owner or  
25 operator a certificate showing the amount of taxes and  
26 which have been overpaid, and such certificate shall be  
27 receivable thereafter for the amount of such overpayment  
28 in payment of any taxes and assessed against the property  
29 of such owner or operator, its successors or assigns. It  
30 shall likewise be the duty of said auditor to certify to the  
31 county commission, school districts and municipalities, the  
32 amounts of the respective overpayments distributable to  
33 such counties, school districts and municipalities.

34 Implementation of collection of assessments upon  
35 interstate commercial motor vehicles by the commissioner  
36 of motor vehicles shall begin the first day of July, one  
37 thousand nine hundred ninety-nine. The motor vehicles  
38 commissioner, upon receipt of funds from other  
39 jurisdictions under a proportional registration agreement,  
40 shall deliver such funds received to the auditor beginning  
41 in August, one thousand nine hundred ninety-nine, and  
42 thereafter every thirty days in arrears. All moneys received  
43 by the auditor under the provisions of this section shall be  
44 transmitted to the several counties within thirty days from  
45 receipt thereof.

**§ 11-6D-13. No release of taxes assessed against such corporations.**

1 Neither the county commission of any county, nor  
2 any board of education, nor the municipal authorities of  
3 any incorporated town, shall have jurisdiction, power or



4 authority, by compromise or otherwise, to remit or release  
5 any portion of the taxes so assessed upon the property of  
6 any such owner or operator. It shall be the duty of the  
7 motor vehicles commissioner to collect the whole thereof,  
8 regardless of any order or direction of any such county  
9 commission, board of education or municipal authority to  
10 the contrary; and, if he fail to do so, he and his sureties in  
11 his official bond, if any, shall, unless he be restrained or  
12 prohibited from so doing by legal process from some  
13 court having jurisdiction to issue the same, be liable  
14 thereon for such taxes that he may so fail to collect, if he  
15 could have collected the same by the use of due diligence.  
16 Any member of the county commission or board of  
17 education, or of the council of a municipal corporation,  
18 who shall vote to remit or release any part of the taxes, so  
19 assessed on the property of any such owner or operator,  
20 shall be guilty of a misdemeanor and fined five hundred  
21 dollars, and shall be removed from his office by the court  
22 by which the judgment of such fine is rendered, in  
23 addition to such fine.

<sup>ε</sup>  
**§11-~~6D~~-14. Accounting for levies against interstate commercial  
motor vehicle corporations.**

1 Subject to the provisions of subsection (b), section  
2 eleven of this article, when such taxes are paid into the  
3 treasury, the auditor shall account to the sheriff of each of  
4 the counties, to which any sum so paid in for county levies  
5 belongs, for the amount due such county, and may  
6 arrange the same with such sheriff in any settlement for  
7 state taxes in such a way as may be most convenient; and  
8 the sheriff shall account to the county commission of his  
9 county for the amount so received by him, in the same  
10 manner as for other county levies. The amount so paid  
11 for each district and independent school district shall be  
12 added to the distributable share of the school fund  
13 payable to such district, and shall be paid upon the  
14 requisition of the county superintendent of free schools in  
15 like manner as other school moneys are paid.

<sup>ε</sup>  
**§11-~~6D~~-15. Certification by auditor of amount chargeable to  
sheriff from levies against interstate motor  
vehicles; payment of amount due municipality.**

1 For collection year one thousand nine hundred  
2 ninety-nine, the auditor shall hold such funds in an  
3 interest bearing escrow account until March twentieth, two  
4 thousand, when such funds collected by the motor vehicles  
5 commissioner including the interest in the escrow account  
6 will be disbursed to the counties per the requirements of  
7 section eighteen of this article. Thereafter, the amount so  
8 paid in for each municipal corporation shall, within thirty  
9 days of being received by the auditor, be paid over to the  
10 sheriff, or the treasurer of such municipal corporation, or  
11 to such other officer of the municipality as the council  
12 may designate, and the auditor shall report such payment  
13 to the council. But the failure of the clerk of any county  
14 commission, or the secretary of any board of education, or  
15 the proper officer of any municipal corporation, to certify  
16 the levies to the auditor within the time herein prescribed  
17 shall not invalidate or prevent the assessment required by  
18 this article, but the auditor shall make the assessment and  
19 proceed to collect or certify the same to the sheriff as soon  
20 as practicable after he shall have obtained the information  
21 necessary to make such assessment.

**§11-~~65~~-16. Lien of taxes; notice; collection by suit.**

1 The amount of taxes assessed under this article shall  
2 constitute a debt due the state or county, district or  
3 municipal corporation entitled thereto, and shall be a lien  
4 on all of the property and assets of the taxpayer within the  
5 state. The lien shall attach as of the thirty-first day of  
6 December following the commencement of the assessment  
7 year, and shall be prior to all other liens and charges. It  
8 shall be the duty of the attorney general to enforce the  
9 collection of such taxes, and for that purpose he may  
10 distrain upon any personal property of such delinquent  
11 taxpayer, or a sufficient amount thereof to satisfy said  
12 taxes, including accrued interest, penalties and costs.

13 The attorney general may also enforce the lien created  
14 by this section on the real estate of such delinquent  
15 taxpayer by instituting a suit, or suits, in equity in the  
16 circuit court of Kanawha County, in the name of the state,  
17 in which such delinquent taxpayers shall be made  
18 defendants. In the bill filed in any such suit it shall be

19 sufficient to allege that the defendant or defendants have  
20 failed to pay the taxes hereunder and that each of them  
21 justly owes the amount of property taxes, levies and  
22 penalties stated therein, which amount shall be computed  
23 up to the first day of the month in which the bill was filed.  
24 No such defendant shall plead that the motor vehicles  
25 commissioner failed to give notice as prescribed by this  
26 section. If, upon the hearing of such suit, it shall appear to  
27 the court that any defendant has failed to pay such taxes  
28 and accrued penalties, the court shall enter a decree  
29 against such defendant for the amount due, and if the  
30 decree be not paid within ten days after made, the court  
31 shall enter a decree directing a sale of the real estate  
32 subject to said lien, or so much thereof as may be  
33 necessary to satisfy said taxes, including interest, penalties  
34 and costs. When two or more taxpayers are included in  
35 one suit, the court shall apportion the cost thereof among  
36 them as it may deem just.

<sup>ξ</sup>  
**§11-6D-17. Operating fund for interstate commerce disclosure  
division in auditor's office.**

1 The auditor shall establish a special operating fund in  
2 the state treasury for the interstate commerce disclosure  
3 division in his or her office. The auditor shall pay into the  
4 fund three eighths of one percent of the gross receipts of  
5 all moneys collected as provided for in this article. From  
6 the fund, the auditor shall reimburse the department of tax  
7 and revenue for the actual operating expenses incurred in  
8 the performance of its duties required by this article. The  
9 reimbursements to the tax department from the fund shall  
10 not exceed fifty percent of the annual deposits to the  
11 fund. Any moneys remaining in the special operating  
12 fund after reimbursement to the tax department shall be  
13 used by the auditor for funding the operation of the  
14 interstate commerce disclosure division located in his  
15 office.

16 The interstate commerce disclosure division is hereby  
17 granted authority and required to share any and all  
18 information obtained by the division in the  
19 implementation of this article with state auditor, tax  
20 commissioner and the commissioner of motor vehicles to

21 effectuate the collection of taxes under this article. The  
 22 motor vehicles commissioner is hereby authorized and  
 23 required to share any and all information obtained by the  
 24 department of motor vehicles in the implementation of  
 25 this article. The commissioner of motor vehicles will  
 26 supply to the interstate commerce disclosure division the  
 27 names of, location or locations of, and amount or amounts  
 28 paid by West Virginia corporations registered under the  
 29 terms of any proportional registration agreement. The tax  
 30 commissioner is hereby authorized and required to share  
 31 any and all information obtained by the department of tax  
 32 and revenue. The state auditor and the interstate  
 33 commerce disclosure division is hereby authorized and  
 34 required to share any and all information obtained by the  
 35 auditor or such division.

**§11-6~~0~~-18. Severability.**

1 If any provisions of this article or the application  
 2 thereof to any person or circumstances is held invalid,  
 3 such invalidity shall not affect other provisions or  
 4 applications of the article which can be given effect  
 5 without the invalid provision or its application and to this  
 6 end the provisions of this article are declared severable.

**CHAPTER 17A.**

**MOTOR VEHICLE ADMINISTRATION,  
 REGISTRATION, CERTIFICATE OF TITLE, AND  
 ANTITHEFT PROVISIONS.**

**ARTICLE 2. DEPARTMENT OF MOTOR VEHICLES.**

**§17A-2-10. Motor vehicles commissioner — Reciprocal  
 agreements with other states.**

1 The motor vehicle commissioner in cooperation with  
 2 the state auditor, state road commissioner, the public  
 3 service commission and the department of public safety  
 4 may enter into such reciprocal agreements as he may  
 5 deem proper or expedient with the proper authorities of  
 6 other states, regulating the use, on the roads and highways  
 7 of this state, of trucks, automobiles and any other vehicles  
 8 owned in such other states and duly licensed under the

9 laws thereof. The commissioner may confer and advise  
10 with the proper officers and legislative bodies of this and  
11 other states and federal districts of the United States, to  
12 promote reciprocal agreements under which the  
13 registration of vehicles owned in this state, and the licenses  
14 of operators and chauffeurs residing in this state shall be  
15 recognized by other states and federal districts.

**§17A-2-10a. Same — Authorizing the entry of this state into reciprocal proportional registration agreements; payment of taxes; issuance of registration plates or markers; promulgation of rules; interagency cooperation; requirement that all registrants pay tax; intermittent interstate commerce and promulgation of rules; proportional registration agreement prevails.**

1 (a) The commissioner of motor vehicles is hereby  
2 authorized and empowered to enter into reciprocal  
3 agreements on behalf of this state with any jurisdiction  
4 which permits or requires the licensing of motor vehicles  
5 in interstate or combined interstate and intrastate  
6 commerce and the payment of taxes, registration, licensing  
7 or other fees fixed by the motor vehicle commissioner,  
8 pursuant to the execution of this article on an  
9 apportionment basis commensurate with and determined  
10 by the miles traveled on public roads and highways in that  
11 jurisdiction, as compared with the miles traveled on public  
12 roads and highways in other jurisdictions or on any other  
13 equitable basis of apportionment, and if that jurisdiction  
14 exempts motor vehicles registered in other jurisdictions  
15 under that apportionment basis from the requirements of  
16 full payment of its own registration, license or other fixed  
17 fees, the commissioner, by agreement may adopt the  
18 exemption as to those motor vehicles, whether owned by  
19 residents or nonresidents of this state and regardless of  
20 where the vehicles are registered.

21 (b) The agreements under such terms, conditions or  
22 restrictions as the commissioner deems proper may  
23 provide that owners of motor vehicles operated in  
24 interstate or combined interstate and intrastate commerce  
25 in this state shall be permitted to pay registration, license

26 or other fees fixed on an apportionment basis,  
27 commensurate with and determined by the miles traveled  
28 on public roads and highways in this state as compared  
29 with the miles traveled on public roads and highways in  
30 other jurisdictions or any other equitable basis of  
31 apportionment. Such agreements shall not authorize or be  
32 construed as authorizing any motor vehicle so registered  
33 to be operated without complying with the provisions of  
34 chapter eleven and chapter twenty-four-a of this code.

35 (c) Pursuant to the provisions of this section, the  
36 commissioner is expressly authorized and empowered to  
37 enter into and become a member of the international  
38 registration plan or such other designation that may from  
39 time to time be given to such reciprocal plan.

40 (d) The commissioner shall prescribe the substance,  
41 form, color and context of any registration plate or  
42 marker issued under the provisions of this section, each of  
43 which shall be visually distinguishable from other  
44 registration plates or markers produced by the department  
45 of motor vehicles.

46 (e) The commissioner is authorized to promulgate  
47 procedural rules as may be necessary to carry out the  
48 provisions of any agreements entered into pursuant to this  
49 section.

50 (f) The commissioner is authorized to collect and  
51 receive funds under this article pursuant to the authority  
52 rested in him or her under article six-~~a~~ of chapter eleven  
53 of this code. *del*

54 (g) The commissioner is hereby authorized and  
55 required to share with the interstate commerce disclosure  
56 division of the office of the state auditor any and all  
57 information acquired by the department of motor vehicles  
58 pursuant to the implementation of this article. The  
59 department shall provide to the interstate commerce  
60 disclosure division, and the department of tax and revenue  
61 the name of the location and amount paid by West  
62 Virginia corporations registered under such proportional  
63 registration agreement.

64 (h) The department of motor vehicles shall not permit  
65 registration of any commercial vehicle without proof that  
66 the public utility tax assessed against it, if any, as certified  
67 by the board of public works, has been paid by  
68 production of a receipt from the division of public utilities  
69 in the office of the state auditor. All such registrants shall  
70 pay such assessments regardless of ownership.

71 (i) For any other irregular, intermittent, or temporary  
72 interstate commerce activity, the department of motor  
73 vehicles is hereby empowered to promulgate rules for the  
74 administration and oversight thereof.

75 (j) Notwithstanding any other provision of the code to  
76 the contrary, the requirements of the proportional  
77 assessment plan as contained in section one, article six<sup>4</sup>,  
78 chapter eleven<sup>4</sup>, *et seq.*, and the provisions of this chapter,  
79 shall prevail in the event of any conflict with any other  
80 portion of the code.

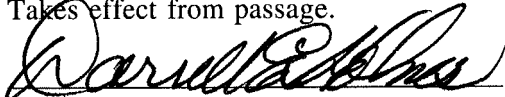
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

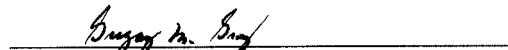
  
Chairman Senate Committee

  
Chairman House Committee


Originating in the House.

Takes effect from passage.

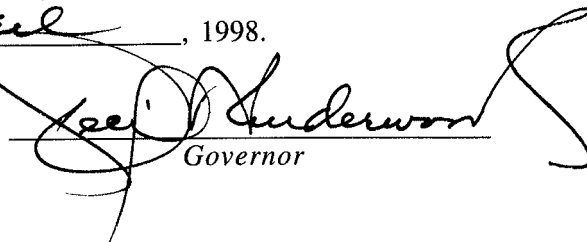
  
Clerk of the Senate

  
Clerk of the House of Delegates

  
President of the Senate

  
Speaker of the House of Delegates

The within approved this the 8th  
day of April, 1998.

  
Governor



PRESENTED TO THE

GOVERNOR

Date 3/23/98

Time 3:10 pm