

WEST VIRGINIA LEGISLATURE

FIRST EXTRAORDINARY SESSION, 1993



ENROLLED

Committee Substitute for
SENATE BILL NO. 6

(By Senators *Bundette, Mr. President,*
and Bolay, By Request of the Executive)



PASSED May 26, 1993
In Effect from Passage

E N R O L L E D

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 6

(BY SENATORS BURDETTE, MR. PRESIDENT, AND BOLEY,

BY REQUEST OF THE EXECUTIVE)

[Passed May 26, 1993; in effect from passage.]

AN ACT to repeal sections five and six, article twenty-three, chapter forty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section two-a, article nine, chapter eleven of said code; to amend and reenact section ten, article twenty, chapter forty-seven of said code; to amend and reenact section eleven, article twenty-one of said chapter; to amend and reenact sections two, three, eight, nine, ten and eleven, article twenty-three of said chapter; and to further amend said article by adding thereto two new sections, designated sections seven-a and fourteen, all relating to charitable bingo and charitable raffle boards and games; repealing provisions requiring indicia on charitable raffle boards or games; providing for the deposit of specified amount of fees to special revenue account; providing for remittance of balance in special revenue account to be transferred to general revenue; increasing the limits on prizes awarded in bingo and charitable raffles; providing

definitions for retail value for the purpose of imposition of fee; amending definition of charitable raffle board or game; requiring serial numbers or other form of verification to be affixed to charitable raffle boards or games; requiring wholesalers and distributors be licensed to do business in this state; requiring the appointment of an agent for service of process in order to do business in state; providing criminal penalties for violations of article; allowing emergency rulemaking for initial promulgation; and specifying an effective date for new article relating to charitable raffle boards and games.

Be it enacted by the Legislature of West Virginia:

That sections five and six, article twenty-three, chapter forty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that section two-a, article nine, chapter eleven of said code be amended and reenacted; that section ten, article twenty, chapter forty-seven of said code be amended and reenacted; that section eleven, article twenty-one of said chapter be amended and reenacted; that sections two, three, eight, nine, ten and eleven, article twenty-three of said chapter be amended and reenacted; and that said article be further amended by adding thereto two new sections, designated sections seven-a and fourteen, all to read as follows:

CHAPTER 11. TAXATION.

ARTICLE 9. CRIMES AND PENALTIES.

§11-9-2a. Criminal investigation section established; funding of same.

1 A criminal investigation section consisting of no
2 more than twelve investigators plus necessary support
3 staff is hereby established within the state tax division
4 for the purpose of assuring compliance with laws,
5 rules and regulations pertaining to the taxes or credits
6 established by articles eleven, eleven-a, eleven-b,
7 twelve, twelve-a, twelve-b, thirteen, thirteen-a, thir-
8 teen-b, thirteen-c, thirteen-d, thirteen-e, thirteen-f,
9 thirteen-g, thirteen-h, fourteen, fourteen-a, fifteen,
10 fifteen-a, sixteen, seventeen, eighteen, nineteen,

11 twenty-three, twenty-four and twenty-six of this
12 chapter, and articles twenty, twenty-one and twenty-
13 three, chapter forty-seven of this code. Charitable
14 bingo fees imposed under sections six and six-a, article
15 twenty of said chapter; charitable raffle fees imposed
16 under section seven, article twenty-one of said chap-
17 ter; and charitable raffle boards and games fees
18 imposed under section three, article twenty-three of
19 said chapter in an amount not to exceed three hun-
20 dred fifty thousand dollars in any fiscal year shall be
21 deposited in a special revenue account established in
22 the office of the treasurer and shall be used to support
23 compliance expenditures relating to the establishment,
24 maintenance and support of such criminal investiga-
25 tion section. Prior to the close of the fiscal year, any
26 moneys in the special revenue account in excess of
27 fifty thousand dollars shall be transferred to the
28 general revenue fund.

29 Any employee of the criminal investigation section
30 so designated by the tax commissioner who shall have
31 a background in accounting and who shall be certified
32 as a law-enforcement officer pursuant to article
33 twenty-nine, chapter thirty of this code, or its equiv-
34 alent, shall have all the lawful powers delegated to
35 members of the department of public safety except the
36 power to carry firearms to enforce the provisions of
37 this article in any county or municipality of this state.
38 The commissioner shall establish such additional
39 standards as he or she deems applicable or necessary.
40 Any such employee shall, before entering upon the
41 discharge of his or her duties, execute a bond with
42 security in the sum of three thousand five hundred
43 dollars, payable to the state of West Virginia, condi-
44 tioned for the faithful performance of his or her
45 duties, as such, and such bond shall be approved as to
46 form by the attorney general, and the same shall be
47 filed with the secretary of state and preserved in his
48 or her office. The department of public safety, any
49 county sheriff, or deputy sheriff, or any municipal
50 police officer, upon request by the tax commissioner,
51 is hereby authorized to assist the tax commissioner in
52 enforcing the provisions of this article and the crimi-

53 nal penalty provisions of this article or any article of
54 this chapter administered under this article.

CHAPTER 47. REGULATION OF TRADE.

ARTICLE 20. CHARITABLE BINGO.

§47-20-10. Limits on prizes awarded — General provisions.

1 Except as otherwise provided in section twenty-two
2 of this article, the total value of all prizes awarded by
3 a licensee during the period of a license, may not
4 exceed in value eighty-five percent of the gross
5 proceeds collected during that period: *Provided*, That
6 notwithstanding the foregoing limitation, the total
7 prizes awarded by a licensee, or in the aggregate by
8 two or more limited occasion licensees holding a joint
9 bingo occasion, for any bingo occasion held pursuant to
10 an annual or limited occasion license, may not exceed
11 seven thousand five hundred dollars in value.

12 Prizes may be money or merchandise other than
13 beer, nonintoxicating beer, wine, spirits or alcoholic
14 liquor as defined in section five, article one, chapter
15 sixty of this code. If the prizes are merchandise, the
16 value assigned to them is their fair market value at
17 the time of purchase.

ARTICLE 21. CHARITABLE RAFFLES.

§47-21-11. Limits on prizes awarded — General provisions.

1 During the period of a license, the total value of all
2 prizes awarded by a licensee shall not exceed in value
3 eighty-five percent of the gross proceeds collected
4 during such period: *Provided*, That notwithstanding
5 the foregoing limitation, the total prizes awarded by a
6 licensee, or in the aggregate by two or more limited
7 occasion licensees holding a joint raffle occasion, for
8 any raffle occasion held pursuant to a limited occasion
9 license, may not exceed in value seven thousand five
10 hundred dollars.

11 Prizes may be money, real or personal property or
12 merchandise other than beer, wine, spirits or alcoholic
13 liquor as defined in section five, article one, chapter
14 sixty of this code. If the prizes are real or personal

15 property or merchandise, the value assigned to them
16 is their fair market value at the time of acquisition for
17 the raffle or at the time of purchase.

ARTICLE 23. CHARITABLE RAFFLE BOARDS AND GAMES.

§47-23-2. Definitions.

1 For purposes of this article, unless specified
2 otherwise:

3 (a) "Commissioner" means tax commissioner of the
4 state of West Virginia, or his delegate.

5 (b) "Retail value" means the actual consideration
6 paid to the wholesaler by the retailer for any raffle
7 boards or games.

8 (c) "Person" means any individual, association,
9 society, incorporated or unincorporated organization,
10 firm partnership or other nongovernmental entity or
11 institution.

12 (d) "Retailer" means every person engaged in the
13 business of making retail sales of raffle chances except
14 a charitable or public service organization authorized
15 to conduct raffles pursuant to section three, article
16 twenty-one of this chapter.

17 (e) "Charitable raffle board" or "charitable raffle
18 game" means: (1) A board or other device that has
19 many folded printed slips to be pulled from the board
20 or otherwise distributed without a board on payment
21 of a nominal sum in an effort to obtain a slip or chance
22 that entitles the player to a designated prize; (2) a
23 series of paper cards with perforated break-open tabs,
24 a face value of which is covered or otherwise hidden
25 from view to conceal one or more numbers, letters or
26 symbols, which, on payment of a nominal sum, entitles
27 the player to obtain a chance to a designated prize; or
28 (3) such other similar game which may be defined by
29 the state tax commissioner by legislative rule.

30 (f) "Sale" means the transfer of the ownership of
31 tangible personal property for a consideration.

32 (g) "Verification" means a unique manufacture

33 identifiable serial number which is required to be
34 printed on each ticket in a charitable raffle board or
35 charitable raffle game or such other form of identifi-
36 cation as may be prescribed by the tax commissioner
37 upon a showing of undue hardship by the taxpayer:
38 *Provided*, That such other form of identification shall
39 be prescribed by rule in accordance with the provi-
40 sions of article three, chapter twenty-nine-a of this
41 code.

42 (h) "Wholesaler" or "distributor" means any person
43 or entity engaged in the wholesale distribution of
44 charitable raffle boards or games or similar boards or
45 devices, as defined by the commissioner, and licensed
46 under the provisions of this article, to distribute said
47 devices to charitable raffle boards or games retailers as
48 defined in this article. It also includes anyone who is
49 engaged in the manufacturing, packaging, preparing or
50 repackaging of charitable raffle boards or games for
51 distribution in this state.

§47-23-3. Fees.

1 Wholesalers or distributors of charitable raffle
2 boards and games to retailers shall be licensed and a
3 license fee in the amount of five hundred dollars shall
4 be paid to the commissioner by each wholesaler or
5 distributor for an annual license. Wholesalers and
6 distributors shall also pay a fee of twenty cents on
7 each dollar of retail value of each charitable raffle
8 board or game sold to a retailer. This fee shall be in
9 addition to any tax imposed pursuant to the provisions
10 of article fifteen, chapter eleven of this code. The fees
11 imposed by this article shall be deposited in accor-
12 dance with the provisions of section two-a, article
13 nine, chapter eleven of this code.

**§47-23-7a. Requirement of wholesalers and distributors to
be licensed to do business in state; resident
agent requirement.**

1 (a) Any wholesaler or distributor supplying charita-
2 ble raffle boards or games to retailers in this state
3 shall be registered to do business in this state pursuant
4 to the provisions of article twelve, chapter eleven of

5 this code.

6 (b) Nonresidents otherwise complying with the
7 provisions of this article may be licensed as wholesal-
8 ers or distributors of charitable raffle boards or games
9 upon designating to the tax commissioner a resident
10 agent upon whom notices, orders or other communica-
11 tions issued pursuant to this article may be served and
12 upon whom process may be served.

**§47-23-8. How fee paid; reports required; due date; records
to be kept; inspection of records and stocks;
examination of witnesses, summons, etc.**

1 The retail value fee imposed by section three of this
2 article shall be paid by each licensed wholesaler or
3 distributor to the commissioner on or before the
4 twentieth day of April, July, October and January for
5 the preceding three calendar months. The measure of
6 the fee on the retail value of charitable raffle boards
7 or games shall be determined by multiplying the total
8 amount of the retail value of all charitable raffle
9 boards and games sold by a wholesaler or distributor
10 to retailers during the said three-month period by
11 twenty percent. Said fee shall be in addition to any tax
12 imposed pursuant to the provisions of article fifteen,
13 chapter eleven of this code. All fees due and owing to
14 the commissioner by reason of this article, if paid after
15 the due dates required by this section, shall be subject
16 to the provisions of article ten, chapter eleven of this
17 code. Each wholesaler or distributor shall provide with
18 each quarterly payment of fees a return covering the
19 business transacted in the previous three calendar
20 months and providing such other information as the
21 commissioner may deem necessary for the ascertain-
22 ment or assessment of the fee imposed by this article.
23 Such return shall be signed under penalty of perjury
24 on such forms as the tax commissioner may prescribe
25 and the wholesaler or distributor shall at the time of
26 filing remit all fees owed or due.

27 The returns prescribed herein are required,
28 although a fee might not be due or no business
29 transacted for the period covered by the return.

30 Each person required to file a return under this
31 article shall make and keep such records as shall be
32 prescribed by the commissioner that are necessary to
33 substantiate the returns required by this article,
34 including, but not limited to, invoices, serial numbers
35 or other verification, inventories, receipts, disburse-
36 ments and sales, for a period of time not less than
37 three years.

38 Unless otherwise permitted, in writing, by authority
39 of the commissioner, each delivery ticket or invoice
40 for each purchase or sale of charitable raffle boards or
41 games must be recorded upon a serially numbered
42 invoice showing the name and address of the seller
43 and the purchaser, the point of delivery, the date,
44 quantity, serial number and price of the product sold
45 and the fee must be set out separately, and such other
46 reasonable information as the commissioner may
47 require. These invoicing requirements also apply to
48 cash sales and a person making such sales must
49 maintain such records as may be reasonably necessary
50 to substantiate his return.

51 In addition to the commissioner's powers set forth in
52 section five, article ten, chapter eleven of this code,
53 the commissioner shall have authority to inspect or
54 examine the stock of charitable raffle boards and
55 games kept in and upon the premises of any person
56 where charitable raffle boards and games are placed,
57 stored or sold, and he or she shall have authority to
58 inspect or examine the records, books, papers and any
59 equipment or records of manufacturers, wholesalers
60 and distributors or any other person for the purpose of
61 determining the quantity of charitable raffle boards
62 and games acquired or disbursed to verify the truth
63 and accuracy of any statement or return and to
64 ascertain whether the fee imposed by this article has
65 been properly paid.

66 In addition to the commissioner's powers set forth in
67 section five, article ten, chapter eleven of this code,
68 and as a further means of obtaining the records, books
69 and papers of a manufacturer, wholesaler, distributor
70 or any other person and ascertaining the amount of

71 fees and returns due under this article, the commis-
 72 sioner shall have the power to examine witnesses
 73 under oath; and if the witness shall fail or refuse at
 74 the request of the commissioner to grant access to the
 75 books, records or papers, the commissioner shall
 76 certify the facts and names to the circuit court of the
 77 county having jurisdiction of the party and such court
 78 shall thereupon issue summons to such party to
 79 appear before the commissioner, at a place designated
 80 within the jurisdiction of such court, on a day fixed, to
 81 be continued as the occasion may require for good
 82 cause shown and give such evidence and lay open for
 83 inspection such books and papers as may be required
 84 for the purpose of ascertaining the amount of fee and
 85 returns due, if any.

**§47-23-9. Penalty for failure to file return when no fee due;
 other offenses; penalties; seizures of illegal
 boards and games; disposition.**

1 (a) *Penalty for failure to file required return where*
 2 *no fee due.* — In the case of any failure to make or file
 3 a return when no fee is due, as required by this
 4 article, on the date prescribed therefor, unless it be
 5 shown that such failure was due to reasonable cause
 6 and not due to willful neglect, there shall be collected
 7 a penalty of twenty-five dollars for each month of such
 8 failure or fraction thereof.

9 (b) It shall be a misdemeanor, punishable pursuant
 10 to the terms of this article, if any person:

11 (1) Makes any false entry upon an invoice required
 12 to be made under the provisions of this article or with
 13 intent to evade the fee imposed by this article presents
 14 any such false entry for the inspection of the
 15 commissioner;

16 (2) Prevents or hinders the commissioner from
 17 making a full inspection of any place where charitable
 18 raffle boards or games subject to the fee imposed by
 19 this state are sold or stored or prevents or hinders the
 20 full inspection of invoices, books, records or papers
 21 required to be kept under the provisions of this article;

22 (3) Sells any charitable raffle boards or games in this
23 state on which the applicable fee or tax has not been
24 paid;

25 (4) Being a retailer in this state, fails to produce on
26 demand by the commissioner invoices and verification
27 of all charitable raffle boards and games purchased or
28 received by him within three years prior to such
29 demand, unless upon satisfactory proof it is shown that
30 such nonproduction is due to providential or other
31 causes beyond his control; or

32 (5) Being a retailer in this state, purchases or
33 acquires charitable raffle boards and games from any
34 person other than a wholesaler or distributor licensed
35 under this article.

36 (c) Any person convicted of violating the provisions
37 of subsection (b) of this section, shall be confined in
38 the county jail or regional jail for not more than one
39 year or fined not less than one thousand dollars nor
40 more than ten thousand dollars, or both.

41 (d) Any person who falsely or fraudulently makes,
42 forges, alters or counterfeits any invoice or serial
43 number prescribed by the provisions of this article, or
44 its related rules and regulations, for the purpose of
45 evading the fee hereby imposed, shall be guilty of a
46 felony, and, upon conviction thereof, shall be sent-
47 enced to pay a fine of not less than five thousand
48 dollars nor more than ten thousand dollars or impris-
49 oned in the penitentiary for a term of not less than
50 one year nor more than five years, or both.

51 (e) Whenever the commissioner, or any of his
52 deputies or employees authorized by him, or any
53 peace officer of this state shall discover any charitable
54 raffle boards or games subject to the fee as provided
55 by this article and upon which the fee has not been
56 paid as herein required, such charitable raffle boards
57 and games shall thereupon be deemed to be contra-
58 band, and the commissioner, or such deputy or
59 employee or any peace officer of this state, is hereby
60 authorized and empowered forthwith to seize and take
61 possession of such charitable raffle boards or games,

62 without a warrant, and such charitable raffle boards
63 and games shall be forfeited to the state, and the
64 commissioner shall retain the forfeited charitable
65 raffle boards and games until they are no longer
66 needed as evidence in any prosecution of the person
67 from whom the raffle boards and games were seized.
68 The commissioner may within a reasonable time
69 thereafter destroy such charitable raffle boards and
70 games or sell said charitable raffle boards or games at
71 public auction to the highest bidder: *Provided*, That
72 such seizure and destruction or public auction shall
73 not be deemed to relieve any person from fine or
74 imprisonment as provided herein for violation of any
75 provisions of this article. Such destruction may be
76 made in any county the commissioner deems most
77 convenient and economical. All revenue from said
78 license fee shall be deposited in the special revenue
79 account established under the authority of section two-
80 a, article nine, chapter eleven of this code and used to
81 support the investigatory activities provided for in said
82 section.

83 (f) Magistrates shall have concurrent jurisdiction
84 with any other courts having jurisdiction for the trial
85 of all misdemeanors arising under this article.

**§47-23-10. Transportation of charitable raffle boards and
games; forfeitures and sales of charitable
raffle boards, charitable raffle games and
equipment; criminal sanctions.**

1 Every person who shall knowingly transport charita-
2 ble raffle boards or games upon the public highways,
3 waterways, airways, roads or streets of this state shall
4 have in his actual possession invoices or delivery
5 tickets for such charitable raffle boards or games
6 which shall show the true name and the complete and
7 exact address of the manufacturer, the true name and
8 complete and exact address of the wholesaler or
9 distributor who is the purchaser, the quantity and
10 description of the charitable raffle boards and games
11 transported and the true name and complete and exact
12 address of the person who has or shall assume pay-
13 ment of the West Virginia state fee, or the tax, if any,

14 of the state or foreign country at the point of ultimate
15 destination. In the absence of such invoices, delivery
16 tickets or bills of lading, as the case may be, the
17 charitable raffle boards or games so transported, the
18 vehicle or vessel in which the charitable raffle boards
19 or games are being transported and any paraphernalia
20 or devices used in connection with such, are declared
21 to be contraband goods and may be seized by the
22 commissioner, his agents or employees or by any
23 peace officer of the state without a warrant.

24 Any person who transports charitable raffle boards
25 or games in violation of this section shall be guilty of
26 a misdemeanor, and, upon conviction thereof, shall be
27 fined not less than three hundred dollars nor more
28 than five thousand dollars, or imprisoned in the
29 county jail not more than one year, or both.

30 Charitable raffle boards and games seized under this
31 section shall be forthwith destroyed in the manner
32 provided hereinafter in this section and such destruc-
33 tion shall not relieve the owner of the destroyed
34 charitable raffle boards and games of any action by the
35 commissioner for violations of this or any other
36 sections of this article.

37 The commissioner shall immediately, after any
38 seizure made pursuant to this section, institute a
39 proceeding for the confiscation thereof in the circuit
40 court of the county in which the seizure is made. The
41 court may proceed in a summary manner and may
42 direct confiscation by the commissioner: *Provided,*
43 That any person claiming to be the holder of a security
44 interest in any vehicle or vessel, the disposition of
45 which is provided for above, may present his petition
46 so alleging and be heard, and in the event it appears
47 to the court that the property was unlawfully used by
48 a person other than such claimant, and if the said
49 claimant acquired his security interest in good faith
50 and without knowledge that the vehicle or vessel, was
51 going to be so used, the court shall waive forfeiture in
52 favor of such claimant and order the vehicle or vessel
53 returned to such claimant.

§47-23-11. Administration; rulemaking; required verification.

1 (a) The commissioner shall propose for promulga-
2 tion, rules to administer the provisions of this article
3 in accordance with the provisions of chapter twenty-
4 nine-a of this code: *Provided*, That the initial promul-
5 gation of rules to administer the provisions of this
6 article shall be by emergency rule. Additionally, the
7 commissioner shall promulgate a rule which requires
8 that every charitable raffle board or game shall each
9 bear verification, as defined by section two of this
10 article, printed by a manufacturer on each ticket in a
11 game unless, upon application by the taxpayer show-
12 ing undue hardship, the tax commissioner consents to
13 waive this requirement in favor of some other form of
14 verification.

15 (b) The commissioner shall deny an application for
16 a license if he or she finds that the issuance thereof
17 would be in violation of the provisions of this article.

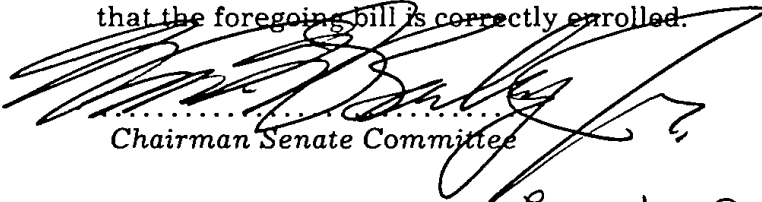
18 (c) The commissioner may suspend, revoke or refuse
19 to renew any license issued hereunder for a material
20 failure to maintain the records or file the reports
21 required by this article or administrative rule if the
22 commissioner finds that said failure will substantially
23 ~~impair the commissioner's ability to administer the~~
24 provisions of this article with regard to said licensee.

25 (d) The burden of proof in any administrative or
26 court proceeding is on the applicant to show cause
27 why a charitable raffle boards or games wholesaler's
28 or distributor's license should be issued or renewed
29 and on the licensee to show cause why its license
30 should not be revoked or suspended.

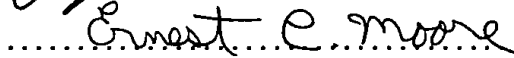
§47-23-14. Effective date of article.

1 The provisions of this article enacted in the year one
2 thousand nine hundred ninety-three shall be effective
3 on and after the ninth day of July, one thousand nine
4 hundred ninety-three.

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



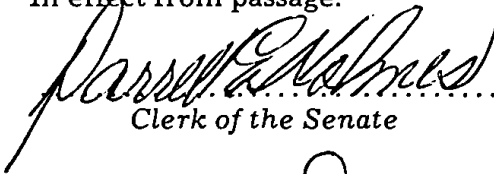
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Chairman Senate Committee



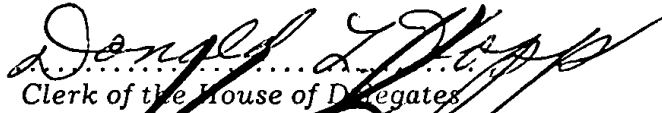
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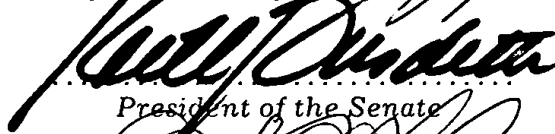
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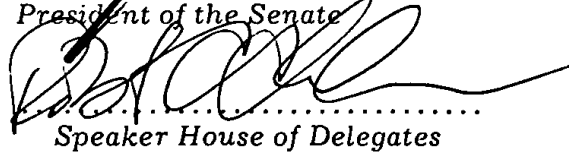
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Clerk of the Senate



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Clerk of the House of Delegates

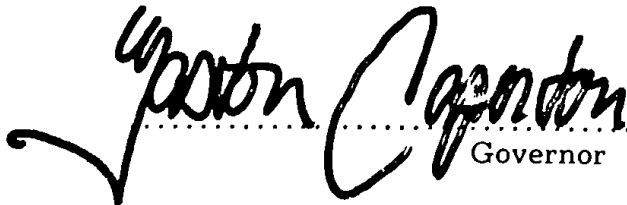


.....
President of the Senate



.....
Speaker House of Delegates

The within is approved this the 1st
June day of, 1993.



.....
Governor

PRESENTED TO THE

GOVERNOR

Date 5/28/93

Time 2:00 pm