

HB 4331

FILED

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OF WEST VIRGINIA  
SECRETARY OF STATE

**WEST VIRGINIA LEGISLATURE**  
SECOND REGULAR SESSION, 2008



**ENROLLED**

COMMITTEE SUBSTITUTE  
FOR  
**House Bill No. 4331**

(By Delegate Boggs and Schadler)



Passed March 8, 2008

In Effect Ninety Days from Passage

# **E N R O L L E D**

COMMITTEE SUBSTITUTE

FOR

## **H. B. 4331**

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(BY DELEGATES BOGGS AND SCHADLER)

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[Passed March 8, 2008; in effect ninety days from passage.]

AN ACT amend and reenact §17B-2-1a, §17B-2-3a, §17B-2-5, §17B-2-6, §17B-2-7 and §17B-2-8 of the Code of West Virginia, 1931, as amended, all relating to the issuance of driver's licenses; disposition of surrendered licenses; issuance of an identification card to applicants who possess a valid driver's license; providing a reduced criminal penalty for violating the terms and conditions of a level one or level two graduated driver's license; defining exceptions for the use of the address of principle residence; removing an obsolete provision related to the issuance of a driver's license without a photo; providing for the use of a passport in lieu of a birth certificate; requiring an applicant to pay a fee for the third and subsequent attempt at the written examination prior to obtaining an instruction permit; and extending the validity of instruction permits from sixty days to ninety days.

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

That §17B-2-1a, §17B-2-3a, §17B-2-5, §17B-2-6, §17B-2-7 and §17B-2-8 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

**ARTICLE 2. ISSUANCE OF LICENSE, EXPIRATION AND RENEWAL.**

**§17B-2-1a. Surrender of license from other state or jurisdiction prior to receipt of license from this state; examination; fees required.**

1 (a) The Division of Motor Vehicles shall not issue a  
2 driver's license to a person who holds a valid license to  
3 operate a motor vehicle issued by another state or jurisdiction  
4 unless or until the applicant shall surrender to the division the  
5 foreign license, or the person has signed and submitted to the  
6 division an affidavit to the effect that the person has  
7 surrendered all valid licenses issued to him or her by other  
8 states or jurisdictions. Any surrendered license issued by any  
9 other state or jurisdiction shall be destroyed or at the  
10 discretion of the division retained by the division and the  
11 division shall notify the original state of licensure that the  
12 person who surrendered the license has been licensed in this  
13 state. It shall be unlawful for a person to possess more than  
14 one valid driver's license at any time.

15 (b) Every driver shall, within thirty days after taking up  
16 residence in this state, apply to the division for a driver's  
17 license as prescribed in this article. For the purposes of this  
18 chapter the presumption that a natural person is a resident of  
19 this state is based on the provisions of section one-a, article  
20 three, chapter seventeen-a of this code. The division may  
21 assign the driver's license class, type, endorsements or  
22 restrictions based on the applicant's prior licensing status,  
23 age and the type of licensing system used by the state of prior  
24 licensing.

25 (c) All other applicable provisions of this article relating  
26 to issuance, fees, expiration and renewal of licenses, and  
27 driver examination of applicants shall also apply to this  
28 section.

**§17B-2-3a. Graduated driver's licenses.**

1 (a) Any person under the age of eighteen may not operate  
2 a motor vehicle unless he or she has obtained a graduated  
3 driver's license in accordance with the three-level graduated  
4 driver's license system described in the following provisions.

5 (b) Any person under the age of twenty-one, regardless  
6 of class or level of licensure, who operates a motor vehicle  
7 with any measurable alcohol in his or her system is subject to  
8 the provisions of section two, article five, chapter seventeen-c  
9 of this code and section two, article five-a of said chapter.  
10 Any person under the age of eighteen, regardless of class or  
11 licensure level, is subject to the mandatory school attendance  
12 provisions of section eleven, article eight, chapter eighteen of  
13 this code.

14 (c) *Level one instruction permit.* -- An applicant who is  
15 fifteen years or older meeting all other requirements  
16 prescribed in this code may be issued a level one instruction  
17 permit.

18 (1) *Eligibility.* -- The division shall not issue a level one  
19 instruction permit unless the applicant:

20 (A) Presents a completed application, as prescribed by  
21 the provisions of section six of this article, and which is  
22 accompanied by a writing, duly acknowledged, consenting to  
23 the issuance of the graduated driver's license and executed by  
24 a parent or guardian entitled to custody of the applicant;

25 (B) Presents a certified copy of a birth certificate issued  
26 by a state or other governmental entity responsible for vital  
27 records or a valid and unexpired passport issued by the  
28 United States government, evidencing that the applicant  
29 meets the minimum age requirement and is of verifiable  
30 identity;

31 (C) Passes the vision and written knowledge examination  
32 and completes the driving under the influence awareness  
33 program, as prescribed in section seven of this article;

34 (D) Presents a current school enrollment form or  
35 otherwise shows compliance with the provisions of section  
36 eleven, article eight, chapter eighteen of this code; and

37 (E) Pays a fee of five dollars which shall permit the  
38 applicant two attempts at the written knowledge test.

39 (2) *Terms and conditions of instruction permit.* -- A level  
40 one instruction permit issued under the provisions of this  
41 section is valid until thirty days after the date the applicant  
42 attains the age of eighteen and is not renewable. However,  
43 any permit holder who allows his or her permit to expire  
44 prior to successfully passing the road skills portion of the  
45 driver examination, and who has not committed any offense  
46 which requires the suspension, revocation or cancellation of  
47 the instruction permit, may reapply for a new instruction  
48 permit under the provisions of section six of this article. The  
49 division shall immediately revoke the permit upon receipt of  
50 a second conviction for a moving violation of traffic  
51 regulations and laws of the road or violation of the terms and  
52 conditions of a level one instruction permit, which  
53 convictions have become final unless a greater penalty is  
54 required by this section or any other provision of this code.  
55 Any person whose instruction permit has been revoked is  
56 disqualified from retesting for a period of ninety days.

57 However, after the expiration of ninety days, the person may  
58 retest if otherwise eligible. In addition to all other provisions  
59 of this code for which a driver's license may be restricted,  
60 suspended, revoked or canceled, the holder of a level one  
61 instruction permit may only operate a motor vehicle under  
62 the following conditions:

63 (A) Under the direct supervision of a licensed driver,  
64 twenty-one years of age or older, or a driver's education or  
65 driving school instructor who is acting in an official capacity  
66 as an instructor, who is fully alert and unimpaired, and the  
67 only other occupant of the front seat. The vehicle may be  
68 operated with no more than two additional passengers, unless  
69 the passengers are family members;

70 (B) Between the hours of five a.m. and eleven p.m.;

71 (C) All occupants must use safety belts in accordance  
72 with the provisions of section forty-nine, article fifteen,  
73 chapter seventeen-c of this code;

74 (D) Without any measurable blood alcohol content, in  
75 accordance with the provisions of subsection (h), section two,  
76 article five, chapter seventeen-c of this code; and

77 (E) Maintains current school enrollment or otherwise  
78 shows compliance with the provisions of section eleven,  
79 article eight, chapter eighteen of this code.

80 (F) A holder of a level one instruction permit who is  
81 under the age of eighteen years may not use a wireless  
82 communication device while operating a motor vehicle,  
83 unless the use of the wireless communication device is for  
84 contacting a 911 system. A law-enforcement officer may  
85 enforce the provisions of this paragraph only as a secondary  
86 action when a law-enforcement officer with probable cause

87 detains a driver for a suspected violation of another provision  
88 of this code. A person violating the provisions of this  
89 paragraph is guilty of a misdemeanor and, upon conviction  
90 thereof, shall for the first offense be fined twenty-five dollars;  
91 for a second offense be fined fifty dollars; and for a third or  
92 subsequent offense be fined seventy-five dollars.

93 (d) *Level two intermediate driver's license.* -- An  
94 applicant sixteen years of age or older, meeting all other  
95 requirements of the code, may be issued a level two  
96 intermediate driver's license.

97 (1) *Eligibility.* -- The division shall not issue a level two  
98 intermediate driver's license unless the applicant:

99 (A) Presents a completed application as prescribed in  
100 section six of this article:

101 (B) Has held the level one instruction permit  
102 conviction-free for the one hundred eighty days immediately  
103 preceding the date of application for a level two intermediate  
104 license;

105 (C) Has completed either a driver's education course  
106 approved by the State Department of Education or thirty  
107 hours of behind-the-wheel driving experience certified by a  
108 parent or legal guardian or other responsible adult over the  
109 age of twenty-one as indicated on the form prescribed by the  
110 division: *Provided*, That nothing in this paragraph shall be  
111 construed to require any school or any county board of  
112 education to provide any particular number of driver's  
113 education courses or to provide driver's education training to  
114 any student;

115 (D) Presents a current school enrollment form or  
116 otherwise shows compliance with the provisions of section  
117 eleven, article eight, chapter eighteen of this code;

118 (E) Passes the road skills examination as prescribed by  
119 section seven of this article; and

120 (F) Pays a fee of five dollars.

121 (2) *Terms and conditions of a level two intermediate*  
122 *driver's license.* -- A level two intermediate driver's license  
123 issued under the provisions of this section shall expire thirty  
124 days after the applicant attains the age of eighteen, or until  
125 the licensee qualifies for a level three full Class E license,  
126 whichever comes first. In addition to all other provisions of  
127 this code for which a driver's license may be restricted,  
128 suspended, revoked or canceled, the holder of a level two  
129 intermediate driver's license may only operate a motor  
130 vehicle under the following conditions:

131 (A) Unsupervised between the hours of five a.m. and  
132 eleven p.m.;

133 (B) Only under the direct supervision of a licensed driver,  
134 age twenty-one years or older, between the hours of eleven  
135 p.m. and five a.m. except when the licensee is going to or  
136 returning from:

137 (i) Lawful employment;

138 (ii) A school-sanctioned activity;

139 (iii) A religious event; or

140 (iv) An emergency situation that requires the licensee to  
141 operate a motor vehicle to prevent bodily injury or death of  
142 another;

143 (C) All occupants shall use safety belts in accordance  
144 with the provisions of section forty-nine, article fifteen,  
145 chapter seventeen-c of this code;



146 (D) Operates the vehicle with no more than three  
147 passengers under the age of nineteen, unless the passengers  
148 are family members, in addition to the driver;

149 (E) Without any measurable blood alcohol content in  
150 accordance with the provisions of subsection (h), section two,  
151 article five, chapter seventeen-c of this code;

152 (F) Maintains current school enrollment or otherwise  
153 shows compliance with the provisions of section eleven,  
154 article eight, chapter eighteen of this code;

155 (G) A holder of a level two intermediate driver's license  
156 who is under the age of eighteen years may not use a wireless  
157 communication device while operating a motor vehicle,  
158 unless the use of the wireless communication device is for  
159 contacting a 911 system. A law-enforcement officer may  
160 enforce the provisions of this paragraph only as a secondary  
161 action when a law-enforcement officer with probable cause  
162 detains a driver for a suspected violation of another provision  
163 of this code. A person violating the provisions of this  
164 paragraph is guilty of a misdemeanor and, upon conviction  
165 thereof, shall for the first offense be fined twenty-five dollars;  
166 for a second offense be fined fifty dollars; and for a third or  
167 subsequent offense be fined seventy-five dollars.

168 (H) Upon the first conviction for a moving traffic  
169 violation or a violation of paragraph (A), (B), (C), (D) or (G),  
170 subdivision (1), subsection (d) of this section of the terms and  
171 conditions of a level two intermediate driver's license, the  
172 licensee shall enroll in an approved driver improvement  
173 program unless a greater penalty is required by this section or  
174 by any other provision of this code; and

175 (I) Upon the second conviction for a moving traffic  
176 violation or a violation of the terms and conditions of the

177 level two intermediate driver's license, the licensee's  
178 privilege to operate a motor vehicle shall be revoked or  
179 suspended for the applicable statutory period or until the  
180 licensee's eighteenth birthday, whichever is longer unless a  
181 greater penalty is required by this section or any other  
182 provision of this code. Any person whose driver's license  
183 has been revoked as a level two intermediate driver, upon  
184 reaching the age of eighteen years and if otherwise eligible  
185 may reapply for an instruction permit, then a driver's license  
186 in accordance with the provisions of sections five, six and  
187 seven of this article.

188 (c) *Level three, full Class E license.* -- The level three  
189 license is valid until t thirty days after the date the licensee  
190 attains his or her twenty-first birthday. Unless otherwise  
191 provided in this section or any other section of this code, the  
192 holder of a level three full Class E license is subject to the  
193 same terms and conditions as the holder of a regular Class E  
194 driver's license.

195 A level two intermediate licensee whose privilege to  
196 operate a motor vehicle has not been suspended, revoked or  
197 otherwise canceled and who meets all other requirements of  
198 the code may be issued a level three full Class E license  
199 without further examination or road skills testing if the  
200 licensee:

201 (1) Has reached the age of seventeen years; and

202 (A) Presents a completed application as prescribed by the  
203 provisions of section six of this article;

204 (B) Has held the level two intermediate license  
205 conviction free for the twelve-month period immediately  
206 preceding the date of the application;

207 (C) Has completed any driver improvement program  
208 required under paragraph (G), subdivision (2), subsection (d)  
209 of this section; and

210 (D) Pays a fee of two dollars and fifty cents for each year  
211 the license is valid. An additional fee of fifty cents shall be  
212 collected to be deposited in the Combined Voter Registration  
213 and Driver's Licensing Fund established in section twelve,  
214 article two, chapter three of this code; or

215 (2) Reaches the age of eighteen years; and

216 (A) Presents a completed application as prescribed by the  
217 provisions of section six of this article; and

218 (B) Pays a fee of two dollars and fifty cents for each year  
219 the license is valid. An additional fee of fifty cents shall be  
220 collected to be deposited in the Combined Voter Registration  
221 and Driver's Licensing Fund established in section twelve,  
222 article two, chapter three of this code.

223 (f) A person violating the provisions of the terms and  
224 conditions of a level one or level two intermediate driver's  
225 license, is guilty of a misdemeanor and, upon conviction  
226 thereof, shall for the first offense be fined twenty-five dollars;  
227 for a second offense be fined fifty dollars; and for a third or  
228 subsequent offense be fined seventy-five dollars.

**§17B-2-5. Qualifications, issuance and fee for instruction  
permits.**

1 (a) Any person who is at least fifteen years of age may  
2 apply to the division for an instruction permit. However, any  
3 person who has not attained the age of eighteen shall comply  
4 with the provisions of section three-a of this article. The  
5 division may, in its discretion, after the applicant has

6 successfully passed all parts of the examination other than the  
7 road skills test, issue to the applicant an instruction permit  
8 which entitles the applicant while having the permit in his or  
9 her immediate possession to drive a motor vehicle upon the  
10 public highways when accompanied by a licensed driver of  
11 at least twenty-one years of age, a driver's education or  
12 driving school instructor that is acting in an official capacity  
13 as an instructor, who is alert and unimpaired or a certified  
14 division license examiner acting in an official capacity as an  
15 examiner, who is occupying a seat beside the driver.

16 (1) Any instruction permit issued to a person under the  
17 age of eighteen years shall be issued in accordance with the  
18 provisions of section three-a of this article.

19 (2) Any permit issued to a person who has reached the  
20 age of eighteen years is valid for a period of ninety days. The  
21 fee for the instruction permit is five dollars.

22 (b) Any person sixteen years of age or older may apply  
23 to the division for a motorcycle instruction permit. Any  
24 person under the age of eighteen must have first completed  
25 the requirements for a level two intermediate driver's license  
26 or a Class E driver's license before being eligible for a  
27 motorcycle instruction permit.

28 The division may, in its discretion, after the applicant has  
29 successfully passed all parts of the motorcycle examination  
30 other than the driving test, and presented documentation of  
31 compliance with the provisions of section eleven, article  
32 eight, chapter eighteen of this code, if applicable, issue to the  
33 applicant an instruction permit which entitles the applicant  
34 while having the permit in his or her immediate possession to  
35 drive a motorcycle upon the public streets or highways for a  
36 period of ninety days, during the daylight hours between  
37 sunrise and sunset only. No holder of a motorcycle

38 instruction permit shall operate a motorcycle while carrying  
39 any passenger on the vehicle.

40 A motorcycle instruction permit is not renewable, but a  
41 qualified applicant may apply for a new permit. The fee for  
42 a motorcycle instruction permit is five dollars, which shall be  
43 paid into a special fund in the state treasury known as the  
44 motor vehicle fees fund.

**§17B-2-6. Application for license or instruction permit; fee to  
accompany application.**

1 (a) Every application for an instruction permit or for a  
2 driver's license shall be made upon a form furnished by the  
3 division. Every application shall be accompanied by the  
4 proper fee and payment of the fee shall entitle an applicant  
5 under the age of eighteen to not more than two attempts at the  
6 written test or not more than three attempts to pass the road  
7 skills test. An applicant age eighteen years or older is  
8 entitled to not more than two attempts at the written test or  
9 not more than three attempts to pass the road skills test within  
10 a period of ninety days from the date of issuance of the  
11 instruction permit. An applicant who fails either the written  
12 test or the road skills test may not be tested twice within a  
13 period of one week.

14 (b) Any applicant who has not been previously licensed  
15 must hold an instruction permit for a minimum of thirty days.  
16 For the purposes of this section, the term "previously  
17 licensed" means an applicant who has obtained at least a level  
18 one graduated license or junior driver's license issued under  
19 the provisions of this article or has obtained an equal or  
20 greater level of licensure if previously licensed in another  
21 state.

22 (c) Every said application shall state the full legal name,  
23 date of birth, sex, and residence address of the applicant and

24 briefly describe the applicant and shall state whether the  
25 applicant has theretofore been a licensed driver and, if so,  
26 when, and by what state or country and whether any such  
27 license has ever been suspended or revoked within the five  
28 years next preceding the date of application, or whether an  
29 application has ever been refused and, if so, the date of and  
30 reason for the suspension, revocation or refusal, whether the  
31 applicant desires a notation on the driver's license indicating  
32 that the applicant is an organ donor, in accordance with  
33 article one-b of this chapter, a diabetic, deaf, or hard of  
34 hearing, or has any other handicap or disability and such  
35 other pertinent information as the commissioner may require.

**§17B-2-7. Examination of applicants.**

1 (a) Upon the presentment of the applicant's certified copy  
2 of the birth certificate issued by a state or other governmental  
3 entity responsible for vital records or a valid and unexpired  
4 passport issued by the United States government, as evidence  
5 that the applicant is of lawful age and verifiable identity, the  
6 Division of Motor Vehicles shall examine every applicant for  
7 a license to operate a motor vehicle in this state, except as  
8 otherwise provided in this section. The examination shall  
9 include a test of the applicant's eyesight, the applicant's  
10 ability to read and understand highway signs regulating,  
11 warning, and directing traffic, the applicant's knowledge of  
12 the traffic laws of this state, and the applicant's knowledge of  
13 the effects of alcohol upon persons and the dangers of driving  
14 a motor vehicle under the influence of alcohol. The  
15 examination shall also include an actual demonstration of  
16 ability to exercise ordinary and reasonable control in the  
17 operation of a motor vehicle, and any further physical and  
18 mental examination as the Division of Motor Vehicles  
19 considers necessary to determine the applicant's fitness to  
20 operate a motor vehicle safely upon the highways.

21 (b) The commissioner shall propose legislative rules for  
22 promulgation in accordance with the provisions of article  
23 three, chapter twenty-nine-a of this code concerning the  
24 examination of applicants for licenses and the qualifications  
25 required of applicants, and the examination of applicants by  
26 the division shall be in accordance with the rules. The rules  
27 shall provide for the viewing of educational material or films  
28 on the medical, biological, and psychological effects of  
29 alcohol upon persons, the dangers of driving a motor vehicle  
30 while under the influence of alcohol and the criminal  
31 penalties and administrative sanctions for alcohol and drug  
32 related motor vehicle violations.

33 (c) After successful completion of the examination  
34 required by this section, section three-a, or section seven-b of  
35 this article, and prior to the issuance of a license pursuant to  
36 the provisions of section eight of this article, every applicant  
37 for a driver's license, graduated driver's license, or  
38 motorcycle-only license shall attend a mandatory education  
39 class on the dangers and social consequences of driving a  
40 motor vehicle while under the influence of alcohol. To the  
41 extent practicable, the commissioner shall use as lecturers at  
42 those classes persons who can relate first-hand experiences  
43 as victims or family members of victims of alcohol-related  
44 accidents or drivers who have been involved in  
45 alcohol-related accidents which caused serious bodily injury  
46 or death.

**§17B-2-8. Issuance and contents of licenses; fees.**

1 (a) The division shall, upon payment of the required fee,  
2 issue to every applicant qualifying therefor a driver's license,  
3 which shall indicate the type or general class or classes of  
4 vehicle or vehicles the licensee may operate in accordance  
5 with this chapter or chapter seventeen-e of this code, or  
6 motorcycle-only license. Each license shall contain a coded

7 number assigned to the licensee, the full legal name, date of  
8 birth, residence address, a brief description and a color  
9 photograph of the licensee and either a facsimile of the  
10 signature of the licensee or a space upon which the signature  
11 of the licensee shall be written with pen and ink immediately  
12 upon receipt of the license. No license is valid until it has  
13 been so signed by the licensee.

14 (b) A driver's license which is valid for operation of a  
15 motorcycle shall contain a motorcycle endorsement.

16 (c) The division shall use such process or processes in the  
17 issuance of licenses that will, insofar as possible, prevent any  
18 alteration, counterfeiting, duplication, reproduction, forging  
19 or modification of, or the superimposition of a photograph  
20 on, the license.

21 (d) The fee for the issuance of a Class E driver's license  
22 is two dollars and fifty cents per year for each year the  
23 license is issued to be valid. The fee for issuance of a Class  
24 D driver's license is six dollars and twenty-five cents per year  
25 for each year the license is issued to be valid. An additional  
26 fee of fifty cents shall be collected from the applicant at the  
27 time of original issuance or each renewal and the additional  
28 fee shall be deposited in the "combined voter registration and  
29 driver's licensing fund," established pursuant to the  
30 provisions of section twelve, article two, chapter three of this  
31 code. The additional fee for adding a motorcycle  
32 endorsement to a driver's license is one dollar per year for  
33 each year the license is issued.

34 (e) The fee for issuance of a motorcycle-only license is  
35 two dollars and fifty cents for each year for which the  
36 motorcycle license is to be valid. The fees for the motorcycle  
37 endorsement or motorcycle-only license shall be paid into a  
38 special fund in the State Treasury known as the Motorcycle



39 Safety Fund as established in section seven, article one-d of  
40 this chapter.

41 (f) The fee for the issuance of either the level one or level  
42 two graduated driver's license as prescribed in section three-a  
43 of this article is five dollars.

44 (g) The division may use an address on the face of the  
45 license other than the applicant's address of residence if:

46 (1) The applicant has a physical address or location that  
47 is not recognized by the post office for the purpose of  
48 receiving mail;


49 (2) The applicant is enrolled in a state address  
50 confidentiality program or the alcohol test and lock program;

51 (3) The applicant's address is entitled to be suppressed  
52 under a state or federal law or suppressed by a court order; or

53 (4) At the discretion of the commissioner, the applicant's  
54 address may be suppressed to provide security for classes of  
55 applicants such as law-enforcement officials, protected  
56 witnesses and members of the state and federal judicial  
57 systems.

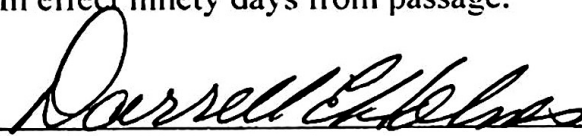
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

  
\_\_\_\_\_  
Chairman Senate Committee

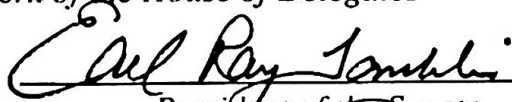
  
\_\_\_\_\_  
Chairman House Committee

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 as appended this the 15<sup>th</sup>  
day of April, 2008.

  
\_\_\_\_\_  
Governor

PRESENTED TO THE  
GOVERNOR

MAR 25 2008

Time 10:20am