

770: 1803

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1986



ENROLLED

Committee Substitute for
HOUSE BILL No. 1803

(By ~~MR~~ *Delegate Fullen*)



Passed *March 8,* 1986

In Effect *ninety days from* Passage

ENROLLED
COMMITTEE SUBSTITUTE
FOR
H. B. 1803
(By DELEGATE FULLEN)

[Passed March 8, 1986; in effect ninety days 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 the licensing of new and used motor vehicle dealers; and who must obtain a license.

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 to read as follows:

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
2 a different meaning, as used in this article:

3 (1) "New motor vehicle dealer" means every person
4 (other than his agents and employees, if any, while
5 acting within the scope of their authority or employ-
6 ment), engaged in, or who holds himself out to the public
7 to be engaged in, the business in this state of selling five
8 or more new motor vehicles or new and used motor

9 vehicles in any fiscal year of a type required to be
10 registered under the provisions of this chapter, except,
11 for the purposes of this article only, motorcycles.

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

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

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

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

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

47 (7) "Wrecker or dismantler" means every person

48 (other than his agents and employees, if any, while
49 acting within the scope of their authority or employ-
50 ment), engaged in, or who holds himself out to the public
51 to be engaged in, the business in this state of dealing
52 in wrecked or damaged motor vehicles or motor vehicle
53 parts for the purpose of selling the parts thereof or scrap
54 therefrom.

55 (8) "New motor vehicles" means all motor vehicles,
56 except motorcycles and used motor vehicles, of a type
57 required to be registered under the provisions of this
58 chapter.

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

64 (10) "House trailers" means all trailers designed or
65 intended for human occupancy and commonly referred
66 to as mobile homes or house trailers, but shall not
67 include camping, vacation and travel trailers.

68 (11) "Trailers" means all types of trailers other than
69 house trailers, and shall include, but not be limited to,
70 pole trailers and semitrailers.

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

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

83 (14) "Applicant" means any person making applica-
84 tion for an original or renewal license certificate under
85 the provisions of this article.

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

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

91 (17) "Established place of business" shall, in the case
92 of a new motor vehicle dealer, mean a permanent
93 location, not a temporary stand or other temporary
94 quarters, owned or leased by the licensee or applicant
95 and actually occupied or to be occupied by him, as the
96 case may be, which is or is to be used exclusively for
97 the purpose of selling new motor vehicles or new and
98 used motor vehicles, which shall have space under roof
99 for the display of at least one new motor vehicle and
100 facilities and space therewith for the servicing and
101 repair of at least one motor vehicle, which servicing and
102 repair facilities and space shall be adequate and suitable
103 to carry out servicing and to make repairs necessary to
104 keep and carry out all representations, warranties and
105 agreements made or to be made by such dealer with
106 respect to motor vehicles sold by him, which shall be
107 easily accessible to the public, which shall conform to
108 all applicable laws of the state of West Virginia and the
109 ordinances of the municipality in which it is located, if
110 any, which shall display thereon at least one permanent
111 sign, clearly visible from the principal public street or
112 highway nearest said location and clearly stating the
113 business which is or shall be conducted thereat, and
114 which shall have adequate facilities to keep, maintain
115 and preserve records, papers and documents necessary
116 to carry on such business and to make the same
117 available to inspection by the commissioner at all
118 reasonable times: *Provided, however,* That the require-
119 ment of exclusive use shall be met even though (i) some
120 new and any used motor vehicles sold or to be sold by
121 such dealer or sold or are to be sold at a different
122 location or locations not meeting the definition of an
123 established place of business of a new motor vehicle
124 dealer, if each such location is or is to be served by other
125 facilities and space of such dealer for the servicing and
126 repair of at least one motor vehicle, adequate and

127 suitable as aforesaid, and each such location used for the
128 sale of some new and any used motor vehicles otherwise
129 meets the definition of an established place of business
130 of a used motor vehicle dealer; (ii) house trailers, trailers
131 and/or motorcycles are sold or are to be sold thereat, if,
132 subject to the provisions of section five of this article,
133 a separate license certificate is obtained for each such
134 type of vehicle business, which license certificate
135 remains unexpired, unsuspended and unrevoked; (iii)
136 farm machinery is sold thereat; and (iv) accessory,
137 gasoline and oil, or storage departments are maintained
138 thereat, if such departments are operated for the
139 purpose of furthering and assisting in the licensed
140 business or businesses.

141 (18) "Farm machinery" means all machines and tools
142 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
146 location, not a temporary stand or other temporary
147 quarters, owned or leased by the licensee or applicant
148 and 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 shall
151 have facilities and space therewith for the servicing and
152 repair of at least one motor vehicle, which servicing and
153 repair facilities and space shall be adequate and suitable
154 to carry out servicing and to make repairs necessary to
155 keep and carry out all representations, warranties and
156 agreements made or to be made by such dealer with
157 respect to used motor vehicles sold by him, which shall
158 be easily accessible to the public, shall conform to all
159 applicable laws of the state of West Virginia, and the
160 ordinances of the municipality in which it is located, if
161 any, which shall display thereon at least one permanent
162 sign, clearly visible from the principal public street or
163 highway nearest said location and clearly stating the
164 business which is or shall be conducted thereat, and
165 which shall have adequate facilities to keep, maintain
166 and preserve records, papers and documents necessary
167 to carry on such business and to make the same

168 available to inspection by the commissioner at all
169 reasonable times: *Provided*, That if a used motor vehicle
170 dealer has entered into a written agreement or agree-
171 ments with a person or persons owning or operating a
172 servicing and repair facility or facilities adequate and
173 suitable as aforesaid, the effect of which agreement or
174 agreements is to provide such servicing and repair
175 services and space in like manner as if said servicing
176 and repair facilities and space were located in or on said
177 dealer's place of business, then, so long as such an
178 agreement or agreements are in effect, it shall not be
179 necessary for such dealer to maintain such servicing and
180 repair facilities and space at his place of business in
181 order for such place of business to be an established
182 place of business as herein defined: *Provided further*,
183 That the requirement of exclusive use shall be met even
184 though (i) house trailers, trailers and/or motorcycles are
185 sold or are to be sold thereat, if, subject to the provisions
186 of section five of this article, a separate license
187 certificate is obtained for each such type of vehicle
188 business, which license certificate remains unexpired,
189 unsuspended and unrevoked; (ii) farm machinery is sold
190 thereat; and (iii) accessory, gasoline and oil, or storage
191 departments are maintained thereat, if such depart-
192 ments are operated for the purpose of furthering and
193 assisting in the licensed business or businesses.

194 (20) "Established place of business" shall, in the case
195 of a house trailer dealer, trailer dealer, motorcycle
196 dealer, used parts dealer and wrecker or dismantler,
197 mean a permanent location, not a temporary stand or
198 other temporary quarters, owned or leased by the
199 licensee or applicant and actually occupied or to be
200 occupied by him, as the case may be, which shall be
201 easily accessible to the public, which shall conform to
202 all applicable laws of the state of West Virginia and the
203 ordinances of the municipality in which it is located, if
204 any, which shall display thereon at least one permanent
205 sign, clearly visible from the principal public street or
206 highway nearest said location and clearly stating the
207 business which is or shall be conducted thereat, and
208 which shall have adequate facilities to keep, maintain
209 and preserve records, papers and documents necessary

210 to carry on such business and to make the same
211 available to inspection by the commissioner at all
212 reasonable times.

213 (21) "Manufacturer" means every person engaged in
214 the business of reconstructing, assembling or reassem-
215 bling vehicles with a special type body required by the
216 purchaser if said vehicle is subject to the title and
217 registration provision of the code.

218 (22) "Transporter" means every person engaged in the
219 business of transporting vehicles to or from a manufac-
220 turing, assembling or distributing plant to dealers, or
221 sales agents of a manufacturer, or purchasers.

222 (b) Under no circumstances whatever shall the terms
223 "new motor vehicle dealer," "used motor vehicle dealer,"
224 "house trailer dealer," "trailer dealer," "motorcycle
225 dealer," "used parts dealer" or "wrecker or dismantler"
226 be construed or applied under this article in such a way
227 as to include a banking institution, insurance company,
228 finance company, or other lending or financial institu-
229 tion, or other person, the state or any agency or political
230 subdivision thereof, or any municipality, who or which
231 owns or shall come in possession or ownership of, or
232 acquire contract rights, or security interests in or to, any
233 vehicle or vehicles or any part thereof and shall sell such
234 vehicle or vehicles or any part thereof for purposes other
235 than engaging in and holding himself or itself out to the
236 public to be engaged in the business of selling vehicles
237 or any part thereof.

238 (c) It is recognized that throughout this code the term
239 "trailer" or "trailers" is used to include, among other
240 types of trailers, house trailers. It is also recognized that
241 throughout this code the term "trailer" or "trailers" is
242 seldom used to include semi-trailers or pole trailers.
243 However, for the purposes of this article only, the term
244 "trailers" shall have the meaning ascribed to it in
245 subsection (a) of this section.

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

Bruce O. Williams

Chairman Senate Committee

Floyd Fulb

Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

Todd C. Walker

Clerk of the Senate

Donald A. Kopp

Clerk of the House of Delegates

Sam Tankersiel

President of the Senate

Joseph P. Allright

Speaker of the House of Delegates

The within *approved* this the *25th*
day of *March*, 1986.

Arch A. Moore Jr.

Governor

PRESENTED TO THE

GOVERNOR

e 3/20/86

4:41 p.m.

RECEIVED

1986 MAR 26 PM 4: 25

OFFICE OF THE CLERK
SECRETARIAT OF STATE

FILED IN THE OFFICE OF
SECRETARY OF STATE OF
WEST VIRGINIA

THIS DATE 3/26/86