

HB 4364

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WEST VIRGINIA LEGISLATURE

SECOND REGULAR SESSION, 2008



ENROLLED

COMMITTEE SUBSTITUTE
FOR
House Bill No. 4364

(By Delegates Schadler and Hrutkay)



Passed March 8, 2008

In Effect Ninety Days from Passage

E N R O L L E D

COMMITTEE SUBSTITUTE

FOR

H. B. 4364

(BY DELEGATES SCHADLER AND HRUTKAY)

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

AN ACT to amend and reenact §17A-6-1b, §17A-6-2a, §17A-6-4, §17A-6-7, §17A-6-15 and §17A-6-18a of the Code of West Virginia, 1931, as amended; to amend and reenact §17A-6E-2 of said code; and to amend and reenact §46A-3-109 of said code, all relating to motor vehicle dealers generally; allowing the Commissioner of the Division of Motor Vehicles to enter into agreements with other states to allow out-of-state dealers to issue vehicle registrations; expanding authority of Dealer Recovery Fund Control Board to consider claims against the fund; increasing minimum bond requirement for certain dealers from ten thousand dollars to twenty-five thousand dollars; establishing minimum number of sales by a dealer prior to renewal of a dealer's license and opportunity for appeal; exempting salespersons employed by dealers selling commercial vehicles, financial institutions and auctions from the requirement to obtain a salesperson license; requirements for issuing temporary registration plates; authorizing the

commissioner to require participation in an electronic temporary plates or markers program as a precondition for issuance of temporary plates; and transferring to commissioner authority to set documentary or similar charges motor vehicle dealers may charge consumers for documentary services in relation to securing a title, with the advice of the Motor Vehicle Dealers Advisory Board.

Be it enacted by the Legislature of West Virginia:

That §17A-6-1b, §17A-6-2a, §17A-6-4, §17A-6-7, §17A-6-15 and §17A-6-18a of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §17A-6E-2 of said code be amended and reenacted; and that §46A-3-109 of said code be amended and reenacted, all to read as follows:

**CHAPTER 17A. MOTOR VEHICLE ADMINISTRATION,
REGISTRATION, CERTIFICATE OF TITLE, AND
ANTITHEFT PROVISIONS.**

**ARTICLE 6. LICENSING OF DEALERS AND WRECKERS
OR DISMANTLERS; SPECIAL PLATES;
TEMPORARY PLATES OR MARKERS.**

**§17A-6-1b. Dealers authorized to issue motor vehicle
registration.**

1 (a) Notwithstanding any other provision in this chapter,
2 the division may allow a licensed motor vehicle dealer as
3 defined in section one of this article, authority to issue or
4 transfer motor vehicle registrations for vehicles sold by the
5 dealer. The authority to issue and transfer motor vehicle
6 registrations shall be contingent upon the dealer collecting all
7 fees and taxes required for the titling and registration of
8 vehicles, receiving proof of insurance as described in
9 subsection (e), section three, article three of this chapter, and

10 if applicable receiving the receipt showing full payment of
11 personal property taxes in accordance with section three-a,
12 article three of this chapter.

13 (b) Authorization to issue and transfer motor vehicle
14 registrations shall be contingent on the dealer completing an
15 application provided by the division and meeting all criteria
16 established by the division. The authority shall also be
17 contingent upon the dealer agreeing to participate fully in a
18 computerized system of electronic submission of registration,
19 titling and lien information and all fees and taxes required
20 under the provisions of this chapter, either directly to the
21 division or through an authorized service provider selected
22 and approved by the division. Any transaction conducted
23 under the provisions of this section shall be conditional
24 pending the determination by the division that the application
25 for title, registration and lien recordation is complete,
26 accurate and in accordance with the provisions of this
27 chapter.

28 (c) The authority to participate in the electronic
29 transmission of title, registration and lien information shall be
30 immediately revoked upon revocation or cancellation of a
31 dealer's license issued under the provisions of this chapter:
32 *Provided*, That the authority to issue and transfer motor
33 vehicle registrations may be revoked by the division
34 immediately and separately from any other action against the
35 dealer's license if the division determines that the terms of
36 the agreement or agreements authorizing issuance, transfer or
37 renewal of a vehicle registration or the electronic
38 transmission of information have been violated.

39 (d) A fee established by the motor vehicle dealer advisory
40 board may be charged by a motor vehicle dealer for its
41 services required under this section.

42 (e) Only motor vehicle registrations of a type specified by
43 the division may be issued, transferred or renewed by the
44 authorized dealer.

45 (f) All fees and taxes collected by an authorized dealer
46 under the provisions of this section shall be deposited in a
47 financial institution designated by the division or the service
48 provider in the manner prescribed by the division.

49 (g) The division may authorize a service provider to
50 supply an authorized dealer with the necessary forms,
51 supplies, registration plates and registration renewal decals
52 necessary to enable the authorized dealer to perform the
53 duties and functions specified in this section.

54 (1) Any service provider authorized to perform services
55 under the provisions of this section shall post a bond of the
56 applicant in the penal sum of one million dollars, in the form
57 prescribed by the commissioner, conditioned that the
58 applicant will not in the conduct of business practice any
59 fraud which, or make any fraudulent representation which,
60 shall cause a financial loss to any dealer, financial institution
61 or agency, or the State of West Virginia, with a corporate
62 surety thereon authorized to do business in this state, which
63 bond shall be effective as of the date on which the
64 authorization to provide services commences.

65 (2) The service provider is solely responsible for the
66 inventory, tracking, safety and reconciliation of all supplies,
67 registration plates, registration decals or other motor vehicle
68 credentialing items in accordance with procedures established
69 by the division and subject to audits by the division.

70 (3) The division may rescind without notice the authority
71 of a service provider to perform services when the division
72 has cause to believe that any state or federal law has been

73 violated or that the service provider is not adhering to the
74 terms and conditions of the authorization agreement.

75 (h) The service provider and the authorized dealer assume
76 full responsibility for the care, custody, control, disclosure
77 and use of any information provided by the division in order
78 to execute the duties and responsibilities required by this
79 section. Each service provider and each authorized dealer
80 agrees to ensure that the disclosure of information to it and its
81 handling of information received from the division complies
82 with all federal and state statutes and division directives
83 governing the disclosure and protection of such information.

84 (i) The commissioner may enter into agreements with
85 other states and jurisdictions granting licensed dealers
86 regulated by other states and jurisdictions the authority to
87 issue or transfer motor vehicle registrations for vehicles sold
88 by the dealer in the same manner as dealers licensed by this
89 state.

§17A-6-2a. Dealer recovery fund created.

1 (a) There is hereby created a special fund in the State
2 Treasury which is to be designated the "Dealer Recovery
3 Fund." The fund shall consist of certain moneys received
4 from persons engaged in the business of selling new or used
5 motor vehicles, new or used motorcycles, trailers,
6 semi-trailers or recreational vehicles or from grants, gifts,
7 bequests or awards arising out of the settlement or
8 adjudication of a claim. The fund is not to be treated by the
9 Auditor and Treasurer as part of the general revenue of the
10 state. The fund is to be a special revolving fund paid out
11 upon order of the Commissioner of Motor Vehicles based on
12 the recommendation of the dealer recovery fund control
13 board created in this section, solely for the purposes specified
14 in this section. The commissioner may use up to one percent

15 of funds from the dealer recovery fund for the administrative
16 expenses of operating the dealer recovery fund program.

17 (b) The dealer recovery fund control board shall consist
18 of the Commissioner of Motor Vehicles or his or her
19 designee, the Attorney General's designee representing the
20 Office of Consumer Protection and one representative
21 selected by the motor vehicle dealer's advisory board. The
22 Commissioner of Motor Vehicles or his or her designee shall
23 serve as chair and the board shall meet at least once a year
24 during the month of July, and as required by the
25 commissioner. The commissioner may propose rules for
26 promulgation in accordance with article three, chapter
27 twenty-nine-a of this code that are necessary to effectuate the
28 provisions of this section. The commissioner may employ
29 the necessary staff needed to operate the program. The board
30 may prorate the amount paid on claims when the amount of
31 valid claims submitted would exceed thirty-three percent of
32 the fund. However, claims presented by the Division of
33 Motor Vehicles for taxes and fees shall be paid in full. The
34 board may purchase insurance at a cost not to exceed one
35 percent of the fund to cover extraordinary or excess claims
36 from the fund.

37 (c) Every applicant for either an original dealer license or
38 renewal of an existing dealer license of the type enumerated
39 in subsection (a) of this section shall pay, in addition to any
40 other license fee, an annual dealer recovery fund fee of one
41 hundred fifty dollars. All dealers shall continue to maintain
42 a surety bond as required by this article and the dealer
43 recovery fund payment unless exempt by one of the
44 following requirements:

45 (1) Any dealer who, for the three years immediately
46 preceding assessment of the fees, has not had a claim paid
47 against their bond or against the dealer recovery fund, whose

48 license has not been suspended or revoked and who has not
49 been assessed any civil penalties is not required to continue
50 to keep the bond required by this article. However, no dealer
51 can submit a claim against the fund unless it has contributed
52 to the fund for at least three years.

53 (2) If the dealer recovery fund reaches or exceeds the
54 amount of three million dollars as of the first day of July of
55 any year, a dealer who meets the requirements of subdivision
56 (1) of this subsection, is exempt from payment of the annual
57 dealer recovery fund fee. However, if the fund should, as of
58 the first day of April of any year, drop below three million
59 dollars, all dealers, regardless of any previous exemption
60 shall pay the annual dealer recovery fee of one hundred fifty
61 dollars. The exemption prescribed in subdivision (1) of this
62 subsection remains in effect regardless of the status of the
63 fund.

64 (d) The dealer recovery fund control board may consider
65 payment only after any dealer surety bond required pursuant
66 to the provisions of section four of this article has been
67 exhausted.

68 (e) When the fund reaches two hundred fifty thousand
69 dollars, the board shall consider claims for payment.

70 (f) Claims against the fund are not to be made for any act
71 or omission which occurred prior to the first day of July, two
72 thousand two.

73 (g) Claims for payment shall be submitted within six
74 months of the date of sale or the date the division is made
75 aware of the claim.

76 (h) The board shall pay claims in the following order:

77 (1) Claims submitted by the Division of Motor Vehicles
78 for unpaid taxes and fees;

79 (2) Claims submitted by a retail purchaser of a vehicle
80 from a dealer covered by the fund with an undisclosed lien or
81 a retail purchaser of a vehicle from a dealer covered by the
82 fund who finds that the lien on the vehicle traded in has not
83 been satisfied by the selling dealer if the lien satisfaction was
84 a condition of the purchase agreement;

85 (3) Claims submitted by a motor vehicle dealer
86 contributing to the fund, which has purchased a vehicle or
87 vehicles from another dealer covered by the fund with an
88 undisclosed lien;

89 (4) Claims submitted by a retail purchaser of third party
90 goods or services from a dealer covered by the fund for the
91 unpaid charges when the dealer fails to pay the third party for
92 the goods or services; or

93 (5) Claims submitted by the Division of Motor Vehicles,
94 a retail purchaser or a motor vehicle dealer contributing to the
95 fund, not authorized by subdivisions (1) through (4) of this
96 subsection, but otherwise payable under the bond described
97 in section four of this article, may be considered for payment
98 by the board up to the amount of fifty thousand dollars for
99 each licensing year the West Virginia dealer that is the
100 subject of the complaint did not maintain the bond: *Provided,*
101 That the board may not consider claims submitted by or on
102 behalf of a financial institution for money owed by a dealer
103 upon a loan to a dealer or credit extended to a dealer that is
104 secured by a lien upon the inventory of the dealer, commonly
105 referred to as a floor planner.

106 (i) The maximum claim against the fund for any unpaid
107 lien of a used vehicle is the unpaid balance of the lien up to

108 the loan value of the vehicle as of the date of the sale or other
109 transaction as shown by a generally accepted motor vehicle
110 value guide. The maximum claim against the fund for any
111 new or unused vehicle is the amount of the invoice less any
112 amounts rebated or to be rebated to the dealer from the
113 manufacturer. Payment is only to be made to a secured party
114 who agrees to accept payment from the dealer recovery fund
115 and who accepts the payment in full settlement of any claims,
116 and who releases the lien and the title, if applicable, prior to
117 receiving payment. Any dealer who agrees to accept
118 payment from the dealer recovery fund shall release the title
119 prior to receiving payment.

120 (j) On payment by the board to a claimant from the fund,
121 the board shall immediately notify the licensee against whom
122 a claim was paid and request full reimbursement within thirty
123 days of notification. If a dealer fails to fully reimburse the
124 board within the specified period of time, the commissioner
125 shall immediately and without prior hearing revoke the dealer
126 license of dealer against whom the claim was paid. No
127 applicant with an unpaid claim is eligible for renewal or
128 relicensure until the full amount of the reimbursement plus
129 interest as determined by the board is paid to the fund.
130 Nothing in this section shall limit the authority of the
131 commissioner to suspend, revoke or levy civil penalties
132 against a dealer, nor shall full repayment of the amount owed
133 to the fund necessarily nullify or modify the effect of any
134 action by the commissioner.

135 (k) Nothing in this section shall limit the right for any
136 person to seek relief through civil action against any other
137 person.

138 (l) The provisions of this section do not apply to those
139 class DTR dealers in the business of selling manufactured
140 housing and covered by the state manufactured housing

141 recovery fund established by the Division of Labor pursuant
142 to a legislative rule.

**§17A-6-4. Application for license certificate; insurance; bonds;
investigation; information confidential.**

1 (a) Application for any license certificate required by
2 section three of this article shall be made on a form
3 prescribed by the commissioner. There shall be attached to
4 the application a certificate of insurance certifying that the
5 applicant has in force an insurance policy issued by an
6 insurance company authorized to do business in this state
7 insuring the applicant and any other person, as insured, using
8 any vehicle or vehicles owned by the applicant with the
9 express or implied permission of the named insured, against
10 loss from the liability imposed by law for damages arising
11 out of the ownership, operation, maintenance or use of the
12 vehicle or vehicles, subject to minimum limits, exclusive of
13 interest and costs, with respect to each vehicle, as follows:
14 Twenty thousand dollars because of bodily injury to or death
15 of one person in any one accident and, subject to the limit for
16 one person, forty thousand dollars because of bodily injury to
17 or death of two or more persons in any one accident, and ten
18 thousand dollars because of injury to or destruction of
19 property of others in any one accident.

20 (b) In the case of an application for a license certificate to
21 engage in the business of new motor vehicle dealer, used
22 motor vehicle dealer or house trailer dealer, the application
23 shall disclose, but not be limited to, the following:

24 (1) The type of business for which a license certificate is
25 sought;

26 (2) If the applicant is an individual, the full name and
27 address of the applicant and any trade name under which he
28 or she will engage in the business;

29 (3) If the applicant is a copartnership, the full name and
30 address of each partner in the copartnership, the name of the
31 copartnership, its post office address and any trade name
32 under which it will engage in the business;

33 (4) If the applicant is a corporation, its name, the state of
34 its incorporation, its post office address and the full name and
35 address of each officer and director of the corporation;

36 (5) The location of each place in this state at which the
37 applicant will engage in the business and whether the
38 business is owned or leased by the applicant;

39 (6) Whether the applicant, any partner, officer or director
40 of the business has previously engaged in the business or any
41 other business required to be licensed under the provisions of
42 this article and if so, with or for whom, at what location and
43 for what periods of time;

44 (7) Whether the applicant, any partner, officer, director or
45 employer of the business has previously applied for a license
46 certificate under the provisions of this article or a similar
47 license certificate in this or any other state, and if so, whether
48 the license certificate was issued or refused and, if issued,
49 whether it was ever suspended or revoked;

50 (8) A statement of previous general business experience
51 and the past history of the applicant; and

52 (9) Any other information that the commissioner may
53 reasonably require which may include information relating to
54 any contracts, agreements or understandings between the

55 applicant and other persons respecting the transaction of the
56 business, and any criminal record of the applicant if an
57 individual, or of each partner if a copartnership, or of each
58 officer and director, if a corporation.

59 (c) In the case of an application for a license certificate to
60 engage in the business of new motor vehicle dealer, the
61 application shall, in addition to the matters outlined in
62 subsection (b) of this section disclose:

63 (1) The make or makes of new motor vehicles which the
64 applicant will offer for sale in this state during the ensuing
65 fiscal year; and

66 (2) The exact number of new and used motor vehicles, if
67 any, sold at retail and wholesale by the applicant or his or her
68 predecessor, if any, during the preceding fiscal year, and if no
69 new and used motor vehicles were sold at retail and
70 wholesale by the applicant or his or her predecessor, if any,
71 during the preceding fiscal year, the number of new and used
72 motor vehicles the applicant reasonably expects to sell at
73 retail and wholesale during the ensuing fiscal year.

74 (d) In the case of an application for a license certificate to
75 engage in the business of used motor vehicle dealer, the
76 application shall in addition to the matters outlined in
77 subsection (b) of this section, disclose the exact number of
78 used motor vehicles, if any, sold at retail and wholesale by
79 the applicant or his or her predecessor, if any, during the
80 preceding fiscal year, and if no used motor vehicles were sold
81 at retail and wholesale by the applicant or his or her
82 predecessor, if any, during the preceding fiscal year, the
83 number of used motor vehicles the applicant reasonably
84 expects to sell at retail and wholesale during the ensuing
85 fiscal year.

86 (e) In the case of an application for a license certificate to
87 engage in the business of trailer dealer, recreational vehicle
88 dealer, motorcycle dealer, used parts dealer or wrecker/
89 dismantler/rebuilder, the application shall disclose any
90 information that the commissioner may reasonably require.

91 (f) The application shall be verified by the oath or
92 affirmation of the applicant, if an individual, or if the
93 applicant is a copartnership or corporation, by a partner or
94 officer thereof, as the case may be. Except as provided in
95 section two-a of this article, the application shall be
96 accompanied by a bond of the applicant in the penal sum of
97 twenty-five thousand dollars, in the form prescribed by the
98 commissioner, conditioned that the applicant will not in the
99 conduct of his or her business practice any fraud which, or
100 make any fraudulent representation which, shall cause a
101 financial loss to any purchaser, seller or financial institution
102 or agency, or the State of West Virginia, with a corporate
103 surety thereon authorized to do business in this state. The
104 bond shall be effective as of the date on which the license
105 certificate sought is issued.

106 (g) Upon receipt of any fully completed application,
107 together with any bond required under subsection (f) of this
108 section, the certificate of insurance as required in subsection
109 (a) of this section and the appropriate fee provided in section
110 ten of this article, the commissioner may conduct any
111 investigation he or she considers necessary to determine the
112 accuracy of any statements contained in the application and
113 the existence of any other facts which he or she considers
114 relevant in considering the application. To facilitate the
115 investigation, the commissioner may withhold issuance or
116 refusal of the license certificate for a period not to exceed
117 twenty days.

118 (h) Any application for a license certificate under the
119 provisions of this article and any information submitted with
120 the application is confidential for the use of the division. No
121 person shall divulge any information contained in any
122 application or any information submitted with the application
123 except in response to a valid subpoena or subpoena duces
124 tecum issued pursuant to law.

**§17A-6-7. When application to be made; expiration of license
certificate; renewal.**

1 (a) Every license certificate issued in accordance with the
2 provisions of this article shall, unless sooner suspended or
3 revoked, expire on the thirtieth day of June next following
4 the issuance thereof.

5 (b) A license certificate may be renewed each year in the
6 same manner, for the same fee as prescribed in section ten of
7 this article and upon the same basis as an original license
8 certificate is issued under section six of this article:
9 *Provided*, That the commissioner may not renew the license
10 of any new or used motor vehicle dealer who has sold less
11 than eighteen vehicles during the preceding year subject to
12 the following:

13 (1) This proviso does not apply to a dealer in the business
14 of selling commercial motor vehicles of a gross vehicle
15 weight of twenty-six thousand one pounds or more;

16 (2) The commissioner may approve the renewal of a
17 dealer selling less than eighteen vehicles based on a finding
18 of extenuating circumstances including, but not limited to,
19 the illness of the dealer, adverse business conditions or sales
20 credited to other types of dealer licenses held by the dealer;
21 and

22 (3) Any dealer may appeal the commissioner's refusal to
23 the Motor Vehicle Dealers Advisory Board which may
24 consider extenuating circumstances and approve the renewal.

25 All applications for the renewal of any license certificate
26 shall be filed with the commissioner at least thirty days
27 before the expiration thereof. Any application for renewal of
28 any license certificate not filed at least thirty days before the
29 expiration may not be renewed except upon payment of the
30 same fee as an original license certificate as prescribed in
31 subsection (a), section ten of this article. The commissioner
32 may allow the delinquent applicant to complete an
33 abbreviated application for renewal in lieu of an original
34 application.

§17A-6-15. Temporary registration plates or markers.

1 (a) In order to permit a vehicle which is sold to a
2 purchaser by a dealer to be operated on the streets and
3 highways pending receipt of the annual registration plate
4 from the division for such vehicle, the commissioner may,
5 subject to the limitations and conditions hereinafter set forth,
6 deliver temporary vehicle registration plates or markers to
7 dealers who in turn may, subject to the limitations and
8 conditions hereinafter set forth, issue the same to purchasers
9 of vehicles, but such purchasers must comply with the
10 pertinent provisions of this section.

11 (b) Application by a dealer to the commissioner for
12 temporary registration plates or markers shall be made on the
13 form and in the manner prescribed and furnished by the
14 commissioner for such purpose and shall be accompanied by
15 a fee of three dollars for each such temporary registration
16 plate or marker. The commissioner may require the fee to be
17 remitted to the division in an electronic format. No refund or
18 credit of fees paid by dealers to the commissioner for

19 temporary registration plates or markers shall be allowed,
20 except that in the event the commissioner discontinues the
21 issuance of such temporary plates or markers, dealers
22 returning temporary registration plates or markers to the
23 commissioner may petition for and be entitled to a refund or
24 a credit thereof. No temporary registration plates or markers
25 shall be delivered by the commissioner to any dealer in house
26 trailers only, and no such temporary plates or markers shall
27 be issued for or used on any house trailer for any purpose.

28 (c) Every dealer who has made application for and
29 received temporary registration plates or markers shall
30 maintain in a manner prescribed by the commissioner, a
31 record of all temporary registration plates or markers issued
32 by him or her, and a record of any other information
33 pertaining to the receipt or the issuance of temporary
34 registration plates or markers which the commissioner may
35 require. Every dealer who issues a temporary registration
36 plate or marker shall notify the division in the manner
37 prescribed by the commissioner. No temporary registration
38 plates or markers may be delivered to any dealer until such
39 dealer has fully accounted to the commissioner for the
40 temporary registration plates or markers last delivered to such
41 dealer, by showing the number issued to purchasers by such
42 dealer and any on hand.

43 (d) A dealer may not issue, assign, transfer or deliver a
44 temporary registration plate or marker to anyone other than
45 the bona fide purchaser of the vehicle to be registered; nor
46 may a dealer issue a temporary registration plate or marker to
47 anyone possessed of an annual registration plate for a vehicle
48 which has been sold or exchanged, except a dealer may issue
49 a temporary registration plate or marker to the bona fide
50 purchaser of a vehicle to be registered who possesses an
51 annual registration plate of a different class and makes
52 application to the division to exchange such annual

53 registration plate of a different class in accordance with the
54 provisions of section one, article four of this chapter; nor may
55 a dealer lend to anyone, or use on any vehicle which he or
56 she may own, a temporary registration plate or marker. It is
57 unlawful for any dealer to issue any temporary registration
58 plate or marker knowingly containing any misstatement of
59 fact, or knowingly to insert any false information upon the
60 face thereof.

61 (e) Every dealer who issues temporary registration plates
62 or markers shall affix or insert clearly and indelibly on the
63 face of each temporary registration plate or marker in the
64 manner prescribed by the commissioner, the date of issuance
65 and expiration thereof, and the make and motor or serial
66 number of the vehicle for which issued.

67 (f) If the commissioner finds that the provisions of this
68 section or his or her directions are not being complied with
69 by a dealer, he or she may suspend the right of such dealer to
70 issue temporary registration plates or markers.

71 (g) Every person to whom a temporary registration plate
72 or marker has been issued shall permanently destroy such
73 temporary registration plate or marker immediately upon
74 receiving the annual registration plate for such vehicle from
75 the division: *Provided*, That if the annual registration plate
76 is not received within sixty days of the issuance of the
77 temporary registration plate or marker, the owner shall,
78 notwithstanding the fact that the annual registration plate has
79 not been received, immediately and permanently destroy the
80 temporary registration plate or marker: *Provided, however*,
81 That not more than one temporary registration plate or
82 marker shall be issued to the same bona fide purchaser for the
83 same vehicle.

84 (h) A temporary registration plate or marker shall expire
85 and become void upon the receipt of the annual registration
86 plate from the division or upon the rescission of the contract
87 to purchase the vehicle in question, or upon the expiration of
88 sixty days from the date of issuance, depending upon
89 whichever event shall first occur.

90 (i) For the purpose of this section, the term "dealer"
91 includes a wrecker/dismantler/rebuilder and in the context of
92 issuing temporary registration plates, any other business
93 licensed by the division in accordance with the provisions of
94 this chapter and authorized to issue temporary registration
95 plates or markers.

96 (j) The commissioner may require participation in an
97 electronic temporary plate issuance system by all dealers as
98 a precondition for authority for a dealer to issue temporary
99 license plates or markers.

§17A-6-18a. Motor Vehicle Dealers Advisory Board.

1 (a) There is continued a Motor Vehicle Dealers Advisory
2 Board to assist and to advise the commissioner on the
3 administration of laws regulating the motor vehicle industry;
4 to work with the commissioner in developing new laws, rules
5 or policies regarding the motor vehicle industry; to advise the
6 commissioner on setting documentary charges or similar
7 charges motor vehicle dealers may charge consumers for
8 documentary services in relation to securing a title, which
9 such charges the commissioner is hereby granted authority to
10 set; and to give the commissioner any further advice and
11 assistance as he or she may, from time to time, require.

12 The board shall consist of nine members and the
13 Commissioner of Motor Vehicles, or his or her
14 representative, who shall be an ex officio member. Two

15 members shall represent new motor vehicle dealers, with one
16 of these two members representing dealers that sell less than
17 one hundred new vehicles per year; one member shall
18 represent used motor vehicle dealers; one member shall
19 represent wrecker/dismantler/rebuilders; one member shall
20 represent automobile auctions; one member shall represent
21 recreational dealers; one member shall represent the West
22 Virginia Attorney General's office; and two members shall
23 represent consumers. All of the representatives, except the
24 Attorney General representative who shall be designated by
25 the Attorney General, shall be appointed by the Governor
26 with the advice and consent of the Senate, with no more than
27 five representatives being from the same political party.

28 The terms of the board members shall be for three years.
29 The attorney general representative shall serve continuously.

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

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

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

47 (d) No action taken by the commissioner is subject to
48 challenge or rendered invalid on account of his or her failure
49 to consult with the board.

50 (e) The appointed members shall serve without
51 compensation, however, members are entitled to
52 reimbursement of travel and other necessary expenses
53 actually incurred while engaged in legitimate board activities
54 in accordance with the guidelines of the Travel Management
55 Office of the Department of Administration or its successor
56 agency.

ARTICLE 6E. MOTOR VEHICLE SALESPERSON LICENSE.

§17A-6E-2. Definitions.

1 The following words as used in this article, unless the
2 context otherwise requires, have the following meanings:

3 (1) "Applicant" means any person making application for
4 an original or renewal of a salesperson license;

5 (2) "Dealer" means any motor vehicle or auction business
6 regulated under the provisions of article six or six-c of this
7 chapter;

8 (3) "Licensee" means any person holding a license issued
9 under the provisions of this article;

10 (4) "Motor vehicle salesperson" or "salesperson" means
11 any person employed by a dealer to sell, buy, display and
12 offer for sale or deal in motor vehicles, recreational vehicles
13 or trailers, as those terms are defined in section one of article
14 one of this chapter, for a commission or other valuable
15 consideration, but does not mean any public officer
16 performing his or her official duties or the dealer licensee. A

17 person employed by a dealer as a finance and insurance
18 representative is for the purposes of this article a salesperson.
19 For the purposes of this article, the term “motor vehicle
20 salesperson” does not apply to persons employed by a dealer
21 in the business of selling commercial motor vehicles with a
22 gross vehicle weight of twenty-six thousand one pounds or
23 more, employees of financial institutions or to businesses
24 licensed as auctions.

**CHAPTER 46A. WEST VIRGINIA CONSUMER CREDIT
AND PROTECTION ACT.**

**ARTICLE 3. FINANCE CHARGES AND RELATED
PROVISIONS.**

**§46A-3-109. Additional charges; credit life or health insurance;
notice of cancellation; when refund required;
obligations of creditor and insurer; civil
penalty; rules relating to insurance.**

1 (a) In addition to the sales finance charge or loan finance
2 charge permitted by this chapter, a creditor may contract for
3 and receive the following additional charges in connection
4 with a consumer credit sale or a consumer loan:

5 (1) Official fees and taxes;

6 (2) Charges for insurance as described in subsection (b)
7 of this section: *Provided*, That nothing contained in this
8 section with respect to insurance in any way limits the power
9 and jurisdiction of the Insurance Commissioner of this state
10 in the premises;

11 (3) Annual charges, payable in advance, for the privilege
12 of using a lender credit card or similar arrangement which
13 entitles the user to purchase goods or services from at least

14 one hundred persons not related to the issuer of the lender
15 credit card or similar arrangement, under an arrangement
16 pursuant to which the debts resulting from the purchases are
17 payable to the issuer;

18 (4) Charges for other benefits, including insurance,
19 conferred on the consumer, if the benefits are of value to him
20 or her and if the charges are reasonable in relation to the
21 benefits, are of a type which is not for credit and are excluded
22 as permissible additional charges from the sales finance
23 charge or loan finance charge by rule adopted by the
24 commissioner: *Provided*, That as to insurance, the policy as
25 distinguished from a certificate of coverage thereunder may
26 only be issued by an individual licensed under the laws of
27 this state to sell the insurance and the determination of
28 whether the charges therefor are reasonable in relation to the
29 benefits shall be determined by the insurance commissioner
30 of this state;

31 (5) Reasonable closing costs with respect to a debt
32 secured by an interest in land; and

33 (6) Documentary charge or any other similar charge for
34 documentary services in relation to securing a title, so long as
35 said charge is applied equally to cash customers and credit
36 customers and there is a reasonable relationship between said
37 charge and the benefit conferred on the customer.

38 (b) A creditor may take, obtain or provide reasonable
39 insurance on the life and earning capacity of any consumer
40 obligated on the consumer credit sale or consumer loan,
41 reasonable insurance on any real or personal property offered
42 as security subject to the provisions of this subsection and
43 section one hundred nine-a of this article and vendor's or
44 creditor's single interest insurance with respect to which the
45 insurer has no right of subrogation. Only one policy of life

46 insurance and/or one policy of health and accident insurance
47 and/or one policy of accident insurance and/or one policy of
48 loss of income insurance on any one consumer may be in
49 force with respect to any one contract or agreement at any
50 one time, but one policy may cover both a consumer and his
51 or her spouse:

52 (1) The amount, terms and conditions of property
53 insurance shall have a reasonable relation to the existing
54 hazards or risk of loss, damage or destruction and be
55 reasonable in relation to the character and value of the
56 property insured or to be insured; and the term of the
57 insurance shall be reasonable in relation to the terms of
58 credit: *Provided*, That nothing may prohibit the consumer
59 from obtaining, at his or her option, greater coverages for
60 longer periods of time if he or she so desires;

61 (2) Life insurance shall be in an initial amount not to
62 exceed the total amount repayable under the consumer credit
63 agreement, and where a consumer credit sale or consumer
64 loan is repayable in installments, such insurance may at no
65 time exceed the scheduled or actual amount of unpaid
66 indebtedness, whichever is greater. Life insurance authorized
67 by this subdivision shall provide that the benefits be paid to
68 the creditor to reduce or extinguish the unpaid indebtedness:
69 *Provided*, That if a separate charge is made for the insurance
70 and the amount of insurance exceeds the unpaid
71 indebtedness, where not prohibited, then the excess is
72 payable to the estate of the consumer. The initial term of the
73 life insurance in connection with a consumer credit sale,
74 other than a sale pursuant to a revolving charge account, or
75 in connection with a consumer loan, other than a loan
76 pursuant to a revolving loan account, may not exceed the
77 scheduled term of the consumer credit agreement by more
78 than fifteen days. The aggregate amount of periodic benefits
79 payable by credit accident and health insurance in the event

80 of disability, as defined in the policy, and loss of income
81 insurance in the event of involuntary loss of employment, as
82 defined in the policy, may not exceed the unpaid amount of
83 such indebtedness; periodic benefits payable in connection
84 with a consumer credit sale pursuant to a revolving charge
85 account or of a consumer loan pursuant to a revolving loan
86 account may be based upon the authorized credit limit;

87 (3) When the insurance is obtained or provided by or
88 through a creditor, the creditor may collect from the
89 consumer or include as part of the cash price of a consumer
90 credit sale or as part of the principal of a consumer loan or
91 deduct from the proceeds of any consumer loan the premium
92 or, in the case of group insurance, the identifiable charge.
93 The premium or identifiable charge for the insurance required
94 or obtained by a creditor may equal, but may not exceed the
95 premium rate filed by the insurer with the insurance
96 commissioner. In any case when the creditor collects the
97 entire premium for such insurance in advance, the premium
98 shall be remitted by the creditor to the insurer or the
99 insurance agent, as specified by the insurer, within ten days
100 from or after the end of the month in which the collection
101 was made;

102 (4) With respect to insurance against loss of or damage to
103 property or against liability, the creditor shall furnish a clear
104 and specific statement in writing to the debtor setting forth
105 the cost of the insurance if obtained from or through the
106 creditor and stating that the debtor may choose the person
107 through whom the insurance is to be obtained;

108 (5) With respect to consumer credit insurance providing
109 life, accident, health or loss of income coverage, no creditor
110 may require a consumer to purchase the insurance or to
111 purchase the insurance from the creditor or any particular

112 agent, broker or insurance company as a condition precedent
113 to extending credit to or on behalf of such consumer;

114 (6) When a consumer credit sale or consumer loan,
115 refinancing or consolidation is paid in full, the creditor
116 receiving the payment shall inform the debtor of the
117 cancellation of any consumer credit insurance providing life,
118 accident, health or loss of income coverage and advise the
119 debtor of the application of any unearned premiums to the
120 loan balance. Notices required by this subdivision shall be
121 made in the following manner:

122 (A) If the insurance was not sold or provided by the
123 creditor, the creditor receiving the payment shall notify the
124 debtor that he or she may have the right to receive a refund of
125 unearned premiums from any other seller or provider of the
126 insurance and advise the debtor of his or her obligation to
127 notify any other insurer of the payment of the loan balance
128 and the cancellation of the consumer credit insurance and
129 request a refund or credit of unearned premiums, if
130 applicable. Such notice shall be sent on a form as prescribed
131 by the insurance commissioner as provided in chapter
132 twenty-nine-a of this code and shall contain the name and
133 address of the seller and the insurer; or

134 (B) If the creditor was the seller or provider of the
135 consumer credit insurance, the creditor shall:

136 (i) Notify the insurer or shall cause the insurer to be
137 notified of the cancellation of such insurance; and

138 (ii) Notify the debtor of the cancellation of the insurance
139 and of the application of any unearned premiums to the loan
140 balance, which notice may be on a form consistent with the
141 general course of business of the creditor;

142 (7) Upon receipt by the insurer of notification of the
143 cancellation of consumer credit insurance, the insurer shall
144 cancel the insurance effective no later than thirty days from
145 the date of receipt of the notice. Within forty-five days
146 following the date of notification of cancellation of the
147 insurance, the insurer shall pay any refund of unearned
148 premiums to the debtor-insurer or such other person as
149 directed by the debtor-insurer; and

150 (8) An insurer, seller or creditor who fails to refund any
151 unused insurance premium or provide the proper notification
152 of payoff is liable for civil damages up to three times the
153 amount of the unused premium as well as other remedies as
154 provided by section one hundred nine, article seven of this
155 chapter.

156 (c) The Insurance Commissioner of this state shall
157 promulgate legislative rules in accordance with the
158 provisions of chapter twenty-nine-a of this code to implement
159 the provisions of this article relating to insurance and the
160 authority of the Insurance Commissioner to promulgate the
161 rules is exclusive notwithstanding any other provisions of this
162 code to the contrary.

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



Chairman Senate Committee



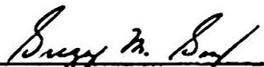
Chairman House Committee

Originating in the House.

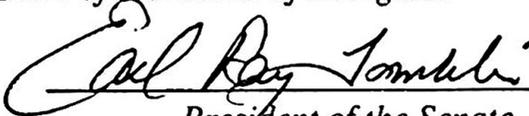
In effect ninety days from passage.



Clerk of the Senate



Clerk of the House of Delegates

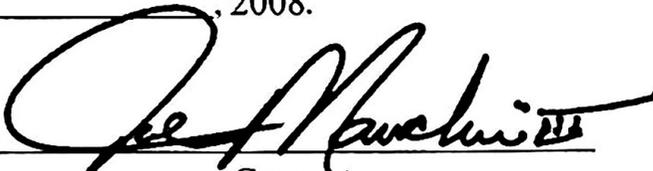


President of the Senate



Speaker of the House of Delegates

The within is approved this the 15th
day of April, 2008.



Governor

PRESENTED TO THE
GOVERNOR

MAR 25 2008

Time 10:20 am