

# Senate Bill No. 671

(By Senators Williams, Barnes and Tucker)

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[Introduced February 20, 2012; referred to the Committee on Agriculture; and then to the Committee on Transportation and Infrastructure.]

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A BILL to amend and reenact §11-15-3c of the Code of West Virginia, 1931, as amended, relating to the taxing of utility terrain vehicles; making an exception for vehicles used for agricultural purposes; and defining “utility terrain vehicles” as motor vehicles.

*Be it enacted by the Legislature of West Virginia:*

That §11-15-3c of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 15. CONSUMERS SALES AND SERVICE TAX.**

**§11-15-3c. Imposition of consumers sales tax on motor vehicle sales; rate of tax; use of motor vehicle purchased out of state; definition of “sale”; definition of “motor vehicle”; exemptions; collection of tax by Division of Motor Vehicles; dedication of tax to highways; legislative and emergency rules.**

1 (a) Notwithstanding any provision of this article or  
2 article fifteen-a of this chapter to the contrary, beginning on  
3 July 1, 2008, all motor vehicle sales to West Virginia resi-  
4 dents shall be subject to the consumers sales tax imposed by  
5 this article.

6 (b) *Rate of tax on motor vehicles.* — Notwithstanding any  
7 provision of this article or article fifteen-a of this chapter to  
8 the contrary, the rate of tax on the sale and use of a motor  
9 vehicle shall be five percent of its sale price, as defined in  
10 section two, article fifteen-b of this chapter: *Provided*, That  
11 so much of the sale price or consideration as is represented  
12 by the exchange of other vehicles on which the tax imposed  
13 by this section or section four, article three, chapter  
14 seventeen-a of this code has been paid by the purchaser shall  
15 be deducted from the total actual sale price paid for the  
16 motor vehicle, whether the motor vehicle be new or used.

17 (c) *Motor vehicles purchased out of state.* — Notwith-  
18 standing this article or article fifteen-a to the contrary, the  
19 tax imposed by this section shall apply to all motor vehicles,  
20 used as defined by section one, article fifteen-a of this  
21 chapter, within this state, regardless of whether the vehicle  
22 was purchased in a state other than West Virginia.

23 (d) *Definition of “sale”*. — Notwithstanding any provi-  
24 sion of this article or article fifteen-a of this chapter to the  
25 contrary, for purposes of this section, “sale”, “sales” or  
26 “selling” means any transfer or lease of the possession or  
27 ownership of a motor vehicle for consideration, including  
28 isolated transactions between individuals not being made in  
29 the ordinary course of repeated and successive business and  
30 also including casual and occasional sales between individu-  
31 als not conducted in a repeated manner or in the ordinary  
32 course of repetitive and successive transactions.

33 (e) *Definition of “motor vehicle”*. — For purposes of this  
34 section, “motor vehicle” means every propellable device in  
35 or upon which any person or property is or may be trans-  
36 ported or drawn upon a highway including, but not limited  
37 to: Automobiles; buses; motor homes; motorcycles; motor-  
38 boats; all-terrain vehicles; utility terrain vehicles; snowmo-  
39 biles; low-speed vehicles; trucks, truck tractors and road  
40 tractors having a weight of less than fifty-five thousand  
41 pounds; trailers, semitrailers, full trailers, pole trailers and  
42 converter gear having a gross weight of less than two  
43 thousand pounds; and motorboat trailers, fold-down camp-

44 ing trailers, traveling trailers, house trailers and motor  
45 homes; except that the term “motor vehicle” does not  
46 include: Modular homes, manufactured homes, mobile  
47 homes, similar nonmotive propelled vehicles susceptible of  
48 being moved upon the highways but primarily designed for  
49 habitation and occupancy; devices operated regularly for the  
50 transportation of persons for compensation under a certifi-  
51 cate of convenience and necessity or contract carrier permit  
52 issued by the Public Service Commission; mobile equipment  
53 as defined in section one, article one, chapter seventeen-a of  
54 this code; special mobile equipment as defined in section one,  
55 article one, chapter seventeen-a of this code; trucks, truck  
56 tractors and road tractors having a gross weight of fifty-five  
57 thousand pounds or more; trailers, semitrailers, full trailers,  
58 pole trailers and converter gear having weight of two  
59 thousand pounds or greater: *Provided*, That notwithstanding  
60 the provisions of section nine, article fifteen, chapter eleven  
61 of this code, the exemption from tax under this section for  
62 mobile equipment as defined in section one, article one,  
63 chapter seventeen-a of this code; special mobile equipment  
64 defined in section one, article one, chapter seventeen-a of

65 this code; Class B trucks, truck tractors and road tractors  
66 registered at a gross weight of fifty-five thousand pounds or  
67 more; and Class C trailers, semitrailers, full trailers, pole  
68 trailers and converter gear having weight of two thousand  
69 pounds or greater does not subject the sale or purchase of the  
70 vehicle to the consumer sales and service tax imposed by  
71 section three of this article.

72 (f) *Exemptions.* — Notwithstanding any other provision  
73 of this code to the contrary, the tax imposed by this section  
74 shall not be subject to any exemption in this code other than  
75 the following:

76 (1) The tax imposed by this section does not apply to any  
77 passenger vehicle offered for rent in the normal course of  
78 business by a daily passenger rental car business as licensed  
79 under the provisions of article six-d, chapter seventeen-a of  
80 this code. For purposes of this section, a daily passenger car  
81 means a motor vehicle having a gross weight of eight  
82 thousand pounds or less and is registered in this state or any  
83 other state. In lieu of the tax imposed by this section, there  
84 is hereby imposed a tax of not less than \$1 nor more than  
85 \$1.50 for each day or part of the rental period. The Commis-

86 sioner of Motor Vehicles shall propose an emergency rule in  
87 accordance with the provisions of article three, chapter  
88 twenty-nine-a of this code to establish this tax.

89 (2) The tax imposed by this section does not apply where  
90 the motor vehicle has been acquired by a corporation,  
91 partnership or limited liability company from another  
92 corporation, partnership or limited liability company that is  
93 a member of the same controlled group and the entity  
94 transferring the motor vehicle has previously paid the tax on  
95 that motor vehicle imposed by this section. For the purposes  
96 of this section, control means ownership, directly or indi-  
97 rectly, of stock or equity interests possessing fifty percent or  
98 more of the total combined voting power of all classes of the  
99 stock of a corporation or equity interests of a partnership or  
100 limited liability company entitled to vote or ownership,  
101 directly or indirectly, of stock or equity interests possessing  
102 fifty percent or more of the value of the corporation, partner-  
103 ship or limited liability company.

104 (3) The tax imposed by this section does not apply where  
105 motor vehicle has been acquired by a senior citizen service  
106 organization which is exempt from the payment of income  
107 taxes under the United States Internal Revenue Code, Title

108 26 U. S. C. §501(c)(3) and which is recognized to be a bona  
109 fide senior citizen service organization by the Bureau of  
110 Senior Services existing under the provisions of article five,  
111 chapter sixteen of this code.

112 (4) The tax imposed by this section does not apply to any  
113 active duty military personnel stationed outside of West  
114 Virginia who acquires a motor vehicle by sale within nine  
115 months from the date the person returns to this state.

116 (5) The tax imposed by this section does not apply to  
117 motor vehicles acquired by registered dealers of this state for  
118 resale only.

119 (6) The tax imposed by this section does not apply to  
120 motor vehicles acquired by this state or any political subdi-  
121 vision thereof or by any volunteer fire department or duly  
122 chartered rescue or ambulance squad organized and incorpo-  
123 rated under the laws of this state as a nonprofit corporation  
124 for protection of life or property.

125 (7) The tax imposed by this section does not apply to  
126 motor vehicles acquired by an urban mass transit authority,  
127 as defined in article twenty-seven, chapter eight of this code,  
128 or a nonprofit entity exempt from federal and state income  
129 tax under the Internal Revenue Code for the purpose of

130 providing mass transportation to the public at large or  
131 designed for the transportation of persons and being oper-  
132 ated for the transportation of persons in the public interest.

133 (8) The tax imposed by this section does not apply to the  
134 registration of a vehicle owned and titled in the name of a  
135 resident of this state if the applicant:

136 (A) Was not a resident of this state at the time the  
137 applicant purchased or otherwise acquired ownership of the  
138 vehicle;

139 (B) Presents evidence as the Commissioner of Motor  
140 Vehicles may require of having titled the vehicle in the  
141 applicant's previous state of residence;

142 (C) Has relocated to this state and can present such  
143 evidence as the Commissioner of Motor Vehicles may require  
144 to show bona fide residency in this state; and

145 (D) Makes application to the Division of Motor Vehicles  
146 for a title and registration and pays all other fees required by  
147 chapter seventeen-a of this code within thirty days of  
148 establishing residency in this state as prescribed in subsec-  
149 tion (a), section one-a of this article.

150 (9) On and after January 1, 2009, the tax imposed by this  
151 section does not apply to Class B trucks, truck tractors and



152 road tractors registered at a gross weight of fifty-five  
153 thousand pounds or more or to Class C trailers, semitrailers,  
154 full trailers, pole trailers and converter gear having a weight  
155 of two thousand pounds or greater. If an owner of a vehicle  
156 has previously titled the vehicle at a declared gross weight of  
157 fifty-five thousand pounds or more and the title was issued  
158 without the payment of the tax imposed by this section, then  
159 before the owner may obtain registration for the vehicle at  
160 a gross weight less than fifty-five thousand pounds, the  
161 owner shall surrender to the commissioner the exempted  
162 registration, the exempted certificate of title and pay the tax  
163 imposed by this section based upon the current market value  
164 of the vehicle.

165       (10) The tax imposed by this section does not apply to  
166 vehicles leased by residents of West Virginia. On or after  
167 January 1, 2009, a tax is imposed upon the monthly pay-  
168 ments for the lease of any motor vehicle leased under a  
169 written contract of lease by a resident of West Virginia for a  
170 contractually specified continuous period of more than thirty  
171 days, which tax is equal to five percent of the amount of the  
172 monthly payment, applied to each payment, and continuing  
173 for the entire term of the initial lease period. The tax shall be

174 remitted to the Division of Motor Vehicles on a monthly  
175 basis by the lessor of the vehicle. Leases of thirty days or less  
176 are taxable under the provisions of this article and article  
177 fifteen-a of this chapter without reference to this section.

178 (11) The tax imposed by this section does not apply to  
179 utility terrain vehicle used for the commercial production of  
180 an agricultural product whose ultimate sale is subject to tax  
181 under this article where the vehicle is used on farmland  
182 valued in accordance with section ten, article one-a of this  
183 chapter and legislative rule: *Provided, That the purchaser*  
184 presents to the vendor a completed application for farm use  
185 valuation for the property being farmed by the purchaser  
186 and the application bears the assessor's stamp that the  
187 application was granted.

188 (g) *Division of Motor Vehicles to collect.* — Notwith-  
189 standing any provision of this article, article fifteen-a and  
190 article ten of this chapter to the contrary, the Division of  
191 Motor Vehicles shall collect the tax imposed by this section:  
192 *Provided, That such tax is imposed upon the monthly*  
193 *payments for the lease of any motor vehicle leased by a*  
194 *resident of West Virginia, which tax is equal to five percent*  
195 *of the amount of the monthly payment, applied to each*

196 payment, and continuing for the entire term of the initial  
197 lease period. The tax shall be remitted to the Division of  
198 Motor Vehicles on a monthly basis by the lessor of the  
199 vehicle.

200 (h) *Dedication of tax to highways.* — Notwithstanding  
201 any provision of this article or article fifteen-a of this  
202 chapter to the contrary, all taxes collected pursuant to this  
203 section, after deducting the amount of any refunds lawfully  
204 paid, shall be deposited in the State Road Fund in the State  
205 Treasury and expended by the Commissioner of Highways  
206 for design, maintenance and construction of roads in the  
207 state highway system.

208 (i) *Legislative rules; emergency rules.* — Notwithstanding  
209 any provision of this article, article fifteen-a and article ten  
210 of this chapter to the contrary, the Commissioner of Motor  
211 Vehicles shall promulgate legislative rules explaining and  
212 implementing this section, which rules shall be promulgated  
213 in accordance with the provisions of article three, chapter  
214 twenty-nine-a of this code and should include a minimum  
215 taxable value and set forth instances when a vehicle is to be  
216 taxed at fair market value rather than its purchase price. The  
217 authority to promulgate rules includes authority to amend or

218 repeal those rules. If proposed legislative rules for this  
219 section are filed in the State Register before June 15, 2008,  
220 those rules may be promulgated as emergency legislative  
221 rules as provided in article three, chapter twenty-nine-a of  
222 this code.

223 (j) Notwithstanding any other provision of this code,  
224 effective January 1, 2009, no municipal sales or use tax or  
225 local sales or use tax or special downtown redevelopment  
226 district excise tax or special district excise tax shall be  
227 imposed under article twenty-two, chapter seven of this code  
228 or article thirteen, chapter eight of this code or article  
229 thirteen-b of said chapter or article thirty-eight of said  
230 chapter or any other provision of this code, except this  
231 section, on sales of motor vehicles as defined in this article  
232 or on any tangible personal property excepted or exempted  
233 from tax under this section. Nothing in this subsection shall  
234 be construed to prevent the application of the municipal  
235 business and occupation tax on motor vehicle retailers and  
236 leasing companies.

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(NOTE: The purpose of this bill is to tax utility terrain vehicles. The bill makes an exception for vehicles used for agricultural purposes. The bill also defines utility terrain vehicles as motor vehicles.)

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.)