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OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

Regular Session, 2003

ENROLLED

Committee Substitute for Committee Substitute for

SENATE BILL NO. 583

(By Senator Chafin et al)

PASSED March 8, 2003

In Effect From **Passage**

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SECRETARY OF STATE

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COMMITTEE SUBSTITUTE

FOR

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Senate Bill No. 583

(SENATORS CHAFIN, LOVE, EDGELL, SNYDER, BAILEY, TOMBLIN,
MR. PRESIDENT, MINEAR, GUILLS, WEEKS, SPROUSE, HELMICK,
ROSS, SHARPE AND FANNING, *original sponsors*)

[Passed March 8, 2003; in effect from passage.]

AN ACT to amend and reenact section one, article six, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to further amend said article by adding thereto a new section, designated section ten; to amend and reenact sections ten and eleven, article seventeen of said chapter; to further amend said article by adding thereto a new section, designated section eleven-d; to further amend said chapter by adding thereto two new articles, designated articles seventeen-a and seventeen-b; to amend and reenact section three, article one, chapter seventeen-e of said code; to amend chapter twenty-four-a of

said code by adding thereto a new article, designated article one-a; and to amend article seven of said chapter by adding thereto a new section, designated section seven, all relating to the regulation of commercial vehicles; increasing speeding fines for certain commercial vehicles transporting coal; authorizing public service commission to enforce laws of the road for commercial vehicles; authorizing public service commission to issue special permits; authorizing weight enforcement for commercial vehicles moving or parked on or within one hundred feet of a public highway or right-of-way; establishing administrative enforcement process and penalties for vehicles transporting coal; issuance of special permits for designated roads; setting maximum highway weights; providing legislative findings for special regulation of coal transportation on the coal resource transportation road system; defining terms; designating eligible counties; directing public service commission to administer commercial vehicle weights and measures; providing that division of highways and public service commission administer all aspects of weight and safety requirements; providing that division of highways coordinate establishment of coal resource transportation roads with the public service commission; establishing a permitting program for vehicles transporting coal which allows higher weight limits upon meeting certain requirements; authorizing public service commission to promulgate emergency and legislative rules; providing special operator and vehicle permit and safety requirements; providing for fees to be assessed for permits; providing reporting requirements for vehicle owners, coal shippers and coal receivers; authorizing commission employees to inspect certain weight transportation records; establishing administrative sanctions for coal vehicle weight violations; establishing new penalties for weight violations; establishing procedure and criteria for commissioner of division of highways to designate special coal resource transportation roads; setting an effective date; authorizing commissioner of division of highways to enter into agreements with persons responsible for coal transport to under-

take road and bridge improvements; exclusion of off-road vehicles and interstate highways; providing penalties for spotting; providing for transfer of certain duties, authority and employees of the division of highways to the public service commission; providing dates for transfer of these duties; providing that state road funds for these costs be transferred to public service commission; providing that transfer of these duties does not alter other law-enforcement agencies' authority; costs of enforcement; removing weight from the list of nonserious traffic violations; creating commercial motor vehicle weight and safety enforcement advisory committee; providing for its membership, organization, compensation, expense reimbursements, duties and termination of committee; and providing that certain employees of the public service commission are authorized to enforce certain traffic offenses and use radar.

Be it enacted by the Legislature of West Virginia:

That section one, article six, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that said article be further amended by adding thereto a new section, designated section ten; that sections ten and eleven, article seventeen of said chapter be amended and reenacted; that said article be further amended by adding thereto a new section, designated section eleven-d; that said chapter be further amended by adding thereto two new articles, designated articles seventeen-a and seventeen-b; that section three, article one, chapter seventeen-e of said code be amended and reenacted; that chapter twenty-four-a of said code be amended by adding thereto a new article, designated article one-a; and that article seven of said chapter be amended by adding thereto a new section, designated section seven, all to read as follows:

**CHAPTER 17C. TRAFFIC REGULATIONS
AND LAW OF THE ROAD.**

ARTICLE 6. SPEED RESTRICTIONS.

§17C-6-1. Speed limitations generally; penalty.

1 (a) No person may drive a vehicle on a highway at a
2 speed greater than is reasonable and prudent under the
3 existing conditions and the actual and potential hazards.
4 In every event speed shall be so controlled as may be
5 necessary to avoid colliding with any person, vehicle or
6 other conveyance on or entering the highways in compli-
7 ance with legal requirements and the duty of all persons to
8 use due care.

9 (b) Where no special hazard exists that requires lower
10 speed for compliance with subsection (a) of this section,
11 the speed of any vehicle not in excess of the limits speci-
12 fied in this section or established as authorized in this
13 section is lawful, but any speed in excess of the limits
14 specified in this subsection or established as authorized in
15 this section is unlawful. The following speed limits apply:

16 (1) Fifteen miles per hour in a school zone during school
17 recess or while children are going to or leaving school
18 during opening or closing hours. A school zone is all
19 school property, including school grounds and any street
20 or highway abutting the school grounds and extending one
21 hundred twenty-five feet along the street or highway from
22 the school grounds. The speed restriction does not apply
23 to vehicles traveling on a controlled - access highway
24 which is separated from the school or school grounds by a
25 fence or barrier approved by the division of highways;

26 (2) Twenty-five miles per hour in any business or resi-
27 dence district; and

28 (3) Fifty-five miles per hour on open country highways,
29 except as otherwise provided by this chapter.

30 The speeds set forth in this section may be altered as
31 authorized in sections two and three of this article.

32 (c) The driver of every vehicle shall, consistent with the
33 requirements of subsection (a) of this section, drive at an
34 appropriate reduced speed when approaching and crossing
35 an intersection or railway grade crossing, when approach-

36 ing and going around a curve, when approaching a hill
37 crest, when traveling upon any narrow or winding road-
38 way and when a special hazard exists with respect to
39 pedestrians or other traffic or by reason of weather or
40 highway conditions.

41 (d) The speed limit on controlled access highways and
42 interstate highways, where no special hazard exists that
43 requires a lower speed, shall be not less than fifty-five
44 miles per hour and the speed limits specified in subsection
45 (b) of this section do not apply.

46 (e) Unless otherwise provided in this section, any person
47 who violates the provisions of this section is guilty of a
48 misdemeanor and, upon conviction thereof, shall be fined
49 not more than one hundred dollars; upon a second convic-
50 tion within one year thereafter, shall be fined not more
51 than two hundred dollars; and, upon a third or subsequent
52 conviction within two years thereafter, shall be fined not
53 more than five hundred dollars: *Provided*, That if the third
54 or subsequent conviction is based upon a violation of the
55 provisions of this section where the offender exceeded the
56 speed limit by fifteen miles per hour or more, then upon
57 conviction, shall be fined not more than five hundred
58 dollars or confined in the county or regional jail for not
59 more than six months, or both.

60 (f) Any person who violates the provisions of subdivision
61 (1), subsection (b) of this section is guilty of a misdemeanor
62 and, upon conviction thereof, shall be fined not less than
63 one hundred dollars nor more than five hundred dollars:
64 *Provided*, That if the conviction is based upon a violation
65 of the provisions of subdivision (1), subsection (b) of this
66 section where the offender exceeded the speed limit by
67 fifteen miles per hour or more in the presence of one or
68 more children, then upon conviction, shall be fined not less
69 than one hundred dollars nor more than five hundred
70 dollars or confined in the regional or county jail for not
71 more than six months, or both.

72 (g) If an owner or driver is arrested under the provisions
73 of this section for the offense of driving above the posted
74 speed limit on a controlled access highway or interstate
75 highway and if the evidence shows that the motor vehicle
76 was being operated at ten miles per hour or less above the
77 speed limit, then, upon conviction thereof, that person
78 shall be fined not more than five dollars, plus court costs.

79 (h) Any person operating a commercial motor vehicle
80 engaged in the transportation of coal on the coal resource
81 transportation road system who violates subsection (a), (b)
82 or (c) of this section shall, upon conviction, be subject to
83 fines in triple the amount otherwise provided in subsection
84 (e) of this section.

85 (i) If an owner or driver is convicted under the provisions
86 of this section for the offense of driving above the speed
87 limit on a controlled-access highway or interstate highway
88 of this state and if the evidence shows that the motor
89 vehicle was being operated at ten miles per hour or less
90 above the speed limit, then notwithstanding the provisions
91 of section four, article three, chapter seventeen-b of this
92 code, a certified abstract of the judgment on the conviction
93 shall not be transmitted to the division of motor vehicles:
94 *Provided*, That the provisions of this subsection do not
95 apply to conviction of owners or drivers who have been
96 issued a commercial driver's license as defined in chapter
97 seventeen-e of this code, if the offense was committed
98 while operating a commercial vehicle.

99 (j) If an owner or driver is convicted in another state for
100 the offense of driving above the maximum speed limit on
101 a controlled-access highway or interstate highway and if
102 the maximum speed limit in the other state is less than the
103 maximum speed limit for a comparable controlled-access
104 highway or interstate highway in this state, and if the
105 evidence shows that the motor vehicle was being operated
106 at ten miles per hour or less above what would be the
107 maximum speed limit for a comparable controlled-access
108 highway or interstate highway in this state, then notwith-

109 standing the provisions of section four, article three,
110 chapter seventeen-b of this code, a certified abstract of the
111 judgment on the conviction shall not be transmitted to the
112 division of motor vehicles or, if transmitted, shall not be
113 recorded by the division, unless within a reasonable time
114 after conviction, the person convicted has failed to pay all
115 fines and costs imposed by the other state: *Provided*, That
116 the provisions of this subsection do not apply to conviction
117 of owners or drivers who have been issued a commercial
118 driver's license as defined in chapter seventeen-e of this
119 code, if the offense was committed while operating a
120 commercial vehicle.

**§17C-6-10. Enforcement of article with respect to operations of
commercial motor vehicles.**

1 In addition to enforcement by officers and other persons
2 authorized by law, designated employees of the public
3 service commission of West Virginia may enforce the
4 provisions of this article as they relate to the operation of
5 commercial motor vehicles.

ARTICLE 17. SIZE, WEIGHT AND LOAD.

**§17C-17-10. Officers may weigh, measure or examine vehicles
and require removal or rearrangement of excess
loads.**

1 (a) Any police officer or employee of the division of
2 highways or the public service commission designated as
3 a member of an official weighing crew by his or her
4 representative agency may require the driver of any
5 vehicle or combination of vehicles located on or within one
6 hundred feet of any public highway or right-of-way, and
7 whether moving or stopped, to submit the vehicle or
8 combination of vehicles to a weighing with portable or
9 stationary weighing devices or submit the vehicle or
10 combination of vehicles to a measuring or to any other
11 examination necessary to determine if the vehicle or
12 combination of vehicles is in violation of any of the
13 provisions of this article or article seventeen-a of this

14 chapter, and may require that the vehicle or combination
15 of vehicles be driven to the nearest weighing device.

16 No vehicle or combination of vehicles may be detained
17 for weighing unless a portable or stationary weighing
18 device is actually present at the location where, and at the
19 time, the vehicle or combination of vehicles is stopped or
20 unless the vehicle or combination of vehicles is escorted
21 immediately after being stopped to the nearest portable or
22 stationary weighing device. In no case may a vehicle or
23 combination of vehicles be detained more than one hour
24 from the time it is stopped for weighing unless the vehicle
25 or combination of vehicles is impounded for another
26 violation or placed out of service for a safety violation.

27 (b) Whenever a police officer or a member of an official
28 weighing crew determines that a vehicle or combination of
29 vehicles is in violation of any of the provisions of this
30 article or article seventeen-a of this chapter, he or she may
31 require the driver to remain in place or be moved to a
32 suitable location until the vehicle or combination of
33 vehicles is brought into conformity with the provisions
34 violated.

35 In the case of a weight violation all material unloaded
36 shall be cared for by the owner, lessee or borrower of the
37 vehicle or combination of vehicles at the risk of the owner,
38 lessee or borrower: *Provided*, That no criminal charge
39 shall be preferred against any driver, operator or owner of
40 a vehicle when a rearrangement of the load upon the
41 vehicle, without removal of the load from the vehicle,
42 reduces the axle loads of the vehicle to the limit permitted
43 under this chapter.

44 (c) Any driver of a vehicle or combination of vehicles
45 who fails or refuses to comply with any requirement or
46 provision of this section shall be guilty of a misdemeanor,
47 or in the case of any driver of a vehicle engaged in the
48 transportation of coal, any other additional penalties that

49 may be applicable under the provisions of article
50 seventeen-a of this chapter.

§17C-17-11. Permits for excess size and weight.

1 (a) The public service commission may, in its discretion,
2 upon application in writing and good cause shown issue a
3 special permit in writing authorizing: (1) The applicant, in
4 crossing any highway of this state, to operate or move a
5 vehicle or combination of vehicles of a size or weight or
6 load exceeding the maximum specified in this chapter or
7 otherwise not in conformity with the provisions of this
8 chapter, whether the operation is continuous or not,
9 provided the applicant agrees to compensate the commis-
10 sioner of highways for all damages or expenses incurred in
11 connection with the crossing; (2) the applicant to operate
12 or move a vehicle or combination of vehicles of a size or
13 weight of vehicles or nondivisible load exceeding the
14 maximum specified in this chapter or otherwise not in
15 conformity with the provisions of this chapter; and (3) the
16 applicant to move or operate, for limited or continuous
17 operation, a vehicle hauling containerized cargo in a
18 sealed, seagoing container to or from a seaport or inland
19 waterway port that has or will be transported by marine
20 shipment where the vehicle is not, as a result of hauling
21 the container, in conformity with the provisions of this
22 article relating to weight limitations, upon the conditions
23 that: (A) The container be hauled only on the roadways
24 and highways designated by the commissioner of high-
25 ways; (B) the contents of the container are not changed
26 from the time it is loaded by the consignor or the con-
27 signor's agent to the time it is delivered to the consignee or
28 the consignee's agent; and (C) any additional conditions as
29 the commissioner of highways or the public service
30 commission may impose to otherwise ensure compliance
31 with the provisions of this chapter.

32 (b) (1) The commissioner of highways may issue a special
33 permit to operate or move a vehicle or combination of
34 vehicles of a size or weight of vehicles or nondivisible load

35 exceeding the maximum specified in this chapter or
36 otherwise not in conformity with the provisions of this
37 chapter over routes designated by the commissioner of
38 highways upon terms and restrictions prescribed by the
39 public service commission, together with the commissioner
40 of highways.

41 (2) For purposes of this section, nondivisible load means
42 any load exceeding applicable length or weight limits
43 which, if separated into smaller loads or vehicles, would:
44 (A) Compromise the intended use of the vehicle, to the
45 extent that the separation would make it unable to
46 perform the function for which it was intended; (B) destroy
47 the value of the load or vehicle, to the extent that the
48 separation would make it unusable for its intended
49 purpose; or (C) require more than eight workhours to
50 dismantle using appropriate equipment: *Provided*, That
51 the applicant for a nondivisible load permit has the burden
52 of proof as to the number of workhours required to
53 dismantle the load.

54 (c) The application for any permit other than a special
55 annual permit shall specifically describe the vehicle or
56 vehicles and load to be operated or moved along or across
57 the highway and the particular highway or crossing of the
58 highway for which the permit to operate is requested, and
59 whether the permit is requested for a single trip or for a
60 continuous operation.

61 (d) The public service commission is authorized to issue
62 or withhold a permit at his or her discretion; or, if the
63 permit is issued, to limit the number of trips, or to estab-
64 lish seasonal or other time limitations within which the
65 vehicles described may be operated on or across the
66 highways indicated, or otherwise to limit or prescribe
67 conditions of operation of the vehicle or vehicles, when
68 necessary to assure against undue damage to the road
69 foundations, surface, or structures, and may require the
70 undertaking, bond or other security considered necessary
71 to compensate for any injury to any roadway structure and

72 to specify the type, number and the location for escort
73 vehicles for any vehicle: *Provided*, That in establishing
74 limitations on permits issued under this section, the public
75 service commission shall consult with the commissioner of
76 highways, and may not issue, limit or condition a permit
77 in a manner inconsistent with the authority of the commis-
78 sioner of highways.

79 The public service commission may charge a fee for the
80 issuance of a permit for a mobile home and a reasonable
81 fee for the issuance of a permit for any other vehicle under
82 the provisions of this section to pay the administrative
83 costs thereof.

84 (e) Every permit shall be carried in the vehicle or combi-
85 nation of vehicles to which it refers and shall be open to
86 inspection by any police officer or authorized agent of the
87 commissioner of highways or the public service commis-
88 sion and no person shall violate any of the terms or
89 conditions of the special permit.

§17C-17-11d. Establishing maximum road highway weights.

1 Effective the first day of July, two thousand three, the
2 maximum gross vehicle weight on existing state-main-
3 tained roads and public highways designated for gross
4 weight vehicle load of eighty thousand pounds shall have
5 a tolerance of ten percent. All requirements for vehicle
6 design and axle weights otherwise established under this
7 code remain applicable. In no case may the commissioner
8 authorize weight limits on any state maintained road or
9 public highway that would jeopardize or otherwise limit
10 federal highway fund appropriations to this state. The
11 commissioner of highways shall, by the thirty-first day of
12 December, two thousand three, review and revise, as the
13 commissioner deems appropriate, weight limits for all
14 state maintained roads and public highways and provide
15 to the joint committee of government and finance a report
16 denoting all weight limits as they have been designated on
17 state maintained roads and public highways.

ARTICLE 17A. REGULATION OF THE COMMERCIAL TRANSPORTATION OF COAL.

§17C-17A-1. Legislative findings and creation of program.

1 (a) The Legislature finds and declares that:

2 (1) No other economic undertaking in the history of West
3 Virginia has had a greater impact upon the citizens of this
4 state, providing such an economic force and affecting the
5 social construct and day-to-day life and environment of
6 the people and communities of this state, than the activi-
7 ties associated with the extraction, transportation and
8 consumption of coal or its byproducts. In areas of this
9 state where the coal industry exists, the economic benefits
10 of coal production are an indispensable part of the local
11 community's vitality.

12 (2) The historic progression of the coal industry has
13 resulted in an increasing use of the public highways of this
14 state for the transportation of coal to river ports, power
15 generators or rail loading facilities. Roads where coal is
16 transported are mainly two-lane rural roads and highways
17 of varying grades and conditions. The daily presence of
18 large commercial motor vehicles on these roads and
19 highways causes significant impact to local communities
20 and the local transportation infrastructure. Local resi-
21 dents are exposed on a daily basis to the dangers associ-
22 ated with sharing the road with a large number of these
23 vehicles.

24 (3) The increased capacity and ability of coal hauling
25 vehicles, tied with increased economic pressures to reduce
26 industry transportation costs, have created economic
27 incentives for transporting coal at higher than legal limits,
28 and for drivers to drive long hours and operate these
29 vehicles at higher rates of speed. Consequently, average
30 vehicle weights have increased and many coal transport
31 vehicles regularly exceed the lawful limit by more than
32 one hundred percent. The excessive weights of these
33 vehicles have also resulted in the rapid deterioration of

34 state roads and bridges, creating significant costs to the
35 state of millions of dollars in lost road and bridge use and
36 life.

37 (4) Advances in truck stability, braking and safety
38 technology have made modern coal transporters much
39 safer conveyances than those used by the industry when
40 the state's current weight laws were enacted. Further
41 advances in technology have made tracking and recording
42 individual vehicles, their operators and load significantly
43 more efficient.

44 (5) Enforcement of truck safety and driver safety laws
45 has been divided between various jurisdictions such as
46 local and state law enforcement, the division of highways
47 and the public service commission. As a result, local and
48 state enforcement of those comprehensive laws has not
49 been uniform, with the result that many of these laws have
50 not been enforced.

51 (6) The resulting need for a remedy for hauling these
52 additional amounts of coal is most severe in a limited and
53 discrete geographic area of the state where the limited
54 access to rail and river transportation options and eco-
55 nomic conditions require a regulatory program that allows
56 a greater weight allowance for coal hauling vehicles to
57 address the unique economic circumstances of that region.

58 (7) That this limited highway system must include
59 additional safety protections for the public sharing the
60 roads with a large coal hauling vehicle fleet and special-
61 ized training for operators of these vehicles, requiring the
62 program be designed to assure that state weight and safety
63 requirements be effectively administered and enforced.

64 (b) A special regulatory program with administrative
65 enforcement authority over all vehicles hauling coal in
66 West Virginia is created. This program is designed to
67 address the economic needs of the state coal industry
68 within the confines of the ability of the transportation

69 infrastructure to accommodate these needs and in careful
70 consideration for road safety and maintenance require-
71 ments of these vehicles, by providing for statewide coal
72 truck weight reporting requirements and allowing a
73 limited statewide increase in weights for commercial
74 vehicles and an additional, limited increase for vehicles
75 hauling coal where the greater increase is required.

§17C-17A-2. Definitions.

- 1 For purposes of this article:
- 2 (a) A “coal resource transportation road” means a road
3 designated by the department of transportation as safe and
4 sufficient to allow vehicles hauling coal to carry a greater
5 gross and axle weight of up to one hundred and twenty
6 thousand pounds, with a five percent variance.
- 7 (b) “Coal” or “coal by-products” means the mineral in
8 raw or clean state and includes synthetic fuel manufac-
9 tured or produced for which credit is allowable under 26
10 U. S. C. §29 of the Internal Revenue Code (1996).
- 11 (c) “Commission” means the public service commission
12 of West Virginia.
- 13 (d) “Division” means the division of highways within the
14 department of transportation.
- 15 (e) “Mining operation” means any activity related to
16 extraction of coal regulated under the provisions of this
17 code.
- 18 (f) “Operator” means the person driving a commercial
19 motor vehicle transporting coal on any public highway of
20 this state;
- 21 (g) “Person” means any individual, partnership, firm,
22 society, association, trust, corporation, other business
23 entity or any agency, unit or instrumentality of federal,
24 state or local government.

25 (h) "Shipper" means the person who loads coal or causes
26 coal to be loaded into any commercial motor vehicle that
27 will operate on any public highway in this state;

28 (i) "Receiver" means the person who accepts for unload-
29 ing coal from any vehicle that has operated on any public
30 highway in this state;

31 (j) "Vehicle owner" means the person who as owner of a
32 commercial motor vehicle employs, contracts or otherwise
33 directs a driver to operate that vehicle on a public highway
34 of this state for the purpose of transporting coal.

**§17C-17A-3. Authority of the division of highways and public
service commission generally.**

1 (a) The division of highways shall establish all legal
2 vehicle weight limits for all public highways including
3 roads within the coal resource transportation system.
4 Public highways shall be designated as coal resource
5 transportation roads by the commissioner of the division
6 of highways pursuant to this article. Only state-main-
7 tained roads and public highways found in the following
8 areas: Boone; Fayette; Lincoln; Logan; McDowell; Mercer;
9 Mingo; Raleigh; Wayne and Wyoming counties; in
10 Greenbrier County, routes west of Sam Black Church and
11 southwest to the Summers County line; in Clay County,
12 routes 4 and 16; in Nicholas County, routes 19, 20, 39, 41
13 and 55; in Webster County, routes 9, 20 and 82; and all
14 state-maintained roads and public highways found in
15 Washington, Malden, Loudon and Cabin Creek districts,
16 Kanawha County, are eligible to qualify as part of the coal
17 resource transportation road system. The division shall
18 post signs on roads informing the public of the designation
19 and shall also list a toll free telephone line for public
20 reporting of poor driving or law violations by special
21 permit operators. The division shall provide periodic
22 reports to the commercial motor vehicle weight and safety
23 enforcement advisory committee as established in section
24 two, article one-a, chapter twenty-four-a of this code

25 relating to the study of coal resource transportation roads.
26 The periodic reports shall include the following at a
27 minimum: (1) Citations issued for violations of this
28 chapter; (2) disposition of the violations; (3) road condi-
29 tions and maintenance; and (4) the amount of undue road
30 damage attributable to coal resource transportation road
31 system permit use.

32 (b) The public service commission shall administer the
33 coal resource transportation road permitting program and
34 otherwise enforce the provisions of this article. The
35 commission shall establish requirements for vehicle
36 operators holding coal resource transportation road
37 permits pursuant to section five of this article consistent
38 with federal statutory and regulatory requirements.

39 (1) The commission may, during normal business hours,
40 conduct inspections of all trucking related records of
41 shippers, vehicle operators, vehicle owners and receivers
42 engaged in the transportation of coal. Copies of records
43 shall be provided to commission employees upon request.
44 This provision may not be construed to authorize the
45 commission to reveal trade secrets or other confidential
46 financial information of those persons inspected; however
47 the commission may use any weight measurement records
48 as evidence of a violation of this article.

49 (2) The commission shall establish and maintain a toll
50 free telephone line for public reporting of poor driving or
51 law violations by special permit operators. In addition,
52 the commission shall require all vehicles operating under
53 a permit issued pursuant to the provisions of this article to
54 clearly display on the vehicle the toll free telephone
55 number.

56 (3) The commission shall implement a study of commer-
57 cial vehicle safety-related issues, including using higher
58 education institutions and other research organizations.
59 The commission shall provide periodic reports to the
60 commercial motor vehicle weight and safety enforcement

61 advisory committee as established in section two, article
62 one-a, chapter twenty-four-a of this code relating to the
63 study of motor vehicle weight and safety enforcement.

64 (4) The commission shall establish procedures to use
65 electronic real time reporting of coal vehicle weights by
66 shippers and receivers. The commission may require daily
67 certified reports from shippers or receivers if electronic
68 reporting methods are not used. The commission may
69 authorize alternative measures of reporting that require
70 same-day reporting of weight measurements by shippers
71 and receivers.

72 (5) The commission shall impose and collect from
73 shippers of coal on the coal resource transportation road
74 system through the use of the special permit, issued
75 pursuant to section five of this article, for the privilege of
76 loading coal in excess of eighty-eight thousand pounds for
77 transport on a coal resource transportation road. The fee
78 shall be assessed in the amount of five cents per ton of coal
79 hauled over the road. Revenue from the fees shall be
80 deposited in the coal resource transportation fund created
81 in section five of this article.

82 (c) Notwithstanding the provisions of section three,
83 article one, chapter twenty-nine-a of this code, the com-
84 mission and the division shall each propose legislative
85 rules for promulgation in accordance with the provisions
86 of article three of said chapter to carry out their duties and
87 responsibilities pursuant to the provisions of this article.

§17C-17A-4. Special permit issuance; and promulgation of rules.

1 (a) The commission may issue permits to authorize the
2 hauling of coal of a greater gross and axle weight than
3 otherwise authorized by state law on roads designated by
4 the commissioner of highways as coal resource transporta-
5 tion roads.

6 (b) Notwithstanding the provisions of section three,
7 article one, chapter twenty-nine-a of this code, the com-

8 mission shall promulgate emergency and legislative rules
9 to effectuate purposes of this section, which shall provide,
10 at a minimum, the following:

11 (1) Twenty-four hours' mandatory specialized training
12 requirements for commercial vehicles operators with less
13 than two years of commercial driving experience;

14 (2) Requirements for random drug and alcohol testing;
15 and

16 (3) Requirements for daily records consistent with the
17 provisions of any applicable federal statutory or regula-
18 tory requirements.

**§17C-17A-5. Operation of coal trucks under special permits;
weight limitations; payment of permit fees.**

1 (a) Any vehicle, when transporting coal over certain
2 public highways, designated as coal resource transporta-
3 tion roads by the commissioner of the department of
4 highways, may be operated at the weights as set forth in
5 this section in excess of the maximum gross weight
6 prescribed in section nine, article seventeen of this chapter
7 and any other maximum weight limitations on any public
8 highway by paying the corresponding special permit fee
9 and otherwise complying with the provisions of this
10 article.

11 (b) Special permits shall be issued subject to the follow-
12 ing requirements:

13 (1) A single unit truck having one steering axle and two
14 axles in tandem shall be limited to a maximum gross
15 weight of eighty thousand pounds with a tolerance of five
16 percent and pay a special permit fee annually of one
17 hundred dollars;

18 (2) A single unit truck having one steering axle and three
19 axles in tridem arrangement shall be limited to a maxi-
20 mum gross weight of ninety thousand pounds with a

21 tolerance of five percent and pay a special permit fee
22 annually of one hundred sixty dollars;

23 (3) A tractor-semitrailer combination with five axles
24 shall be limited to a maximum gross weight of one hun-
25 dred ten thousand pounds with a tolerance of five percent
26 and pay a special permit fee annually of three hundred
27 dollars;

28 (4) A tractor-semitrailer combination with six or more
29 axles shall be limited to a maximum gross weight of one
30 hundred twenty thousand pounds with a tolerance of five
31 percent and pay a special permit fee annually of five
32 hundred dollars.

33 (c) The axle loads set forth in subsection (b) of this
34 section may in no event exceed the maximum axle load
35 allowable based upon the minimum axle spacings as
36 determined by the division of highways in accordance with
37 generally accepted industry standards and bridge loading
38 analysis.

39 (d) In order to qualify for issuance of a special permit,
40 the applicant shall provide information that demonstrates
41 that the vehicle, as configured, has a total combined axle
42 rating capacity equal to or greater than the maximum
43 amount of weight for which a special permit is sought.
44 The information may include, but not be limited to, the
45 manufacturer's rated capacity. In the event that manufac-
46 turer's rated capacity is not available, any other informa-
47 tion reasonably determined by the secretary of the depart-
48 ment of transportation to give evidence of adequate
49 combined axle rating capacity may be submitted.

50 (e) Special permits authorized by this section shall be
51 issued by the commission on forms prescribed and fur-
52 nished by it. The special permit indicium shall be perma-
53 nently affixed immediately below the window glass on the
54 top of the door on the driver's side of the vehicle. Lost,
55 destroyed, stolen or otherwise unusable special permits

56 indicia shall be replaced in accordance with legislative
57 rules to be promulgated by the commission. The special
58 permit indicium shall be issued to a particular vehicle and
59 shall remain with the vehicle upon transfer of possession
60 or ownership of the vehicle.

61 (f) Special permits issued pursuant to the provisions of
62 this article are valid for a period of one year from the date
63 of purchase: *Provided*, That no renewal permits shall be
64 issued to any permittee who, at the time of the renewal,
65 has any administrative or criminal actions pending
66 relating to the operation of commercial motor vehicles in
67 this or other states.

68 (g) For purposes of this section, the dimensional require-
69 ments of motor vehicles shall conform to all applicable
70 federal laws and regulations. Nothing in this section may
71 be construed or administered to jeopardize the receipt of
72 federal funds for highway purposes.

73 (h) Any operator of a vehicle with a special permit issued
74 under the provisions of this article shall submit the vehicle
75 or combination of vehicles to weighing with portable or
76 stationary weighing devices as required by section ten,
77 article seventeen of this chapter. Any driver or owner of
78 a vehicle or combination of vehicles operating under the
79 provisions of this section who fails or refuses to comply
80 with any requirement of section ten, article seventeen of
81 this chapter forfeits all privileges granted by the special
82 permits.

83 (i) Any vehicle or combination of vehicles transporting
84 coal pursuant to the provisions of this article shall be
85 securely covered to prevent the escape of the load on any
86 trip exceeding a total distance of one mile on any public
87 highway.

88 (j) As a condition of receipt of a special permit, vehicle
89 owners and operators shall submit permitted vehicles to
90 safety checks and other vehicle inspection requirements as

91 required by legislative rules of the commission. The
92 commission may impose additional vehicle operation and
93 maintenance requirements by rule as the commission
94 deems appropriate to assure the safe operation of vehicles
95 issued a special permit.

96 (k) The commission shall propose rules in accordance
97 with the provisions of article three, chapter twenty-nine-a
98 of this code regarding the implementation of the require-
99 ments of this section. The rules shall be initially promul-
100 gated as emergency rules pursuant to the provisions of said
101 article by no later than the first day of October, two
102 thousand three.

103 (l) The payment of the special permit fee is in addition to
104 any state registration fee, user fee or other decal fee.

105 (m) All revenues generated pursuant to this section shall
106 be credited to a special account within the road fund
107 which is created and shall be designated as the "coal
108 resource transportation road fund". Moneys of the fund
109 shall be used by the division of highways for construction,
110 maintenance and repair of public highways and bridges
111 over which substantial quantities of coal are transported.

112 (n) For periods of less than one year, the permit fee
113 imposed by subsection (b) of this section shall be prorated
114 to the nearest month.

**§17C-17A-6. Reporting requirements for shippers, vehicle
owners and receivers of coal transported on
public highways.**

1 (a) Every shipper of coal for transport on a public
2 highway in this state that loads vehicles to a gross weight
3 in excess of eighty thousand gross pounds shall be required
4 to report to the commission weight and other transport-
5 related data as required in this article. The commission
6 shall by rule establish special recording and reporting
7 methods for timely and accurate disclosure of all ship-
8 ments of coal made upon any public highway of this state.

9 The rules shall provide for administrative penalties to be
10 imposed for failure to timely or accurately report weight
11 or other required data.

12 (b) Every vehicle owner who transports coal on a public
13 highway of this state is subject to the provisions of this
14 article and any rules established by the commission
15 requiring reporting, monitoring or removal from service of
16 any unsafe vehicle or driver.

17 (c) Every receiver of coal transported on a public high-
18 way in this state that unloads or causes to be unloaded any
19 shipment of coal shall report to the commission the weight
20 of the shipment and other data related to the shipment as
21 required by rules promulgated by the commission. The
22 rules shall provide for administrative penalties to be
23 imposed for failure to timely or accurately report the
24 weight or other data. Compliance with the reporting
25 requirements shall cause the receiver to be immune from
26 any and all criminal, civil and administrative liability,
27 damages, costs, fines and penalties based on, arising out of
28 or resulting from the receiver's receipt or acceptance of the
29 shipment.

30 (d) The commission shall by rule establish special
31 recording and reporting methods for timely and accurate
32 disclosure of all shipments of coal made by commercial
33 motor vehicles upon a public highway of this state.

§17C-17A-7. Permit application procedure.

1 The commission shall propose in accordance with
2 provisions of article three, chapter twenty-nine-a of this
3 code by emergency and legislative rules, filed no later than
4 the first day of October, two thousand three, a permit
5 application procedure for the issuance of permits pursuant
6 to the authority contained within this article.

§17C-17A-8. Powers and duties of the commission.

1 In addition to all other powers, duties, responsibilities
2 and authority granted and assigned to the commission in

3 this code and elsewhere prescribed by law, notwithstand-
4 ing any provision of the code to the contrary:

5 (1) The commission shall promulgate rules in accordance
6 with the provisions of article three, chapter twenty-nine-a
7 of this code to carry out the provisions of this article
8 including modifying any existing rules and establishing
9 permit application fees up to an amount sufficient to
10 defray the costs of permit review;

11 (2) The commission or any authorized representative,
12 employee or agent may, at reasonable times, enter onto
13 any coal shipping or receiving facility in the state for the
14 purpose of making an inspection or investigation;

15 (3) The commission may also perform or require a
16 person, by order, to perform any and all acts necessary to
17 carry out the provisions of this article or the rules promul-
18 gated under this article;

19 (4) The commission, its authorized representative,
20 employee or agent shall make periodic inspections at coal
21 shipping or receiving facilities to effectively implement
22 and enforce the requirements of this article or its rules and
23 may conduct at weigh stations or any other adequate site
24 or facility inspections of coal in transit.

§17C-17A-9. Administrative sanctions.

1 (a) This section imposes administrative sanctions for
2 violations occurring on the coal resource transportation
3 system. It is the intent of the Legislature to impose
4 administrative sanctions in addition and separate from
5 any criminal or civil penalties upon any person violating
6 or assisting in the violation of the provisions of this article.

7 (b) For a particular violation, the commission may take
8 administrative notice of criminal convictions, or a plea of
9 nolo contendere, for a violation for purposes of imposing
10 the administrative sanctions in this section in lieu of the
11 procedure provided in subsection (f) of this section. After

12 providing notice and an opportunity to show cause why
13 penalties should not be imposed for the violation of
14 provisions of this article, the commission shall impose
15 sanctions upon an operator, shipper, receiver or truck
16 owner when a violation is found to have occurred. Lack of
17 intent is not a defense to a violation except as it applies to
18 receivers.

19 (c) Administrative sanctions for violations shall be
20 imposed as follows:

21 (1) Every shipper of coal for transport on the public
22 roads or highways of this state which loads coal in an
23 amount which results in gross vehicle weight to be in
24 excess of the weight limits established in this article shall
25 be subject to an administrative penalty per pound in
26 excess of the lawful weight pursuant to the penalty
27 schedule established in section ten of this article.

28 (2) It is unlawful for any person to operate a commercial
29 motor vehicle engaged in the transportation of coal with
30 a gross vehicle weight for nonpermitted vehicles in excess
31 of the lawful maximum weight on a coal resource trans-
32 portation road without a permit required by section five of
33 this article. Any person violating this subsection shall
34 have his or her driver's license suspended by the commis-
35 sioner of the division of motor vehicles for a period of
36 ninety days for the first offense, six months for the second
37 offense, and one year for the third offense: *Provided*, That
38 in the case of a permit, expired for less than thirty days,
39 the operator may present a valid permit to the commission
40 within five days of the date of the offense in order to avoid
41 the penalty;

42 (3) Any owner of a commercial motor vehicle engaged in
43 the transportation of coal operating without an excess
44 weight hauling permit and bearing a gross vehicle weight
45 in excess of the lawful maximum weight for the public
46 highway for nonpermitted vehicles who allows the opera-
47 tion of that vehicle upon a coal resource transportation

48 road of this state shall have any state-issued hauling
49 permit then in force suspended by the commission for a
50 period of ninety days for the first offense, six months for
51 the second offense, and revoked for the third offense:
52 *Provided*, That in the case of a permit, expired for less
53 than thirty days, the operator may present a valid permit
54 to the commission of motor vehicles within five days of the
55 date of the offense in order to avoid the penalty: *Provided*,
56 *however*, That should there be no state-issued hauling
57 permit then in force, the owner shall have his or her
58 vehicle registration suspended by the commission of motor
59 vehicles for a period of ninety days for the first offense, six
60 months for the second offense and revoked for the third
61 offense.

62 (4) Any operator who operates a vehicle engaged in the
63 transportation of coal that has been issued a special permit
64 by the division upon the coal resource transportation road
65 system and who operates the vehicle with a gross vehicle
66 weight that is in excess of the lawful maximum weight
67 allowed pursuant to the permit shall have his or her
68 driver's license suspended by the commissioner of the
69 division of motor vehicles for a period of three days for the
70 first offense, thirty days for the second offense and six
71 months for the third offense;

72 (5) Any owner of a vehicle engaged in the transportation
73 of coal that has been issued a special permit by the com-
74 mission who allows the operation of that vehicle upon the
75 coal resource transportation road system with a gross
76 vehicle weight that is in excess of the lawful maximum
77 weight allowed pursuant to the permit shall have the
78 special permit suspended by the commission for a period
79 of three days for the first offense, thirty days for the
80 second offense and revoked for the third offense;

81 (6) Any operator who operates a vehicle engaged in the
82 transportation of coal with a suspended excess weight
83 hauling permit at a weight in excess of the limits imposed
84 by article seventeen of this chapter upon the coal resource

85 transportation system shall have his or her driver's license
86 suspended by the commissioner of the division of motor
87 vehicles for a period of six months for the first offense,
88 twelve months for the second offense, and two years for
89 the third offense: *Provided*, That if the operator is also the
90 owner of the vehicle, the owner penalties set forth in
91 subdivision (5) of this subsection also apply;

92 (7) Any owner of a vehicle engaged in the transportation
93 of coal with a suspended excess weight hauling permit
94 who allows the operation of that vehicle upon the roads or
95 highways of this state during a period of permit suspen-
96 sion at a weight in excess of the limits imposed by article
97 seventeen of this chapter shall have all state-issued
98 hauling permits then in force suspended by the commis-
99 sion or, if applicable, the commissioner of highways for a
100 period of twelve months for the first offense, two years for
101 the second offense and revoked for the third offense;

102 (8) Any operator who operates a vehicle engaged in the
103 transportation of coal that has been issued a special permit
104 by the commission under the provisions of section five of
105 this article and who is charged with a violation of section
106 one, article six, chapter seventeen-c of this code upon a
107 road or highway of this state designated by the commis-
108 sioner of division of highways as a part of the coal re-
109 source transportation road system shall have his or her
110 driver's license suspended by the commissioner of the
111 division of motor vehicles for a period of three days for the
112 first offense, thirty days for the second offense and re-
113 voked for the third offense.

114 (9) Any person who falsifies information relating to the
115 acquisition of a hauling permit shall have his or her
116 driver's license suspended by the commissioner of the
117 division of motor vehicles for a period of sixty days for the
118 first offense, one hundred twenty days for the second
119 offense and six months for the third offense;

120 (10) Any person regulated pursuant to this article that
121 falsifies information relating to the acquisition of a

122 hauling permit shall have its state-issued business license
123 suspended by the commissioner of the state tax division
124 for a period of six months for the first offense, one year for
125 the second offense and two years for the third offense;

126 (11) Any person who fabricates or displays an altered,
127 forged or counterfeited permit shall have his or her
128 driver's license suspended by the commissioner of the
129 division of motor vehicles for a period of sixty days for the
130 first offense, one hundred twenty days for the second
131 offense and revoked for the third offense;

132 (12) Any person that bribes or attempts to bribe an
133 employee of the state of West Virginia or who gives an
134 employee of the state of West Virginia a gift, gratuity,
135 entertainment, loan, favor or other thing of monetary
136 value for the purpose of avoiding any penalties permitted
137 under this article shall have his or her state-issued hauling
138 permit then in force suspended by the commission for a
139 period of sixty days for the first offense, one hundred
140 twenty days for the second offense and revoked for the
141 third offense; and

142 (13) In the case of multiple violations by a permittee,
143 shipper, operator or receiver, the commission may direct
144 that the imposed suspension be served concurrently or
145 consecutively, taking into account the frequency of
146 violations committed during the inclusive time periods, or
147 in the same course of misconduct if the commission
148 determines that sufficient mitigating or aggravating
149 circumstances are present.

150 (14) Any person who aids or abets another person's
151 attempt to avoid suspension shall have his or her driver's
152 license suspended by the commissioner of the division of
153 motor vehicles for a period of sixty days for the first
154 offense, one hundred twenty days for the second offense
155 and six months for the third offense.

156 (15) Any person that aids or abets a person's attempt to
157 avoid suspension shall have its state-issued business

158 license suspended by the tax commissioner for a period of
159 three months for the first offense, six months for the
160 second offense and one year for the third offense.

161 (d) Without providing a hearing, the commission may
162 immediately suspend a person from obtaining permits or
163 operating under permit authority for failure to pay a fee
164 required under this article until proper payment is re-
165 ceived. Upon the completion of all administrative appeals
166 of any violation that results in a license suspension, the
167 commission shall notify the division of motor vehicles
168 which shall act accordingly.

169 (e) Without providing a hearing, the commission and
170 law-enforcement personnel may immediately confiscate an
171 altered, forged or counterfeited permit, or a permit used in
172 violation of its terms and conditions. Upon issuance of a
173 citation alleging a violation of this subsection, the vehicle
174 and its load shall be impounded by law-enforcement
175 personnel until such time as a hearing on the matter is
176 conducted by the division.

177 (f) Administrative sanctions may be imposed pursuant to
178 the following procedures:

179 (1) No administrative sanction may be imposed until
180 after the person has been notified by certified mail or
181 personal service. The notice shall include: A reference to
182 the section of statute, rule, order, or permit violated; a
183 concise statement of the facts alleged to constitute a
184 violation; a statement of the administrative penalties to be
185 imposed; and a statement of the person's right to a hear-
186 ing. The person has twenty days from receipt of the notice
187 within which to deliver to the commission a written
188 request for a hearing.

189 (2) Subsequent to the hearing and upon finding that a
190 violation has occurred, the commission shall issue a final
191 order. If no hearing is requested, the notice shall become
192 a final order upon the expiration of the twenty-day period.

193 (3) For purposes of the enhanced penalty provisions of
194 this section, the second and subsequent offenses shall be
195 calculated on a per-year basis.

196 (4) In addition to the imposition of an administrative
197 sanction, the commission or division may, by administra-
198 tive order and upon an appropriate finding, assess a
199 violator for the reasonable costs, as established by rules of
200 any investigation, inspection or monitoring survey which
201 led to the establishment of the violation.

**§17C-17A-10. Penalties for violation of weight laws; impound-
ing vehicles.**

1 (a) Any owner, lessee or borrower of a commercial motor
2 vehicle or combination of vehicles transporting coal who
3 operates or permits to be operated on any highway the
4 vehicle or combination of vehicles with a total gross
5 weight load imposed upon the highway by any one group
6 of two or more consecutive axles in excess of that permit-
7 ted by section five of this article is guilty of a misde-
8 meanor and, upon conviction thereof, shall be punished by
9 a fine based on the number of pounds in excess of the
10 registered weight, or in excess of allowable weights for
11 single axle, or in excess of allowable weights for groups of
12 two or more consecutive axles, in accordance with the
13 following schedule:

14 Excess Weight	Amount of Fine
15 1 to 4,000 pounds1 cent per overweight pound
16 4,001 to 8,000 pounds3 cents per overweight pound
17 8,001 to 12,000 pounds7 cents per overweight pound
18 12,001 to 16,000 pounds	10 cents per overweight pound
19 16,001 to 20,000 pounds	15 cents per overweight pound
20 20,001 to 40,000 pounds	30 cents per overweight pound
21 40,001 pounds or more	45 cents per overweight pound

22 (b) Upon a second or subsequent conviction within two
23 years thereafter, the owner, lessee or borrower shall be
24 punished by a fine according to the following schedule:

25 Excess Weight	Amount of Fine
26 1 to 4,000 pounds1 cent per overweight pound
27 4,001 to 8,000 pounds	5 cents per overweight pound
28 8,001 to 12,000 pounds	10 cents per overweight pound
29 12,001 to 16,000 pounds	15 cents per overweight pound
30 16,001 to 20,000 pounds	20 cents per overweight pound
31 20,001 to 40,000 pounds	40 cents per overweight pound
32 40,001 pounds or more	80 cents per overweight pound

33 (c) The fines specified in subsections (a) and (b) of this
34 section are mandatory and may not be waived or reduced
35 by any judicial officer.

36 (d) In the event any owner, lessee or borrower of a
37 vehicle is charged with violating this section, the vehicle
38 charged to have been overloaded shall be impounded by
39 the arresting officer. The vehicle shall not be released to
40 the alleged offender or the owner unless and until he or she
41 either has: (1) Been acquitted of the charge; (2) been found
42 guilty of the charge and paid any fine assessed under
43 subsection (a) or (b) of this section; or (3) furnished cash or
44 surety bond in at least double the amount of the fine which
45 may be assessed the offender under subsection (a) or (b) of
46 this section conditioned upon the payment of any fine and
47 costs assessed for the violation. The offender is liable for
48 any reasonable storage costs incurred in storing im-
49 pounded vehicles: *Provided*, That if the owner of the
50 vehicle is a resident of or has a principal place of business
51 located in this state and the vehicle has been duly licensed
52 in the state, then the vehicle may not be impounded by the
53 arresting officer who shall deliver to the operator a written

54 notice of the violation; the place, date and time of viola-
55 tion; the license number of the vehicle; the title number
56 and name and address of the owner; the driver's name,
57 address and the number of his or her commercial driver's
58 license; and the court, place, date and time for hearing,
59 which shall be within ten days of the violation, Saturdays,
60 Sundays and holidays excluded. A copy of the notice shall
61 be mailed to the owner of the vehicle within forty-eight
62 hours. If the owner or his, her or its agent fails to appear
63 at the designated place and time or, if convicted, fails to
64 pay the fine and costs assessed for the violation, the court
65 shall order the owner to post a bond or the impounding of
66 the vehicle as provided in this section.

67 (e) Any shipper or receiver who directs or knowingly
68 permits a commercial motor vehicle to be loaded in excess
69 of registered weight, allowable weights for single axle or
70 allowable weights for groups of two or more consecutive
71 axles is also guilty of a misdemeanor and, upon conviction,
72 shall be punished by a fine equal to that which may be
73 imposed on the owner, lessee or borrower of a commercial
74 motor vehicle under subsection (a) of this section.

75 (f) The penalties and fees specified in this section are in
76 addition to any other liability that may be legally fixed
77 against the owner, operator or other person charged with
78 a weight violation.

§17C-17A-11. Effective date.

1 Criminal and administrative penalties imposed by this
2 article take effect on the first day of October, two thou-
3 sand three.

§17C-17A-12. Designating special coal resource transportation roads, highways and bridges.

1 (a) From those counties and districts described in
2 subdivision (a), section two of this article, the commis-
3 sioner of the division of highways shall identify those
4 public roads, highways and bridges used during the

5 previous twelve month period for transportation of
6 quantities of coal in excess of fifty thousand tons or
7 projected to be used for transporting quantities of coal in
8 excess of fifty thousand tons during the ensuing year. The
9 identification process shall include the following as to
10 each discretely identifiable section of the public highway:

11 (1) The current condition of the public roads, highways
12 and bridges;

13 (2) The estimated quantities of coal transported;

14 (3) Any planned or necessary maintenance or improve-
15 ment;

16 (4) The number of truck loads of coal transported in an
17 average day;

18 (5) Any anticipated increase or decrease in the quantity
19 of coal being transported; and

20 (6) Other information determined by the commissioner
21 to be relevant.

22 (b) Upon completion of the identification process, but in
23 no event later than the first day of July, two thousand
24 three, the commissioner shall designate by order an
25 interim coal resource transportation road system consist-
26 ing of those public roads, highways, bridges or segments
27 thereof which may be used as special coal haulage roads
28 consistent with the authority contained in this article. The
29 commissioner shall establish a process for the receipt and
30 evaluation of public comment on the designations con-
31 tained within the interim coal resource transportation
32 road system, and designate weight limits and other
33 conditions for use of the coal resource transportation road
34 system as public interest so provides. The commissioner
35 shall publish a directory, including supporting maps and
36 other documents, of the interim coal resource transporta-
37 tion road system.

38 (c) By no later than the first day of January, two thou-
39 sand four, the commissioner shall designate by order the
40 coal resource transportation road system and shall publish
41 a directory, including supporting maps and other docu-
42 ments, of that road system.

43 (d) The commissioner shall establish a process for
44 periodic evaluation of the designations contained in the
45 coal resource transportation road system in order to add to
46 or delete from the road system certain additional sections
47 of public highways: *Provided*, That the evaluations and
48 modifications of the road system shall be completed at a
49 minimum on an annual basis.

**§17C-17A-13. Authority of the commissioner of the division of
highways relating to road and bridge repair on
designated coal resource transportation roads.**

1 (a) In addition to all other powers provided by law to the
2 commissioner of highways, he or she may enter into
3 agreements with coal shippers, motor vehicle operators or
4 owners holding or applying for permits issued pursuant to
5 this article, or with any other persons, for the purpose of
6 replacing, repairing, widening, reconstructing, altering,
7 improving or maintaining public highways used for coal
8 resource transportation. These agreements shall contain
9 necessary criteria to assure any damages associated with
10 the transport of coal upon the respective public highways
11 are ameliorated.

12 (b) All moneys collected by the commissioner shall be
13 deposited in a special account created within the state
14 road fund, known as the coal resource transportation fund,
15 to be expended for the purposes set forth in subsection (a)
16 of this section.

§17C-17A-14. Exclusion of off-road vehicles.

1 Notwithstanding any other provisions of state law to the
2 contrary, the provisions of this article shall not apply to

3 coal hauling vehicles operating off-road or vehicles
4 designed for off-road.

§17C-17A-15. Exclusion of interstate highways.

1 Notwithstanding any other provisions of this code to the
2 contrary, the provisions of this article shall not apply to
3 the interstate highways in this state.

§17C-17A-16. Spotting unlawful; penalties.

1 It is unlawful for any person to intentionally assist an
2 owner or operator of a commercial motor vehicle engaged
3 in the transportation of coal to avoid a road, safety or
4 other lawful inspection or enforcement activity by any law
5 or weight enforcement officer through electronic commu-
6 nications or other means intended to give the commercial
7 vehicle driver knowledge of the location of the officers.
8 Any person who violates this section is guilty of a misde-
9 meanor and shall, upon conviction, be fined not less than
10 one thousand dollars and upon a second or subsequent
11 conviction, fined not less than two thousand dollars.

**ARTICLE 17B. TRANSFER OF CERTAIN JURISDICTION AND EMPLOYEES
TO PUBLIC SERVICE COMMISSION.**

§17C-17B-1. Legislative findings and purposes.

1 (a) The Legislature finds that:

2 (1) Enforcement officers of the public service commis-
3 sion of West Virginia are, as part of their enforcement of
4 chapters twenty-four and twenty-four-a of this code with
5 respect to common and contract carriers by motor vehicle,
6 other for-hire carriers and private commercial carriers,
7 currently inspecting for safety many of the same vehicles
8 and loads that are inspected for size and weight by em-
9 ployees of the department of transportation;

10 (2) To effectuate the legislative findings and declarations
11 set forth in section one, article one, chapter five-f of this
12 code, the jurisdiction over the administration and enforce-

13 ment of state statutes and rules relating to vehicular
14 weight and the jurisdiction over the issuance of permits for
15 excess vehicular weight should be transferred to the public
16 service commission;

17 (3) To preserve continuity and to maximize efficiency,
18 those employees of the department of transportation who
19 are employed primarily in the performance of the govern-
20 mental duties described in this section should be trans-
21 ferred to the public service commission; and

22 (4) The enforcement of state statutes and rules relating
23 to coal truck weight, including costs of inspections of the
24 vehicles and loads, training of enforcement officers,
25 program oversight, administrative proceedings, personal
26 services, employee benefits and all other costs associated
27 with enforcement matters, falls within the scope of
28 maintenance of state roads and public highways as
29 described in section fifty-two, article six of the constitu-
30 tion of this state and in section one, article three, chapter
31 seventeen of this code.

32 (b) The purposes of this article are to transfer:

33 (1) Jurisdiction over the enforcement of state statutes
34 and rules, including, but not limited to, the provisions of
35 article seventeen-a of this chapter, relating to coal truck
36 weight, from the department of transportation to the
37 public service commission of West Virginia;

38 (2) Jurisdiction over the issuance of permits for excess
39 vehicular weight under section eleven, article seventeen, of
40 this chapter, from the department of transportation to the
41 public service commission of West Virginia; and

42 (3) To the public service commission of West Virginia
43 those employees of the department of transportation
44 whose primary governmental duties include the adminis-
45 tration and enforcement of statutes and rules relating to
46 vehicular weight.

§17C-17B-2. Transfer of jurisdiction over vehicle weight enforcement and excess weight permit issuances to public service commission.

1 (a) Effective the first day of July, two thousand three,
2 the jurisdiction over the enforcement of state statutes and
3 rules, including, but not limited to, applicable provisions
4 of article seventeen of this chapter relating to vehicular
5 weight, shall be transferred from the department of
6 transportation to the public service commission of West
7 Virginia.

8 (b) Effective the first day of July, two thousand three,
9 the jurisdiction over the issuance of permits for excess
10 vehicular weight shall be transferred from the department
11 of transportation to the public service commission of West
12 Virginia.

§17C-17B-3. Transfer of certain employees from department of transportation to public service commission.

1 (a) Effective the first day of July, two thousand three,
2 employees of the department of transportation whose
3 primary governmental duties as of the thirtieth day of
4 June, two thousand three, included the administration and
5 enforcement of this code and rules promulgated under this
6 code relating to vehicular weight or the issuance of
7 permits for excess vehicular weight shall be transferred
8 from the department of transportation to the public
9 service commission of West Virginia.

10 (b) Upon the transfer of employees as provided in
11 subsection (a) of this section, the department of transpor-
12 tation shall pay to the public service commission the costs
13 of personal services, employees benefits and other associ-
14 ated costs of the transferred employees.

§17C-17B-4. Costs of enforcement to be funded from revenues in state road fund.

1 (a) On and after the first day of July, two thousand three,
2 the cost of enforcement of this code and rules promulgated

3 under this code, relating to vehicular weight, including
4 inspections of vehicles and loads, training of enforcement
5 officers, administrative proceedings, personal services,
6 employees benefits and all other costs associated with
7 enforcement matters, shall be funded by revenues in the
8 state road fund, established pursuant to the provisions of
9 section one, article three, chapter seventeen of this code.

10 (b) The secretary of transportation and the treasurer
11 shall take all actions necessary to implement the transfer
12 of funding to effectuate the purposes of this article.

13 (c) For fiscal years beginning on and after the first day
14 of July, two thousand four, the commission shall include
15 in its budget to the legislature the costs of implementation
16 and continuing enforcement of this article for payment
17 and appropriation from the state road fund, or other
18 sources as deemed appropriated, into the public service
19 commission fund.

§17C-17B-5. Exceptions.

1 (a) Nothing in this article reduces or eliminates the
2 authority of any police officer to enforce the provisions of
3 article seventeen of this chapter.

4 (b) Nothing in this article reduces or eliminates the
5 jurisdiction of the department of transportation to admin-
6 ister and enforce sections eleven-a, eleven-b, eleven-c and
7 twelve, article seventeen of this chapter.

8 (c) Nothing in this article expands, reduces or eliminates
9 any remedies otherwise available by law.

**CHAPTER 17E. UNIFORM COMMERCIAL
DRIVER'S LICENSE ACT.**

ARTICLE 1. COMMERCIAL DRIVER'S LICENSE.

§17E-1-3. Definitions.

1 Notwithstanding any other provision of this code, the
2 following definitions apply to this article:

3 “Alcohol” means:

4 (a) Any substance containing any form of alcohol,
5 including, but not limited to, ethanol, methanol, propanol
6 and isopropanol;

7 (b) Beer, ale, port or stout and other similar fermented
8 beverages (including sake or similar products) of any name
9 or description containing one half of one percent or more
10 of alcohol by volume, brewed or produced from malt,
11 wholly or in part, or from any substitute for malt;

12 (c) Distilled spirits or that substance known as ethyl
13 alcohol, ethanol or spirits of wine in any form (including
14 all dilutions and mixtures thereof from whatever source or
15 by whatever process produced); or

16 (d) Wine of not less than one half of one percent of
17 alcohol by volume.

18 “Alcohol concentration” means:

19 (a) The number of grams of alcohol per one hundred
20 milliliters of blood;

21 (b) The number of grams of alcohol per two hundred ten
22 liters of breath; or

23 (c) The number of grams of alcohol per sixty-seven
24 milliliters of urine.

25 “Commercial driver’s license” means a license issued in
26 accordance with the requirements of this article to an
27 individual which authorizes the individual to drive a class
28 of commercial motor vehicle.

29 “Commercial driver’s license information system” is the
30 information system established pursuant to the federal
31 commercial motor vehicle safety act to serve as a clearing-
32 house for locating information related to the licensing and
33 identification of commercial motor vehicle drivers.

34 “Commercial driver instruction permit” means a permit
35 issued pursuant to subsection (d), section nine of this
36 article.

37 “Commercial motor vehicle” means a motor vehicle
38 designed or used to transport passengers or property:

39 (a) If the vehicle has a gross vehicle weight rating as
40 determined by federal regulation;

41 (b) If the vehicle is designed to transport sixteen or more
42 passengers, including the driver; or

43 (c) If the vehicle is transporting hazardous materials and
44 is required to be placarded in accordance with 49 C. F. R.
45 part 172, subpart F.

46 “Commissioner” means the commissioner of motor
47 vehicles of this state.

48 “Controlled substance” means any substance classified
49 under the provisions of chapter sixty-a of this code
50 (uniform controlled substances act) and includes all
51 substances listed on Schedules I through V, inclusive,
52 article two of said chapter as they are revised.

53 “Conviction” means the final judgment in a judicial or
54 administrative proceeding or a verdict or finding of guilty,
55 a plea of guilty, a plea of nolo contendere or a forfeiture of
56 bond or collateral upon a charge of a disqualifying offense,
57 as a result of proceedings upon any violation of the
58 requirement of this article.

59 “Division” means the division of motor vehicles.

60 “Disqualification” means a prohibition against driving
61 a commercial motor vehicle.

62 “Drive” means to drive, operate or be in physical control
63 of a motor vehicle in any place open to the general public
64 for purposes of vehicular traffic. For the purposes of
65 sections twelve, thirteen and fourteen of this article,

66 “drive” includes operation or physical control of a motor
67 vehicle anywhere in this state.

68 “Driver” means any person who drives, operates or is in
69 physical control of a commercial motor vehicle, in any
70 place open to the general public for purposes of vehicular
71 traffic, or who is required to hold a commercial driver’s
72 license.

73 “Driver’s license” means a license issued by a state to an
74 individual which authorizes the individual to drive a
75 motor vehicle of a specific class.

76 “Employee” means a person who is employed by an
77 employer to drive a commercial motor vehicle, including
78 independent contractors. An employee who is self-em-
79 ployed as a commercial motor vehicle driver shall comply
80 with the requirements of this article pertaining to both
81 employees and employers.

82 “Employer” means any person, including the United
83 States, a state or a political subdivision of a state, who
84 owns or leases a commercial motor vehicle or assigns a
85 person to drive a commercial motor vehicle.

86 “Farm vehicle” includes a motor vehicle or combination
87 vehicle registered to the farm owner or entity operating
88 the farm and used exclusively in the transportation of
89 agricultural or horticultural products, livestock, poultry
90 and dairy products from the farm or orchard on which
91 they are raised or produced to markets, processing plants,
92 packing houses, canneries, railway shipping points and
93 cold storage plants and in the transportation of agricul-
94 tural or horticultural supplies and machinery to the farms
95 or orchards to be used on the farms or orchards.

96 “Farmer” includes an owner, tenant, lessee, occupant or
97 person in control of the premises used substantially for
98 agricultural or horticultural pursuits who is at least
99 eighteen years of age with two years’ licensed driving
100 experience.

101 “Farmer vehicle driver” means the person employed and
102 designated by the “farmer” to drive a “farm vehicle” as
103 long as driving is not his or her sole or principal function
104 on the farm who is at least eighteen years of age with two
105 years’ licensed driving experience.

106 “Gross combination weight rating (GCWR)” means the
107 value specified by the manufacturer as the loaded weight
108 of a combination (articulated) vehicle. In the absence of a
109 value specified by the manufacturer, GCWR will be
110 determined by adding the GVWR of the power unit and the
111 total weight of the towed unit and any load thereon.

112 “Gross vehicle weight rating (GVWR)” means the value
113 specified by the manufacturer as the loaded weight of a
114 single vehicle. In the absence of a value specified by the
115 manufacturer the GVWR will be determined by the total
116 weight of the vehicle and any load thereon.

117 “Hazardous materials” has the meaning as that found in
118 the Hazardous Materials Transportation Act (§49 U. S. C.
119 5101, *et seq.*, (1998)).

120 “Motor vehicle” means every vehicle which is self-
121 propelled and every vehicle which is propelled by electric
122 power obtained from overhead trolley wires but not
123 operated upon rails.

124 “Out-of-service order” means a temporary prohibition
125 against driving a commercial motor vehicle as a result of
126 a determination by a federal agency or the public service
127 commission, pursuant to chapter twenty-four-a of this
128 code, that: (a) The continued use of a commercial motor
129 vehicle may result in death, serious injury or severe
130 personal injury; or (b) the continued actions by the driver
131 of a commercial motor vehicle poses an imminent hazard
132 to public safety.

133 “Violation of an out-of-service order” means: (a) The
134 operation of a commercial motor vehicle during the period
135 the driver was placed out of service; or (b) the operation of

136 a commercial motor vehicle by a driver after the vehicle
137 was placed out of service and before the required repairs
138 are made.

139 “Serious traffic violation” means:

140 (a) Excessive speeding which is defined as fifteen miles
141 per hour in excess of all posted limits;

142 (b) Reckless driving as defined in section three, article
143 five, chapter seventeen-c of this code, including erratic
144 lane changes and following the vehicle ahead too closely;

145 (c) A violation of state or local law relating to motor
146 vehicle traffic control, other than a parking violation,
147 arising in connection with a fatal traffic accident. Vehicle
148 defects are excluded as serious traffic violations, except as
149 to violations committed by a special permittee on the coal
150 resource transportation system; or

151 (d) Any other serious violations determined by the
152 United States secretary of transportation.

153 “State” means a state of the United States and the
154 District of Columbia.

155 “Tank vehicle” means any commercial motor vehicle
156 that is designed to transport any liquid or gaseous materi-
157 als within a tank that is either permanently or temporarily
158 attached to the vehicle or the chassis. These vehicles
159 include, but are not limited to, cargo tanks and portable
160 tanks, as defined in 49 C. F. R. Part 171 (1998). However,
161 this definition does not include portable tanks having a
162 rated capacity under one thousand gallons.

163 “At fault traffic accident” means for the purposes of
164 waiving the road test, a determination, by the official
165 filing the accident report, of fault as evidenced by an
166 indication of contributing circumstances in the accident
167 report.

CHAPTER 24A. COMMERCIAL MOTOR CARRIERS.

ARTICLE 1A. COMMERCIAL VEHICLE REGULATION.

§24A-1A-1. Regulation of commercial vehicle weights.

1 (a) Effective the first day of July, two thousand three,
2 the commission has jurisdiction over the enforcement of
3 this code and rules promulgated under this code, includ-
4 ing, but not limited to, applicable provisions of article
5 seventeen-a, chapter seventeen-c of this code relating to
6 vehicular weight.

7 (b) Effective the first day of January, two thousand
8 three, the commission has jurisdiction over the issuance of
9 permits for excess vehicular weight.

10 (c) Effective the first day of January, two thousand
11 three, employees of the division of highways, department
12 of transportation, whose primary governmental duties as
13 of the thirtieth day of June, two thousand two, included
14 the administration and enforcement of state statutes and
15 rules relating to vehicular weight or the issuance of
16 permits for excess vehicular weight shall be transferred
17 from the division of highways and department of transpor-
18 tation to the commission.

19 (d) The commission shall implement and administer the
20 provisions of this section and of articles six, six-a and six-
21 b of this chapter.

**§24A-1A-2. Creation of advisory committee; purpose; members;
terms.**

1 (a) There is created the commercial motor vehicle weight
2 and safety enforcement advisory committee,
3 the purpose of which is to study the implementation of the
4 commercial motor vehicle weight and safety enforcement
5 program set forth in this article.

6 (b) The committee consists of the following members:

7 (1) One member who is an employee of the division of
8 highways, to be appointed by the commissioner of high-
9 ways;

10 (2) One member who is an employee of the public service
11 commission, to be appointed by the chairman of the public
12 service commission;

13 (3) One member who is a state police officer, to be
14 appointed by the superintendent of the state police;

15 (4) One member who is an employee of the division of
16 motor vehicles, to be appointed by the commissioner of
17 motor vehicles;

18 (5) One member who is an employee of the development
19 office, to be appointed by the governor;

20 (6) One member who is representative of the coal indus-
21 try, to be appointed by the governor;

22 (7) One member of the Senate, to be appointed by the
23 president of the Senate;

24 (8) One member of the House of Delegates, to be ap-
25 pointed by the speaker of the House of Delegates;

26 (9) One citizen member, to be appointed by the governor;
27 and

28 (10) One member of the largest organization representing
29 coal miners, to be appointed by the governor.

30 (c) Members shall serve for terms of three years. No
31 member may be appointed to serve more than two consec-
32 utive terms.

33 (d) The committee shall annually nominate from its
34 members a chair, who shall hold office for one year.

35 (e) The committee shall hold at least four meetings each
36 year or more often as may, in the discretion of the chair, be
37 necessary to effectuate the purposes of this article.

38 (f) The public members of the committee may receive
39 compensation for attendance at official meetings, not to
40 exceed the amount paid to members of the Legislature for

41 their interim duties as recommended by the citizens
42 legislative compensation commission and authorized by
43 law.

44 (g) Committee members may be reimbursed for actual
45 and necessary expenses incurred for each day or portion of
46 a day engaged in the discharge of committee duties in a
47 manner consistent with guidelines of the travel manage-
48 ment office of the department of administration.

49 (h) On or before the first day of January, two thousand
50 four, and each subsequent year thereafter, the committee
51 shall submit to the governor and to the Legislature a
52 report of its recommendations for improving the effective-
53 ness of the commercial vehicle weight and safety enforce-
54 ment program.

55 (i) The commercial vehicle weight and safety enforce-
56 ment advisory committee shall continue to exist until the
57 first day of July, two thousand seven, pursuant to the
58 provisions of article ten, chapter four of this code, unless
59 sooner terminated, continued or reestablished pursuant to
60 the provisions of that article.

**§24A-7-7. Authority of motor carrier inspectors to enforce all
traffic rules as to commercial vehicles; use of
radar as evidence.**

1 (a) The employees of the commission designated as motor
2 carrier inspectors have the same authority as law-enforce-
3 ment officers generally to enforce the provisions of chapter
4 seventeen-c of this code with respect to commercial motor
5 vehicles owned or operated by motor carriers, exempt
6 carriers or private commercial carriers where vehicles
7 have a gross vehicle weight rating of ten thousand pounds
8 or more.

9 (b) The speed of a commercial motor vehicle owned or
10 operated by a motor carrier, exempt carrier or private
11 commercial carrier may be proved by evidence obtained by
12 use of any device designed to measure and indicate or

13 record the speed of a moving object by means of micro-
14 waves when the evidence is obtained by employees of the
15 commission designated as motor carrier inspectors. The
16 evidence so obtained is prima facie evidence of the speed
17 of the vehicle.

18 (c) Motor carrier inspectors shall also perform a north
19 American standard safety inspection of each commercial
20 motor vehicle stopped for enforcement purposes pursuant
21 to this section.

22 (d) Before exercising the provisions of this section, the
23 motor carrier inspectors shall receive adequate training.

24 (e) Nothing in this section affects the existing authority
25 of law-enforcement officers not employed by the commis-
26 sion to enforce the provisions of chapter seventeen-c of
27 this code.

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

Carly Fiorino
.....
Chairman Senate Committee

Greg Butcher
.....
Chairman House Committee

Originated in the Senate.

In effect from passage.

Darrell E. Holman
.....
Clerk of the Senate

Barry R. Bur
.....
Clerk of the House of Delegates

Carl Ray Tomblin
.....
President of the Senate

Robert W. Kiehl
.....
Speaker House of Delegates

The within *approved* this the *20*
Day of *March*, 2003.

Bob Wise
.....
Governor

PRESENTED TO THE
GOVERNOR

Date 3-20-03

Time 9:50AM