

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1971



ENROLLED

HOUSE BILL No. 1197

(By Mrs. Smirl and Mr. White, of Cabell)



PASSED March 13 1971

In Effect from Passage



1197

FILED IN THE OFFICE
FIELD H. ROCKEFELLER, IV
SECRETARY OF STATE
THIS DATE 4-2-71

ENROLLED

House Bill No. 1197

(By MRS. SMIRL and MR. WHITE, of Cabell)

[Passed March 13, 1971; in effect from passage.]

AN ACT to amend and reenact section one, article six, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to definitions and to further amend said article by adding thereto a new section, designated section ten-a, relating to special plates for manufacturers and transporters, fee.

Be it enacted by the Legislature of West Virginia:

That section one, article six, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that said article six be further amended by adding thereto a new section, designated section ten-a, all to read as follows:

**ARTICLE 6. LICENSING OF DEALERS AND WRECKERS OR DIS-
MANTLERS; SPECIAL PLATES; TEMPORARY
PLATES OR MARKERS, ETC.**

§17A-6-1. Definitions.

1 (1) "New motor vehicle dealer" means every person
2 (other than his agents and employees, if any, while
3 acting within the scope of their authority or employ-
4 ment), engaged in, or who holds himself out to the
5 public to be engaged in, the business in this state of
6 selling new motor vehicles or new and used motor
7 vehicles, of a type required to be registered under the
8 provisions of this chapter, except for the purposes of this
9 article only, motorcycles.

10 (2) "Used motor vehicle dealer" means every per-
11 son (other than his agents and employees, if any, while
12 acting within the scope of their authority or employ-
13 ment), engaged in, or holds himself out to the public
14 to be engaged in, the business in this state of selling
15 used motor vehicles of a type required to be registered
16 under the provisions of this chapter, except, for the pur-
17 poses of this article only, motorcycles.

18 (3) "House trailer dealer" means every person (other

19 than his agents and employees, if any, while acting within
20 the scope of their authority or employment), engaged
21 in, or who holds himself out to the public to be engaged
22 in, the business in this state of selling new and/or
23 used house trailers, or new and/or used house trailers
24 and trailers.

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

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

37 (6) "Used parts dealer" means every person (other
38 than his agents and employees, if any, while acting
39 within the scope of their authority or employment),

40 engaged in, or who holds himself out to the public
41 to be engaged in, the business in this state of selling
42 any used appliance, accessory, member, portion or other
43 part of any vehicle.

44 (7) "Wrecker or dismantler" means every person
45 (other than his agents and employees, if any, while
46 acting within the scope of their authority or employ-
47 ment), engaged in, or who holds himself out to the
48 public to be engaged in, the business in this state of
49 dealing in wrecked or damaged motor vehicles or motor
50 vehicle parts for the purpose of selling the parts thereof
51 or scrap therefrom.

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
59 sold and operated, or which have been registered or
60 titled, in this or any other state or jurisdiction.

61 (10) "House trailers" means all trailers designed or
62 intended for human occupancy and commonly referred
63 to as mobile homes or house trailers, but shall not in-
64 clude camping, vacation and travel trailers.

65 (11) "Trailers" means all types of trailers other
66 than house trailers, and shall include, but not be lim-
67 ited to, pole trailers and semitrailers.

68 (12) "Sales instrument" means any document re-
69 sulting from the sale of a vehicle, which shall include,
70 but not be limited to, a bill of sale, invoice, conditional
71 sales contract, chattel mortgage, chattel trust deed, se-
72 curity agreement or similar document.

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

80 (14) "Applicant" means any person making appli-

81 cation for an original or renewal license certificate
82 under the provisions of this article.

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

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

90 (17) "Established place of business" shall, in the
91 case of a new motor vehicle dealer, mean a permanent
92 location, not a temporary stand or other temporary
93 quarters, owned or leased by the licensee or applicant
94 and actually occupied or to be occupied by him, as
95 the case may be, which is or is to be used exclusively
96 for the purpose of selling new motor vehicles or new
97 and used motor vehicles, which shall have space under
98 roof for the display of at least one new motor vehicle
99 and facilities and space therewith for the servicing
100 and repair of at least one motor vehicle, which ser-
101 vicing and repair facilities and space shall be adequate

102 and suitable to carry out servicing and to make repairs
103 necessary to keep and carry out all representations,
104 warranties and agreements made or to be made by such
105 dealer with respect to motor vehicles sold by him,
106 which shall be easily accessible to the public, which
107 shall conform to all applicable laws of the state of
108 West Virginia and the ordinances of the municipality
109 in which it is located, if any, which shall display
110 thereon at least one permanent sign, clearly visible
111 from the principal public street or highway nearest
112 said location and clearly stating the business which
113 is or shall be conducted thereat, and which shall have
114 adequate facilities to keep, maintain and preserve rec-
115 ords, papers and documents necessary to carry on such
116 business and to make the same available to inspection
117 by the commissioner at all reasonable times: *Provided,*
118 *however,* That the requirement of exclusive use shall
119 be met even though (i) some new and any used motor
120 vehicles sold or to be sold by such dealer or sold or
121 are to be sold at a different location or locations not
122 meeting the definition of an established place of busi-

123 ness of a new motor vehicle dealer, if each such location
124 is or is to be served by other facilities and space of
125 such dealer for the servicing and repair of at least
126 one motor vehicle, adequate and suitable as aforesaid,
127 and each such location used for the sale of some new
128 and any used motor vehicles otherwise meets the defi-
129 nition of an established place of business of a used
130 motor vehicle dealer; (ii) house trailers, trailers
131 and/or motorcycles are sold or are to be sold thereat,
132 if, subject to the provisions of section five of this
133 article, a separate license certificate is obtained for
134 each such type of vehicle business, which license cer-
135 tificate remains unexpired, unsuspended and unrevoked;
136 (iii) farm machinery is sold thereat; and (iv) acces-
137 sory, gasoline and oil, or storage departments are main-
138 tained thereat, if such departments are operated for
139 the purpose of furthering and assisting in the licensed
140 business or businesses.

141 (18) "Farm machinery" means all machines and
142 tools used in the production, harvesting or care of farm
143 products.

144 (19) "Established place of business" shall, in the case
145 of a used motor vehicle dealer, mean a permanent lo-
146 cation, not a temporary stand or other temporary quar-
147 ters, owned or leased by the licensee or applicant and
148 actually occupied or to be occupied by him, as the
149 case may be, which is or is to be used exclusively for
150 the purpose of selling used motor vehicles, which
151 shall have facilities and space therewith for the ser-
152 vicing and repair of at least one motor vehicle, which
153 servicing and repair facilities and space shall be ade-
154 quate and suitable to carry out servicing and to make
155 repairs necessary to keep and carry out all represen-
156 tations, warranties and agreements made or to be made
157 by such dealer with respect to used motor vehicles
158 sold by him, which shall be easily accessible to the
159 public, shall conform to all applicable laws of the
160 state of West Virginia, and the ordinances of the mu-
161 nicipality in which it is located, if any, which shall
162 display thereon at least one permanent sign, clearly
163 visible from the principal public street or highway
164 nearest said location and clearly stating the business

165 which is or shall be conducted thereat, and which shall
166 have adequate facilities to keep, maintain and pre-
167 serve records, papers and documents necessary to carry
168 on such business and to make the same available to
169 inspection by the commissioner at all reasonable times:
170 *Provided*, That if a used motor vehicle dealer has en-
171 tered into a written agreement or agreements with a
172 person or persons owning or operating a servicing and
173 repair facility or facilities adequate and suitable as
174 aforesaid, the effect of which agreement or agreements
175 is to provide such servicing and repair services and
176 space in like manner as if said servicing and repair
177 facilities and space were located in or on said dealer's
178 place of business, then, so long as such an agreement
179 or agreements are in effect, it shall not be necessary
180 for such dealer to maintain such servicing and repair
181 facilities and space at his place of business in order
182 for such place of business to be an established place
183 of business as herein defined: *Provided further*, That
184 the requirement of exclusive use shall be met even
185 though (i) house trailers, trailers and/or motorcycles

186 are sold or are to be sold thereat, if, subject to the
187 provisions of section five of this article, a separate
188 license certificate is obtained for each such type of
189 vehicle business, which license certificate remains un-
190 expired, unsuspended and unrevoked; (ii) farm ma-
191 chinery is sold thereat; and (iii) accessory, gasoline
192 and oil, or storage departments are maintained thereat,
193 if such departments are operated for the purpose of
194 furthering and assisting in the licensed business or busi-
195 nesses.

196 (20) "Established place of business" shall, in the
197 case of a house trailer dealer, trailer dealer, motorcycle
198 dealer, used parts dealer and wrecker or dismantler,
199 mean a permanent location, not a temporary stand or
200 other temporary quarters, owned or leased by the licen-
201 see or applicant and actually occupied or to be oc-
202 cupied by him, as the case may be, which shall be
203 easily accessible to the public, which shall conform
204 to all applicable laws of the state of West Virginia and
205 the ordinances of the municipality in which it is lo-
206 cated, if any, which shall display thereon at least one

207 permanent sign, clearly visible from the principal pub-
208 lic street or highway nearest said location and clearly
209 stating the business which is or shall be conducted
210 thereat, and which shall have adequate facilities to keep,
211 maintain and preserve records, papers and documents
212 necessary to carry on such business and to make the
213 same available to inspection by the commissioner at
214 all reasonable times.

215 (b) Under no circumstances whatever shall the
216 terms "new motor vehicle dealer," "used motor vehicle
217 dealer," "house trailer dealer," "trailer dealer," "motor-
218 cycle dealer," "used parts dealer" or "wrecker or dis-
219 mantler" be construed or applied under this article in
220 such a way as to include a banking institution, insur-
221 ance company, finance company, or other lending or
222 financial institution, or other person, the state or any
223 agency or political subdivision thereof, or any munici-
224 pality, who or which owns or shall come in possession
225 or ownership of, or acquire contract rights, or security
226 interests in or to, any vehicle or vehicles or any part
227 thereof and shall sell such vehicle or vehicles or any

228 part thereof for purposes other than engaging in and
229 holding himself or itself out to the public to be en-
230 gaged in the business of selling vehicles or any part
231 thereof.

232 (c) It is recognized that throughout this code the
233 term "trailer" or "trailers" is used to include, among
234 other types of trailers, house trailers. It is also recog-
235 nized that throughout this code the term "trailer" or
236 "trailers" is seldom used to include semitrailers or pole
237 trailers. However, for the purposes of this article only,
238 the term "trailers" shall have the meaning ascribed
239 to it in subsection (a) of this section.

240 (21) "Manufacturer" means every person engaged
241 in the business of reconstructing, assembling, or reas-
242 sembling vehicles with a special type body required by
243 the purchaser if said vehicle is subject to the title and
244 registration provision of the code.

245 (22) "Transporter" means every person engaged in
246 the business of transporting vehicles to or from a manu-
247 facturing, assembling or distributing plant to dealers,
248 or sales agents of a manufacturer, or purchasers.

§17A-6-10A. Special plates for manufacturers and transporters; fee.

1 (1) Notwithstanding any of the other provisions of this
2 article, a manufacturer or transporter may operate or
3 move a vehicle upon the highways of this state solely for
4 purposes of transporting and/or testing the same with-
5 out first registering each such vehicle upon condition
6 that any such vehicle display thereon, in a manner pre-
7 scribed by the commissioner, a special plate or plates
8 issued to such manufacturer or transporter as provided
9 in this section.

10 (2) Any manufacturer or transporter may make ap-
11 plication to the commissioner upon a form prescribed by
12 him for a certificate containing a general distinguishing
13 number and for a special plate or plates. The applicant
14 shall also submit proof of his status as a bona fide manu-
15 facturer or transporter as may be required by the com-
16 missioner.

17 (3) The commissioner, upon approving any such ap-
18 plication, shall issue to the applicant a certificate con-
19 taining the applicant's name and address and the general

20 distinguishing number assigned to the applicant. The
21 commissioner shall also issue a special plate, or special
22 plates, as applied for, which shall have displayed thereon
23 the general distinguishing number assigned to the ap-
24 plicant. Each plate shall also contain a number or symbol
25 identifying the same from every other plate or plates
26 bearing the same general distinguishing number.

27 (4) The annual fee for a license certificate for a
28 manufacturer or transporter and one special plate
29 shall be one hundred dollars. Additional special plates
30 shall be twenty-five dollars each.

31 (5) Every manufacturer or transporter shall keep
32 a written record of the vehicle upon which such special
33 plates are used, the time during which each is used on
34 a particular vehicle, and the location to which the
35 vehicle was delivered, which record shall be open to in-
36 spection by any police officer or employee of the de-
37 partment.

38 (6) The provisions of this section shall not apply to
39 work or service vehicles owned by a manufacturer or
40 transporter.

41 (7) Said manufacturer or transporter shall be re-
42 quired to furnish a certificate of insurance in the amount
43 of ten thousand dollars because of bodily injury to or
44 death to any one person in any one accident. Twenty
45 thousand dollars because of bodily injury or death to two
46 or more persons in any one accident, and five thousand
47 dollars because of injury to or destruction of property of
48 others in any one accident.

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

Russell G. Beale
Chairman Senate Committee

Phyllis J. Rutledge
Chairman House Committee

Originated in the House.

Takes effect from passage.

Howard Tyeer
Clerk of the Senate

C. A. Blankenship
Clerk of the House of Delegates

E. Hans McComer
President of the Senate

Lewis D. McManus
Speaker House of Delegates

The within *approved* this the *10th*
day of *April*, 1971.

Arch A. Moore, Jr.
Governor



PRESENTED TO THE
GOVERNOR

Date 3/22/71

Time 3:10 p.m.

RECEIVED

APR 2 11 56 PM '71

OFFICE OF
SECRETARY OF STATE
STATE OF WEST VIRGINIA