

SB 394

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OFFICE WEST VIRGINIA
CLERK OF STATE

WEST VIRGINIA LEGISLATURE
SEVENTY-NINTH LEGISLATURE
REGULAR SESSION, 2010

ENROLLED

COMMITTEE SUBSTITUTE
FOR
COMMITTEE SUBSTITUTE
FOR

Senate Bill No. 394

(SENATORS UNGER, McCABE, CHAFIN AND
PLYMALE, *original sponsors*)

[Passed March 13, 2010; in effect ninety days from passage.]

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AN ACT to amend and reenact §17A-3-3 of the Code of West Virginia, 1931, as amended; to amend and reenact §17D-2A-1, §17D-2A-2, §17D-2A-3, §17D-2A-6, §17D-2A-7 and §17D-2A-8 of said code; to amend said code by adding thereto a new section, designated §17D-2A-6a; and to amend said code by adding thereto a new section, designated §33-6-31g, all relating to authorizing the Division of Motor Vehicles to use an electronic insurance verification program to identify uninsured noncommercial motor vehicles; surrendering registration plate to division when required security dropped by owner or registrant; requiring insurance companies licensed to do business in this state to participate in an electronic insurance verification program developed by the motor vehicles commissioner; providing requirements for an electronic insurance verification

program; providing duties of the motor vehicles commissioner relating to a program; setting forth duties of insurers relating to a program; providing penalties for failing to have the required security or knowingly operating a motor vehicle without the required security by suspending the owner's driver's license and revoking vehicle registration; providing for a hearing; providing that any rules promulgated by the motor vehicles commissioner pertaining to a program be consistent with the Insurance Industry Committee for Motor Vehicle Administration Model; and authorizing the insurance commissioner to promulgate rules and emergency rules, some of which may prescribe penalties.

Be it enacted by the Legislature of West Virginia:

That §17A-3-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §17D-2A-1, §17D-2A-2, §17D-2A-3, §17D-2A-6, §17D-2A-7 and §17D-2A-8. of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §17D-2A-6a; and that said code be amended by adding thereto a new section, designated §33-6-31g, all to read as follows:

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

**ARTICLE 3. ORIGINAL AND RENEWAL OF REGISTRATION; ISSUANCE
OF CERTIFICATES OF TITLE.**

**§17A-3-3. Application for registration; statement of insurance
or other proof of security to accompany applica-
tion; criminal penalties; fees; special revolving
fund.**

1 Every owner of a vehicle subject to registration under
2 this article shall make application to the division for the
3 registration of the vehicle upon the appropriate form or
4 forms furnished by the division and every application shall

5 bear the signature of the owner or his or her authorized
6 agent, written with pen and ink, and the application shall
7 contain:

8 (a) The name, bona fide residence and mailing address of
9 the owner, the county in which he or she resides or busi-
10 ness address of the owner if a firm, association or corpora-
11 tion.

12 (b) A description of the vehicle including, insofar as the
13 data specified in this section may exist with respect to a
14 given vehicle, the make, model, type of body, the manufac-
15 turer's serial or identification number or other number as
16 determined by the commissioner.

17 (c) In the event a motor vehicle is designed, constructed,
18 converted or rebuilt for the transportation of property, the
19 application shall include a statement of its declared gross
20 weight if the motor vehicle is to be used alone, or if the
21 motor vehicle is to be used in combination with other
22 vehicles, the application for registration of the motor
23 vehicle shall include a statement of the combined declared
24 gross weight of the motor vehicle and the vehicles to be
25 drawn by the motor vehicle; declared gross weight being
26 the weight declared by the owner to be the actual com-
27 bined weight of the vehicle or combination of vehicles and
28 load when carrying the maximum load which the owner
29 intends to place on the vehicle; and the application for
30 registration of each vehicle shall also include a statement
31 of the distance between the first and last axles of that
32 vehicle or combination of vehicles.

33 The declared gross weight stated in the application may
34 not exceed the permissible gross weight for the axle
35 spacing listed in the application as determined by the
36 table of permissible gross weights contained in chapter
37 seventeen-c of this code; and any vehicle registered for a
38 declared gross weight as stated in the application is

39 subject to the single-axle load limit set forth in that
40 chapter.

41 (d) Each applicant shall state whether the vehicle is or is
42 not to be used in the public transportation of passengers
43 or property, or both, for compensation and if used for
44 compensation, or to be used, the applicants shall certify
45 that the vehicle is used for compensation and shall, as a
46 condition precedent to the registration of the vehicle,
47 obtain a certificate of convenience or permit from the
48 Public Service Commission unless otherwise exempt from
49 this requirement in accordance with chapter twenty-four-
50 a of this code.

51 (e) A statement under penalty of false swearing that
52 liability insurance is in effect and will continue to be in
53 effect through the entire term of the vehicle registration
54 period within limits which may not be less than the
55 requirement of section two, article four, chapter
56 seventeen-d of this code, which shall contain the name and
57 National Association of Insurance commissioners assigned
58 code of the applicant's insurer, the policy number, and any
59 other information required by the commissioner of Motor
60 Vehicles or that the applicant has qualified as a self-
61 insurer meeting the requirements of section two, article six
62 of said chapter and that as a self-insurer he or she has
63 complied with the minimum security requirements as
64 established in section two, article four of that chapter. If
65 the commissioner determines that the required security is
66 not or was not in effect, he or she shall suspend the vehicle
67 owner's driver's license and revoke the vehicle registration
68 in accordance with the provisions of article two-a, chapter
69 seventeen-d of this code.

70 If any person making an application required under the
71 provisions of this section, in the application knowingly
72 provides false information, false proof of security or a
73 false statement of insurance, or if any person, including an
74 applicant's insurance agent, knowingly counsels, advises,

75 aids or abets another in providing false information, false
76 proof of security, or a false statement of insurance in the
77 application he or she is guilty of a misdemeanor and, upon
78 conviction thereof, shall be fined not more than five
79 hundred dollars, or be imprisoned in jail for a period not
80 to exceed fifteen days, or both fined and imprisoned and,
81 in addition to the fine or imprisonment, shall have his or
82 her driver's license suspended for a period of ninety days
83 and vehicle registration revoked if applicable.

84 (f) Any further information that is reasonably required
85 by the division to enable it to determine whether the
86 vehicle is lawfully entitled to registration.

87 (g) Each application for registration shall be accompa-
88 nied by the fees provided in this article and an additional
89 fee of fifty cents for each motor vehicle for which the
90 applicant seeks registration.

91 (h) Revocation of a motor vehicle registration pursuant
92 to this section does not affect the perfection or priority of
93 a lien or security interest attaching to the motor vehicle
94 that is noted on the certificate of title to the motor vehicle.

CHAPTER 17D. MOTOR VEHICLE SAFETY RESPONSIBILITY LAW.

ARTICLE 2A. SECURITY UPON MOTOR VEHICLES.

§17D-2A-1. Purpose of article.

1 The purpose of this article is to promote the public
2 welfare by requiring every owner or registrant of a motor
3 vehicle licensed in this state or operated in this state to
4 maintain certain security during the registration period
5 for the vehicle and to provide the means for the Division
6 of Motor Vehicles, law enforcement and the judicial
7 branch to electronically verify evidence of current insur-
8 ance coverage at any time while a vehicle has a current
9 registration or is operated on the roads and highways.

§17D-2A-2. Scope of article.

1 This article applies to the operation of all motor vehicles
2 required to be registered or operated on the roads and
3 highways to have the security in effect, as provided in
4 section two, article two of this chapter, with the exception
5 of motor vehicles owned by the state, any of its political
6 subdivisions or by the federal government.

7 For the purposes of this article, commercial auto cover-
8 age is defined as any coverage provided to an insured,
9 regardless of number of vehicles or entity covered, under
10 a commercial coverage form and rated from a commercial
11 manual approved by the Department of Insurance. This
12 article shall not apply to vehicles insured under commer-
13 cial auto coverage; however, insurers of such vehicles may
14 participate on a voluntary basis.

§17D-2A-3. Required security; exceptions.

1 (a) Every owner or registrant of a motor vehicle required
2 to be registered and licensed in this state shall maintain
3 security as hereinafter provided in effect continuously
4 throughout the registration or licensing period except in
5 case of a periodic use or seasonal vehicle, in which case the
6 owner or registrant is required to maintain security upon
7 the vehicle only for the portion of the year the vehicle is in
8 actual use. As used in this section, a periodic use or
9 seasonal vehicle means a recreational vehicle, antique
10 motor vehicle, motorcycle or other motor vehicle which is
11 stored part of the year and used seasonally.

12 (b) The owner or registrant shall immediately surrender
13 the registration plate to the Division of Motor Vehicles
14 when he or she drops the required security during the
15 registration period. An owner of a periodic use or seasonal
16 vehicle may retain a registration plate subject to legisla-
17 tive rules promulgated by the commissioner.

18 (c) Every nonresident owner or registrant of a motor
19 vehicle, which is operated upon any road or highway of
20 this state and which has been physically present within
21 this state for more than thirty days during the preceding
22 three hundred sixty-five days shall thereafter maintain
23 security as hereinafter provided in effect continuously
24 throughout the period the motor vehicle remains within
25 this state.

26 (d) No person may knowingly drive or operate upon any
27 road or highway any motor vehicle upon which security is
28 required by the provisions of this article unless the
29 required security is in effect.

30 (e) The security shall be provided by one of the following
31 methods:

32 (1) By an insurance policy delivered or issued for the
33 delivery in this state by an insurance company authorized
34 to issue vehicle liability and property insurance policies in
35 this state within limits which may not be less than the
36 requirements of section two, article four of this chapter; or

37 (2) By qualification as a self-insurer under the provisions
38 of section two, article six of this chapter.

39 (f) This article does not apply to any motor vehicle
40 owned by the state or by a political subdivision of this
41 state, nor to any motor vehicle owned by the federal
42 government.

**§17D-2A-6. Investigation by duly authorized law-enforcement
officer to include inquiry regarding required
security; notice by officer or court to Division of
Motor Vehicles.**

1 (a) At the time of investigation of a motor vehicle offense
2 or crash the State Police or other law-enforcement agency
3 or when a vehicle is stopped by a law-enforcement officer
4 for reasonable cause, the officer of the agency making the

5 investigation shall inquire of the operator of any motor
6 vehicle involved and, by an inquiry through the on-line
7 insurance verification program established in accordance
8 with section six-a of this article if available as to the
9 existence upon the vehicle or vehicles of the evidence of
10 insurance or other security required by the provisions of
11 this code and upon a finding by the law-enforcement
12 agency, officer or agent thereof that the security required
13 by the provisions of this article is not in effect, as to any
14 vehicle, he or she shall notify the Division of Motor
15 Vehicles of the finding within five days. *Provided*, That
16 the law-enforcement officer or agent may not stop vehicles
17 solely to inquire as to the certificate of insurance.

18 (b) A defendant who is charged with a traffic offense
19 that requires an appearance in court shall present the
20 court at the time of his or her appearance or subsequent
21 appearance with proof that the defendant had security at
22 the time of the traffic offenses as required by this article
23 subject to verification by the court through the Division of
24 Motor Vehicles or its agent or by an on-line insurance
25 verification program if available.

26 (c) If, as a result of the defendant's failure to show proof,
27 the court determines that the defendant has violated this
28 article, the court shall notify the Division of Motor
29 Vehicles within five days.

§17D-2A-6a. Determining if required security is in effect.

1 (a) The commissioner may make a determination that the
2 required security on a motor vehicle is not in effect based
3 upon crash reports required under the provisions of article
4 four, chapter seventeen-c of this code, reports or citations
5 from law-enforcement agencies, citations or abstracts of
6 conviction from courts or from information from an on-
7 line electronic insurance verification program.

8 (b) The commissioner is authorized to develop and
9 implement an electronic insurance verification program
10 based upon a model established by the Insurance Industry
11 Committee on Motor Vehicle Administration to electroni-
12 cally verify evidence of insurance coverage with insurance
13 companies.

14 (c) The commissioner may contract with a third party
15 vendor to act as his or her agent to develop the program,
16 conduct the electronic verification process with insurance
17 companies and to operate the program.

18 (d) If developed and implemented by the commissioner,
19 the on-line insurance verification program shall:

20 (1) Be able to verify, on an on-demand basis minus
21 reasonable down time for system maintenance as agreed
22 upon by the division or its agent and the insurance carrier,
23 the liability insurance status as of the time of the inquiry or
24 at other times not exceeding six months prior unless
25 otherwise agreed upon by the division or its agent and the
26 insurance carrier or via other similar electronic system that
27 is consistent with insurance industry and Insurance Indus-
28 try Committee on Motor Vehicle Administration (IICMVA)
29 recommendations and the specifications and standards of
30 the IICMVA model;

31 (2) Be able to make insurance verification inquiries to
32 insurers by using multiple data elements for greater
33 matching accuracy including: National Association of
34 Insurance Commissioner's (NAIC) code specific to each
35 licensed insurance company, vehicle identification numbers
36 and policy number or other data elements as otherwise
37 agreed to by the division or its agent and the insurer.

38 (3) Provide sufficient measures for the security and
39 integrity of data including a requirement that the informa-
40 tion obtained through the operation of the program be only
41 used for the sole use of the Division of Motor Vehicles or its

42 agent, law enforcement and the judiciary to effectuate the
43 provisions of this article; and

44 (4) Utilize open and agreed upon data and data transmis-
45 sion standards and standard SML extensible markup
46 language schema.

47 (e) If the commissioner develops and implements an on-
48 line insurance verification program, each insurer shall:

49 (1) Cooperate with the Division of Motor Vehicles, or its
50 agent in establishing and operating the program;

51 (2) Maintain the data necessary to verify the existence of
52 mandatory liability insurance coverage provided to its
53 customers pursuant to the required time period established
54 for the on-line insurance verification program;

55 (3) Maintain the internet web service, pursuant to the
56 requirements established under the online insurance
57 verification program, through which online insurance
58 verification can take place that includes the ability to
59 respond to authorized inquiries on whether the vehicle is
60 insured or the policy in effect on the requested date through
61 the insurer's national insurance commissioners association
62 code, vehicle identification number, insurance policy
63 number or other data key or keys as otherwise agreed to by
64 the division or its agent and the insurer;

65 (4) Provide security consistent with accepted insurance
66 industry and United States motor vehicle agency standards
67 pertinent to the transmission of personal data;

68 (5) Be immune from civil and administrative liability for
69 good faith efforts to comply with the terms of the verifica-
70 tion program; and

71 (6) As a condition of writing motor vehicle liability
72 insurance in this state, insurance carriers shall cooperate
73 with the division or its agent and the insurance commission

74 in establishing and maintaining an insurance verification
75 system. Nothing prohibits an insurer from using the
76 services of a third party vendor for facilitating the insur-
77 ance verification program required by this section.

78 (f) If the commissioner develops and implements an on-
79 line insurance verification program, the Division of Motor
80 Vehicles or its agent as applicable shall:

81 (1) Consult and cooperate with insurers in establishing
82 and operating the on-line insurance verification system;

83 (2) Designate and maintain a contact person for insurers
84 during the establishment and implementation of the on-line
85 insurance verification system;

86 (3) Conduct a pilot project to test the insurance verifica-
87 tion system no less than eighteen months prior to final
88 implementation;

89 (4) Establish and maintain the systems necessary to make
90 verification requests to insurers using the data elements
91 that the Division of Motor Vehicles or its agent and the
92 insurer have agreed upon and are necessary to receive
93 accurate responses from insurers;

94 (5) For all information transmitted and received, imple-
95 ment and maintain strict system and data security mea-
96 sures consistent with applicable standards. Data secured
97 via the reporting system by either the division or its agent
98 may not be shared with any party other than those permit-
99 ted by state or federal privacy laws;

100 (6) Be responsible for keeping all interested state agencies
101 informed on the implementation status, functionality, and
102 planned or unplanned service interruptions; and

103 (7) Provide alternative methods of reporting for small
104 insurers writing less than 500 non-commercial motor
105 vehicle policies in the state as determined by the Division
106 of Motor Vehicles or its agent;

107 (g) Any information obtained by the division or its agent
108 under the provisions of an electronic insurance system is for
109 the sole use of the Division of Motor Vehicles or its agent,
110 law enforcement and the judiciary to effectuate the provi-
111 sions of this article and is exempt from disclosure under the
112 provisions of article one, chapter twenty-nine-b and may
113 not be considered a public record as defined in section two,
114 article one, chapter twenty-nine-b of this code.

115 (h) Not more than two years after the establishment of an
116 on-line insurance verification program, the Division of
117 Motor Vehicles, after consultation with insurers, shall
118 report to the Legislature as to the costs of the program
119 incurred by the division, insurers and the public and the
120 effectiveness of the program in reducing the number of
121 uninsured motor vehicles.

**§17D-2A-7. Suspension or revocation of license, registration;
reinstatement.**

1 (a) Any owner of a motor vehicle, subject to the provi-
2 sions of this article, who fails to have the required security
3 in effect at the time such vehicle is registered or being
4 operated upon the roads or highways shall have his or her
5 driver's license suspended by the commissioner of the
6 division of motor vehicles and shall have his or her motor
7 vehicle registration revoked as follows:

8 (1) For the first offense, the commissioner shall suspend
9 the driver's license and vehicle registration until such time
10 as he or she presents current proof of insurance on all
11 currently registered vehicles: *Provided*, That if an owner
12 complies with the provisions of this subdivision, and pays
13 a penalty fee of \$200 before the effective date, the driver's
14 license suspension of thirty days shall not be imposed and
15 the vehicle registration revocation shall be not imposed and
16 no reinstatement fees are required.

17 (2) For the second offense within five years, the commis-
18 sioner shall suspend the owner's driver's license for a
19 period of thirty days and shall revoke the owner's vehicle
20 registration until he or she presents to the Division of
21 Motor Vehicles the proof of security required by this
22 article.

23 (3) For the third or subsequent offense within five years,
24 the commissioner shall suspend the owner's driver's license
25 for a period of ninety days and revoke the vehicle registra-
26 tion until such time as he or she presents current proof of
27 insurance.

28 (4) If the motor vehicle is titled and registered in more
29 than one name, the commissioner shall suspend the driver's
30 license of only one of the owners.

31 (b) Any person who knowingly operates a motor vehicle
32 upon the roads or highways of this state which does not
33 have the security required by the provisions of this article
34 shall have his or her driver's license suspended by the
35 commissioner subject to the following:

36 (1) For the first offense, the commissioner shall suspend
37 the driver's license until such time as he or she presents
38 current proof of insurance on all currently registered
39 vehicles: *Provided*, That if a driver complies with the
40 provisions of this section and pays a penalty fee of \$200
41 before the effective date of the driver's license suspension,
42 the thirty day driver's license suspension shall not be
43 imposed and no reinstatement fees are required.

44 (2) For the second offense within five years, the commis-
45 sioner shall suspend the driver's license for a period of
46 thirty days.

47 (3) For the third or subsequent offense within five years,
48 the commissioner shall suspend the person's driver's license
49 for a period of ninety days.

50 (c) A person's driver's license shall be suspended in
51 accordance with subsection(b) of this section if the person
52 is operating a motor vehicle designated for off-highway use
53 upon the roads and highways of this state without the
54 required security in effect.

55 (d) The commissioner may withdraw a suspension of a
56 driver's license or revocation of a motor vehicle registration
57 and refund any penalty or reinstatement fees at any time
58 provided that the commissioner is satisfied that there was
59 not a violation of the provisions of required security related
60 to operation of a motor vehicle upon the roads or highways
61 of this state by such person. The commissioner may request
62 additional information as needed in order to make such
63 determination.

64 (e) A person may not have his or her driver's license
65 suspended or motor vehicle registration revoked under any
66 provisions of this section unless he or she and any
67 lienholder noted on the certificate of title shall is first given
68 written notice of such suspension or revocation sent by
69 certified mail, at least thirty days prior to the effective date
70 of such suspension or revocation, and upon that person's
71 written request, he or she shall be afforded an opportunity
72 for a hearing thereupon as well as a stay of the commis-
73 sioner's order of suspension or revocation and an opportu-
74 nity for judicial review of such hearing. The request for a
75 hearing shall be made within ten days from the date of
76 receipt of the notice of driver's license suspension or motor
77 vehicle registration revocation. The scope of the hearing is
78 limited to questions of identity or whether or not there was
79 insurance in effect at the time of the event causing the
80 commissioner's action. Upon affirmation of the commis-
81 sioner's order, the period of suspension, revocation or other
82 penalty commences to run.

83 (f) A suspended driver's license is reinstated following the
84 period of suspension upon compliance with the conditions
85 set forth in this article and a revoked motor vehicle regis-

86 tration is reissued only upon lawful compliance with the
87 provisions of this article.

88 (g) Revocation of a motor vehicle registration pursuant to
89 this section does not affect the perfection or priority of a
90 lien or security interest attaching to the motor vehicle that
91 is noted on the certificate of title to the motor vehicle.

92 (h) Any owner or driver of a motor vehicle determined by
93 an electronic insurance verification program to be unin-
94 sured shall be assessed the same criminal and administra-
95 tive sanctions prescribed in this chapter subject to the
96 following;

97 (1) Any person who is assessed a penalty prescribed by
98 this section has the same procedural due process provided
99 by this chapter or by rules promulgated by the division to
100 show that there was not a violation and provide for the
101 exoneration of any penalties or records; and

102 (2) The commissioner may accept a binder, an identifica-
103 tion card or a declaration page from a policy as evidence of
104 insurance pending electronic verification to stay a pending
105 administrative sanction.

§ 17D-2A-8. Rules.

1 The Commissioner of the Division of Motor Vehicles is
2 hereby authorized to promulgate rules, in accordance with
3 chapter twenty-nine-a of this code, for the administration,
4 operation and enforcement of the provisions of this article.
5 Any rules or procedures which pertain to an electronic
6 insurance verification program shall be consistent with the
7 provisions and intent of the standards and specifications of
8 the Insurance Industry Committee for Motor Vehicle
9 Administration Model.

CHAPTER 33. INSURANCE.

ARTICLE 6. THE INSURANCE POLICY.

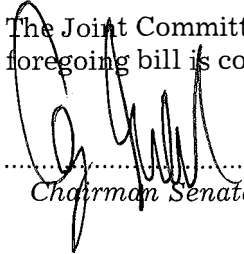
§33-6-31g. Electronic insurance verification program; insurer's duty to cooperate.

1 (a) If the Division of Motor Vehicles establishes an
2 electronic insurance verification program in accordance
3 with the provisions of section six-a, article two-a, chapter
4 seventeen-d of this code, any insurance company that issues
5 or delivers in this state a policy or contract of bodily injury
6 liability insurance or of property damage liability insur-
7 ance covering liability arising from the ownership, mainte-
8 nance or use of any motor vehicle, or upon any motor
9 vehicle for which a certificate of title has been issued by the
10 Division of Motor Vehicles of this state, shall comply with
11 the requirements of the program.

12 (b) The insurance commissioner may propose rules for
13 legislative approval in accordance with the provisions of
14 article three, chapter twenty-nine-a of this code as neces-
15 sary to implement the provisions of this section, and may
16 initially promulgate emergency rules pursuant to the
17 provisions of section fifteen, article three, chapter twenty-
18 nine-a of this code. Such rules may prescribe penalties,
19 including fines and other administrative sanctions, that
20 may be imposed by the commissioner for a company's
21 failure to comply with requirements of the electronic
22 insurance verification program.

17 [Enr. Com. Sub. for Com. Sub. for S. B. No. 394


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

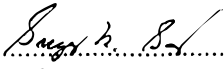

.....
Chairman Senate Committee

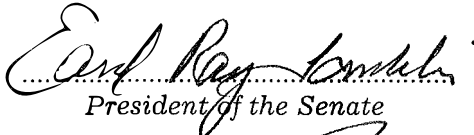

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Chairman House Committee

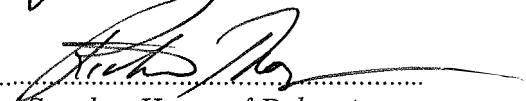
Originated in the Senate.

In effect ninety days from passage.


.....
Clerk of the Senate


.....
Clerk of the House of Delegates


.....
President of the Senate


.....
Speaker House of Delegates

The within *is approved* this the *31st*
Day of *March*, 2010.


.....
Governor

PRESENTED TO THE
GOVERNOR

MAR 30 2010

Time 4:20 p