

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1961



ENROLLED

HOUSE BILL No. *32*.....

(By Mr. *Nellis*.....)



PASSED *February 28th*, 1961

In Effect *July 1st, 1961* Passage



Filed in Office of the Secretary of State
of West Virginia *March 7, 1961*
JOE F. BURDETT
SECRETARY OF STATE

32

be enacted by the Legislature of West Virginia

This chapter seventeen of the Code of West Virginia is **ENROLLED**

House Bill No. 32
(By MR. WELLS)

read as follows:

[Passed February 28, 1961; in effect July 1, 1961.]

AN ACT to amend chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article four-a, relating to the showing of liens and encumbrances on the certificate of title to vehicles by the department of motor vehicles; notice of the existence of lien, voluntary liens created by owner not endorsed on title void as to subsequent purchasers for value without notice and lien creditors; no cause of action against the lienor created, certain common law and statutory liens not affected; vehicle accessories not affected; effect of article on liens and encumbrances created in transactions consummated before vehicle brought into state and subject to registration and titling in state; and providing such liens or encumbrances to be void after five years unless refiled.

Be it enacted by the Legislature of West Virginia:

That chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article four-a, to read as follows:

Article 4-a. Liens and Encumbrances on Vehicles to Be Shown on Certificate of Title; Notice to Creditors and Purchasers.

Section 1. Certificate to Show Liens or Encumbrances.

2 —The department upon receiving an application for a cer-
3 tificate of title to a vehicle, trailer, semi-trailer or pole
4 trailer, for which a certificate of title is required under
5 article three of this chapter, all of which are hereinafter
6 in this article referred to as vehicles, showing liens or
7 encumbrances upon such vehicle, shall, upon issuing to
8 the owner thereof a certificate of title therefor, show upon
9 the face of the certificate of title all liens or encumbrances
10 disclosed by such application. All such liens or encum-
11 brances shall be shown in the order of their priority being
12 according to the information contained in such applica-
13 tion. When such an application shows liens and encum-
14 brances, such information and evidence of the lien in con-

15 nection therewith as the department may deem necessary
16 shall also be furnished. Such information shall include
17 the name and address of the lien holder, the nature and
18 kind of his lien, the date thereof, and the amount thereby
19 secured, all of which information, upon recordation, shall
20 be endorsed upon the title certificate. Upon issuing the
21 certificate, the department shall thereupon send or deliver
22 it to the holder of the first lien.

Sec. 2. Liens and Encumbrances Subsequently Created.

2 —Liens or encumbrances placed on vehicles by the volun-
3 tary act of the owner (including a registered dealer hold-
4 ing title by assignment entered upon a certificate of title)
5 after the original issue of title to be properly recorded
6 must be shown on the certificate of title. In such cases,
7 the owner or lien holder shall file application with the
8 department on a blank furnished for that purpose, setting
9 forth the lien or liens and such information and evidence
10 of the lien in connection therewith as the department may
11 deem necessary. Such information shall include the name
12 and address of the lien holder, the nature and kind of his
13 lien, the date thereof, and the amount thereby secured,

14 all of which information, upon recordation, shall be en-
15 dorsed upon the title certificate with the endorsement of
16 the fact of such lien as hereinafter provided. The depart-
17 ment, if satisfied that it is proper that the same be re-
18 corded, and upon surrender of the certificate of title cov-
19 ering the vehicle, shall thereupon issue a new certificate
20 of title, showing the liens or encumbrances in the order
21 of their filing being according to the date, hour and min-
22 ute of receipt by the department of the application for
23 same. For the purpose of recording a subsequent lien on
24 a certificate of title, the subsequent lienor shall make a
25 written request upon the lienor in possession of the cer-
26 tificate of title, accompanied by proof of the existence of
27 his subsequent lien, stating his need to have possession
28 of the certificate of title for the purpose of having his
29 lien recorded thereon by the department of motor ve-
30 hicles. Thereupon, the lienor in possession of the certifi-
31 cate shall within a reasonable time, not to exceed ten
32 days from the receipt of said written request, deliver the
33 certificate of title to the requesting subsequent lienor.

34 Upon delivery of the certificate of title, the subsequent

35 lienor shall immediately forward it and his own applica-
36 tion to the department of motor vehicles for filing his
37 lien and recording the same on the certificate of title.
38 Upon issuing the new certificate, the department shall
39 thereupon send or deliver it to the holder of the first lien.

*Sec. 3. Certificate as Notice of Lien; Lien Created by
2 Voluntary Act of the Owner Not Shown on Certificate of
3 Title Void as to Subsequent Purchasers and Lien Cred-
4 itors; Deferred Purchase Money Liens May Be Filed
5 Within Ten Days After Purchase.—Such certificate of
6 title, when issued by the department showing a lien or
7 encumbrance, shall be deemed from and after the filing
8 with the department of the application therefor ade-
9 quate notice to the state, and its agencies, boards and
10 commissions and the United States government and its
11 agencies, boards and commissions, creditors and pur-
12 chasers that a lien against the vehicle exists and the
13 recording of such reservation of title, lien or encum-
14 brance in the county wherein the purchaser or debtor
15 resides or elsewhere is not necessary and shall not be
16 required or have any effect. The provision of any other*

17 article, chapter or section of this code to the contrary not-
18 withstanding, any lien or encumbrance placed upon a
19 vehicle by the voluntary act of the owner (including a
20 registered dealer holding title thereto by assignment en-
21 tered upon a certificate of title) but not shown on such
22 certificate of title shall be void as to any purchaser for
23 value or lien creditor, who, in either case, without notice
24 of such lien or encumbrance, purchases such vehicle or
25 acquires by attachment, levy or otherwise a lien there-
26 upon: *Provided, however,* That a purchase money lien or
27 encumbrance may be filed as hereinafter set forth in sec-
28 tion four of this article with the effect therein stated:
29 *Provided, further,* That this section shall apply only to
30 liens and encumbrances created on and after the effective
31 date of this act.

Sec. 4. *Deferred Purchase Money Lien or Encumbrance*
2 *May Be Filed Within Ten Days After Purchase.*—If appli-
3 cation for a certificate of title showing a deferred pur-
4 chase money lien or deferred purchase money encum-
5 brance to be placed upon a vehicle be filed in the office of
6 the department within ten days from the date of such ap-

7 plicant's purchase of such vehicle, it shall be as valid as to
8 all persons, whomsoever, including the state, as if such
9 filing had been done on the day such lien or encum-
10 brance was acquired.

Sec. 5. *Priority of Liens Shown on Certificate.*—The
2 liens shown upon such certificate of title issued by the
3 department pursuant to applications for same shall have
4 priority over any other liens against such vehicle, how-
5 ever created and recorded, except as hereinafter pro-
6 vided in this article.

Sec. 6. *Who To Hold Certificate of Title Subject to Lien.*
2 —The certificate of title of such vehicle shall be delivered
3 to the person, firm or corporation holding the first lien or
4 encumbrance upon the vehicle and retained by him or
5 them until the entire amount of his or their lien is fully
6 paid. Thereupon the certificate of title shall be delivered
7 to the next lien holder, and so on, or if none, then to the
8 owner of the vehicle. It shall be the responsibility of
9 each lienor upon the satisfaction of his lien to deliver
10 said certificate of title to the lienor next entitled to the
11 possession thereof and, if none to the owner, which acts

12 of delivery may be accomplished through registered or
13 certified mail addressed to the lienor or the owner entitled
14 to such possession at his address as shown upon said cer-
15 tificate. In the event of assignment of the obligation by a
16 lien holder who lawfully has possession of the certificate
17 of title at the time of assignment, the lien holder shall
18 deliver the certificate of title to his assignee who shall
19 be entitled to hold the same until the obligation is satis-
20 fied, at which time the assignee shall deliver the certificate
21 of title to the next lien holder, or if none, then to the
22 owner of the vehicle. In the event of assignment of the
23 obligation by a lien holder not entitled to possession of
24 the certificate of title at the time of assignment, the lien
25 holder shall immediately upon becoming lawfully entitled
26 to, and obtaining lawful possession of, the certificate of
27 title, deliver the same to his assignee who shall be entitled
28 to hold the same until the obligation is satisfied, at which
29 time the assignee shall deliver the certificate of title to
30 the next lien holder, or if none, then to the owner of the
31 vehicle.

Sec. 7. Release of Lien or Encumbrance Shown on Cer-

2 *tificate of Title.*—An owner upon securing the release of
3 any lien or encumbrance upon a vehicle shown upon the
4 certificate of title issued therefor may exhibit the docu-
5 ment evidencing such release, signed by the person or
6 persons making such release and acknowledged before a
7 notary public or someone authorized by the laws of this
8 state to take acknowledgments of deeds, and this docu-
9 ment together with the certificate of title shall be returned
10 to the department; or the lien holder may release the
11 lien by endorsing across the lien in his favor on the face
12 of the title or closely adjacent thereto the following words
13 or words of similar effect or purport: “This lien, this day
14 fully paid, satisfied and released, this____day of____,”
15 and duly signing and executing said endorsement and
16 acknowledging the same before a notary public and hav-
17 ing said notary public execute a certificate of such ac-
18 knowledgment in the form required for releasing deeds of
19 trust in this state; or when it is impossible to secure either
20 such release from the beneficiary or holder of the lien, the
21 owner may exhibit to the department whatever evidence
22 may be available showing that the debt secured has been

23 satisfied, together with a statement by the owner under
24 oath that the debt has been paid and the certificate of title
25 to such vehicle. The department when satisfied as to the
26 genuineness and regularity thereof shall issue to the
27 owner either a new certificate of title in proper form or
28 an endorsement or rider showing the release of the lien
29 or encumbrance which the department shall attach to the
30 outstanding certificate of title.

Sec. 8. *Surrender of Certificate Required When Lien*
2 *Paid.*—It shall be unlawful and constitute a misdemeanor
3 for a lienor who holds a certificate of title as provided in
4 this article to refuse or fail to execute a release as pro-
5 vided for in the next preceding section, or to refuse or
6 fail to surrender such certificate of title to the person
7 legally entitled thereto within fifteen days after his lien
8 shall have been paid and satisfied.

Sec. 9. *Levy of Execution, Etc.*—A levy made by virtue
2 of an execution, fieri facias or other proper court order,
3 upon a vehicle for which application for a certificate of
4 title has been filed with the department, shall constitute a
5 recorded lien, with the effect of constructive notice there-

6 of to all persons, subsequent to holders of liens or encum-
7 brances theretofore filed with the department, only from
8 and after the time when the officer making such levy files
9 a report to and with the department of motor vehicles, on
10 forms provided therefor by the department, that such levy
11 has been made or that the vehicle thus levied upon has
12 been seized by and is in the custody of such officer; and the
13 provisions of any other article, chapter or section of this
14 code to the contrary notwithstanding the docketing or
15 recording of any such execution, fieri facias or other
16 court order in the office of the clerk of the county court of
17 any county in this state shall not constitute constructive
18 notice thereof as to any such vehicle.

19 Such report by such officer shall show among other
20 things the full names of the parties to the proceeding
21 upon which the execution, fieri facias or court order is
22 based; the identity of the court, judge or justice of the
23 peace or other judicial officer from which said execu-
24 tion, fieri facias or other court order was issued; the
25 amount required for the satisfaction thereof; the date
26 thereof; the date and hour when received by the officer;

27 the date, hour and minute of levy, seizure, attachment
28 or other execution of said process; the date returnable;
29 the make, year, body style of the vehicle to which the
30 lien of said execution, fieri facias or court order relates
31 as well as the name of the person or persons whose in-
32 terest or ownership therein is intended to be affected by
33 the lien of such execution, fieri facias or court order.
34 Such report shall also show, if known, the serial num-
35 ber of such vehicle, the current West Virginia registra-
36 tion card number and current West Virginia registered
37 owner thereof and current West Virginia license plate
38 number, and if any item in this sentence enumerated for
39 listing on such report is unknown to the reporting officer
40 the report shall state that such item is unknown to the
41 officer. Such report shall be dated, signed and certified
42 by the reporting officer and such certification shall con-
43 stitute an official act on his part. The department shall
44 by endorsement upon or attachment to its records note
45 the officer's report and the day and hour and the minute
46 received upon its record copy of the certificate of title
47 thereby affected; should such lien be thereafter satisfied

48 or should the vehicle thus levied upon and seized be
49 thereafter released by such officer, he shall immediately
50 report that fact to the department of motor vehicles and
51 the department shall in a like manner note such fact.
52 Any owner who after such levy or seizure by an officer
53 and before the report thereof by the officer to the de-
54 partment shall fraudulently assign or transfer his title
55 to or interest in such vehicle or cause the certificate of
56 title thereto to be assigned or transferred or cause a
57 lien or encumbrance to be shown upon such certificate
58 of title shall be deemed guilty of a misdemeanor and
59 upon conviction thereof shall be fined not less than
60 twenty-five nor more than five hundred dollars, or im-
61 prisoned in jail for not less than ten days nor more than
62 twelve months.

63 The actual possession of the levying or attaching officer
64 of the law or the actual possession of some person, other
65 than the judgment or attachment debtor, holding such
66 property for the officer, shall constitute notice of the
67 lien, if any, of the execution, fieri facias, or other court

68 order under which he levies, seizes or otherwise takes
69 possession.

70 For any vehicle as to which an involuntary lien has
71 been reported and noted by the department and for which
72 there has been no report of release or satisfaction by the
73 levying or seizing officer, if application be made for the
74 transfer of title thereto or issuance of new certificate of
75 title therefor to the current registered owner or to some-
76 one claiming by assignment of title certificate from such
77 registered owner or if application be made pursuant to
78 the provisions of this article for the endorsement upon
79 the certificate of title to such vehicle of a lien or encum-
80 brance created by the voluntary act of the owner and
81 the issuance of a new certificate of title showing the
82 same, such involuntary lien, for which the department's
83 records show no report of satisfaction or release, and the
84 information furnished in the officer's report thereof to-
85 gether with the date, hour and minute of receipt of such
86 report shall be endorsed upon such new certificate of
87 title issued pursuant to any of such applications.

Sec. 10. *Fee for Recording of Lien.*—The department of

2 motor vehicles is hereby authorized to charge a fee of
3 two dollars for the recording of any lien created by the
4 voluntary act of the owner and endorsing it upon such
5 title certificate issued pursuant to this article, and the
6 department of motor vehicles is hereby authorized to
7 charge a fee of fifty cents for recordation of any release
8 of a lien created by the voluntary act of the owner: *Pro-*
9 *vided, however,* That no charge shall be made for the
10 endorsement and recordation of liens or releases thereof
11 as provided under section nine of this article.

Sec. 11. *Article to Create no Cause of Action against*
2 *Lienor for Damage to Property or Injury to Person.—*
3 The exercise by the lienor of the rights and privileges in
4 this article given him shall not in and of itself give rise
5 to a cause of action against such lienor for damages
6 resulting from any act or omission of the registered and
7 beneficial owner of the vehicle in said registered owner's
8 dominion, ownership, use, operation or control thereof.

Sec. 12. *Article Not to Apply to Certain Common Law*
2 *and Statutory Liens.—*The provisions of this article shall
3 not be construed so as to require common law mechanic's

4 liens or repairman's liens, or the lien of an improver
5 or bailee as provided in article eleven, chapter thirty-
6 eight of the code of West Virginia, one thousand nine
7 hundred thirty-one, as amended, to be shown on the
8 certificate of title in order to preserve such liens against
9 any purchaser for value or lien creditor who, in either
10 case, without notice of such lien or encumbrance, pur-
11 chases such vehicle or acquires by attachment, levy or
12 otherwise a lien thereupon.

Sec. 13. Article Not to Apply to Vehicle Accessories.—

2 The provisions of this article shall not apply to the re-
3 cording of a lien or liens which are created only upon
4 tires, radios, heaters, or other vehicle accessories.

Sec. 14. Effect of Article on Liens and Encumbrances

2 *Created in Transactions Consummated before Vehicle*
3 *Brought into State and Subject to Registration and Titling*
4 *in State.*—As to bona fide purchasers for value or lien
5 creditors without notice, the provisions of this article
6 shall not be construed so as to invalidate or render void
7 any lien or encumbrance placed upon a vehicle, by the
8 voluntary act of the owner, in a transaction consummated

9 before the vehicle is brought into this state, and before the
10 same is subject to registration in the state of West Vir-
11 ginia, and before the application for a West Virginia
12 certificate of title is required so long as such a lien or en-
13 cumbrance has been properly recorded according to the
14 laws of the jurisdiction in which it was created so as
15 to be valid against bona fide purchasers for value or lien
16 creditors without notice and so long as such lien or en-
17 cumbrance is of such kind, nature and character as the
18 law of this state would otherwise protect against such
19 purchasers and lien creditors: *Provided, however,* That
20 after such vehicle is brought into this state and after it is
21 required to be registered and titled in this state, such
22 lien or encumbrance as in this section described shall be
23 void as to any purchaser for value or lien creditor, who,
24 in either case, without notice of such lien or encum-
25 brances, purchases such vehicle or acquires by attach-
26 ment, levy or otherwise a lien thereupon, unless such
27 lien holder, within three months after the removal of such
28 vehicle into this state or within ten days after such lien
29 holder received notice of such removal, which ever period

30 of time is least, shall, in the manner set forth in section
31 two of this article file application with the department in
32 which case the department shall proceed as in section two
33 of this article.

Sec. 15. *Liens or Encumbrances Void After Five Years*

2 *Unless Refiled.*—The filing of any lien or encumbrance
3 and its recordation upon the face of a certificate of title
4 to any vehicle as provided in this article shall be valid
5 for a period of five years only from the date of such filing,
6 unless the lien or encumbrance is refiled in the manner
7 provided in this article for filing and recordation in the
8 first instance, in which event the lien or encumbrance
9 shall be valid for successive additional periods of two
10 years from the date of each such refiling.

11 When the last lien or encumbrance shown on a certi-
12 ficate of title becomes invalid by the passage of time as
13 provided in this section, the commissioner of motor ve-
14 hicles shall not be required to maintain a lien index as
15 to such certificate of title.

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

Thomas Davis, Jr.
Chairman Senate Committee

Mrs. W. H. Withrow
Chairman House Committee

Originated in the House.

Takes effect July 1st 1961 passage.

Thomas Keyes
Clerk of the Senate

A. Blankenship
Clerk of the House of Delegates

Howard Robinson
President of the Senate

Julius W. Singleton Jr.
Speaker House of Delegates

The within approved this the 2nd day of March, 1961.

Tom Barron
Governor

