

SB 47

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STATE OF WEST VIRGINIA
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WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1997



ENROLLED

SENATE BILL NO. 47

(By Senators DITMAR, CRAIG & HUNTER)



PASSED APRIL 12, 1997

In Effect NINETY DAYS FROM Passage

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SENATE, WEST VIRGINIA

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Senate Bill No. 47

(BY SENATORS DITTMAR, CRAIGO AND HUNTER)

[Passed April 12, 1997; in effect ninety days from passage.]

AN ACT to amend and reenact section one, article one, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections two and four, article three of said chapter; to amend and reenact sections one and fifteen, article four-a of said chapter; and to amend and reenact section one, article six of said chapter, all relating to factory-built homes, including house trailers, mobile homes and manufactured homes; redefining terms; requiring certificate of title, annual registration and license plates and providing exemptions therefrom; requiring certificate of title for factory-built homes; exempting mobile homes or manufactured homes from the requirements of annual registration, license plates and fees; allowing house trailers to be registered and licensed; providing for the crime of failing to provide a certificate of title and providing criminal

penalties therefor; revising the tax on the privilege of certificate of title; requiring certificate of titles to show lienholders; extending the expiration date of liens on mobile homes and manufactured homes; and revising certain terms.

Be it enacted by the Legislature of West Virginia:

That section one, article one, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that sections two and four, article three of said chapter be amended and reenacted; that sections one and fifteen, article four-a of said chapter be amended and reenacted; and that section one, article six of said chapter be amended and reenacted, all to read as follows:

ARTICLE 1. WORDS AND PHRASES DEFINED.

§17A-1-1. Definitions.

1 Except as otherwise provided in this chapter the follow-
2 ing words and phrases when used in this chapter shall
3 have the meanings respectively ascribed to them in this
4 article:

5 (a) "Vehicle" means every device in, upon or by which
6 any person or property is or may be transported or drawn
7 upon a highway, excepting devices moved by human
8 power or used exclusively upon stationary rails or tracks.

9 (b) "Motor vehicle" means every vehicle which is
10 self-propelled and every vehicle which is propelled by
11 electric power obtained from overhead trolley wires, but
12 not operated upon rails.

13 (c) "Motorcycle" means every motor vehicle, including
14 motor-driven cycles and mopeds as defined in sections five
15 and five-a, article one, chapter seventeen-c of this code,
16 having a saddle for the use of the rider and designed to
17 travel on not more than three wheels in contact with the
18 ground but excluding a tractor.

19 (d) "School bus" means every motor vehicle owned by a
20 public governmental agency and operated for the trans-
21 portation of children to or from school or privately owned
22 and operated for compensation for the transportation of

23 children to or from school.

24 (e) "Bus" means every motor vehicle designed to carry
25 more than seven passengers and used to transport persons;
26 and every motor vehicle, other than a taxicab, designed
27 and used to transport persons for compensation.

28 (f) "Truck tractor" means every motor vehicle designed
29 and used primarily for drawing other vehicles and not so
30 constructed as to carry a load other than a part of the
31 weight of the vehicle and load so drawn.

32 (g) "Farm tractor" means every motor vehicle designed
33 and used primarily as a farm implement for drawing
34 plows, mowing machines and other implements of hus-
35 bandry.

36 (h) "Road tractor" means every motor vehicle designed,
37 used or maintained for drawing other vehicles and not so
38 constructed as to carry any load thereon either independ-
39 ently or any part of the weight of a vehicle or load so
40 drawn.

41 (i) "Truck" means every motor vehicle designed, used or
42 maintained primarily for the transportation of property.

43 (j) "Trailer" means every vehicle with or without motive
44 power designed for carrying persons or property and for
45 being drawn by a motor vehicle and so constructed that no
46 part of its weight rests upon the towing vehicle but
47 excluding recreational vehicles.

48 (k) "Semitrailer" means every vehicle with or without
49 motive power designed for carrying persons or property
50 and for being drawn by a motor vehicle and so constructed
51 that some part of its weight and that of its load rests upon
52 or is carried by another vehicle.

53 (l) "Pole trailer" means every vehicle without motive
54 power designed to be drawn by another vehicle and
55 attached to the towing vehicle by means of a reach, or
56 pole, or by being boomed or otherwise secured to the
57 towing vehicle, and ordinarily used for transporting long
58 or irregularly shaped loads such as poles, pipes or struc-
59 tural members capable, generally, of sustaining them-
60 selves as beams between the supporting connections.

61 (m) "Specially constructed vehicles" means every vehicle
62 of a type required to be registered hereunder not origi-
63 nally constructed under a distinctive name, make, model
64 or type by a generally recognized manufacturer of vehicles
65 and not materially altered from its original construction.

66 (n) "Reconstructed vehicle" means every vehicle of a
67 type required to be registered hereunder materially
68 altered from its original construction by the removal,
69 addition or substitution of essential parts, new or used.

70 (o) "Essential parts" means all integral and body parts
71 of a vehicle of a type required to be registered hereunder,
72 the removal, alteration or substitution of which would
73 tend to conceal the identity of the vehicle or substantially
74 alter its appearance, model, type or mode of operation.

75 (p) "Foreign vehicle" means every vehicle of a type
76 required to be registered hereunder brought into this state
77 from another state, territory or country other than in the
78 ordinary course of business by or through a manufacturer
79 or dealer and not registered in this state.

80 (q) "Implement of husbandry" means every vehicle
81 which is designed for or adapted to agricultural purposes
82 and used by the owner thereof primarily in the conduct of
83 his agricultural operations, including, but not limited to,
84 trucks used for spraying trees and plants: *Provided*, That
85 the vehicle may not be let for hire at any time.

86 (r) "Special mobile equipment" means every self-
87 propelled vehicle not designed or used primarily for the
88 transportation of persons or property and incidentally
89 operated or moved over the highways, including, without
90 limitation, road construction or maintenance machinery,
91 ditch-digging apparatus, stone crushers, air compressors,
92 power shovels, graders, rollers, well-drillers, wood-sawing
93 equipment, asphalt spreaders, bituminous mixers, bucket
94 loaders, ditchers, leveling graders, finishing machines,
95 motor graders, road rollers, scarifiers, earth-moving
96 carryalls, scrapers, drag lines, rock-drilling equipment
97 and earth-moving equipment. The foregoing enumeration
98 shall be deemed partial and may not operate to exclude
99 other such vehicles which are within the general terms of

100 this subdivision.

101 (s) "Pneumatic tire" means every tire in which com-
102 pressed air is designed to support the load.

103 (t) "Solid tire" means every tire of rubber or other
104 resilient material which does not depend upon compressed
105 air for the support of the load.

106 (u) "Metal tire" means every tire the surface of which in
107 contact with the highway is wholly or partly of metal or
108 other hard, nonresilient material.

109 (v) "Commissioner" means the commissioner of motor
110 vehicles of this state.

111 (w) "Department" means the department of motor
112 vehicles of this state acting directly or through its duly
113 authorized officers and agents.

114 (x) "Person" means every natural person, firm,
115 copartnership, association or corporation.

116 (y) "Owner" means a person who holds the legal title to
117 a vehicle, or in the event a vehicle is the subject of an
118 agreement for the conditional sale or lease thereof with
119 the right of purchase upon performance of the conditions
120 stated in the agreement and with an immediate right of
121 possession vested in the conditional vendee or lessee, or in
122 the event a mortgagor of a vehicle is entitled to possession,
123 then the conditional vendee or lessee or mortgagor shall be
124 deemed the owner for the purpose of this chapter.

125 (z) "Nonresident" means every person who is not a
126 resident of this state.

127 (aa) "Dealer" or "dealers" is a general term meaning,
128 depending upon the context in which used, either a new
129 motor vehicle dealer, used motor vehicle dealer, factory-
130 built home dealer, recreational vehicle dealer, trailer
131 dealer or motorcycle dealer, as defined in section one,
132 article six of this chapter, or all of the dealers or a combi-
133 nation thereof, and in some instances a new motor vehicle
134 dealer or dealers in another state.

135 (bb) "Registered dealer" or "registered dealers" is a
136 general term meaning, depending upon the context in

137 which used, either a new motor vehicle dealer, used motor
138 vehicle dealer, house trailer dealer, trailer dealer, recre-
139 ational vehicle dealer or motorcycle dealer, or all of the
140 dealers or a combination thereof, licensed under the
141 provisions of article six of this chapter.

142 (cc) "Licensed dealer" or "licensed dealers" is a general
143 term meaning, depending upon the context in which used,
144 either a new motor vehicle dealer, used motor vehicle
145 dealer, house trailer dealer, trailer dealer, recreational
146 vehicle dealer or motorcycle dealer, or all of the dealers or
147 a combination thereof, licensed under the provisions of
148 article six of this chapter.

149 (dd) "Transporter" means every person engaged in the
150 business of delivering vehicles of a type required to be
151 registered hereunder from a manufacturing, assembling or
152 distributing plant to dealers or sales agents of a manufac-
153 turer.

154 (ee) "Manufacturer" means every person engaged in the
155 business of constructing or assembling vehicles of a type
156 required to be registered hereunder at a place of business
157 in this state which is actually occupied either continuously
158 or at regular periods by the manufacturer where his books
159 and records are kept and a large share of his business is
160 transacted.

161 (ff) "Street" or "highway" means the entire width
162 between boundary lines of every way publicly maintained
163 when any part thereof is open to the use of the public for
164 purposes of vehicular travel.

165 (gg) "Motorboat" means any vessel propelled by an
166 electrical, steam, gas, diesel or other fuel propelled or
167 driven motor, whether or not the motor is the principal
168 source of propulsion, but may not include a vessel which
169 has a valid marine document issued by the bureau of
170 customs of the United States government or any federal
171 agency successor thereto.

172 (hh) "Motorboat trailer" means every vehicle designed
173 for or ordinarily used for the transportation of a motor-
174 boat.

175 (ii) "All-terrain vehicle" (ATV) means any motor vehicle
176 designed for off-highway use and designed for operator
177 use only with no passengers, having a seat or saddle
178 designed to be straddled by the operator, and handlebars
179 for steering control.

180 (jj) "Travel trailer" means every vehicle, mounted on
181 wheels, designed to provide temporary living quarters for
182 recreational, camping or travel use of such size or weight
183 as not to require special highway movement permits when
184 towed by a motor vehicle and of gross trailer area less
185 than four hundred square feet.

186 (kk) "Fold down camping trailer" means every vehicle
187 consisting of a portable unit mounted on wheels and
188 constructed with collapsible partial sidewalls which fold
189 for towing by another vehicle and unfold at the camp site
190 to provide temporary living quarters for recreational,
191 camping or travel use.

192 (ll) "Motor home" means every vehicle, designed to
193 provide temporary living quarters, built into an integral
194 part of or permanently attached to a self-propelled motor
195 vehicle, chassis or van including: (1) Type A motor home
196 built on an incomplete truck chassis with the truck cab
197 constructed by the second stage manufacturer; (2) Type B
198 motor home consisting of a van-type vehicle which has
199 been altered to provide temporary living quarters; and (3)
200 Type C motor home built on an incomplete van or truck
201 chassis with a cab constructed by the chassis manufac-
202 turer.

203 (mm) "Snowmobile" means a self-propelled vehicle
204 intended for travel primarily on snow and driven by a
205 track or tracks in contact with the snow and steered by a
206 ski or skis in contact with the snow.

207 (nn) "Recreational vehicle" means a motorboat, motor-
208 boat trailer, all-terrain vehicle, travel trailer, fold down
209 camping trailer, motor home or snowmobile.

210 (oo) "Mobile equipment" means every self-propelled
211 vehicle not designed or used primarily for the transporta-
212 tion of persons or property over the highway but which
213 may infrequently or incidentally travel over the highways

214 among job sites, equipment storage sites or repair sites,
215 including farm equipment, implements of husbandry,
216 well-drillers, cranes and wood-sawing equipment.

217 (pp) "Factory-built home" includes mobile homes, house
218 trailers and manufactured homes.

219 (qq) "Manufactured home" has the same meaning as the
220 term is defined in section two, article nine, chapter
221 twenty-one of this code which meets the National Manu-
222 factured Housing Construction and Safety Standards Act
223 of 1974 (42 U.S.C. §5401 et seq.), effective on the fifteenth
224 day of June, one thousand nine hundred seventy-six, and
225 the federal manufactured home construction and safety
226 standards and regulations promulgated by the secretary of
227 the United States department of housing and urban
228 development.

229 (rr) "Mobile home" means a transportable structure that
230 is wholly, or in substantial part, made, fabricated, formed
231 or assembled in manufacturing facilities for installation or
232 assembly and installation on a building site and designed
233 for long-term residential use and built prior to enactment
234 of the federal Manufactured Housing Construction and
235 Safety Standards Act of 1974 (42 U.S.C. §5401 et seq.),
236 effective on the fifteenth day of June, one thousand nine
237 hundred seventy-six, and usually built to the voluntary
238 industry standard of the American national standards
239 institute (ANSI) — A119.1 standards for mobile homes.

240 (ss) "House trailers" means all trailers designed and
241 used for human occupancy on a continual nonrecreational
242 basis, but may not include fold down camping and travel
243 trailers, mobile homes or manufactured homes.

244 (tt) "Parking Enforcement Vehicle" means a motor
245 vehicle which does not fit into any other classification of
246 vehicle in this chapter, has three or four wheels and is
247 designed for use in an incorporated municipality by a city,
248 county, state or other governmental entity primarily for
249 parking enforcement or other governmental purposes with
250 an operator area with sides permanently enclosed with
251 rigid construction and a top which may be convertible,
252 sealed beam headlights, turn signals, brake lights, horn, at

253 least one rear view mirror on each side and such other
254 equipment that will enable it to pass a standard motorcy-
255 cle vehicle inspection.

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

**§17A-3-2. Every motor vehicle, etc., subject to registration and
certificate of title provisions; exceptions.**

1 (a) Every motor vehicle, trailer, semitrailer, pole trailer
2 and recreational vehicle when driven or moved upon a
3 highway shall be subject to the registration and certificate
4 of title provisions of this chapter except:

5 (1) Any vehicle driven or moved upon a highway in
6 conformance with the provisions of this chapter relating
7 to manufacturers, transporters, dealers, lienholders or
8 nonresidents or under a temporary registration permit
9 issued by the department as hereinafter authorized;

10 (2) Any implement of husbandry upon which is securely
11 attached a machine for spraying fruit trees and plants of
12 the owner or lessee or for any other implement of hus-
13 bandry which is used exclusively for agricultural or
14 horticultural purposes on lands owned or leased by the
15 owner thereof and which is not operated on or over any
16 public highway of this state for any other purpose other
17 than for the purpose of operating it across a highway or
18 along a highway other than an expressway as designated
19 by the commissioner of the division of highways from one
20 point of the owner's land to another part thereof, irrespec-
21 tive of whether or not the tracts adjoin: *Provided*, That
22 the distance between the points may not exceed
23 twenty-five miles, or for the purpose of taking it or other
24 fixtures thereto attached, to and from a repair shop for
25 repairs. The foregoing exemption from registration and
26 license requirements shall also apply to any vehicle
27 hereinbefore described or to any farm trailer owned by the
28 owner or lessee of the farm on which the trailer is used,
29 when the trailer is used by the owner thereof for the
30 purpose of moving farm produce and livestock from the
31 farm along a public highway for a distance not to exceed
32 twenty-five miles to a storage house or packing plant,
33 when the use is a seasonal operation:

34 (A) The exemptions contained in this section shall also
35 apply to farm machinery and tractors: *Provided*, That the
36 machinery and tractors may use the highways in going
37 from one tract of land to another tract of land regardless
38 of whether the land be owned by the same or different
39 persons.

40 (B) Any vehicle exempted hereunder from the require-
41 ments of annual registration certificate and license plates
42 and fees therefor may not be permitted to use the high-
43 ways between sunset and sunrise.

44 (C) Any vehicle exempted hereunder from the require-
45 ments of annual registration certificate and license plates
46 shall be permitted to use the highways as herein provided
47 whether the exempt vehicle is self-propelled, towed by
48 another exempt vehicle or towed by another vehicle for
49 which registration is required.

50 (D) Any vehicle used as an implement of husbandry
51 exempt hereunder must have the words "farm use" affixed
52 to both sides of the implement in ten inch letters. Any
53 vehicle which would be subject to registration as a Class
54 A or B vehicle if not exempted by this section shall display
55 a farm use exemption certificate on the lower driver's side
56 of the windshield:

57 (i) The farm use exemption certificate shall be provided
58 by the commissioner and shall be issued annually by the
59 assessor of the applicant's county of residence. The
60 assessor shall issue a farm use exemption certificate upon
61 his or her determination pursuant to an examination of
62 the property books or documentation provided by the
63 applicant that the vehicle has been properly assessed as
64 Class I personal property. The assessor shall charge a fee
65 of two dollars for each certificate, one dollar of the fee
66 shall be retained by the assessor and one dollar shall be
67 remitted by the assessor to the commissioner of the
68 division of motor vehicles to be deposited in a special
69 revolving fund to be used in the administration of this
70 section.

71 (ii) A farm use exemption certificate in no way exempts
72 the applicant from maintaining the security as required by

73 chapter seventeen-d of this code on any vehicle being
74 operated on the roads or highways of this state.

75 (iii) No person charged with operating a vehicle without
76 a farm use exemption certificate, if required under this
77 section, shall be convicted if he or she produces in court,
78 or in the office of the arresting officer, a valid farm use
79 exemption certificate for the vehicle in question within
80 five days;

81 (3) Any vehicle which is propelled exclusively by electric
82 power obtained from overhead trolley wires though not
83 operated upon rails;

84 (4) Any vehicle of a type subject to registration owned
85 by the government of the United States;

86 (5) Any wrecked or disabled vehicle which is being
87 towed by a licensed wrecker or dealer on the public
88 highways of this state;

89 (6) The following recreational vehicles shall be exempt
90 from the requirements of annual registration, license
91 plates and fees, unless otherwise specified by law, but
92 shall be subject to the certificate of title provisions of this
93 chapter regardless of highway use: Motorboats,
94 all-terrain vehicles and snowmobiles; and

95 (7) Any special mobile equipment as defined in subsec-
96 tion (r), section one, article one of this chapter.

97 (b) The provisions of this article relating to recreational
98 vehicles shall become effective on the first day of July, one
99 thousand nine hundred eighty-nine.

100 (c) Notwithstanding the provisions of subsections (a) and
101 (b) of this section:

102 (1) Mobile homes or manufactured homes are exempt
103 from the requirements of annual registration, license
104 plates and fees;

105 (2) House trailers may be registered and licensed; and

106 (3) Factory-built homes are subject to the certificate of
107 title provisions of this chapter.

§17A-3-4. Application for certificate of title; tax for privilege

of certification of title; penalty for false swearing.

1 (a) Certificates of registration of any vehicle or registra-
2 tion plates therefor, whether original issues or duplicates,
3 may not be issued or furnished by the division of motor
4 vehicles or any other officer charged with the duty, unless
5 the applicant therefor already has received, or at the same
6 time makes application for and is granted, an official
7 certificate of title of the vehicle. The application shall be
8 upon a blank form to be furnished by the division of motor
9 vehicles and shall contain a full description of the vehicle,
10 which description shall contain a manufacturer's serial or
11 identification number or other number as determined by
12 the commissioner and any distinguishing marks, together
13 with a statement of the applicant's title and of any liens or
14 encumbrances upon the vehicle, the names and addresses
15 of the holders of the liens and any other information as the
16 division of motor vehicles may require. The application
17 shall be signed and sworn to by the applicant.

18 (b) A tax is hereby imposed upon the privilege of effect-
19 ing the certification of title of each vehicle in the amount
20 equal to five percent of the value of the motor vehicle at
21 the time of the certification, to be assessed as follows:

22 (1) If the vehicle is new, the actual purchase price or
23 consideration to the purchaser thereof is the value of the
24 vehicle. If the vehicle is a used or secondhand vehicle, the
25 present market value at time of transfer or purchase is the
26 value thereof for the purposes of this section: *Provided,*
27 That so much of the purchase price or consideration as is
28 represented by the exchange of other vehicles on which
29 the tax imposed by this section has been paid by the
30 purchaser shall be deducted from the total actual price or
31 consideration paid for the vehicle, whether the vehicle be
32 new or secondhand. If the vehicle is acquired through gift,
33 or by any manner whatsoever, unless specifically ex-
34 empted in this section, the present market value of the
35 vehicle at the time of the gift or transfer is the value
36 thereof for the purposes of this section.

37 (2) No certificate of title for any vehicle may be issued to
38 any applicant unless the applicant has paid to the division

39 of motor vehicles the tax imposed by this section which is
40 five percent of the true and actual value of the vehicle
41 whether the vehicle is acquired through purchase, by gift
42 or by any other manner whatsoever except gifts between
43 husband and wife or between parents and children:
44 *Provided*, That the husband or wife, or the parents or
45 children previously have paid the tax on the vehicles
46 transferred to the state of West Virginia.

47 (3) The division of motor vehicles may issue a certificate
48 of registration and title to an applicant if the applicant
49 provides sufficient proof to the division of motor vehicles
50 that the applicant has paid the taxes and fees required by
51 this section to a motor vehicle dealership that has gone out
52 of business or has filed bankruptcy proceedings in the
53 United States bankruptcy court and the taxes and fees so
54 required to be paid by the applicant have not been sent to
55 the division by the motor vehicle dealership or have been
56 impounded due to the bankruptcy proceedings: *Provided*,
57 That the applicant makes an affidavit of the same and
58 assigns all rights to claims for money the applicant may
59 have against the motor vehicle dealership to the division
60 of motor vehicles.

61 (4) The division of motor vehicles shall issue a certificate
62 of registration and title to an applicant without payment
63 of the tax imposed by this section if the applicant is a
64 corporation, partnership or limited liability company
65 transferring the vehicle to another corporation, partner-
66 ship or limited liability company when the entities
67 involved in the transfer are members of the same con-
68 trolled group and the transferring entity has previously
69 paid the tax on the vehicle transferred. For the purposes
70 of this section, control means ownership, directly or
71 indirectly, of stock or equity interests possessing fifty
72 percent or more of the total combined voting power of all
73 classes of the stock of a corporation or equity interests of
74 a partnership or limited liability company entitled to vote
75 or ownership, directly or indirectly, of stock or equity
76 interests possessing fifty percent or more of the value of
77 the corporation, partnership or limited liability company.

78 (5) The tax imposed by this section does not apply to

79 vehicles to be registered as Class H vehicles or Class M
80 vehicles, as defined in section one, article ten of this
81 chapter, which are used or to be used in interstate com-
82 merce. Nor does the tax imposed by this section apply to
83 the titling of Class B, Class K or Class E vehicles regis-
84 tered at a gross weight of fifty-five thousand pounds or
85 more, or to the titling of Class C or Class L semitrailers,
86 full trailers, pole trailers and converter gear: *Provided,*
87 That if an owner of a vehicle has previously titled the
88 vehicle at a declared gross weight of fifty-five thousand
89 pounds or more and the title was issued without the
90 payment of the tax imposed by this section, then before
91 the owner may obtain registration for the vehicle at a
92 gross weight less than fifty-five thousand pounds, the
93 owner shall surrender to the commissioner the exempted
94 registration, the exempted certificate of title, and pay the
95 tax imposed by this section based upon the current market
96 value of the vehicle: *Provided, however,* That notwith-
97 standing the provisions of section nine, article fifteen,
98 chapter eleven of this code, the exemption from tax under
99 this section for Class B, Class K or Class E vehicles in
100 excess of fifty-five thousand pounds and Class C or Class
101 L semitrailers, full trailers, pole trailers and converter
102 gear may not subject the sale or purchase of the vehicles
103 to the consumers sales tax.

104 (6) The tax imposed by this section does not apply to
105 titling of vehicles leased by residents of West Virginia. A
106 tax is hereby imposed upon the monthly payments for the
107 lease of any motor vehicle leased by a resident of West
108 Virginia, which tax is equal to five percent of the amount
109 of the monthly payment, applied to each payment, and
110 continuing for the entire term of the initial lease period.
111 The tax shall be remitted to the division of motor vehicles
112 on a monthly basis by the lessor of the vehicle.

113 (7) The tax imposed by this section does not apply to
114 titling of vehicles by a registered dealer of this state for
115 resale only, nor does the tax imposed by this section apply
116 to titling of vehicles by this state or any political subdivi-
117 sion thereof, or by any volunteer fire department or duly
118 chartered rescue or ambulance squad organized and
119 incorporated under the laws of the state of West Virginia

120 as a nonprofit corporation for protection of life or prop-
121 erty. The total amount of revenue collected by reason of
122 this tax shall be paid into the state road fund and ex-
123 pended by the commissioner of highways for matching
124 federal funds allocated for West Virginia. In addition to
125 the tax, there is a charge of five dollars for each original
126 certificate of title or duplicate certificate of title so issued:
127 *Provided*, That this state or any political subdivision
128 thereof, or any volunteer fire department, or duly char-
129 tered rescue squad is exempt from payment of the charge.

130 (8) The certificate is good for the life of the vehicle, so
131 long as the vehicle is owned or held by the original holder
132 of the certificate, and need not be renewed annually, or
133 any other time, except as provided in this section.

134 (9) If, by will or direct inheritance, a person becomes the
135 owner of a motor vehicle and the tax imposed by this
136 section previously has been paid, to the division of motor
137 vehicles, on that vehicle, he or she is not required to pay
138 the tax.

139 (10) A person who has paid the tax imposed by this
140 section may not be required to pay the tax a second time
141 for the same motor vehicle, but is required to pay a charge
142 of five dollars for the certificate of retitling of that motor
143 vehicle, except that the tax shall be paid by the person
144 when the title to the vehicle has been transferred either in
145 this or another state from the person to another person
146 and transferred back to the person.

147 (c) Notwithstanding any provisions of this code to the
148 contrary, the owners of trailers, semitrailers, recreational
149 vehicles and other vehicles not subject to the certificate of
150 title tax prior to the enactment of this chapter are subject
151 to the privilege tax imposed by this section: *Provided*,
152 That the certification of title of any recreational vehicle
153 owned by the applicant on the thirtieth day of June, one
154 thousand nine hundred eighty-nine, is not subject to the
155 tax imposed by this section: *Provided, however*, That
156 mobile homes, manufactured homes, modular homes and
157 similar nonmotive propelled vehicles, except recreational
158 vehicles and house trailers, susceptible of being moved
159 upon the highways but primarily designed for habitation

160 and occupancy, rather than for transporting persons or
161 property, or any vehicle operated on a nonprofit basis and
162 used exclusively for the transportation of mentally
163 retarded or physically handicapped children when the
164 application for certificate of registration for the vehicle is
165 accompanied by an affidavit stating that the vehicle will
166 be operated on a nonprofit basis and used exclusively for
167 the transportation of mentally retarded and physically
168 handicapped children, are not subject to the tax imposed
169 by this section, but are taxable under the provisions of
170 articles fifteen and fifteen-a, chapter eleven of this code.

171 (d) Any person making any affidavit required under any
172 provision of this section, who knowingly swears falsely, or
173 any person who counsels, advises, aids or abets another in
174 the commission of false swearing is on the first offense
175 guilty of a misdemeanor and, upon conviction thereof,
176 shall be fined not more than five hundred dollars or be
177 imprisoned in the county or regional jail for a period not
178 to exceed six months or, in the discretion of the court,
179 both fined and imprisoned. For a second or any subse-
180 quent conviction within five years, that person is guilty of
181 a felony and, upon conviction thereof, shall be fined not
182 more than five thousand dollars or be imprisoned in the
183 penitentiary for not less than one year nor more than five
184 years or, in the discretion of the court, fined and impris-
185 oned.

186 (e) Notwithstanding any other provisions of this section,
187 any person in the military stationed outside West Virginia,
188 or his or her dependents who possess a motor vehicle with
189 valid registration, are exempt from the provisions of this
190 article for a period of nine months from the date that that
191 person returns to this state or the date his or her depend-
192 ent returns to this state, whichever is later.

193 (f) After the first day of July, one thousand nine hundred
194 ninety-seven, no person may transfer, purchase or sell a
195 factory-built home without a certificate of title issued by
196 the commissioner in accordance with the provisions of this
197 article:

198 (1) Any person who fails to provide a certificate of title
199 upon the transfer, purchase or sale of a factory-built home

200 is guilty of a misdemeanor and, upon conviction thereof,
201 shall for the first offense be fined not less than one
202 hundred dollars nor more than one thousand dollars, or be
203 imprisoned in the county or regional jail for not more than
204 one year or, both fined and imprisoned. For each subse-
205 quent offense, the fine may be increased to not more than
206 two thousand dollars, with imprisonment in the county or
207 regional jail not more than one year or, both fined and
208 imprisoned.

209 (2) Failure of the seller to transfer a certificate of title
210 upon sale or transfer of the factory-built home gives rise
211 to a cause of action, upon prosecution thereof, and allows
212 for the recovery of damages, costs and reasonable attorney
213 fees.

**ARTICLE 4A. LIENS AND ENCUMBRANCES ON VEHICLES TO BE
SHOWN ON CERTIFICATE OF TITLE; NOTICE TO
CREDITORS AND PURCHASERS.**

§17A-4A-1. Certificate to show liens or encumbrances.

1 The department upon receiving an application for a
2 certificate of title to a vehicle, trailer, semitrailer, pole
3 trailer, factory-built home or recreational vehicle for
4 which a certificate of title is required under article three
5 of this chapter, all of which are hereinafter in this article
6 referred to as vehicles, showing liens or encumbrances
7 upon the vehicle, shall, upon issuing to the owner thereof
8 a certificate of title therefor, show upon the face of the
9 certificate of title all liens or encumbrances disclosed by
10 the application. All liens or encumbrances shall be shown
11 in the order of their priority being according to the
12 information contained in the application. When an
13 application shows liens and encumbrances, the informa-
14 tion as evidence of the lien in connection therewith as the
15 department may deem necessary shall also be furnished.
16 The information shall include the name and address of the
17 lienholder, the nature and kind of the lien, the date thereof
18 and the amount thereby secured. However, only the name
19 and address of the lienholder will be endorsed on the title
20 certificate. Upon issuing the certificate, the department
21 shall thereupon send or deliver it to the holder of the first
22 lien.

§17A-4A-15. Expiration of lien or encumbrance; refiling.

1 The filing of any lien or encumbrance and its
2 recordation upon the face of a certificate of title to any
3 vehicle as provided in this article shall be valid for a
4 period of ten years only from the date of filing, unless the
5 lien or encumbrance is refiled in the manner provided in
6 this article for filing and recordation in the first instance,
7 in which event the lien or encumbrance shall be valid for
8 successive additional periods of two years from the date of
9 each refiling: *Provided*, That in the case of a mobile home
10 or manufactured home, the filing of any lien or encum-
11 brance and its recordation upon the face of a certificate of
12 title to the mobile home or manufactured home shall be
13 valid for a period of thirty-three years from the date of
14 filing.

15 When the last lien or encumbrance shown on a certifi-
16 cate of title becomes invalid by the passage of time as
17 provided in this section, the commissioner of motor
18 vehicles shall not be required to maintain a lien index as
19 to the certificate of title.

**ARTICLE 6. LICENSING OF DEALERS AND WRECKERS OR
DISMANTLERS; SPECIAL PLATES; TEMPORARY
PLATES OR MARKERS, ETC.****§17A-6-1. Definitions.**

1 (a) Unless the context in which used clearly requires a
2 different meaning, as used in this article:

3 (1) "New motor vehicle dealer" means every person
4 (other than agents and employees, if any, while acting
5 within the scope of their authority or employment),
6 engaged in, or held out to the public to be engaged in, the
7 business in this state of selling five or more new motor
8 vehicles or new and used motor vehicles in any fiscal year
9 of a type required to be registered under the provisions of
10 this chapter, except, for the purposes of this article only,
11 motorcycles.

12 (2) "Used motor vehicle dealer" means every person
13 (other than agents and employees, if any, while acting
14 within the scope of their authority or employment),
15 engaged in, or held out to the public to be engaged in, the

16 business in this state of selling five or more used motor
17 vehicles in any fiscal year of a type required to be regis-
18 tered under the provisions of this chapter, except, for the
19 purposes of this article only, motorcycles.

20 (3) "House trailer dealer" means every person (other
21 than agents and employees, if any, while acting within the
22 scope of their authority or employment), engaged in, or
23 held out to the public to be engaged in, the business in this
24 state of selling new and/or used house trailers, or new or
25 used or both house trailers and trailers or new or used, or
26 both manufactured homes and mobile homes.

27 (4) "Trailer dealer" means every person (other than
28 agents and employees, if any, while acting within the
29 scope of their authority or employment), engaged in, or
30 held out to the public to be engaged in, the business in this
31 state of selling new or used trailers.

32 (5) "Motorcycle dealer" means every person (other than
33 agents and employees, if any, while acting within the
34 scope of their authority or employment), engaged in, or
35 held out to the public to be engaged in, the business in this
36 state of selling new or used motorcycles.

37 (6) "Used parts dealer" means every person (other than
38 agents and employees, if any, while acting within the
39 scope of their authority or employment), engaged in, or
40 held out to the public to be engaged in, the business in this
41 state of selling any used appliance, accessory, member,
42 portion or other part of any vehicle.

43 (7) "Wrecker/dismantler/rebuilder" means every person
44 (other than agents and employees, if any, while acting
45 within the scope of their authority or employment),
46 engaged in, or held out to the public to be engaged in, the
47 business in this state of dealing in wrecked or damaged
48 motor vehicles or motor vehicle parts for the purpose of
49 selling the parts thereof or scrap therefrom or who is in
50 the business of rebuilding salvage motor vehicles for the
51 purpose of resale to the public.

52 (8) "New motor vehicles" means all motor vehicles,
53 except motorcycles and used motor vehicles, of a type
54 required to be registered under the provisions of this

55 chapter.

56 (9) "Used motor vehicles" means all motor vehicles,
57 except motorcycles, of a type required to be registered
58 under the provisions of this chapter which have been sold
59 and operated, or which have been registered or titled, in
60 this or any other state or jurisdiction.

61 (10) "House trailers" means all trailers designed and
62 used for human occupancy on a continual nonrecreational
63 basis, but may not include fold down camping and travel
64 trailers, mobile homes or manufactured homes.

65 (11) "Trailers" means all types of trailers other than
66 house trailers, and shall include, but not be limited to,
67 pole trailers and semitrailers but excluding recreational
68 vehicles.

69 (12) "Sales instrument" means any document resulting
70 from the sale of a vehicle, which shall include, but not be
71 limited to, a bill of sale, invoice, conditional sales con-
72 tract, chattel mortgage, chattel trust deed, security
73 agreement or similar document.

74 (13) "Sell", "sale" or "selling" shall, in addition to the
75 ordinary definitions of the terms, include offering for sale,
76 soliciting sales of, negotiating for the sale of, displaying
77 for sale or advertising for sale, any vehicle, whether at
78 retail, wholesale or at auction. "Selling" shall, in addition
79 to the ordinary definition of that term, also include buying
80 and exchanging.

81 (14) "Applicant" means any person making application
82 for an original or renewal license certificate under the
83 provisions of this article.

84 (15) "Licensee" means any person holding any license
85 certificate issued under the provisions of this article.

86 (16) "Predecessor" means the former owner or owners or
87 operator or operators of any new motor vehicle dealer
88 business or used motor vehicle dealer business.

89 (17) "Established place of business" means, in the case
90 of a new motor vehicle dealer, a permanent location, not
91 a temporary stand or other temporary quarters, owned or

92 leased by the licensee or applicant and actually occupied
93 or to be occupied by him or her, as the case may be, which
94 is or is to be used exclusively for the purpose of selling
95 new motor vehicles or new and used motor vehicles, which
96 shall have space under roof for the display of at least one
97 new motor vehicle and facilities and space therewith for
98 the servicing and repair of at least one motor vehicle,
99 which servicing and repair facilities and space shall be
100 adequate and suitable to carry out servicing and to make
101 repairs necessary to keep and carry out all representa-
102 tions, warranties and agreements made or to be made by
103 the dealer with respect to motor vehicles sold by him or
104 her, which shall be easily accessible to the public, which
105 shall conform to all applicable laws of this state and the
106 ordinances of the municipality in which it is located, if
107 any, which shall display thereon at least one permanent
108 sign, clearly visible from the principal public street or
109 highway nearest the location and clearly stating the
110 business which is or shall be conducted thereat, and which
111 shall have adequate facilities to keep, maintain and
112 preserve records, papers and documents necessary to carry
113 on the business and to make the business available to
114 inspection by the commissioner at all reasonable times:
115 *Provided*, That each established place of business shall
116 have a display area which may be outside or inside or a
117 combination thereof of at least twelve hundred square feet
118 which is to be used exclusively for the display of vehicles
119 which are offered for sale by the dealer, office space of at
120 least one hundred forty-four square feet and a telephone
121 listed in the name of the dealership. Each established
122 place of business shall be open to the public a minimum of
123 twenty hours per week at least forty weeks per calendar
124 year with at least ten of those hours being between the
125 hours of nine-thirty a.m. and eight-thirty p.m., Monday
126 through Saturday: *Provided, however*, That the require-
127 ment of exclusive use shall be met even though: (A) Some
128 new and any used motor vehicles sold or to be sold by the
129 dealer or sold or are to be sold at a different location or
130 locations not meeting the definition of an established
131 place of business of a new motor vehicle dealer, if each
132 location is or is to be served by other facilities and space
133 of the dealer for the servicing and repair of at least one

134 motor vehicle, adequate and suitable as aforesaid, and
135 each location used for the sale of some new and any used
136 motor vehicles otherwise meets the definition of an
137 established place of business of a used motor vehicle
138 dealer; (B) house trailers, trailers or motorcycles are sold
139 or are to be sold thereat, if, subject to the provisions of
140 section five of this article, a separate license certificate is
141 obtained for each type of vehicle business, which license
142 certificate remains unexpired, unsuspended and
143 unrevoked; (C) farm machinery is sold thereat; and (D)
144 accessory, gasoline and oil, or storage departments are
145 maintained thereat, if the departments are operated for
146 the purpose of furthering and assisting in the licensed
147 business or businesses.

148 (18) "Farm machinery" means all machines and tools
149 used in the production, harvesting or care of farm prod-
150 ucts.

151 (19) "Established place of business" shall, in the case of
152 a used motor vehicle dealer, mean a permanent location,
153 not a temporary stand or other temporary quarters, owned
154 or leased by the licensee or applicant and actually occu-
155 pied or to be occupied by him or her, as the case may be,
156 which is or is to be used exclusively for the purpose of
157 selling used motor vehicles, which shall have facilities and
158 space therewith for the servicing and repair of at least one
159 motor vehicle, which servicing and repair facilities and
160 space shall be adequate and suitable to carry out servicing
161 and to make repairs necessary to keep and carry out all
162 representations, warranties and agreements made or to be
163 made by the dealer with respect to used motor vehicles
164 sold by him or her, which shall be easily accessible to the
165 public, shall conform to all applicable laws of this state,
166 and the ordinances of the municipality in which it is
167 located, if any, which shall display thereon at least one
168 permanent sign, clearly visible from the principal public
169 street or highway nearest the location and clearly stating
170 the business which is or shall be conducted thereat, and
171 which shall have adequate facilities to keep, maintain and
172 preserve records, papers and documents necessary to carry
173 on the business and to make the business available to
174 inspection by the commissioner at all reasonable times:

175 *Provided*, That each established place of business shall
176 have a display area which may be outside or inside or a
177 combination thereof of at least twelve hundred square feet
178 which is to be used exclusively for the display of vehicles
179 which are offered for sale by the dealer, office space of at
180 least one hundred forty-four square feet and a telephone
181 listed in the name of the dealership. Each established
182 place of business shall be open to the public a minimum of
183 twenty hours per week at least forty weeks per calendar
184 year with at least ten of those hours being between the
185 hours of nine-thirty a.m. and eight-thirty p.m., Monday
186 through Saturday: *Provided, however*, That if a used
187 motor vehicle dealer has entered into a written agreement
188 or agreements with a person or persons owning or operat-
189 ing a servicing and repair facility or facilities adequate
190 and suitable as aforesaid, the effect of which agreement or
191 agreements is to provide the servicing and repair services
192 and space in like manner as if the servicing and repair
193 facilities and space were located in or on the dealer's place
194 of business, then, so long as the agreement or agreements
195 are in effect, it shall not be necessary for the dealer to
196 maintain the servicing and repair facilities and space at
197 the place of business in order for the place of business to
198 be an established place of business as herein defined:
199 *Provided further*, That the requirement of exclusive use
200 shall be met even though: (A) House trailers, trailers or
201 motorcycles are sold or are to be sold thereat, if, subject to
202 the provisions of section five of this article, a separate
203 license certificate is obtained for each type of vehicle
204 business, which license certificate remains unexpired,
205 unsuspended and unrevoked; (B) farm machinery is sold
206 thereat; and (C) accessory, gasoline and oil, or storage
207 departments are maintained thereat, if the departments
208 are operated for the purpose of furthering and assisting in
209 the licensed business or businesses.

210 (20) "Established place of business" shall, in the case of
211 a house trailer dealer, trailer dealer, recreational vehicle
212 dealer, motorcycle dealer, used parts dealer and wrecker
213 or dismantler, mean a permanent location, not a tempo-
214 rary stand or other temporary quarters, owned or leased
215 by the licensee or applicant and actually occupied or to be

216 occupied by the licensee, as the case may be, which shall
217 be easily accessible to the public, which shall conform to
218 all applicable laws of this state and the ordinances of the
219 municipality in which it is located, if any, which shall
220 display thereon at least one permanent sign, clearly visible
221 from the principal public street or highway nearest the
222 location and clearly stating the business which is or shall
223 be conducted thereat, and which shall have adequate
224 facilities to keep, maintain and preserve records, papers
225 and documents necessary to carry on the business and to
226 make the business available to inspection by the commis-
227 sioner at all reasonable times.

228 (21) "Manufacturer" means every person engaged in the
229 business of reconstructing, assembling or reassembling
230 vehicles with a special type body required by the pur-
231 chaser if the vehicle is subject to the title and registration
232 provisions of this code.

233 (22) "Transporter" means every person engaged in the
234 business of transporting vehicles to or from a manufactur-
235 ing, assembling or distributing plant to dealers or sales
236 agents of a manufacturer, or purchasers.

237 (23) "Recreational vehicle dealer" means every person
238 (other than agents and employees, if any, while acting
239 within the scope of their authority or employment),
240 engaged in, or held out to the public to be engaged in, the
241 business in this state of selling new or used recreational
242 vehicles, or both.

243 (24) "Motorboat" means any vessel propelled by an
244 electrical, steam, gas, diesel or other fuel propelled or
245 driven motor, whether or not the motor is the principal
246 source of propulsion, but may not include a vessel which
247 has a valid marine document issued by the bureau of
248 customs of the United States government or any federal
249 agency successor thereto.

250 (25) "Motorboat trailer" means every vehicle designed
251 for or ordinarily used for the transportation of a motor-
252 boat.

253 (26) "All-terrain vehicle" (ATV) means any motor
254 vehicle designed for off-highway use and designed for

255 operator use only with no passengers, having a seat or
256 saddle designed to be straddled by the operator, and
257 handlebars for steering control.

258 (27) "Travel trailer" means every vehicle, mounted on
259 wheels, designed to provide temporary living quarters for
260 recreational, camping or travel use of such size or weight
261 as not to require special highway movement permits when
262 towed by a motor vehicle and of gross trailer area less
263 than four hundred square feet.

264 (28) "Fold down camping trailer" means every vehicle
265 consisting of a portable unit mounted on wheels and
266 constructed with collapsible partial sidewalls which fold
267 for towing by another vehicle and unfold at the camp site
268 to provide temporary living quarters for recreational,
269 camping or travel use.

270 (29) "Motor home" means every vehicle, designed to
271 provide temporary living quarters, built into an integral
272 part of or permanently attached to a self-propelled motor
273 vehicle, chassis or van including: (1) Type A motor home
274 built on an incomplete truck chassis with the truck cab
275 constructed by the second stage manufacturer; (2) Type B
276 motor home consisting of a van-type vehicle which has
277 been altered to provide temporary living quarters; and (3)
278 Type C motor home built on an incomplete van or truck
279 chassis with a cab constructed by the chassis manufac-
280 turer.

281 (30) "Snowmobile" means a self-propelled vehicle
282 intended for travel primarily on snow and driven by a
283 track or tracks in contact with the snow and steered by a
284 ski or skis in contact with the snow.

285 (31) "Recreational vehicle" means a motorboat, motor-
286 boat trailer, all-terrain vehicle, travel trailer, fold down
287 camping trailer, motor home or snowmobile.

288 (32) "Major component" means any one of the following
289 subassemblies of a motor vehicle: (A) Front clip assembly
290 consisting of fenders, grille, hood, bumper and related
291 parts; (B) engine; (C) transmission; (D) rear clip assembly
292 consisting of quarter panels and floor panel assembly; or
293 (E) two or more doors.

294 (33) "Factory-built home" includes mobile homes, house
295 trailers and manufactured homes.

296 (34) "Manufactured home" has the same meaning as the
297 term is defined in section two, article nine, chapter
298 twenty-one of this code which meets the National Manu-
299 factured Housing Construction and Safety Standards Act
300 of 1974 (42 U.S.C. §5401 et seq.), effective on the fifteenth
301 day of June, one thousand nine hundred seventy-six, and
302 the federal manufactured home construction and safety
303 standards and regulations promulgated by the secretary of
304 the United States department of housing and urban
305 development.

306 (35) "Mobile home" means a transportable structure that
307 is wholly, or in substantial part, made, fabricated, formed
308 or assembled in manufacturing facilities for installation or
309 assembly and installation on a building site and designed
310 for long-term residential use and built prior to enactment
311 of the federal manufactured housing construction and
312 safety standards institute (ANSI) -- A119.1 standards for
313 mobile homes.

314 (b) Under no circumstances whatever may the terms
315 "new motor vehicle dealer", "used motor vehicle dealer",
316 "house trailer dealer", "trailer dealer", "recreational
317 vehicle dealer", "motorcycle dealer", "used parts dealer"
318 or "wrecker/dismantler/rebuilder" be construed or
319 applied under this article in such a way as to include a
320 banking institution, insurance company, finance company,
321 or other lending or financial institution, or other person,
322 the state or any agency or political subdivision thereof, or
323 any municipality, who or which owns or comes in posses-
324 sion or ownership of, or acquires contract rights, or
325 security interests in or to, any vehicle or vehicles or any
326 part thereof and sells the vehicle or vehicles or any part
327 thereof for purposes other than engaging in and holding
328 out to the public to be engaged in the business of selling
329 vehicles or any part thereof.

330 (c) It is recognized that throughout this code the term
331 "trailer" or "trailers" is used to include, among other
332 types of trailers, house trailers. It is also recognized that
333 throughout this code the term "trailer" or "trailers" is

334 seldom used to include semitrailers or pole trailers.
335 However, for the purposes of this article only, the term
336 "trailers" has the meaning ascribed to it in subsection (a)
337 of this section.

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

Randy Schooner
.....
Chairman Senate Committee

Nick Fantasia
.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Harriet Holmes
.....
Clerk of the Senate

Bryony M. Sam
.....
Clerk of the House of Delegates

Carl Roy Tomblin
.....
President of the Senate

P. Ki
.....
Speaker House of Delegates

The within *is approved* this the *5th*
day of *May*, 1997.

Leif Anderson
.....
Governor

PRESENTED TO THE

GOVERNOR

Date

4/28/97

Time

2:30 pm