

SB 380

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WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1996



ENROLLED

Con. Sub. For Con. Sub. For
SENATE BILL NO. 380

(By Senator *Miller*)



PASSED *MARCH 9,* 1996
In Effect *NINETY DAYS FROM* Passage

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SECRETARY OF STATE

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COMMITTEE SUBSTITUTE
FOR
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FOR

Senate Bill No. 380

(SENATOR MILLER, *original sponsor*)

[Passed March 9, 1996; in effect ninety days from passage.]

AN ACT to amend and reenact section eighteen, article six, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto two new sections, designated sections eighteen-a and twenty-five-a, all relating to motor vehicle dealers, license services and automobile auctions; investigation of licensees; disclosure of information to the motor vehicle dealers advisory board; revocation and suspension of licenses and plates; adding new offense to the grounds for suspending or revoking a license certificate; creating a motor vehicle dealers advisory board; composition of

board; terms of board members; requiring commissioner to consult with the board; adding provisions for civil penalties for violations by vehicle dealers, license services and automobile auctions; providing for coviolator penalties; providing for hearings on civil penalties; and providing for judicial review.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 6. LICENSING OF DEALERS AND WRECKERS; ETC.

§17A-6-18. Investigation; matters confidential; grounds for suspending or revoking license or imposing fine; suspension and revocation generally.

1 (a) The commissioner may conduct an investigation to
2 determine whether any provisions of this chapter have
3 been or are about to be violated by a licensee. Any
4 investigation shall be kept in strictest confidence by the
5 commissioner, the division, the licensee, any complain-
6 ant and all other persons, unless and until the commis-
7 sioner suspends or revokes the license certificate of the
8 licensee involved or fines the licensee: *Provided*, That
9 the commissioner may advise the motor vehicle dealers
10 advisory board of pending actions and may disclose to
11 the motor vehicle dealers advisory board such informa-
12 tion as may enable it to perform its advisory function in
13 imposing penalties. The commissioner may suspend or
14 revoke a license certificate, suspend a special dealer
15 plate or plates, impose a fine or take any combination of
16 these actions, if the commissioner finds that the licensee:

17 (1) Has failed or refused to comply with the laws of this
18 state relating to the registration and titling of vehicles
19 and the giving of notices of transfers, the provisions and
20 requirements of this article, or any reasonable rules

21 authorized in section nine, article two of this chapter
22 and promulgated to implement the provisions of this
23 article by the commissioner in accordance with the
24 provisions of article three, chapter twenty-nine-a of this
25 code;

26 (2) Has given any check in the payment of any fee
27 required under the provisions of this chapter which is
28 dishonored;

29 (3) In the case of a dealer, has knowingly made or
30 permitted any unlawful use of any dealer special plate or
31 plates issued to him or her;

32 (4) In the case of a dealer, has a dealer special plate or
33 plates to which he or she is not lawfully entitled;

34 (5) Has knowingly made false statement of a material
35 fact in his or her application for the license certificate
36 then issued and outstanding;

37 (6) Has habitually defaulted on financial obligations;

38 (7) Does not have and maintain at each place of busi-
39 ness (subject to the qualification contained in subdivi-
40 sion (17), subsection (a), section one of this article with
41 respect to a new motor vehicle dealer) an established
42 place of business as defined for the business in question
43 in section one of this article;

44 (8) Has been guilty of any fraudulent act in connection
45 with the business of new motor vehicle dealer, used
46 motor vehicle dealer, house trailer dealer, trailer dealer,
47 motorcycle dealer, used parts dealer, or wrecker or
48 dismantler;

49 (9) Has defrauded or is attempting to defraud any
50 buyer or any other person, to the damage of the buyer or
51 such other person, in the conduct of the licensee's
52 business;

53 (10) Has defrauded or is attempting to defraud the
54 state or any political subdivision of the state of any taxes
55 or fees in connection with the sale or transfer of any

56 vehicle;

57 (11) Has committed fraud in the registration of a
58 vehicle;

59 (12) Has knowingly purchased, sold or otherwise dealt
60 in a stolen vehicle or vehicles;

61 (13) Has advertised by any means, with intent to
62 defraud, any material representation or statement of fact
63 which is untrue, misleading or deceptive in any particu-
64 lar relating to the conduct of the licensed business;

65 (14) Has willfully failed or refused to perform any
66 legally binding written agreement with any buyer;

67 (15) Has made a fraudulent sale or purchase;

68 (16) Has failed or refused to assign, reassign or transfer
69 a proper certificate of title;

70 (17) Has a license certificate to which he or she is not
71 lawfully entitled; or

72 (18) Has misrepresented a customer's credit or finan-
73 cial status to obtain financing.

74 The commissioner shall also suspend or revoke the
75 license certificate of a licensee if he or she finds the
76 existence of any ground upon which the license certifi-
77 cate could have been refused, or any ground which
78 would be cause for refusing a license certificate to the
79 licensee were he or she then applying for the license
80 certificate.

81 (b) Whenever a licensee fails or refuses to keep the
82 bond or liability insurance required by section four of
83 this article in full force and effect the commissioner shall
84 automatically suspend the license certificate of the
85 licensee unless and until a bond or certificate of insur-
86 ance as required by section four of this article is fur-
87 nished to the commissioner. When the licensee furnishes
88 the bond or certificate of insurance to the commissioner,
89 the commissioner shall vacate the suspension.

90 (c) Suspensions under this section shall continue until
91 the cause for the suspension has been eliminated or
92 corrected. Revocation of a license certificate shall not
93 preclude application for a new license certificate. The
94 commissioner shall process the application for a new
95 license certificate in the same manner and issue or refuse
96 to issue the license certificate on the same grounds as
97 any other application for a license certificate is pro-
98 cessed, considered and passed upon, except that the
99 commissioner may give any previous suspension and the
100 revocation such weight in deciding whether to issue or
101 refuse the license certificate as is correct and proper
102 under all of the circumstances.

§17A-6-18a. Motor vehicle dealers advisory board.

1 (a) There is created a motor vehicle dealers advisory
2 board to assist and to advise the commissioner on the
3 administration of laws regulating the motor vehicle
4 industry; to work with the commissioner in developing
5 new laws, rules or policies regarding the motor vehicle
6 industry; and to give the commissioner such further
7 advice and assistance as he or she may from time to time
8 require.

9 The board shall consist of nine members and the
10 commissioner of motor vehicles, or his or her representa-
11 tive, who shall be an ex officio member. Two members
12 shall represent new motor vehicle dealers, with one of
13 these two members representing dealers that sell less
14 than one hundred new vehicles per year; one member
15 shall represent used motor vehicle dealers; one member
16 shall represent wrecker/dismantler/rebuilders; one
17 member shall represent automobile auctions; one mem-
18 ber shall represent recreational dealers; one member
19 shall represent the West Virginia attorney general's
20 office; and two members shall represent consumers. All
21 of the representatives, except the attorney general
22 representative who shall be designated by the attorney
23 general, shall be appointed by the governor with the
24 advice and consent of the Senate, with no more than five

25 representatives being from the same political party. The
26 appointed members shall serve without compensation.

27 The terms of the board members shall be for three
28 years commencing the first day of July, one thousand
29 nine hundred ninety-six. Two members shall be ap-
30 pointed to serve one year, two members shall be ap-
31 pointed to serve two years and five members shall be
32 appointed to serve three years. Successive appointments
33 shall be for the full three years. The attorney general
34 representative shall serve continuously.

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

37 Notwithstanding the provisions of article ten, chapter
38 four of this code, the motor vehicle dealers advisory
39 board shall continue until the first day of July, two
40 thousand one.

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

48 (c) The commissioner may consult with the board by
49 mail, by facsimile, by telephone or at a meeting of the
50 board, but the commissioner is not bound by the recom-
51 mendations of the board. The commissioner shall give
52 members seven days from the date of a mailing or other
53 notification to respond to proposed actions, except in
54 those instances when the commissioner determines that
55 the delay in acting creates a serious danger to the pub-
56 lic's health or safety or would unduly compromise the
57 effectiveness of the action.

58 (d) No action taken by the commissioner shall be
59 subject to challenge or rendered invalid on account of his
60 or her failure to consult with the board.

§17A-6-25a. Civil penalties.

1 (a) In addition to any other remedy or penalty provided
2 by law, the commissioner may levy and collect a civil
3 fine, in an amount not to exceed one thousand dollars for
4 each first violation, against any person who violates the
5 provisions of this article, article six-b or article six-c of
6 this chapter, any of the rules or policies implemented to
7 enforce those articles, or any lawful order of the commis-
8 sioner pursuant to authority set forth in those articles.
9 Every transaction which violates this article, article six-
10 b or article six-c of this chapter shall be considered a
11 separate violation. For a second violation, being any
12 violation occurring within three years following any
13 previous violation for which the violator has been
14 disciplined pursuant to section eighteen, article six of
15 this chapter, the commissioner may levy and collect a
16 fine in an amount not to exceed twenty-five hundred
17 dollars, and for a third and subsequent violation occur-
18 ring within the three-year period following the first
19 violation the commissioner may levy and collect a fine in
20 an amount not to exceed five thousand dollars.

21 (b) A fine assessed under this section shall not take
22 effect until the commissioner sends to the person against
23 whom the penalty is assessed by certified mail, return
24 receipt requested, a notice of violation finding that the
25 person has committed an offense. The notice shall
26 contain:

27 (1) A statement of the offense the person committed;

28 (2) A summary of the facts on which the finding of a
29 violation was made;

30 (3) The amount of the fine which is being levied; and

31 (4) An order that the person:

32 (A) Cease and desist from all future violations and pay
33 the fine; or

34 (B) Protest in writing the findings of the commissioner
35 or the amount of the assessed fine and request a hearing.

36 Any request for a hearing must be received by the
37 commissioner within thirty days after the mailing date
38 of the notice of violation. The notice of violation may be
39 sent to any address which the person has used on any
40 title or license application, or other filing or record
41 which the commissioner believes is current. Failure of
42 any person to receive a notice of violation does not
43 preclude the fine from taking effect. However, the
44 commissioner shall accept as timely a request for hearing
45 from any person who, within one year of the date the
46 notice of violation was sent, provides satisfactory proof
47 that he or she did not receive the notice of violation and
48 that good cause exists to excuse his or her failure to
49 receive the notice of violation and that he or she wishes
50 in good faith to assert a protest to the notice of violation.
51 The pendency of the one-year period shall not keep any
52 penalty from taking effect, but the commissioner shall
53 stay enforcement of the fine upon his or her acceptance
54 of any notice filed after the thirty-day period pending
55 the outcome of the appeal.

56 (c) Upon receipt of a timely request the commissioner
57 shall afford the person a hearing in accordance with the
58 rules of the division of motor vehicles. The commis-
59 sioner, in addition to considering the evidence relied
60 upon to prove or defend against a finding of a violation,
61 shall also evaluate the appropriateness of the amount of
62 the civil penalty. In making such evaluation, the com-
63 missioner shall consider:

64 (1) The severity of the violation and its impact on the
65 public;

66 (2) The number of similar or related violations;

67 (3) Whether the violations were willful or intentional;
68 and

69 (4) Any other facts considered appropriate.

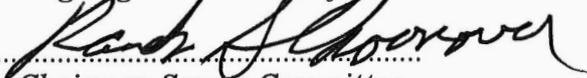
70 (d) In addition to any other findings of fact or conclu-
71 sions of law, the commissioner may reduce the civil
72 penalty to a stated amount. The appellant may, at any

73 time during the pendency of the appeal, enter into a
74 settlement agreement with the commissioner. The
75 settlement agreement may provide for a reduction in the
76 penalty and may provide that the appellant does not
77 admit a violation. The entry into a settlement agreement
78 or the payment of any fine pursuant to a settlement
79 agreement which states that the appellant does not
80 admit a violation shall not amount to an admission of
81 guilt for purposes of any criminal prosecution.

82 (e) Upon the expiration of all periods for protest or
83 appeal of a notice of violation, including judicial review
84 pursuant to section four, article five, chapter twenty-
85 nine-a of this code, the notice of violation shall have the
86 same force and effect and be enforceable as a judgment
87 entered by any court of law of this state.

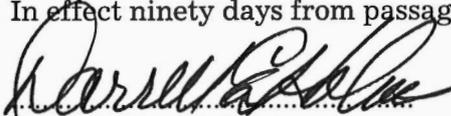
88 (f) If a corporation is found to have committed a
89 violation against which a penalty may be assessed under
90 this section, any officer of the corporation who is found
91 to have knowingly and intentionally committed the
92 violation, to have knowingly and intentionally directed
93 another to commit the violation or to have knowingly
94 and intentionally failed to take reasonable steps to
95 prevent another from committing the violation, may be
96 individually found to be a coviolator and assessed a civil
97 penalty as provided by this section.

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

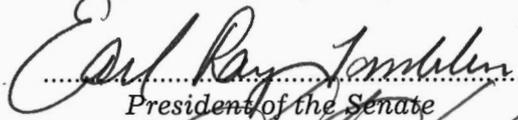

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Chairman Senate Committee

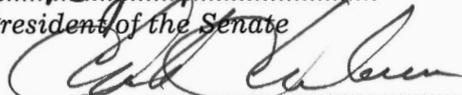

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Chairman House Committee

Originated in the Senate.
In effect ninety days from passage.

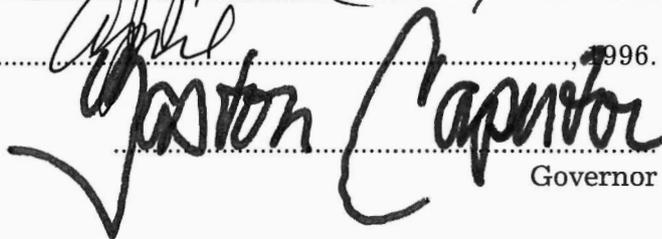

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Clerk of the Senate


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Clerk of the House of Delegates


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President of the Senate


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Speaker House of Delegates

The within is approved this the 1st
day of April, 1996.


.....
Governor

PRESENTED TO THE

GOVERNOR

Date 3/28/96

Time 9:59 am