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
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.

(a) Notwithstanding any other provision in this chapter, the division may allow a licensed motor vehicle dealer as defined in section one of this article, authority to issue or transfer motor vehicle registrations for vehicles sold by the dealer. The authority to issue and transfer motor vehicle registrations shall be contingent upon the dealer collecting all fees and taxes required for the titling and registration of vehicles, receiving proof of insurance as described in subsection (c), section three, article three of this chapter, and
if applicable receiving the receipt showing full payment of personal property taxes in accordance with section three-a, article three of this chapter.

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

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

(d) A fee established by the motor vehicle dealer advisory board may be charged by a motor vehicle dealer for its services required under this section.
(e) Only motor vehicle registrations of a type specified by the division may be issued, transferred or renewed by the authorized dealer.

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

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

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

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

(3) The division may rescind without notice the authority of a service provider to perform services when the division has cause to believe that any state or federal law has been
violated or that the service provider is not adhering to the terms and conditions of the authorization agreement.

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

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

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

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

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

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

(1) Any dealer who, for the three years immediately
preceding assessment of the fees, has not had a claim paid
against their bond or against the dealer recovery fund, whose
license has not been suspended or revoked and who has not been assessed any civil penalties is not required to continue to keep the bond required by this article. However, no dealer can submit a claim against the fund unless it has contributed to the fund for at least three years.

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

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

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

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

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

(h) The board shall pay claims in the following order:
(1) Claims submitted by the Division of Motor Vehicles for unpaid taxes and fees;

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

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

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

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

(i) The maximum claim against the fund for any unpaid lien of a used vehicle is the unpaid balance of the lien up to
the loan value of the vehicle as of the date of the sale or other
transaction as shown by a generally accepted motor vehicle
value guide. The maximum claim against the fund for any
new or unused vehicle is the amount of the invoice less any
amounts rebated or to be rebated to the dealer from the
manufacturer. Payment is only to be made to a secured party
who agrees to accept payment from the dealer recovery fund
and who accepts the payment in full settlement of any claims,
and who releases the lien and the title, if applicable, prior to
receiving payment. Any dealer who agrees to accept
payment from the dealer recovery fund shall release the title
prior to receiving payment.

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

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

(l) The provisions of this section do not apply to those
class DTR dealers in the business of selling manufactured
housing and covered by the state manufactured housing
recovery fund established by the Division of Labor pursuant to a legislative rule.

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

(a) Application for any license certificate required by section three of this article shall be made on a form prescribed by the commissioner. There shall be attached to the application a certificate of insurance certifying that the applicant has in force an insurance policy issued by an insurance company authorized to do business in this state insuring the applicant and any other person, as insured, using any vehicle or vehicles owned by the applicant with the express or implied permission of the named insured, against loss from the liability imposed by law for damages arising out of the ownership, operation, maintenance or use of the vehicle or vehicles, subject to minimum limits, exclusive of interest and costs, with respect to each vehicle, as follows:

Twenty thousand dollars because of bodily injury to or death of one person in any one accident and, subject to the limit for one person, forty thousand dollars because of bodily injury to or death of two or more persons in any one accident, and ten thousand dollars because of injury to or destruction of property of others in any one accident.

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

1. The type of business for which a license certificate is sought;
(2) If the applicant is an individual, the full name and address of the applicant and any trade name under which he or she will engage in the business;

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

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

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

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

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

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

(9) Any other information that the commissioner may reasonably require which may include information relating to any contracts, agreements or understandings between the
applicant and other persons respecting the transaction of the
business, and any criminal record of the applicant if an
individual, or of each partner if a copartnership, or of each
officer and director, if a corporation.

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

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

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

(d) In the case of an application for a license certificate to
engage in the business of used motor vehicle dealer, the
application shall in addition to the matters outlined in
subsection (b) of this section, disclose the exact number of
used motor vehicles, if any, sold at retail and wholesale by
the applicant or his or her predecessor, if any, during the
preceding fiscal year, and if no used motor vehicles were sold
at retail and wholesale by the applicant or his or her
predecessor, if any, during the preceding fiscal year, the
number of used motor vehicles the applicant reasonably
expects to sell at retail and wholesale during the ensuing
fiscal year.
(e) In the case of an application for a license certificate to engage in the business of trailer dealer, recreational vehicle dealer, motorcycle dealer, used parts dealer or wrecker/dismantler/rebuilder, the application shall disclose any information that the commissioner may reasonably require.

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

(g) Upon receipt of any fully completed application, together with any bond required under subsection (f) of this section, the certificate of insurance as required in subsection (a) of this section and the appropriate fee provided in section ten of this article, the commissioner may conduct any investigation he or she considers necessary to determine the accuracy of any statements contained in the application and the existence of any other facts which he or she considers relevant in considering the application. To facilitate the investigation, the commissioner may withhold issuance or refusal of the license certificate for a period not to exceed twenty days.
(h) Any application for a license certificate under the provisions of this article and any information submitted with the application is confidential for the use of the division. No person shall divulge any information contained in any application or any information submitted with the application except in response to a valid subpoena or subpoena duces tecum issued pursuant to law.

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

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

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

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

(2) The commissioner may approve the renewal of a dealer selling less than eighteen vehicles based on a finding of extenuating circumstances including, but not limited to, the illness of the dealer, adverse business conditions or sales credited to other types of dealer licenses held by the dealer; and
(3) Any dealer may appeal the commissioner's refusal to the Motor Vehicle Dealers Advisory Board which may consider extenuating circumstances and approve the renewal.

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

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

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

(b) Application by a dealer to the commissioner for temporary registration plates or markers shall be made on the form and in the manner prescribed and furnished by the commissioner for such purpose and shall be accompanied by a fee of three dollars for each such temporary registration plate or marker. The commissioner may require the fee to be remitted to the division in an electronic format. No refund or credit of fees paid by dealers to the commissioner for
19 temporary registration plates or markers shall be allowed, except that in the event the commissioner discontinues the issuance of such temporary plates or markers, dealers returning temporary registration plates or markers to the commissioner may petition for and be entitled to a refund or a credit thereof. No temporary registration plates or markers shall be delivered by the commissioner to any dealer in house trailers only, and no such temporary plates or markers shall be issued for or used on any house trailer for any purpose.

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

(d) A dealer may not issue, assign, transfer or deliver a temporary registration plate or marker to anyone other than the bona fide purchaser of the vehicle to be registered; nor may a dealer issue a temporary registration plate or marker to anyone possessed of an annual registration plate for a vehicle which has been sold or exchanged, except a dealer may issue a temporary registration plate or marker to the bona fide purchaser of a vehicle to be registered who possesses an annual registration plate of a different class and makes application to the division to exchange such annual
registration plate of a different class in accordance with the
provisions of section one, article four of this chapter; nor may
a dealer lend to anyone, or use on any vehicle which he or
she may own, a temporary registration plate or marker. It is
unlawful for any dealer to issue any temporary registration
plate or marker knowingly containing any misstatement of
fact, or knowingly to insert any false information upon the
face thereof.

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

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

(g) Every person to whom a temporary registration plate
or marker has been issued shall permanently destroy such
temporary registration plate or marker immediately upon
receiving the annual registration plate for such vehicle from
the division: Provided, That if the annual registration plate
is not received within sixty days of the issuance of the
temporary registration plate or marker, the owner shall,
notwithstanding the fact that the annual registration plate has
not been received, immediately and permanently destroy the
temporary registration plate or marker: Provided, however.
That not more than one temporary registration plate or
marker shall be issued to the same bona fide purchaser for the
same vehicle.
(h) A temporary registration plate or marker shall expire and become void upon the receipt of the annual registration plate from the division or upon the rescission of the contract to purchase the vehicle in question, or upon the expiration of sixty days from the date of issuance, depending upon whichever event shall first occur.

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

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

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

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

The board shall consist of nine members and the Commissioner of Motor Vehicles, or his or her representative, who shall be an ex officio member. Two
members shall represent new motor vehicle dealers, with one
of these two members representing dealers that sell less than
one hundred new vehicles per year; one member shall
represent used motor vehicle dealers; one member shall
represent wrecker/dismantler/rebuilders; one member shall
represent automobile auctions; one member shall represent
recreational dealers; one member shall represent the West
Virginia Attorney General’s office; and two members shall
represent consumers. All of the representatives, except the
Attorney General representative who shall be designated by
the Attorney General, shall be appointed by the Governor
with the advice and consent of the Senate, with no more than
five representatives being from the same political party.

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

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

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

(c) The commissioner may consult with the board by
mail, by facsimile, by telephone or at a meeting of the board,
but the commissioner is not bound by the recommendations
of the board. The commissioner shall give members seven
days from the date of a mailing or other notification to
respond to proposed actions, except in those instances when
the commissioner determines that the delay in acting creates
a serious danger to the public’s health or safety or would
unduly compromise the effectiveness of the action.
(d) No action taken by the commissioner is subject to challenge or rendered invalid on account of his or her failure to consult with the board.

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

ARTICLE 6E. MOTOR VEHICLE SALESPERSON LICENSE.


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

1. "Applicant" means any person making application for an original or renewal of a salesperson license;

2. "Dealers" means any motor vehicle or auction business regulated under the provisions of article six or six-c of this chapter;

3. "Licensee" means any person holding a license issued under the provisions of this article;

4. "Motor vehicle salesperson" or "salesperson" means any person employed by a dealer to sell, buy, display and offer for sale or deal in motor vehicles, recreational vehicles or trailers, as those terms are defined in section one of article one of this chapter, for a commission or other valuable consideration, but does not mean any public officer performing his or her official duties or the dealer licensee. A
person employed by a dealer as a finance and insurance representative is for the purposes of this article a salesperson. For the purposes of this article, the term "motor vehicle salesperson" does not apply to persons employed by a dealer in the business of selling commercial motor vehicles with a gross vehicle weight of twenty-six thousand one pounds or more, employees of financial institutions or to businesses 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.

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

(1) Official fees and taxes;

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

(3) Annual charges, payable in advance, for the privilege of using a lender credit card or similar arrangement which entitles the user to purchase goods or services from at least
one hundred persons not related to the issuer of the lender
credit card or similar arrangement, under an arrangement
pursuant to which the debts resulting from the purchases are
payable to the issuer;

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

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

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

(b) A creditor may take, obtain or provide reasonable
insurance on the life and earning capacity of any consumer
obligated on the consumer credit sale or consumer loan,
reasonable insurance on any real or personal property offered
as security subject to the provisions of this subsection and
section one hundred nine-a of this article and vendor's or
creditor's single interest insurance with respect to which the
insurer has no right of subrogation. Only one policy of life
insurance and/or one policy of health and accident insurance
and/or one policy of accident insurance and/or one policy of
loss of income insurance on any one consumer may be in
force with respect to any one contract or agreement at any
time, but one policy may cover both a consumer and his
or her spouse:

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

(2) Life insurance shall be in an initial amount not to
exceed the total amount repayable under the consumer credit
agreement, and where a consumer credit sale or consumer
loan is repayable in installments, such insurance may at no
time exceed the scheduled or actual amount of unpaid
indebtedness, whichever is greater. Life insurance authorized
by this subdivision shall provide that the benefits be paid to
the creditor to reduce or extinguish the unpaid indebtedness:
Provided, That if a separate charge is made for the insurance
and the amount of insurance exceeds the unpaid
indebtedness, where not prohibited, then the excess is
payable to the estate of the consumer. The initial term of the
life insurance in connection with a consumer credit sale,
other than a sale pursuant to a revolving charge account, or
in connection with a consumer loan, other than a loan
pursuant to a revolving loan account, may not exceed the
scheduled term of the consumer credit agreement by more
than fifteen days. The aggregate amount of periodic benefits
payable by credit accident and health insurance in the event
of disability, as defined in the policy, and loss of income
insurance in the event of involuntary loss of employment, as
defined in the policy, may not exceed the unpaid amount of
such indebtedness; periodic benefits payable in connection
with a consumer credit sale pursuant to a revolving charge
account or of a consumer loan pursuant to a revolving loan
account may be based upon the authorized credit limit;

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

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

(5) With respect to consumer credit insurance providing
life, accident, health or loss of income coverage, no creditor
may require a consumer to purchase the insurance or to
purchase the insurance from the creditor or any particular
agent, broker or insurance company as a condition precedent
to extending credit to or on behalf of such consumer;

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

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

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

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

(ii) Notify the debtor of the cancellation of the insurance
and of the application of any unearned premiums to the loan
balance, which notice may be on a form consistent with the
general course of business of the creditor;
(7) Upon receipt by the insurer of notification of the cancellation of consumer credit insurance, the insurer shall cancel the insurance effective no later than thirty days from the date of receipt of the notice. Within forty-five days following the date of notification of cancellation of the insurance, the insurer shall pay any refund of unearned premiums to the debtor-insurer or such other person as directed by the debtor-insurer; and

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

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