WEST VIRGINIA LEGISLATURE
Regular Session, 2003

ENROLLED
Committee Substitute for Committee Substitute for
SENATE BILL NO. ________583________

(By Senator Charles, et al)_____

PASSED March 8, 2003

In Effect ________From ________Passage
ENROLLED

COMMITTEE SUBSTITUTE

FOR

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 583

(Senators Chafin, Love, Edgell, Snyder, Bailey, Tomblin,
Mr. President, Minear, Guill's, Weeks, Sprouse, Helmick,
Ross, Sharpe and Fanning, original sponsors)

[Passed March 8, 2003; in effect from passage.]

AN ACT to amend and reenact section one, article six, chapter seventeen-c 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 ten; to amend and reenact sections ten and eleven, article seventeen of said chapter; to further amend said article by adding thereto a new section, designated section eleven-d; to further amend said chapter by adding thereto two new articles, designated articles seventeen-a and seventeen-b; to amend and reenact section three, article one, chapter seventeen-e of said code; to amend chapter twenty-four-a of
said code by adding thereto a new article, designated article one-a; and to amend article seven of said chapter by adding thereto a new section, designated section seven, all relating to the regulation of commercial vehicles; increasing speeding fines for certain commercial vehicles transporting coal; authorizing public service commission to enforce laws of the road for commercial vehicles; authorizing public service commission to issue special permits; authorizing weight enforcement for commercial vehicles moving or parked on or within one hundred feet of a public highway or right-of-way; establishing administrative enforcement process and penalties for vehicles transporting coal; issuance of special permits for designated roads; setting maximum highway weights; providing legislative findings for special regulation of coal transportation on the coal resource transportation road system; defining terms; designating eligible counties; directing public service commission to administer commercial vehicle weights and measures; providing that division of highways and public service commission administer all aspects of weight and safety requirements; providing that division of highways coordinate establishment of coal resource transportation roads with the public service commission; establishing a permitting program for vehicles transporting coal which allows higher weight limits upon meeting certain requirements; authorizing public service commission to promulgate emergency and legislative rules; providing for fees to be assessed for permits; providing requirements for vehicle owners, coal shippers and coal receivers; authorizing commission employees to inspect certain weight transportation records; establishing administrative sanctions for coal vehicle weight violations; establishing new penalties for weight violations; establishing procedure and criteria for commissioner of division of highways to designate special coal resource transportation roads; setting an effective date; authorizing commissioner of division of highways to enter into agreements with persons responsible for coal transport to under-
take road and bridge improvements; exclusion of off-road vehicles and interstate highways; providing penalties for spotting; providing for transfer of certain duties, authority and employees of the division of highways to the public service commission; providing dates for transfer of these duties; providing that state road funds for these costs be transferred to public service commission; providing that transfer of these duties does not alter other law-enforcement agencies' authority; costs of enforcement; removing weight from the list of nonserious traffic violations; creating commercial motor vehicle weight and safety enforcement advisory committee; providing for its membership, organization, compensation, expense reimbursements, duties and termination of committee; and providing that certain employees of the public service commission are authorized to enforce certain traffic offenses and use radar.

Be it enacted by the Legislature of West Virginia:

That section one, article six, chapter seventeen-c 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 ten; that sections ten and eleven, article seventeen of said chapter be amended and reenacted; that said article be further amended by adding thereto a new section, designated section eleven-d; that said chapter be further amended by adding thereto two new articles, designated articles seventeen-a and seventeen-b; that section three, article one, chapter seventeen-e of said code be amended and reenacted; that chapter twenty-four-a of said code be amended by adding thereto a new article, designated article one-a; and that article seven of said chapter be amended by adding thereto a new section, designated section seven, all to read as follows:

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

ARTICLE 6. SPEED RESTRICTIONS.

§17C-6-1. Speed limitations generally; penalty.
(a) No person may drive a vehicle on a highway at a speed greater than is reasonable and prudent under the existing conditions and the actual and potential hazards. In every event speed shall be so controlled as may be necessary to avoid colliding with any person, vehicle or other conveyance on or entering the highways in compliance with legal requirements and the duty of all persons to use due care.

(b) Where no special hazard exists that requires lower speed for compliance with subsection (a) of this section, the speed of any vehicle not in excess of the limits specified in this section or established as authorized in this section is lawful, but any speed in excess of the limits specified in this subsection or established as authorized in this section is unlawful. The following speed limits apply:

(1) Fifteen miles per hour in a school zone during school recess or while children are going to or leaving school during opening or closing hours. A school zone is all school property, including school grounds and any street or highway abutting the school grounds and extending one hundred twenty-five feet along the street or highway from the school grounds. The speed restriction does not apply to vehicles traveling on a controlled-access highway which is separated from the school or school grounds by a fence or barrier approved by the division of highways;

(2) Twenty-five miles per hour in any business or residence district; and

(3) Fifty-five miles per hour on open country highways, except as otherwise provided by this chapter.

The speeds set forth in this section may be altered as authorized in sections two and three of this article.

(c) The driver of every vehicle shall, consistent with the requirements of subsection (a) of this section, drive at an appropriate reduced speed when approaching and crossing an intersection or railway grade crossing, when approach-
ing and going around a curve, when approaching a hill crest, when traveling upon any narrow or winding roadway and when a special hazard exists with respect to pedestrians or other traffic or by reason of weather or highway conditions.

(d) The speed limit on controlled access highways and interstate highways, where no special hazard exists that requires a lower speed, shall be not less than fifty-five miles per hour and the speed limits specified in subsection (b) of this section do not apply.

(e) Unless otherwise provided in this section, any person who violates the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one hundred dollars; upon a second conviction within one year thereafter, shall be fined not more than two hundred dollars; and, upon a third or subsequent conviction within two years thereafter, shall be fined not more than five hundred dollars: Provided, That if the third or subsequent conviction is based upon a violation of the provisions of this section where the offender exceeded the speed limit by fifteen miles per hour or more, then upon conviction, shall be fined not more than five hundred dollars or confined in the county or regional jail for not more than six months, or both.

(f) Any person who violates the provisions of subdivision (1), subsection (b) of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than one hundred dollars nor more than five hundred dollars: Provided, That if the conviction is based upon a violation of the provisions of subdivision (1), subsection (b) of this section where the offender exceeded the speed limit by fifteen miles per hour or more in the presence of one or more children, then upon conviction, shall be fined not less than one hundred dollars nor more than five hundred dollars or confined in the regional or county jail for not more than six months, or both.
(g) If an owner or driver is arrested under the provisions of this section for the offense of driving above the posted speed limit on a controlled access highway or interstate highway and if the evidence shows that the motor vehicle was being operated at ten miles per hour or less above the speed limit, then, upon conviction thereof, that person shall be fined not more than five dollars, plus court costs.

(h) Any person operating a commercial motor vehicle engaged in the transportation of coal on the coal resource transportation road system who violates subsection (a), (b) or (c) of this section shall, upon conviction, be subject to fines in triple the amount otherwise provided in subsection (e) of this section.

(i) If an owner or driver is convicted under the provisions of this section for the offense of driving above the speed limit on a controlled-access highway or interstate highway of this state and if the evidence shows that the motor vehicle was being operated at ten miles per hour or less above the speed limit, then notwithstanding the provisions of section four, article three, chapter seventeen-b of this code, a certified abstract of the judgment on the conviction shall not be transmitted to the division of motor vehicles: Provided, That the provisions of this subsection do not apply to conviction of owners or drivers who have been issued a commercial driver's license as defined in chapter seventeen-e of this code, if the offense was committed while operating a commercial vehicle.

(j) If an owner or driver is convicted in another state for the offense of driving above the maximum speed limit on a controlled-access highway or interstate highway and if the maximum speed limit in the other state is less than the maximum speed limit for a comparable controlled-access highway or interstate highway in this state, and if the evidence shows that the motor vehicle was being operated at ten miles per hour or less above what would be the maximum speed limit for a comparable controlled-access highway or interstate highway in this state, then notwith-
standing the provisions of section four, article three,
chapter seventeen-b of this code, a certified abstract of the
judgment on the conviction shall not be transmitted to the
division of motor vehicles or, if transmitted, shall not be
recorded by the division, unless within a reasonable time
after conviction, the person convicted has failed to pay all
fines and costs imposed by the other state: Provided, That
the provisions of this subsection do not apply to conviction
of owners or drivers who have been issued a commercial
driver's license as defined in chapter seventeen-e of this
code, if the offense was committed while operating a
commercial vehicle.

§17C-6-10. Enforcement of article with respect to operations of
commercial motor vehicles.

In addition to enforcement by officers and other persons
authorized by law, designated employees of the public
service commission of West Virginia may enforce the
provisions of this article as they relate to the operation of
commercial motor vehicles.

ARTICLE 17. SIZE, WEIGHT AND LOAD.

§17C-17-10. Officers may weigh, measure or examine vehicles
and require removal or rearrangement of excess loads.

(a) Any police officer or employee of the division of
highways or the public service commission designated as
a member of an official weighing crew by his or her
representative agency may require the driver of any
vehicle or combination of vehicles located on or within one
hundred feet of any public highway or right-of-way, and
whether moving or stopped, to submit the vehicle or
combination of vehicles to a weighing with portable or
stationary weighing devices or submit the vehicle or
combination of vehicles to a measuring or to any other
examination necessary to determine if the vehicle or
combination of vehicles is in violation of any of the
provisions of this article or article seventeen-a of this
chapter, and may require that the vehicle or combination of vehicles be driven to the nearest weighing device.

No vehicle or combination of vehicles may be detained for weighing unless a portable or stationary weighing device is actually present at the location where, and at the time, the vehicle or combination of vehicles is stopped or unless the vehicle or combination of vehicles is escorted immediately after being stopped to the nearest portable or stationary weighing device. In no case may a vehicle or combination of vehicles be detained more than one hour from the time it is stopped for weighing unless the vehicle or combination of vehicles is impounded for another violation or placed out of service for a safety violation.

(b) Whenever a police officer or a member of an official weighing crew determines that a vehicle or combination of vehicles is in violation of any of the provisions of this article or article seventeen-a of this chapter, he or she may require the driver to remain in place or be moved to a suitable location until the vehicle or combination of vehicles is brought into conformity with the provisions violated.

In the case of a weight violation all material unloaded shall be cared for by the owner, lessee or borrower of the vehicle or combination of vehicles at the risk of the owner, lessee or borrower: Provided, That no criminal charge shall be preferred against any driver, operator or owner of a vehicle when a rearrangement of the load upon the vehicle, without removal of the load from the vehicle, reduces the axle loads of the vehicle to the limit permitted under this chapter.

(c) Any driver of a vehicle or combination of vehicles who fails or refuses to comply with any requirement or provision of this section shall be guilty of a misdemeanor, or in the case of any driver of a vehicle engaged in the transportation of coal, any other additional penalties that
may be applicable under the provisions of article seventeen-a of this chapter.

§17C-17-11. Permits for excess size and weight.

(a) The public service commission may, in its discretion, upon application in writing and good cause shown issue a special permit in writing authorizing: (1) The applicant, in crossing any highway of this state, to operate or move a vehicle or combination of vehicles of a size or weight or load exceeding the maximum specified in this chapter or otherwise not in conformity with the provisions of this chapter, whether the operation is continuous or not, provided the applicant agrees to compensate the commissioner of highways for all damages or expenses incurred in connection with the crossing; (2) the applicant to operate or move a vehicle or combination of vehicles of a size or weight of vehicles or nondivisible load exceeding the maximum specified in this chapter or otherwise not in conformity with the provisions of this chapter; and (3) the applicant to move or operate, for limited or continuous operation, a vehicle hauling containerized cargo in a sealed, seagoing container to or from a seaport or inland waterway port that has or will be transported by marine shipment where the vehicle is not, as a result of hauling the container, in conformity with the provisions of this article relating to weight limitations, upon the conditions that: (A) The container be hauled only on the roadways and highways designated by the commissioner of highways; (B) the contents of the container are not changed from the time it is loaded by the consignor or the consignor's agent to the time it is delivered to the consignee or the consignee's agent; and (C) any additional conditions as the commissioner of highways or the public service commission may impose to otherwise ensure compliance with the provisions of this chapter.

(b) (1) The commissioner of highways may issue a special permit to operate or move a vehicle or combination of vehicles of a size or weight of vehicles or nondivisible load
(2) For purposes of this section, nondivisible load means any load exceeding applicable length or weight limits which, if separated into smaller loads or vehicles, would:

(A) Compromise the intended use of the vehicle, to the extent that the separation would make it unable to perform the function for which it was intended; (B) destroy the value of the load or vehicle, to the extent that the separation would make it unusable for its intended purpose; or (C) require more than eight workhours to dismantle using appropriate equipment: Provided, That the applicant for a nondivisible load permit has the burden of proof as to the number of workhours required to dismantle the load.

(c) The application for any permit other than a special annual permit shall specifically describe the vehicle or vehicles and load to be operated or moved along or across the highway and the particular highway or crossing of the highway for which the permit to operate is requested, and whether the permit is requested for a single trip or for a continuous operation.

(d) The public service commission is authorized to issue or withhold a permit at his or her discretion; or, if the permit is issued, to limit the number of trips, or to establish seasonal or other time limitations within which the vehicles described may be operated on or across the highways indicated, or otherwise to limit or prescribe conditions of operation of the vehicle or vehicles, when necessary to assure against undue damage to the road foundations, surface, or structures, and may require the undertaking, bond or other security considered necessary to compensate for any injury to any roadway structure and...
to specify the type, number and the location for escort
vehicles for any vehicle: Provided, That in establishing
limitations on permits issued under this section, the public
service commission shall consult with the commissioner of
highways, and may not issue, limit or condition a permit
in a manner inconsistent with the authority of the commis-
sioner of highways.

The public service commission may charge a fee for the
issuance of a permit for a mobile home and a reasonable
fee for the issuance of a permit for any other vehicle under
the provisions of this section to pay the administrative
costs thereof.

(e) Every permit shall be carried in the vehicle or combi-
nation of vehicles to which it refers and shall be open to
inspection by any police officer or authorized agent of the
commissioner of highways or the public service commis-
sion and no person shall violate any of the terms or
conditions of the special permit.

§17C-17-11d. Establishing maximum road highway weights.

Effective the first day of July, two thousand three, the
maximum gross vehicle weight on existing state-main-
tained roads and public highways designated for gross
weight vehicle load of eighty thousand pounds shall have
a tolerance of ten percent. All requirements for vehicle
design and axle weights otherwise established under this
code remain applicable. In no case may the commissioner
authorize weight limits on any state maintained road or
public highway that would jeopardize or otherwise limit
federal highway fund appropriations to this state. The
commissioner of highways shall, by the thirty-first day of
December, two thousand three, review and revise, as the
commissioner deems appropriate, weight limits for all
state maintained roads and public highways and provide
to the joint committee of government and finance a report
denoting all weight limits as they have been designated on
state maintained roads and public highways.
ARTICLE 17A. REGULATION OF THE COMMERCIAL TRANSPORTATION OF COAL.

§17C-17A-1. Legislative findings and creation of program.

(a) The Legislature finds and declares that:

(1) No other economic undertaking in the history of West Virginia has had a greater impact upon the citizens of this state, providing such an economic force and affecting the social construct and day-to-day life and environment of the people and communities of this state, than the activities associated with the extraction, transportation and consumption of coal or its byproducts. In areas of this state where the coal industry exists, the economic benefits of coal production are an indispensable part of the local community's vitality.

(2) The historic progression of the coal industry has resulted in an increasing use of the public highways of this state for the transportation of coal to river ports, power generators or rail loading facilities. Roads where coal is transported are mainly two-lane rural roads and highways of varying grades and conditions. The daily presence of large commercial motor vehicles on these roads and highways causes significant impact to local communities and the local transportation infrastructure. Local residents are exposed on a daily basis to the dangers associated with sharing the road with a large number of these vehicles.

(3) The increased capacity and ability of coal hauling vehicles, tied with increased economic pressures to reduce industry transportation costs, have created economic incentives for transporting coal at higher than legal limits, and for drivers to drive long hours and operate these vehicles at higher rates of speed. Consequently, average vehicle weights have increased and many coal transport vehicles regularly exceed the lawful limit by more than one hundred percent. The excessive weights of these vehicles have also resulted in the rapid deterioration of
state roads and bridges, creating significant costs to the
state of millions of dollars in lost road and bridge use and
life.

(4) Advances in truck stability, braking and safety
technology have made modern coal transporters much
safer conveyances than those used by the industry when
the state’s current weight laws were enacted. Further
advances in technology have made tracking and recording
individual vehicles, their operators and load significantly
more efficient.

(5) Enforcement of truck safety and driver safety laws
has been divided between various jurisdictions such as
local and state law enforcement, the division of highways
and the public service commission. As a result, local and
state enforcement of those comprehensive laws has not
been uniform, with the result that many of these laws have
not been enforced.

(6) The resulting need for a remedy for hauling these
additional amounts of coal is most severe in a limited and
discrete geographic area of the state where the limited
access to rail and river transportation options and eco-
nomic conditions require a regulatory program that allows
a greater weight allowance for coal hauling vehicles to
address the unique economic circumstances of that region.

(7) That this limited highway system must include
additional safety protections for the public sharing the
roads with a large coal hauling vehicle fleet and special-
ized training for operators of these vehicles, requiring the
program be designed to assure that state weight and safety
requirements be effectively administered and enforced.

(b) A special regulatory program with administrative
enforcement authority over all vehicles hauling coal in
West Virginia is created. This program is designed to
address the economic needs of the state coal industry
within the confines of the ability of the transportation
infrastructure to accommodate these needs and in careful consideration for road safety and maintenance requirements of these vehicles, by providing for statewide coal truck weight reporting requirements and allowing a limited statewide increase in weights for commercial vehicles and an additional, limited increase for vehicles hauling coal where the greater increase is required.

§17C-17A-2. Definitions.

1 For purposes of this article:

2 (a) A “coal resource transportation road” means a road designated by the department of transportation as safe and sufficient to allow vehicles hauling coal to carry a greater gross and axle weight of up to one hundred and twenty thousand pounds, with a five percent variance.

3 (b) “Coal” or “coal by-products” means the mineral in raw or clean state and includes synthetic fuel manufactured or produced for which credit is allowable under 26 U. S. C. §29 of the Internal Revenue Code (1996).

4 (c) “Commission” means the public service commission of West Virginia.

5 (d) “Division” means the division of highways within the department of transportation.

6 (e) “Mining operation” means any activity related to extraction of coal regulated under the provisions of this code.

7 (f) “Operator” means the person driving a commercial motor vehicle transporting coal on any public highway of this state;

8 (g) “Person” means any individual, partnership, firm, society, association, trust, corporation, other business entity or any agency, unit or instrumentality of federal, state or local government.
(h) "Shipper" means the person who loads coal or causes coal to be loaded into any commercial motor vehicle that will operate on any public highway in this state;

(i) "Receiver" means the person who accepts for unloading coal from any vehicle that has operated on any public highway in this state;

(j) "Vehicle owner" means the person who as owner of a commercial motor vehicle employs, contracts or otherwise directs a driver to operate that vehicle on a public highway of this state for the purpose of transporting coal.

§17C-17A-3. Authority of the division of highways and public service commission generally.

(a) The division of highways shall establish all legal vehicle weight limits for all public highways including roads within the coal resource transportation system. Public highways shall be designated as coal resource transportation roads by the commissioner of the division of highways pursuant to this article. Only state-maintained roads and public highways found in the following areas: Boone; Fayette; Lincoln; Logan; McDowell; Mercer; Mingo; Raleigh; Wayne and Wyoming counties; in Greenbrier County, routes west of Sam Black Church and southwest to the Summers County line; in Clay County, routes 4 and 16; in Nicholas County, routes 19, 20, 39, 41 and 55; in Webster County, routes 9, 20 and 82; and all state-maintained roads and public highways found in Washington, Malden, Louden and Cabin Creek districts, Kanawha County, are eligible to qualify as part of the coal resource transportation road system. The division shall post signs on roads informing the public of the designation and shall also list a toll free telephone line for public reporting of poor driving or law violations by special permit operators. The division shall provide periodic reports to the commercial motor vehicle weight and safety enforcement advisory committee as established in section two, article one-a, chapter twenty-four-a of this code.
relating to the study of coal resource transportation roads. The periodic reports shall include the following at a minimum: (1) Citations issued for violations of this chapter; (2) disposition of the violations; (3) road conditions and maintenance; and (4) the amount of undue road damage attributable to coal resource transportation road system permit use.

(b) The public service commission shall administer the coal resource transportation road permitting program and otherwise enforce the provisions of this article. The commission shall establish requirements for vehicle operators holding coal resource transportation road permits pursuant to section five of this article consistent with federal statutory and regulatory requirements.

(1) The commission may, during normal business hours, conduct inspections of all trucking related records of shippers, vehicle operators, vehicle owners and receivers engaged in the transportation of coal. Copies of records shall be provided to commission employees upon request. This provision may not be construed to authorize the commission to reveal trade secrets or other confidential financial information of those persons inspected; however the commission may use any weight measurement records as evidence of a violation of this article.

(2) The commission shall establish and maintain a toll free telephone line for public reporting of poor driving or law violations by special permit operators. In addition, the commission shall require all vehicles operating under a permit issued pursuant to the provisions of this article to clearly display on the vehicle the toll free telephone number.

(3) The commission shall implement a study of commercial vehicle safety-related issues, including using higher education institutions and other research organizations. The commission shall provide periodic reports to the commercial motor vehicle weight and safety enforcement
(4) The commission shall establish procedures to use electronic real time reporting of coal vehicle weights by shippers and receivers. The commission may require daily certified reports from shippers or receivers if electronic reporting methods are not used. The commission may authorize alternative measures of reporting that require same-day reporting of weight measurements by shippers and receivers.

(5) The commission shall impose and collect from shippers of coal on the coal resource transportation road system through the use of the special permit, issued pursuant to section five of this article, for the privilege of loading coal in excess of eighty-eight thousand pounds for transport on a coal resource transportation road. The fee shall be assessed in the amount of five cents per ton of coal hauled over the road. Revenue from the fees shall be deposited in the coal resource transportation fund created in section five of this article.

(c) Notwithstanding the provisions of section three, article one, chapter twenty-nine-a of this code, the commission and the division shall each propose legislative rules for promulgation in accordance with the provisions of article three of said chapter to carry out their duties and responsibilities pursuant to the provisions of this article.

§17C-17A-4. Special permit issuance; and promulgation of rules.

(a) The commission may issue permits to authorize the hauling of coal of a greater gross and axle weight than otherwise authorized by state law on roads designated by the commissioner of highways as coal resource transportation roads.

(b) Notwithstanding the provisions of section three, article one, chapter twenty-nine-a of this code, the com-

8 mission shall promulgate emergency and legislative rules
9 to effectuate purposes of this section, which shall provide,
10 at a minimum, the following:

11 (1) Twenty-four hours’ mandatory specialized training
12 requirements for commercial vehicles operators with less
13 than two years of commercial driving experience;
14 (2) Requirements for random drug and alcohol testing;
15 and
16 (3) Requirements for daily records consistent with the
17 provisions of any applicable federal statutory or regula-
18 tory requirements.

§17C-17A-5. Operation of coal trucks under special permits;
weight limitations; payment of permit fees.

1 (a) Any vehicle, when transporting coal over certain
2 public highways, designated as coal resource transporta-
3 tion roads by the commissioner of the department of
4 highways, may be operated at the weights as set forth in
5 this section in excess of the maximum gross weight
6 prescribed in section nine, article seventeen of this chapter
7 and any other maximum weight limitations on any public
8 highway by paying the corresponding special permit fee
9 and otherwise complying with the provisions of this
10 article.

11 (b) Special permits shall be issued subject to the follow-
12 ing requirements:

13 (1) A single unit truck having one steering axle and two
14 axles in tandem shall be limited to a maximum gross
15 weight of eighty thousand pounds with a tolerance of five
16 percent and pay a special permit fee annually of one
17 hundred dollars;

18 (2) A single unit truck having one steering axle and three
19 axles in tridem arrangement shall be limited to a max-
20imum gross weight of ninety thousand pounds with a
tolerance of five percent and pay a special permit fee annually of one hundred sixty dollars;

(3) A tractor-semitrailer combination with five axles shall be limited to a maximum gross weight of one hundred ten thousand pounds with a tolerance of five percent and pay a special permit fee annually of three hundred dollars;

(4) A tractor-semitrailer combination with six or more axles shall be limited to a maximum gross weight of one hundred twenty thousand pounds with a tolerance of five percent and pay a special permit fee annually of five hundred dollars.

(c) The axle loads set forth in subsection (b) of this section may in no event exceed the maximum axle load allowable based upon the minimum axle spacings as determined by the division of highways in accordance with generally accepted industry standards and bridge loading analysis.

(d) In order to qualify for issuance of a special permit, the applicant shall provide information that demonstrates that the vehicle, as configured, has a total combined axle rating capacity equal to or greater than the maximum amount of weight for which a special permit is sought. The information may include, but not be limited to, the manufacturer's rated capacity. In the event that manufacturer's rated capacity is not available, any other information reasonably determined by the secretary of the department of transportation to give evidence of adequate combined axle rating capacity may be submitted.

(e) Special permits authorized by this section shall be issued by the commission on forms prescribed and furnished by it. The special permit indicium shall be permanently affixed immediately below the window glass on the top of the door on the driver's side of the vehicle. Lost, destroyed, stolen or otherwise unusable special permits
indicia shall be replaced in accordance with legislative
rules to be promulgated by the commission. The special
permit indicium shall be issued to a particular vehicle and
shall remain with the vehicle upon transfer of possession
or ownership of the vehicle.

(f) Special permits issued pursuant to the provisions of
this article are valid for a period of one year from the date
of purchase: Provided, That no renewal permits shall be
issued to any permittee who, at the time of the renewal,
has any administrative or criminal actions pending
relating to the operation of commercial motor vehicles in
this or other states.

(g) For purposes of this section, the dimensional require-
ments of motor vehicles shall conform to all applicable
federal laws and regulations. Nothing in this section may
be construed or administered to jeopardize the receipt of
federal funds for highway purposes.

(h) Any operator of a vehicle with a special permit issued
under the provisions of this article shall submit the vehicle
or combination of vehicles to weighing with portable or
stationary weighing devices as required by section ten,
article seventeen of this chapter. Any driver or owner of
a vehicle or combination of vehicles operating under the
provisions of this section who fails or refuses to comply
with any requirement of section ten, article seventeen of
this chapter forfeits all privileges granted by the special
permits.

(i) Any vehicle or combination of vehicles transporting
coal pursuant to the provisions of this article shall be
securely covered to prevent the escape of the load on any
trip exceeding a total distance of one mile on any public
highway.

(j) As a condition of receipt of a special permit, vehicle
owners and operators shall submit permitted vehicles to
safety checks and other vehicle inspection requirements as
required by legislative rules of the commission. The
commission may impose additional vehicle operation and
maintenance requirements by rule as the commission
deems appropriate to assure the safe operation of vehicles
issued a special permit.

(k) The commission shall propose rules in accordance
with the provisions of article three, chapter twenty-nine-a
of this code regarding the implementation of the require-
ments of this section. The rules shall be initially promul-
gated as emergency rules pursuant to the provisions of said
article by no later than the first day of October, two
thousand three.

(l) The payment of the special permit fee is in addition to
any state registration fee, user fee or other decal fee.

(m) All revenues generated pursuant to this section shall
be credited to a special account within the road fund
which is created and shall be designated as the “coal
resource transportation road fund”. Moneys of the fund
shall be used by the division of highways for construction,
maintenance and repair of public highways and bridges
over which substantial quantities of coal are transported.

(n) For periods of less than one year, the permit fee
imposed by subsection (b) of this section shall be prorated
to the nearest month.

§17C-17A-6. Reporting requirements for shippers, vehicle
owners and receivers of coal transported on
public highways.

(a) Every shipper of coal for transport on a public
highway in this state that loads vehicles to a gross weight
in excess of eighty thousand gross pounds shall be required
to report to the commission weight and other transport-
related data as required in this article. The commission
shall by rule establish special recording and reporting
methods for timely and accurate disclosure of all ship-
ments of coal made upon any public highway of this state.
The rules shall provide for administrative penalties to be imposed for failure to timely or accurately report weight or other required data.

(b) Every vehicle owner who transports coal on a public highway of this state is subject to the provisions of this article and any rules established by the commission requiring reporting, monitoring or removal from service of any unsafe vehicle or driver.

(c) Every receiver of coal transported on a public highway in this state that unloads or causes to be unloaded any shipment of coal shall report to the commission the weight of the shipment and other data related to the shipment as required by rules promulgated by the commission. The rules shall provide for administrative penalties to be imposed for failure to timely or accurately report the weight or other data. Compliance with the reporting requirements shall cause the receiver to be immune from any and all criminal, civil and administrative liability, damages, costs, fines and penalties based on, arising out of or resulting from the receiver’s receipt or acceptance of the shipment.

(d) The commission shall by rule establish special recording and reporting methods for timely and accurate disclosure of all shipments of coal made by commercial motor vehicles upon a public highway of this state.

§17C-17A-7. Permit application procedure.

The commission shall propose in accordance with provisions of article three, chapter twenty-nine-a of this code by emergency and legislative rules, filed no later than the first day of October, two thousand three, a permit application procedure for the issuance of permits pursuant to the authority contained within this article.

§17C-17A-8. Powers and duties of the commission.

In addition to all other powers, duties, responsibilities and authority granted and assigned to the commission in
(1) The commission shall promulgate rules in accordance with the provisions of article three, chapter twenty-nine-a of this code to carry out the provisions of this article including modifying any existing rules and establishing permit application fees up to an amount sufficient to defray the costs of permit review;

(2) The commission or any authorized representative, employee or agent may, at reasonable times, enter onto any coal shipping or receiving facility in the state for the purpose of making an inspection or investigation;

(3) The commission may also perform or require a person, by order, to perform any and all acts necessary to carry out the provisions of this article or the rules promulgated under this article;

(4) The commission, its authorized representative, employee or agent shall make periodic inspections at coal shipping or receiving facilities to effectively implement and enforce the requirements of this article or its rules and may conduct at weigh stations or any other adequate site or facility inspections of coal in transit.

§17C-17A-9. Administrative sanctions.

(a) This section imposes administrative sanctions for violations occurring on the coal resource transportation system. It is the intent of the Legislature to impose administrative sanctions in addition and separate from any criminal or civil penalties upon any person violating or assisting in the violation of the provisions of this article.

(b) For a particular violation, the commission may take administrative notice of criminal convictions, or a plea of nolo contendere, for a violation for purposes of imposing the administrative sanctions in this section in lieu of the procedure provided in subsection (f) of this section. After
providing notice and an opportunity to show cause why penalties should not be imposed for the violation of provisions of this article, the commission shall impose sanctions upon an operator, shipper, receiver or truck owner when a violation is found to have occurred. Lack of intent is not a defense to a violation except as it applies to receivers.

(c) Administrative sanctions for violations shall be imposed as follows:

(1) Every shipper of coal for transport on the public roads or highways of this state which loads coal in an amount which results in gross vehicle weight to be in excess of the weight limits established in this article shall be subject to an administrative penalty per pound in excess of the lawful weight pursuant to the penalty schedule established in section ten of this article.

(2) It is unlawful for any person to operate a commercial motor vehicle engaged in the transportation of coal with a gross vehicle weight for nonpermitted vehicles in excess of the lawful maximum weight on a coal resource transportation road without a permit required by section five of this article. Any person violating this subsection shall have his or her driver’s license suspended by the commissioner of the division of motor vehicles for a period of ninety days for the first offense, six months for the second offense, and one year for the third offense: Provided, That in the case of a permit, expired for less than thirty days, the operator may present a valid permit to the commission within five days of the date of the offense in order to avoid the penalty;

(3) Any owner of a commercial motor vehicle engaged in the transportation of coal operating without an excess weight hauling permit and bearing a gross vehicle weight in excess of the lawful maximum weight for the public highway for nonpermitted vehicles who allows the operation of that vehicle upon a coal resource transportation road without a permit required by section five of this article shall...
road of this state shall have any state-issued hauling permit then in force suspended by the commission for a period of ninety days for the first offense, six months for the second offense, and revoked for the third offense: Provided, That in the case of a permit, expired for less than thirty days, the operator may present a valid permit to the commission of motor vehicles within five days of the date of the offense in order to avoid the penalty: Provided, however, That should there be no state-issued hauling permit then in force, the owner shall have his or her vehicle registration suspended by the commission of motor vehicles for a period of ninety days for the first offense, six months for the second offense and revoked for the third offense.

(4) Any operator who operates a vehicle engaged in the transportation of coal that has been issued a special permit by the division upon the coal resource transportation road system and who operates the vehicle with a gross vehicle weight that is in excess of the lawful maximum weight allowed pursuant to the permit shall have his or her driver's license suspended by the commissioner of the division of motor vehicles for a period of three days for the first offense, thirty days for the second offense and six months for the third offense;

(5) Any owner of a vehicle engaged in the transportation of coal that has been issued a special permit by the commission who allows the operation of that vehicle upon the coal resource transportation road system with a gross vehicle weight that is in excess of the lawful maximum weight allowed pursuant to the permit shall have the special permit suspended by the commission for a period of three days for the first offense, thirty days for the second offense and revoked for the third offense;

(6) Any operator who operates a vehicle engaged in the transportation of coal with a suspended excess weight hauling permit at a weight in excess of the limits imposed by article seventeen of this chapter upon the coal resource
transportation system shall have his or her driver's license
suspended by the commissioner of the division of motor
vehicles for a period of six months for the first offense,
twelve months for the second offense, and two years for
the third offense: Provided, That if the operator is also the
owner of the vehicle, the owner penalties set forth in
subdivision (5) of this subsection also apply;

(7) Any owner of a vehicle engaged in the transportation
of coal with a suspended excess weight hauling permit
who allows the operation of that vehicle upon the roads or
highways of this state during a period of permit suspen-
sion at a weight in excess of the limits imposed by article
seventeen of this chapter shall have all state-issued
hauling permits then in force suspended by the commis-
sioner or, if applicable, the commissioner of highways for a
period of twelve months for the first offense, two years for
the second offense and revoked for the third offense;

(8) Any operator who operates a vehicle engaged in the
transportation of coal that has been issued a special permit
by the commission under the provisions of section five of
this article and who is charged with a violation of section
one, article six, chapter seventeen-c of this code upon a
road or highway of this state designated by the commis-
sioner of division of highways as a part of the coal re-
source transportation road system shall have his or her
driver's license suspended by the commissioner of the
division of motor vehicles for a period of three days for the
first offense, thirty days for the second offense and re-
voked for the third offense.

(9) Any person who falsifies information relating to the
acquisition of a hauling permit shall have his or her
driver's license suspended by the commissioner of the
division of motor vehicles for a period of sixty days for the
first offense, one hundred twenty days for the second
offense and six months for the third offense;

(10) Any person regulated pursuant to this article that
falsifies information relating to the acquisition of a
hauling permit shall have its state-issued business license
suspended by the commissioner of the state tax division
for a period of six months for the first offense, one year for
the second offense and two years for the third offense;

(11) Any person who fabricates or displays an altered,
forged or counterfeited permit shall have his or her
driver's license suspended by the commissioner of the
division of motor vehicles for a period of sixty days for the
first offense, one hundred twenty days for the second
offense and revoked for the third offense;

(12) Any person that bribes or attempts to bribe an
employee of the state of West Virginia or who gives an
employee of the state of West Virginia a gift, gratuity,
entertainment, loan, favor or other thing of monetary
value for the purpose of avoiding any penalties permitted
under this article shall have his or her state-issued hauling
permit then in force suspended by the commission for a
period of sixty days for the first offense, one hundred
twenty days for the second offense and revoked for the
third offense; and

(13) In the case of multiple violations by a permittee,
shipper, operator or receiver, the commission may direct
that the imposed suspension be served concurrently or
consecutively, taking into account the frequency of
violations committed during the inclusive time periods, or
in the same course of misconduct if the commission
determines that sufficient mitigating or aggravating
circumstances are present.

(14) Any person who aids or abets another person's
attempt to avoid suspension shall have his or her driver's
license suspended by the commissioner of the division of
motor vehicles for a period of sixty days for the first
offense, one hundred twenty days for the second offense
and six months for the third offense.

(15) Any person that aids or abets a person's attempt to
avoid suspension shall have its state-issued business
license suspended by the tax commissioner for a period of
three months for the first offense, six months for the
second offense and one year for the third offense.

(d) Without providing a hearing, the commission may
immediately suspend a person from obtaining permits or
operating under permit authority for failure to pay a fee
required under this article until proper payment is re-
ceived. Upon the completion of all administrative appeals
of any violation that results in a license suspension, the
commission shall notify the division of motor vehicles
which shall act accordingly.

(e) Without providing a hearing, the commission and
law-enforcement personnel may immediately confiscate an
altered, forged or counterfeited permit, or a permit used in
violation of its terms and conditions. Upon issuance of a
citation alleging a violation of this subsection, the vehicle
and its load shall be impounded by law-enforcement
personnel until such time as a hearing on the matter is
conducted by the division.

(f) Administrative sanctions may be imposed pursuant to
the following procedures:

(1) No administrative sanction may be imposed until
after the person has been notified by certified mail or
personal service. The notice shall include: A reference to
the section of statute, rule, order, or permit violated; a
concise statement of the facts alleged to constitute a
violation; a statement of the administrative penalties to be
imposed; and a statement of the person’s right to a hear-
ing. The person has twenty days from receipt of the notice
within which to deliver to the commission a written
request for a hearing.

(2) Subsequent to the hearing and upon finding that a
violation has occurred, the commission shall issue a final
order. If no hearing is requested, the notice shall become
a final order upon the expiration of the twenty-day period.
(3) For purposes of the enhanced penalty provisions of this section, the second and subsequent offenses shall be calculated on a per-year basis.

(4) In addition to the imposition of an administrative sanction, the commission or division may, by administrative order and upon an appropriate finding, assess a violator for the reasonable costs, as established by rules of any investigation, inspection or monitoring survey which led to the establishment of the violation.

§17C-17A-10. Penalties for violation of weight laws; impounding vehicles.

(a) Any owner, lessee or borrower of a commercial motor vehicle or combination of vehicles transporting coal who operates or permits to be operated on any highway the vehicle or combination of vehicles with a total gross weight load imposed upon the highway by any one group of two or more consecutive axles in excess of that permitted by section five of this article is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine based on the number of pounds in excess of the registered weight, or in excess of allowable weights for single axle, or in excess of allowable weights for groups of two or more consecutive axles, in accordance with the following schedule:

<table>
<thead>
<tr>
<th>Excess Weight</th>
<th>Amount of Fine</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 to 4,000 pounds</td>
<td>.1 cent per overweight pound</td>
</tr>
<tr>
<td>4,001 to 8,000 pounds</td>
<td>.3 cents per overweight pound</td>
</tr>
<tr>
<td>8,001 to 12,000 pounds</td>
<td>.7 cents per overweight pound</td>
</tr>
<tr>
<td>12,001 to 16,000 pounds</td>
<td>10 cents per overweight pound</td>
</tr>
<tr>
<td>16,001 to 20,000 pounds</td>
<td>15 cents per overweight pound</td>
</tr>
<tr>
<td>20,001 to 40,000 pounds</td>
<td>30 cents per overweight pound</td>
</tr>
<tr>
<td>40,001 pounds or more</td>
<td>45 cents per overweight pound</td>
</tr>
</tbody>
</table>
(b) Upon a second or subsequent conviction within two years thereafter, the owner, lessee or borrower shall be punished by a fine according to the following schedule:

<table>
<thead>
<tr>
<th>Excess Weight</th>
<th>Amount of Fine</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 to 4,000 pounds</td>
<td>.1 cent per overweight pound</td>
</tr>
<tr>
<td>4,001 to 8,000 pounds</td>
<td>5 cents per overweight pound</td>
</tr>
<tr>
<td>8,001 to 12,000 pounds</td>
<td>10 cents per overweight pound</td>
</tr>
<tr>
<td>12,001 to 16,000 pounds</td>
<td>15 cents per overweight pound</td>
</tr>
<tr>
<td>16,001 to 20,000 pounds</td>
<td>20 cents per overweight pound</td>
</tr>
<tr>
<td>20,001 to 40,000 pounds</td>
<td>40 cents per overweight pound</td>
</tr>
<tr>
<td>40,001 pounds or more</td>
<td>80 cents per overweight pound</td>
</tr>
</tbody>
</table>

(c) The fines specified in subsections (a) and (b) of this section are mandatory and may not be waived or reduced by any judicial officer.

(d) In the event any owner, lessee or borrower of a vehicle is charged with violating this section, the vehicle charged to have been overloaded shall be impounded by the arresting officer. The vehicle shall not be released to the alleged offender or the owner unless and until he or she either has: (1) Been acquitted of the charge; (2) been found guilty of the charge and paid any fine assessed under subsection (a) or (b) of this section; or (3) furnished cash or surety bond in at least double the amount of the fine which may be assessed the offender under subsection (a) or (b) of this section conditioned upon the payment of any fine and costs assessed for the violation. The offender is liable for any reasonable storage costs incurred in storing impounded vehicles: Provided, That if the owner of the vehicle is a resident of or has a principal place of business located in this state and the vehicle has been duly licensed in the state, then the vehicle may not be impounded by the arresting officer who shall deliver to the operator a written...
notice of the violation; the place, date and time of violation; the license number of the vehicle; the title number and name and address of the owner; the driver's name, address and the number of his or her commercial driver's license; and the court, place, date and time for hearing, which shall be within ten days of the violation, Saturdays, Sundays and holidays excluded. A copy of the notice shall be mailed to the owner of the vehicle within forty-eight hours. If the owner or his, her or its agent fails to appear at the designated place and time or, if convicted, fails to pay the fine and costs assessed for the violation, the court shall order the owner to post a bond or the impounding of the vehicle as provided in this section.

(e) Any shipper or receiver who directs or knowingly permits a commercial motor vehicle to be loaded in excess of registered weight, allowable weights for single axle or allowable weights for groups of two or more consecutive axles is also guilty of a misdemeanor and, upon conviction, shall be punished by a fine equal to that which may be imposed on the owner, lessee or borrower of a commercial motor vehicle under subsection (a) of this section.

(f) The penalties and fees specified in this section are in addition to any other liability that may be legally fixed against the owner, operator or other person charged with a weight violation.

§17C-17A-11. Effective date.

Criminal and administrative penalties imposed by this article take effect on the first day of October, two thousand three.

§17C-17A-12. Designating special coal resource transportation roads, highways and bridges.

(a) From those counties and districts described in subdivision (a), section two of this article, the commissioner of the division of highways shall identify those public roads, highways and bridges used during the
previous twelve month period for transportation of quantities of coal in excess of fifty thousand tons or projected to be used for transporting quantities of coal in excess of fifty thousand tons during the ensuing year. The identification process shall include the following as to each discretely identifiable section of the public highway:

(1) The current condition of the public roads, highways and bridges;

(2) The estimated quantities of coal transported;

(3) Any planned or necessary maintenance or improvement;

(4) The number of truck loads of coal transported in an average day;

(5) Any anticipated increase or decrease in the quantity of coal being transported; and

(6) Other information determined by the commissioner to be relevant.

(b) Upon completion of the identification process, but in no event later than the first day of July, two thousand three, the commissioner shall designate by order an interim coal resource transportation road system consisting of those public roads, highways, bridges or segments thereof which may be used as special coal haulage roads consistent with the authority contained in this article. The commissioner shall establish a process for the receipt and evaluation of public comment on the designations contained within the interim coal resource transportation road system, and designate weight limits and other conditions for use of the coal resource transportation road system as public interest so provides. The commissioner shall publish a directory, including supporting maps and other documents, of the interim coal resource transportation road system.
(c) By no later than the first day of January, two thousand four, the commissioner shall designate by order the coal resource transportation road system and shall publish a directory, including supporting maps and other documents, of that road system.

(d) The commissioner shall establish a process for periodic evaluation of the designations contained in the coal resource transportation road system in order to add to or delete from the road system certain additional sections of public highways: Provided, That the evaluations and modifications of the road system shall be completed at a minimum on an annual basis.

§17C-17A-13. Authority of the commissioner of the division of highways relating to road and bridge repair on designated coal resource transportation roads.

(a) In addition to all other powers provided by law to the commissioner of highways, he or she may enter into agreements with coal shippers, motor vehicle operators or owners holding or applying for permits issued pursuant to this article, or with any other persons, for the purpose of replacing, repairing, widening, reconstructing, altering, improving or maintaining public highways used for coal resource transportation. These agreements shall contain necessary criteria to assure any damages associated with the transport of coal upon the respective public highways are ameliorated.

(b) All moneys collected by the commissioner shall be deposited in a special account created within the state road fund, known as the coal resource transportation fund, to be expended for the purposes set forth in subsection (a) of this section.

§17C-17A-14. Exclusion of off-road vehicles.

Notwithstanding any other provisions of state law to the contrary, the provisions of this article shall not apply to
§17C-17A-15. Exclusion of interstate highways.

Notwithstanding any other provisions of this code to the contrary, the provisions of this article shall not apply to the interstate highways in this state.

§17C-17A-16. Spotting unlawful; penalties.

It is unlawful for any person to intentionally assist an owner or operator of a commercial motor vehicle engaged in the transportation of coal to avoid a road, safety or other lawful inspection or enforcement activity by any law or weight enforcement officer through electronic communications or other means intended to give the commercial vehicle driver knowledge of the location of the officers. Any person who violates this section is guilty of a misdemeanor and shall, upon conviction, be fined not less than one thousand dollars and upon a second or subsequent conviction, fined not less than two thousand dollars.

ARTICLE 17B. TRANSFER OF CERTAIN JURISDICTION AND EMPLOYEES TO PUBLIC SERVICE COMMISSION.

§17C-17B-1. Legislative findings and purposes.

(a) The Legislature finds that:

(1) Enforcement officers of the public service commission of West Virginia are, as part of their enforcement of chapters twenty-four and twenty-four-a of this code with respect to common and contract carriers by motor vehicle, other for-hire carriers and private commercial carriers, currently inspecting for safety many of the same vehicles and loads that are inspected for size and weight by employees of the department of transportation;

(2) To effectuate the legislative findings and declarations set forth in section one, article one, chapter five-f of this code, the jurisdiction over the administration and enforce-
(3) To preserve continuity and to maximize efficiency, those employees of the department of transportation who are employed primarily in the performance of the governmental duties described in this section should be transferred to the public service commission; and

(4) The enforcement of state statutes and rules relating to coal truck weight, including costs of inspections of the vehicles and loads, training of enforcement officers, program oversight, administrative proceedings, personal services, employee benefits and all other costs associated with enforcement matters, falls within the scope of maintenance of state roads and public highways as described in section fifty-two, article six of the constitution of this state and in section one, article three, chapter seventeen of this code.

(b) The purposes of this article are to transfer:

(1) Jurisdiction over the enforcement of state statutes and rules, including, but not limited to, the provisions of article seventeen-a of this chapter, relating to coal truck weight, from the department of transportation to the public service commission of West Virginia;

(2) Jurisdiction over the issuance of permits for excess vehicular weight under section eleven, article seventeen, of this chapter, from the department of transportation to the public service commission of West Virginia; and

(3) To the public service commission of West Virginia those employees of the department of transportation whose primary governmental duties include the administration and enforcement of statutes and rules relating to vehicular weight.
§17C-17B-2. Transfer of jurisdiction over vehicle weight enforcement and excess weight permit issuances to public service commission.

(a) Effective the first day of July, two thousand three, the jurisdiction over the enforcement of state statutes and rules, including, but not limited to, applicable provisions of article seventeen of this chapter relating to vehicular weight, shall be transferred from the department of transportation to the public service commission of West Virginia.

(b) Effective the first day of July, two thousand three, the jurisdiction over the issuance of permits for excess vehicular weight shall be transferred from the department of transportation to the public service commission of West Virginia.

§17C-17B-3. Transfer of certain employees from department of transportation to public service commission.

(a) Effective the first day of July, two thousand three, employees of the department of transportation whose primary governmental duties as of the thirtieth day of June, two thousand three, included the administration and enforcement of this code and rules promulgated under this code relating to vehicular weight or the issuance of permits for excess vehicular weight shall be transferred from the department of transportation to the public service commission of West Virginia.

(b) Upon the transfer of employees as provided in subsection (a) of this section, the department of transportation shall pay to the public service commission the costs of personal services, employees benefits and other associated costs of the transferred employees.

§17C-17B-4. Costs of enforcement to be funded from revenues in state road fund.

(a) On and after the first day of July, two thousand three, the cost of enforcement of this code and rules promulgated
under this code, relating to vehicular weight, including
inspections of vehicles and loads, training of enforcement
officers, administrative proceedings, personal services,
employees benefits and all other costs associated with
enforcement matters, shall be funded by revenues in the
state road fund, established pursuant to the provisions of
section one, article three, chapter seventeen of this code.

(b) The secretary of transportation and the treasurer
shall take all actions necessary to implement the transfer
of funding to effectuate the purposes of this article.

(c) For fiscal years beginning on and after the first day
of July, two thousand four, the commission shall include
in its budget to the legislature the costs of implementation
and continuing enforcement of this article for payment
and appropriation from the state road fund, or other
sources as deemed appropriated, into the public service
commission fund.

§17C-17B-5. Exceptions.

(a) Nothing in this article reduces or eliminates the
authority of any police officer to enforce the provisions of
article seventeen of this chapter.

(b) Nothing in this article reduces or eliminates the
jurisdiction of the department of transportation to admin-
ister and enforce sections eleven-a, eleven-b, eleven-c and
twelve, article seventeen of this chapter.

(c) Nothing in this article expands, reduces or eliminates
any remedies otherwise available by law.

CHAPTER 17E. UNIFORM COMMERCIAL
DRIVER’S LICENSE ACT.

ARTICLE 1. COMMERCIAL DRIVER’S LICENSE.

§17E-1-3. Definitions.

Notwithstanding any other provision of this code, the
following definitions apply to this article:
“Alcohol” means:
(a) Any substance containing any form of alcohol, including, but not limited to, ethanol, methanol, propanol and isopropanol;
(b) Beer, ale, port or stout and other similar fermented beverages (including sake or similar products) of any name or description containing one half of one percent or more of alcohol by volume, brewed or produced from malt, wholly or in part, or from any substitute for malt;
(c) Distilled spirits or that substance known as ethyl alcohol, ethanol or spirits of wine in any form (including all dilutions and mixtures thereof from whatever source or by whatever process produced); or
(d) Wine of not less than one half of one percent of alcohol by volume.

“Alcohol concentration” means:
(a) The number of grams of alcohol per one hundred milliliters of blood;
(b) The number of grams of alcohol per two hundred ten liters of breath; or
(c) The number of grams of alcohol per sixty-seven milliliters of urine.

“Commercial driver’s license” means a license issued in accordance with the requirements of this article to an individual which authorizes the individual to drive a class of commercial motor vehicle.

“Commercial driver’s license information system” is the information system established pursuant to the federal commercial motor vehicle safety act to serve as a clearing-house for locating information related to the licensing and identification of commercial motor vehicle drivers.
“Commercial driver instruction permit” means a permit issued pursuant to subsection (d), section nine of this article.

“Commercial motor vehicle” means a motor vehicle designed or used to transport passengers or property:

(a) If the vehicle has a gross vehicle weight rating as determined by federal regulation;

(b) If the vehicle is designed to transport sixteen or more passengers, including the driver; or

(c) If the vehicle is transporting hazardous materials and is required to be placarded in accordance with 49 C. F. R. part 172, subpart F.

“Commissioner” means the commissioner of motor vehicles of this state.

“Controlled substance” means any substance classified under the provisions of chapter sixty-a of this code (uniform controlled substances act) and includes all substances listed on Schedules I through V, inclusive, article two of said chapter as they are revised.

“Conviction” means the final judgment in a judicial or administrative proceeding or a verdict or finding of guilty, a plea of guilty, a plea of nolo contendere or a forfeiture of bond or collateral upon a charge of a disqualifying offense, as a result of proceedings upon any violation of the requirement of this article.

“Division” means the division of motor vehicles.

“Disqualification” means a prohibition against driving a commercial motor vehicle.

“Drive” means to drive, operate or be in physical control of a motor vehicle in any place open to the general public for purposes of vehicular traffic. For the purposes of sections twelve, thirteen and fourteen of this article,
“drive” includes operation or physical control of a motor vehicle anywhere in this state.

“Driver” means any person who drives, operates or is in physical control of a commercial motor vehicle, in any place open to the general public for purposes of vehicular traffic, or who is required to hold a commercial driver’s license.

“Driver’s license” means a license issued by a state to an individual which authorizes the individual to drive a motor vehicle of a specific class.

“Employee” means a person who is employed by an employer to drive a commercial motor vehicle, including independent contractors. An employee who is self-employed as a commercial motor vehicle driver shall comply with the requirements of this article pertaining to both employees and employers.

“Employer” means any person, including the United States, a state or a political subdivision of a state, who owns or leases a commercial motor vehicle or assigns a person to drive a commercial motor vehicle.

“Farm vehicle” includes a motor vehicle or combination vehicle registered to the farm owner or entity operating the farm and used exclusively in the transportation of agricultural or horticultural products, livestock, poultry and dairy products from the farm or orchard on which they are raised or produced to markets, processing plants, packing houses, canneries, railway shipping points and cold storage plants and in the transportation of agricultural or horticultural supplies and machinery to the farms or orchards to be used on the farms or orchards.

“Farmer” includes an owner, tenant, lessee, occupant or person in control of the premises used substantially for agricultural or horticultural pursuits who is at least eighteen years of age with two years’ licensed driving experience.
“Farmer vehicle driver” means the person employed and designated by the “farmer” to drive a “farm vehicle” as long as driving is not his or her sole or principal function on the farm who is at least eighteen years of age with two years’ licensed driving experience.

“Gross combination weight rating (GCWR)” means the value specified by the manufacturer as the loaded weight of a combination (articulated) vehicle. In the absence of a value specified by the manufacturer, GCWR will be determined by adding the GVWR of the power unit and the total weight of the towed unit and any load thereon.

“Gross vehicle weight rating (GVWR)” means the value specified by the manufacturer as the loaded weight of a single vehicle. In the absence of a value specified by the manufacturer the GVWR will be determined by the total weight of the vehicle and any load thereon.

“Hazardous materials” has the meaning as that found in the Hazardous Materials Transportation Act (§49 U. S. C. 5101, et seq., (1998)).

“Motor vehicle” means every vehicle which is self-propelled and every vehicle which is propelled by electric power obtained from overhead trolley wires but not operated upon rails.

“Out-of-service order” means a temporary prohibition against driving a commercial motor vehicle as a result of a determination by a federal agency or the public service commission, pursuant to chapter twenty-four-a of this code, that: (a) The continued use of a commercial motor vehicle may result in death, serious injury or severe personal injury; or (b) the continued actions by the driver of a commercial motor vehicle poses an imminent hazard to public safety.

“Violation of an out-of-service order” means: (a) The operation of a commercial motor vehicle during the period the driver was placed out of service; or (b) the operation of
a commercial motor vehicle by a driver after the vehicle
was placed out of service and before the required repairs
are made.

"Serious traffic violation" means:

(a) Excessive speeding which is defined as fifteen miles
per hour in excess of all posted limits;

(b) Reckless driving as defined in section three, article
five, chapter seventeen-c of this code, including erratic
lane changes and following the vehicle ahead too closely;

(c) A violation of state or local law relating to motor
vehicle traffic control, other than a parking violation,
arising in connection with a fatal traffic accident. Vehicle
defects are excluded as serious traffic violations, except as
to violations committed by a special permittee on the coal
resource transportation system; or

(d) Any other serious violations determined by the
United States secretary of transportation.

"State" means a state of the United States and the
District of Columbia.

"Tank vehicle" means any commercial motor vehicle
that is designed to transport any liquid or gaseous materi-
als within a tank that is either permanently or temporarily
attached to the vehicle or the chassis. These vehicles
include, but are not limited to, cargo tanks and portable
tanks, as defined in 49 C. F. R. Part 171 (1998). However,
this definition does not include portable tanks having a
rated capacity under one thousand gallons.

"At fault traffic accident" means for the purposes of
waiving the road test, a determination, by the official
filing the accident report, of fault as evidenced by an
indication of contributing circumstances in the accident
report.

CHAPTER 24A. COMMERCIAL MOTOR CARRIERS.
ARTICLE 1A. COMMERCIAL VEHICLE REGULATION.

§24A-1A-1. Regulation of commercial vehicle weights.

(a) Effective the first day of July, two thousand three, the commission has jurisdiction over the enforcement of this code and rules promulgated under this code, including, but not limited to, applicable provisions of article seventeen-a, chapter seventeen-c of this code relating to vehicular weight.

(b) Effective the first day of January, two thousand three, the commission has jurisdiction over the issuance of permits for excess vehicular weight.

(c) Effective the first day of January, two thousand three, employees of the division of highways, department of transportation, whose primary governmental duties as of the thirtieth day of June, two thousand two, included the administration and enforcement of state statutes and rules relating to vehicular weight or the issuance of permits for excess vehicular weight shall be transferred from the division of highways and department of transportation to the commission.

(d) The commission shall implement and administer the provisions of this section and of articles six, six-a and six-b of this chapter.

§24A-1A-2. Creation of advisory committee; purpose; members; terms.

(a) There is created the commercial motor vehicle weight and safety enforcement advisory committee, the purpose of which is to study the implementation of the commercial motor vehicle weight and safety enforcement program set forth in this article.

(b) The committee consists of the following members:

(1) One member who is an employee of the division of highways, to be appointed by the commissioner of highways;
(2) One member who is an employee of the public service commission, to be appointed by the chairman of the public service commission;

(3) One member who is a state police officer, to be appointed by the superintendent of the state police;

(4) One member who is an employee of the division of motor vehicles, to be appointed by the commissioner of motor vehicles;

(5) One member who is an employee of the development office, to be appointed by the governor;

(6) One member who is representative of the coal industry, to be appointed by the governor;

(7) One member of the Senate, to be appointed by the president of the Senate;

(8) One member of the House of Delegates, to be appointed by the speaker of the House of Delegates;

(9) One citizen member, to be appointed by the governor; and

(10) One member of the largest organization representing coal miners, to be appointed by the governor.

(c) Members shall serve for terms of three years. No member may be appointed to serve more than two consecutive terms.

(d) The committee shall annually nominate from its members a chair, who shall hold office for one year.

(e) The committee shall hold at least four meetings each year or more often as may, in the discretion of the chair, be necessary to effectuate the purposes of this article.

(f) The public members of the committee may receive compensation for attendance at official meetings, not to exceed the amount paid to members of the Legislature for
their interim duties as recommended by the citizens legislative compensation commission and authorized by law.

(g) Committee members may be reimbursed for actual and necessary expenses incurred for each day or portion of a day engaged in the discharge of committee duties in a manner consistent with guidelines of the travel management office of the department of administration.

(h) On or before the first day of January, two thousand four, and each subsequent year thereafter, the committee shall submit to the governor and to the Legislature a report of its recommendations for improving the effectiveness of the commercial vehicle weight and safety enforcement program.

(i) The commercial vehicle weight and safety enforcement advisory committee shall continue to exist until the first day of July, two thousand seven, pursuant to the provisions of article ten, chapter four of this code, unless sooner terminated, continued or reestablished pursuant to the provisions of that article.

§24A-7-7. Authority of motor carrier inspectors to enforce all traffic rules as to commercial vehicles; use of radar as evidence.

(a) The employees of the commission designated as motor carrier inspectors have the same authority as law-enforcement officers generally to enforce the provisions of chapter seventeen-c of this code with respect to commercial motor vehicles owned or operated by motor carriers, exempt carriers or private commercial carriers where vehicles have a gross vehicle weight rating of ten thousand pounds or more.

(b) The speed of a commercial motor vehicle owned or operated by a motor carrier, exempt carrier or private commercial carrier may be proved by evidence obtained by use of any device designed to measure and indicate or
record the speed of a moving object by means of micro-
waves when the evidence is obtained by employees of the
commission designated as motor carrier inspectors. The
evidence so obtained is prima facie evidence of the speed
of the vehicle.

(c) Motor carrier inspectors shall also perform a north
American standard safety inspection of each commercial
motor vehicle stopped for enforcement purposes pursuant
to this section.

(d) Before exercising the provisions of this section, the
motor carrier inspectors shall receive adequate training.

(e) Nothing in this section affects the existing authority
of law-enforcement officers not employed by the commis-
sion to enforce the provisions of chapter seventeen-c of
this code.
The 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 from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within approved this the 20

Governor
PRESENTED TO THE
GOVERNOR

Date 3-20-03
Time 9:30 AM