WEST VIRGINIA LEGISLATURE
FIRST REGULAR SESSION, 2001

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ENROLLED

COMMITTEE SUBSTITUTE
FOR
House Bill No. 2804

(By Delegates Staton, Canterbury, Keener,
Craig, Stephens, Fox and Swartzmiller)

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Passed April 14, 2001

In Effect Ninety Days from Passage
ENROLLED

COMMITTEE SUBSTITUTE

FOR

H. B. 2804

(BY DELEGATES STATON, CANTERBURY, KEENER, CRAIG, STEPHENS, FOX AND SWARTZMILLER)

[Passed April 14, 2001; in effect ninety days from passage.]

AN ACT to amend and reenact section four, article five, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections eleven, sixteen, eighteen, eighteen-a and eighteen-b, article seven, chapter twenty of said code; and to further amend said article by adding thereto seven new sections, designated sections eighteen-c, eighteen-d, nineteen-a, twenty-a and twenty-two-a, all relating to motorboats and other motorized vessels; providing for certain implied consent regulations to test for alcohol on blood, breath or urine; regulating certain personal watercrafts; restricting the age of operation; requiring certain flotation and safety devices; restricting the hours of use; prohibiting certain reckless activities; setting guidelines for towing certain water skiers and other towables; regulating certain boating and personal watercraft liveries; providing certain exemptions; providing for a duty on
Enr. Com. Sub. for H.B. 2804] 2
certain personal watercrafts and motorized vessels to render aid after a collision; restriction of operation of certain personal watercrafts or other motorized vessels under the influence of alcohol, controlled substances or drugs; and providing certain criminal penalties.

Be it enacted by the Legislature of West Virginia:

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

CHAPTER 17C. TRAFFIC REGULATIONS AND LAWS OF THE ROAD.

ARTICLE 5. SERIOUS TRAFFIC OFFENSES.

§17C-5-4. Implied consent to test; administration at direction of law-enforcement officer; designation of type of test; definition of law-enforcement officer.

(a) Any person who drives a motor vehicle in this state is deemed to have given his or her consent by the operation of the motor vehicle to a preliminary breath analysis and a secondary chemical test of either his or her blood, breath or urine for the purposes of determining the alcoholic content of his or her blood.

(b) A preliminary breath analysis may be administered in accordance with the provisions of section five of this article whenever a law-enforcement officer has reasonable cause to believe a person has committed an offense prohibited by section two of this article or by an ordinance of a municipality of this
state which has the same elements as an offense described in section two of this article.

(c) A secondary test of blood, breath or urine is incidental to a lawful arrest and is to be administered at the direction of the arresting law-enforcement officer having reasonable grounds to believe the person has committed an offense prohibited by section two of this article or by an ordinance of a municipality of this state which has the same elements as an offense described in section two of this article.

(d) The law-enforcement agency that employs the law-enforcement officer shall designate which type of secondary test is to be administered: Provided, That if the test designated is a blood test and the person arrested refuses to submit to the blood test, then the law-enforcement officer making the arrest shall designate either a breath or urine test to be administered. Notwithstanding the provisions of section seven of this article, the refusal to submit to a blood test only may not result in the revocation of the arrested person's license to operate a motor vehicle in this state.

(e) Any person to whom a preliminary breath test is administered who is then arrested shall be given a written statement advising him or her that his or her refusal to submit to the secondary chemical test pursuant to subsection (d) of this section, will result in the revocation of his or her license to operate a motor vehicle in this state for a period of at least one year and up to life.

(f) Any law-enforcement officer who has been properly trained in the administration of any secondary chemical test authorized by this article, including, but not limited to, certification by the division of health in the operation of any equipment required for the collection and analysis of a breath sample, may conduct the test at any location in the county wherein the
arrest is made: Provided, That the law-enforcement officer may conduct the test at the nearest available properly functioning secondary chemical testing device located outside the county in which the arrest was made, if (i) there is no properly functioning secondary chemical testing device located within the county the arrest was made or (ii) there is no magistrate available within the county the arrest was made for the arraignment of the person arrested. A law-enforcement officer who is directing that a secondary chemical test be conducted has the authority to transport the person arrested to where the secondary chemical testing device is located.

(g) If the arresting officer lacks proper training in the administration of a secondary chemical test, then any other law-enforcement officer who has received training in the administration of the secondary chemical test to be administered may, upon the request of the arresting law-enforcement officer and in his or her presence, conduct the secondary test. The results of a test conducted pursuant to this subsection may be used in evidence to the same extent and in the same manner as if the test had been conducted by the arresting law-enforcement officer.

(h) Only the person actually administering or conducting a test conducted pursuant to this article is competent to testify as to the results and the veracity of the test.

(i) For the purpose of this article, the term "law-enforcement officer" or "police officer" means: (1) Any member of the West Virginia state police; (2) any sheriff and any deputy sheriff of any county; (3) any member of a police department in any municipality as defined in section two, article one, chapter eight of this code; (4) any conservation officer of the division of natural resources; and (5) any special police officer appointed by the governor pursuant to the provisions of section forty-one, article three, chapter sixty-one
of this code who has completed the course of instruction at a
law-enforcement training academy as provided for under the
provisions of section nine, article twenty-nine, chapter thirty of
this code.

(j) A law-enforcement officer who has reasonable cause to
believe that person has committed an offense prohibited by
section 18 the article seven, chapter twenty of this code, related
the operation of a motorboat, jet ski or other motorized vessel,
shall follow the provisions of this section in administering, or
causing to be administered, a preliminary breath analysis and
the secondary chemical test of the accused person’s blood,
breath or urine for the purpose of determining alcohol content
of his or her blood.

CHAPTER 20. NATURAL RESOURCES

ARTICLE 7. LAW ENFORCEMENT, MOTORBOATING, LITTER.

§20-7-11. Motorboats and other terms defined.

As used in this section and subsequent sections of this
article, unless the context clearly requires a different meaning:

(1) “Vessel” means every description of watercraft, other
than a seaplane on the water, used or capable of being used as
a means of transportation on water;

(2) “Motorboat” means any vessel propelled by an electri-
cal, steam, gas, diesel or other fuel propelled or driven motor,
whether or not the motor is the principal source of propulsion,
but does not include a vessel which has a valid marine docu-
ment issued by the bureau of customs of the United States
government or any federal agency successor thereto;

(3) “Owner” means a person, other than a lienholder,
having the property in or title to a motorboat. The term includes
a person entitled to the use or possession of a motorboat subject
to an interest in another person, reserved or created by agree-
ment and securing payment or performance of an obligation,
but the term excludes a lessee under a lease not intended as
security;

(4) “Commissioner” means the commissioner of the
division of motor vehicles;

(5) “Director” means the director of the division of natural
resources; and

(6) “Personal watercraft” means a small vessel of less than
sixteen feet in length which uses an inboard motor powering a
water jet pump as its primary source of motive power and
which is designed to be operated by a person sitting, standing,
or kneeling on the vessel, rather than the conventional manner
of sitting or standing inside the vessel. For purposes of this
article, the term “personal watercraft” also includes “specialty
prop-crafts” which are vessels similar in appearance and
operation to a personal watercraft but which are powered by an
outboard motor or propeller driven motor.

§20-7-16. Boat liveries.

(a) The owner or operator of a boat livery or rental facility
shall cause to be kept a record of the name and address of the
person or persons hiring any vessel including personal water-
crafts which is designed or permitted by him or her to be
operated as a motorboat, identification number thereof, and the
departure date and time, and the expected time of return. The
record shall be preserved for at least six months.

(b) Neither the owner or operator of a boat livery or rental
facility, nor his or her agent or employee, shall permit any
motorboat, personal watercraft or any vessel designed or
permitted by him or her to be operated as a motorboat or
personal watercraft to depart from his or her premises unless it
shall have been provided, either by owner or renter, with the
equipment required pursuant to section thirteen of this article
and any rules made pursuant thereto.

(c) The owner or operator of a boat livery or rental facility,
or his or her agent or employee, shall provide boating safety
orientation for all persons that rent any vessel, including
personal watercrafts, unless that person holds a certificate as
required by section twelve-b, article seven of this chapter. The
owner of a boat livery or rental facility, or his or her agent or
employee, shall also provide to the operator or operators in
print, prior to rental, the operational characteristics of personal
watercrafts.

(d) The owner or operator of a boat livery or rental facility,
or his or her agent or employee, may not lease, hire or rent a
personal watercraft to any person under eighteen years of age.

(e) The owner or operator of a boat livery or rental facility,
or his or her agent or employee, shall provide to the operator or
operators of rental vessels, boats or personal watercrafts, in
print, all pertinent boating rules including, but not limited to,
those rules that may be peculiar to the area of the rental, such
as no-wake zones, restricted areas, channel markers, water
hazard markers and swimming zones.

(f) The owner or operator of a boat livery or rental facility
shall carry liability insurance of at least three-hundred thousand
dollars and possess the license and surety bond as required by
section twenty-three-d, article two of this chapter.

§20-7-18. Care in handling watercraft; duty to render aid after
a collision, accident or casualty; accident reports.

(a) No person shall operate a motorboat, jet ski or other
motorized vessel or manipulate any water skis, surfboard or
similar device in a reckless or negligent manner so as to endanger the life, limb or property of any person.

(b) No person shall operate any motorboat, jet ski or other motorized vessel, or manipulate any water skis, surfboard or similar device while under the influence of alcohol or a controlled substance or drug, under the combined influence of alcohol and any controlled substance or any other drug, or while having an alcohol concentration in his or her blood of ten hundredths of one percent or more, by weight.

(c) It shall be the duty of the operator of a vessel involved in a collision, accident or other casualty, so far as he or she can do so without serious danger to his or her own vessel, crew and passengers (if any), to render to other persons affected by the collision, accident or other casualty such assistance as may be practicable and as may be necessary in order to save them from or minimize any danger caused by the collision, accident or other casualty, and also to give his or her name, address and identification of his or her vessel in writing to any person injured and to the owner of any property damaged in the collision, accident or other casualty.

(d) The operator of a vessel involved in a collision, accident or other casualty shall file an accident report with the director if the incident results in a loss of life, in a personal injury that requires medical treatment beyond first aid or in excess of five hundred dollars damage to a vessel or other property. The report shall be made on forms and contain information as prescribed by the director. Upon a request duly made by an authorized official or agency of the United States, any information compiled or otherwise available to the director pursuant to this subsection shall be transmitted to the official or agency.

§20-7-18a. Negligent homicide; penalties.
(a) When the death of any person ensues within one year as a proximate result of injury received by operating any motorboat, jet ski or other motorized vessel anywhere in this state in reckless disregard of the safety of others, the person so operating the motorboat, jet ski or other motorized vessel is guilty of negligent homicide.

(b) Any person convicted of negligent homicide shall be punished by imprisonment in the county or regional jail for not more than one year or by fine of not less than one hundred dollars nor more than one thousand dollars, or by both fine and imprisonment.

(c) The director shall suspend the privilege to operate a motorboat or other motorized vessel in this state for a period of five years from the date of conviction.

§20-7-18b. Operating under influence of alcohol, controlled substances or drugs; penalties.

(a) Any person who:

(1) Operates a motorboat, jet ski or other motorized vessel in this state while:

(A) He or she is under the influence of alcohol; or

(B) He or she is under the influence of any controlled substance; or

(C) He or she is under the influence of any other drug; or

(D) He or she is under the combined influence of alcohol and any controlled substance or any other drug; or

(E) He or she has an alcohol concentration in his or her blood of ten hundredths of one percent or more, by weight; and
(2) When so operating does any act forbidden by law or fails to perform any duty imposed by law in the operating of the motorboat, jet ski or other motorized vessel, which act or failure proximately causes the death of any person within one year next following the act or failure; and

(3) Commits the act or failure in reckless disregard of the safety of others, when the influence of alcohol, controlled substances or drugs is shown to be a contributing cause to the death, is guilty of a felony and, upon conviction thereof, shall be imprisoned in the state correctional facility for not less than one nor more than ten years and shall be fined not less than one thousand dollars nor more than three thousand dollars.

(b) Any person who:

(1) Operates a motorboat, jet ski or other motorized vessel in this state while:

(A) He or she is under the influence of alcohol; or

(B) He or she is under the influence of any controlled substance; or

(C) He or she is under the influence of any other drug; or

(D) He or she is under the combined influence of alcohol and any controlled substance or any other drug; or

(E) He or she has an alcohol concentration in his or her blood of ten hundredths of one percent or more, by weight; and

(2) When so operating does any act forbidden by law or fails to perform any duty imposed by law in the operating of the motorboat, jet ski or other motorized vessel, which act or failure proximately causes the death of any person within one year next following the act or failure, is guilty of a misde-
meantor and, upon conviction thereof, shall be confined in the county or regional jail for not less than ninety days nor more than one year and shall be fined not less than five hundred dollars nor more than one thousand dollars.

(c) Any person who:

(1) Operates a motorboat, jet ski or other motorized vessel in this state while:

(A) He or she is under the influence of alcohol; or

(B) He or she is under the influence of any controlled substance; or

(C) He or she is under the influence of any other drug; or

(D) He or she is under the combined influence of alcohol and any controlled substance or any other drug; or

(E) He or she has an alcohol concentration in his or her blood of ten hundredths of one percent or more, by weight; and

(2) When so operating does any act forbidden by law or fails to perform any duty imposed by law in the operating of the motorboat, jet ski or other motorized vessel, which act or failure proximately causes bodily injury to any person other than himself or herself, is guilty of a misdemeanor and, upon conviction thereof, shall be confined in the county or regional jail for not less than one day nor more than one year, which jail term shall include actual confinement of not less than twenty-four hours, and shall be fined not less than two hundred dollars nor more than one thousand dollars.

(d) Any person who:

(1) Operates a motorboat, jet ski or other motorized vessel in this state while:
(A) He or she is under the influence of alcohol; or

(B) He or she is under the influence of any controlled substance; or

(C) He or she is under the influence of any other drug; or

(D) He or she is under the combined influence of alcohol and any controlled substance or any other drug; or

(E) He or she has an alcohol concentration in his or her blood of ten hundredths of one percent or more, by weight;

(2) Is guilty of a misdemeanor and, upon conviction thereof, shall be confined in the county or regional jail for not less than one day nor more than six months, which jail term shall include actual confinement of not less than twenty-four hours, and shall be fined not less than one hundred dollars nor more than five hundred dollars.

(e) Any person who, being an habitual user of narcotic drugs or amphetamine or any derivative thereof, operates a motorboat, jet ski or other motorized vessel in this state, is guilty of a misdemeanor and, upon conviction thereof, shall be confined in the county or regional jail for not less than one day nor more than six months, which jail term shall include actual confinement of not less than twenty-four hours, and shall be fined not less than one hundred dollars nor more than five hundred dollars.

(f) Any person who:

(1) Knowingly permits his or her motorboat, jet ski or other motorized vessel to be operated in this state by any other person who is:

(A) Under the influence of alcohol; or
(B) Under the influence of any controlled substance; or

(C) Under the influence of any other drug; or

(D) Under the combined influence of alcohol and any
controlled substance or any other drug; or

(E) Has an alcohol concentration in his or her blood of ten
hundredths of one percent or more, by weight;

(2) Is guilty of a misdemeanor and, upon conviction
thereof, shall be confined in the county or regional jail for not
more than six months and shall be fined not less than one
hundred dollars nor more than five hundred dollars.

(g) Any person who:

Knowingly permits his or her motorboat, jet ski or other
motorized vessel to be operated in this state by any other person
who is an habitual user of narcotic drugs or amphetamine or
any derivative thereof, is guilty of a misdemeanor and, upon
conviction thereof, shall be confined in the county or regional
jail for not more than six months and shall be fined not less than
one hundred dollars nor more than five hundred dollars.

(h) Any person under the age of twenty-one years who
operates a motorboat, jet ski or other motorized vessel in this
state while he or she has 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, shall, for a
first offense under this subsection, be guilty of a misdemeanor
and, upon conviction thereof, shall be fined not less than
twenty-five dollars nor more than one hundred dollars. For a
second or subsequent offense under this subsection, the person
is guilty of a misdemeanor and, upon conviction thereof, shall
be confined in the county or regional jail for twenty-four hours,
and shall be fined not less than one hundred dollars nor more
than five hundred dollars.

A person arrested and charged with an offense under the
provisions of subsection (a), (b), (c), (d), (e), (f), (g) or (i) of
this section may not also be charged with an offense under this
subsection arising out of the same transaction or occurrence.

(i) Any person who:

(1) Operates a motorboat, jet ski or other motorized vessel
in this state while:

(A) He or she is under the influence of alcohol; or

(B) He or she is under the influence of any controlled
substance; or

(C) He or she is under the influence of any other drug; or

(D) He or she is under the combined influence of alcohol
and any controlled substance or any other drug; or

(E) He or she has an alcohol concentration in his or her
blood of ten hundredths of one percent or more, by weight; and

(2) The person when so operating has on or within the
motorboat, jet ski or other motorized vessel one or more other
persons who are unemancipated minors who have not reached
their sixteenth birthday, shall be guilty of a misdemeanor and,
upon conviction thereof, shall be confined in the county or
regional jail for not less than two days nor more than twelve
months, which jail term shall include actual confinement of not
less than forty-eight hours, and shall be fined not less than two
hundred dollars nor more than one thousand dollars.

(j) A person violating any provision of subsection (b), (c),
(d), (e), (f), (g) or (i) of this section, for the second offense
under this section, is guilty of a misdemeanor and, upon conviction thereof, shall be confined in the county or regional jail for a period of not less than six months nor more than one year, and the court may, in its discretion, impose a fine of not less than one thousand dollars nor more than three thousand dollars.

(k) A person violating any provision of subsection (b), (c), (d), (e), (f), (g) or (i) of this section shall, for the third or any subsequent offense under this section, be guilty of a felony and, upon conviction thereof, shall be imprisoned in the state correctional facility for not less than one nor more than three years, and the court may, in its discretion, impose a fine of not less than three thousand dollars nor more than five thousand dollars.

(l) For purposes of subsections (j) and (k) of this section relating to second, third and subsequent offenses, the following types of convictions shall be regarded as convictions under this section:

(1) Any conviction under the provisions of subsection (a), (b), (c), (d), (e) or (f) of this section for an offense which occurred on or after the effective date of this section;

(2) Any conviction under the provisions of subsection (a) or (b) of this section for an offense which occurred within a period of five years immediately preceding the date of the offense; and

(3) Any conviction under a municipal ordinance of this state or any other state or a statute of the United States or of any other state of an offense which has the same elements as an offense described in subsection (a), (b), (c), (d), (e), (f) or (g) of this section, which offense occurred after the effective date of this section.
(m) A person may be charged in a warrant or indictment or information for a second or subsequent offense under this section if the person has been previously arrested for or charged with a violation of this section which is alleged to have occurred within the applicable time periods for prior offenses, notwithstanding the fact that there has not been a final adjudication of the charges for the alleged previous offense. The warrant or indictment or information shall set forth the date, location and particulars of the previous offense or offenses. No person may be convicted of a second or subsequent offense under this section unless the conviction for the previous offense has become final.

(n) The fact that any person charged with a violation of subsection (a), (b), (c), (d) or (e) of this section, or any person permitted to operate as described under subsection (f) or (g) of this section, is or has been legally entitled to use alcohol, a controlled substance or a drug shall not constitute a defense against any charge of violating subsection (a), (b), (c), (d), (e), (f) or (g) of this section.

(o) For purposes of this section, the term “controlled substance” shall have the meaning ascribed to it in chapter sixty-a of this code.

(p) The sentences provided herein upon conviction for a violation of this article are mandatory and may not be subject to suspension or probation: Provided, That the court may apply the provisions of article eleven-a, chapter sixty-two of this code to a person sentenced or committed to a term of one year or less. An order for home detention by the court pursuant to the provisions of article eleven-b, chapter sixty-two of this code may be used as an alternative sentence to any period of incarceration required by this section.
§20-7-18c. Implied consent to test; administration at direction of law-enforcement officer.

Any person who operates a motorboat, jet ski or other motorized vessel in this state shall be deemed to have given his or her consent by the operation thereof, to a preliminary breath analysis and a secondary chemical test of either his or her blood, breath or urine for the purposes of determining the alcoholic content of his or her blood. A preliminary breath test and the secondary chemical test of blood, breath or urine and the results of the tests may be designated, administered, processed, interpreted and used in the same manner as tests designated and administered in accordance with the provisions of article five, chapter seventeen-c of this code.

§20-7-18d. Operation of Personal Watercrafts.

(a) No person under the age of fifteen may operate a personal watercraft on the waters of this state; Provided, That a person that has attained the age of twelve may operate a personal watercraft if a person eighteen years or older is aboard the personal watercraft.

(b) A person may not operate a personal watercraft unless each person on board or being towed behind is wearing a type I, type II, type III, or type V personal flotation device approved by the United States Coast Guard. Inflatable personal flotation devices do not meet the requirements of this section.

(c) A person operating a personal watercraft equipped by the manufacturer with a lanyard-type engine cutoff switch must attach the lanyard to his or her person, clothing, or personal flotation device as appropriate for the specific vessel.

(d) A person may not operate a personal watercraft at anytime between the hours of sunset and sunrise. However, an agent or employee of a fire rescue, emergency rescue unit, or
law enforcement division is exempt from this subsection while performing his or her official duties.

(e) A personal watercraft must at all times be operated in a reasonable and prudent manner. Maneuvers which unreasonably or unnecessarily endanger life, limb, or property constitutes reckless operation of a vessel and includes, but is not limited to:

(1) Weaving through congested traffic;

(2) Jumping the wake of another vessel unreasonably or unnecessarily close to the other vessel or when visibility around the other vessel is obstructed or restricted;

(3) Becoming airborne or completely leaving the water while crossing the wake of another vessel within one-hundred feet of the vessel creating the wake;

(4) Operating at a greater than slow or no-wake speed within one-hundred feet of an anchored or moored vessel, shoreline, dock, pier, swim float, marked swim areas, swimmers, surfers, persons engaged in angling, or any manually powered vessel;

(5) Operating contrary to navigation rules including following too closely to another vessel, including another personal watercraft. For the purpose of this subdivision, “following too closely” is construed as a proceeding in the same direction and operating at a speed in excess of ten miles per hour within one-hundred feet to the rear or fifty feet to the side of another vessel which is underway, unless said vessels are operating in a narrow channel, in which case the personal watercraft may operate at the speed and flow of the other vessel traffic within the channel.

§20-7-19a. Towing water skiers and towables.
(a) No person may operate a personal watercraft towing another person on water skis or other towables unless the personal watercraft has, on board, in addition to the operator, a rear-facing observer, who monitors the progress of the person or persons being towed. This rear-facing observer must be at least twelve years of age.

(b) No person may operate a personal watercraft towing another person on water skis or other towables unless the total number of persons operating, observing and being towed does not exceed the specified number of passengers as identified by the manufacturer as the maximum safe load for the vessel.

§20-7-20a. Personal watercraft operation and towing exemptions.

(a) The provisions of sections eighteen-f and nineteen-a do not apply to a performer engaged in a professional exhibition or a person engaging in an officially sanctioned regatta, race, marine parade, tournament, exhibition, or water safety demonstration.

(b) The provisions of sections eighteen-f and nineteen-a do not apply to a person who holds a valid master’s, mate’s, or operator’s license issued by the United States Coast Guard while performing his or her official duties.

§20-7-22a. Agency rulemaking for personal watercrafts.

The director of the division of natural resources shall propose rules, including the personal watercraft safety orientation requirements for livery owners and operators, for legislative approval in accordance with the provisions of subdivision thirty, section seven, article one of this chapter and section one, article one, chapter twenty-nine-a of this code which effectuate the contents of sections eleven, sixteen, eighteen-f, nineteen-a and twenty-a of this article.
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originating in the House.

In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within is approved this the 30th day of April, 2001.

Governor