WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1988

ENROLLED

Com. Sub. for Com. Sub. for
SENATE BILL NO. 614

(By Senator TUCKER, ET AL)

PASSED MARCH 12, 1988

In Effect 90 days from Passage
AN ACT to amend and reenact section one, article one; sections two and four, article three; section one, article four-a; and sections one, two, three, four, five, six, ten and thirteen, article six, all of chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to the registration of motor vehicles, including recreational vehicles and the licensing of motor vehicle dealers, including recreational vehicle dealers; defining certain terms; requiring the registration of recreational vehicles except for motor boats, all-terrain vehicles and snow mobiles, effective date of provisions regarding registration of recreational vehicles; subjecting recreational vehicles to certificate of title tax and exempting those acquired prior to a certain date; requiring certificates of title to show liens or encumbrances; providing legislative findings and declaration of public policy; requiring license certificates for dealers; requiring dealers to have an established place of business; increasing minimum levels of
insurance necessary to obtain a license certificate; providing license certificate exemption; refusal or issuance of license certificate; initial application and renewal fees for dealers and refund of fees; issuance of special plates; and use of special plates.

Be it enacted by the Legislature of West Virginia:

That section one, article one; sections two and four, article three; section one, article four-a; and sections one, two, three, four, five, six, ten and thirteen, article six, all of chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, 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 following words and phrases when used in this chapter shall have the meanings respectively ascribed to them in this article:
2 (a) "Vehicle" means every device in, upon or by which any person or property is or may be transported or drawn upon a highway, excepting devices moved by human power or used exclusively upon stationary rails or tracks.
3 (b) "Motor vehicle" means every vehicle which is self-propelled and every vehicle which is propelled by electric power obtained from overhead trolley wires, but not operated upon rails.
4 (c) "Motorcycle" means every motor vehicle, including motor-driven cycles and mopeds as defined in sections five and five-a, article one, chapter seventeen-c of this code, having a saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground but excluding a tractor.
5 (d) "School bus" means every motor vehicle owned by a public governmental agency and operated for the transportation of children to or from school or privately owned and operated for compensation for the transportation of children to or from school.
6 (e) "Bus" means every motor vehicle designed for carrying more than seven passengers and used for the transportation of persons; and every motor vehicle, other
than a taxicab, designed and used for the transportation of persons for compensation.

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

(g) "Farm tractor" means every motor vehicle designed and used primarily as a farm implement for drawing plows, mowing machines, and other implements of husbandry.

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

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

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

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

(l) "Pole trailer" means every vehicle without motive power designed to be drawn by another vehicle and attached to the towing vehicle by means of a reach, or pole, or by being boomed or otherwise secured to the towing vehicle, and ordinarily used for transporting long or irregularly shaped loads such as poles, pipes, or structural members capable, generally, of sustaining themselves as beams between the supporting connections.

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

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

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

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

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

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

(s) "Pneumatic tire" means every tire in which compressed air is designed to support the load.

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

(u) "Metal tire" means every tire the surface of which in contact with the highway is wholly or partly of metal or other hard, nonresilient material.
(v) "Commissioner" means the commissioner of motor vehicles of this state.

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

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

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

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

(aa) "Dealer" or "dealers" is a general term meaning, depending upon the context in which used, either a new motor vehicle dealer, used motor vehicle dealer, house trailer dealer, recreational vehicle dealer, trailer dealer or motorcycle dealer, as defined in section one, article six of this chapter, or all of such dealers or a combination thereof, and in some instances a new motor vehicle dealer or dealers in another state.

(bb) "Registered dealer" or "registered dealers" is a general term meaning, depending upon the context in which used, either a new motor vehicle dealer, used motor vehicle dealer, house trailer dealer, trailer dealer, recreational vehicle dealer or motorcycle dealer, or all of such dealers or a combination thereof, licensed under the provisions of article six of this chapter.

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

(dd) "Transporter" means every person engaged in the business of delivering vehicles of a type required to be
registered hereunder from a manufacturing, assembling or distributing plant to dealers or sales agents of a manufacturer.

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

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

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

(hh) "Motorboat trailer" means every vehicle designed for or ordinarily used for the transportation of a motorboat.

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

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

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

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

“Snowmobile” means a self-propelled vehicle
intended for travel primarily on snow and driven by a track
or tracks in contact with the snow and steered by a ski or
skis in contact with the snow.

“Recreational vehicle” means a motorboat,
motorboat trailer, all-terrain vehicle, travel trailer, fold
down camping trailer, motor home or snowmobile.

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.

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

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

(2) Any implement of husbandry upon which is securely
attached a machine for spraying fruit trees and plants of the
owner or lessee or for any other implement of husbandry
which is used exclusively for agricultural or horticultural
purposes on lands owned or leased by the owner thereof and
which is not operated on or over any public highway of this
state for any other purpose other than for the purpose of
operating it across a highway or along a highway other than
an expressway as designated by the state road
commissioner from one point of the owner's land to another
part thereof, irrespective of whether or not the tracts
adjoin: Provided, That the distance between the points
shall not exceed fifteen miles, or for the purpose of taking it
or other fixtures thereto attached, to and from a repair shop for repairs. The foregoing exemption from registration and license requirements shall also apply to any vehicle hereinbefore described or to any farm trailer owned by the owner or lessee of the farm on which such trailer is used, when such trailer is used by the owner thereof for the purpose of moving farm produce and livestock from such farm along a public highway for a distance not to exceed ten miles to a storage house or packing plant, when such use is a seasonal operation.

The exemptions contained in this section shall also apply to farm machinery and tractors: Provided, That such machinery and tractors may use the highways in going from one tract of land to another tract of land regardless of whether such land be owned by the same or different persons.

Any vehicle exempted hereunder from the requirements of annual registration certificate and license plates shall be permitted to use the highways as herein provided whether such exempt vehicle is self-propelled, towed by another exempt vehicle or towed by another vehicle for which registration is required.

Any vehicle used as an implement of husbandry exempt hereunder must have the words “farm use” affixed to both sides of the implement in ten inch letters;

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

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

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

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

The provisions of this article relating to recreational vehicles shall become effective on the first day of July, one thousand nine hundred eighty-nine.
§17A-3-4. Application for certificate of title; tax for privilege of certification of title; penalty for false swearing.

Certificates of registration of any vehicle or registration plates therefor, whether original issues or duplicates, shall not be issued or furnished by the department of motor vehicles or any other officer charged with the duty, unless the applicant therefor already has received, or shall at the same time make application for and be granted, an official certificate of title of the vehicle. The application shall be upon a blank form to be furnished by the department of motor vehicles and shall contain a full description of the vehicle, which description shall contain a manufacturer's serial or identification number or other number as determined by the commissioner and any distinguishing marks, together with a statement of the applicant's title and of any liens or encumbrances upon the vehicle, the names and addresses of the holders of the liens and any other information as the department of motor vehicles may require. The application shall be signed and sworn to by the applicant. A tax is hereby imposed upon the privilege of effecting the certification of title of each vehicle in the amount equal to five percent of the value of said motor vehicle at the time of such certification. If the vehicle is new, the actual purchase price or consideration to the purchaser thereof shall be the value of the vehicle; if the vehicle is a used or secondhand vehicle, the present market value at time of transfer or purchase shall be considered the value thereof for the purposes of this section. Provided, That so much of the purchase price or consideration as is represented by the exchange of other vehicles on which the tax herein imposed has been paid by the purchaser shall be deducted from the total actual price or consideration paid for the vehicle, whether the same be new or secondhand; if the vehicle be acquired through gift, or by any manner whatsoever, unless specifically exempted in this section, the present market value of the vehicle at the time of the gift or transfer shall be considered the value thereof for the purposes of this section. No certificate of title for any vehicle shall be issued to any applicant unless the applicant shall have paid to the department of motor vehicles the tax
imposed by this section which shall be five percent of the 
true and actual value of said vehicle whether the vehicle be 
acquired through purchase, by gift or by any other manner 
whatsoever except gifts between husband and wife or 
between parents and children: *Provided, however, That the 
husband or wife, or the parents or children previously have 
paid the tax on the vehicles so transferred to the state of 
West Virginia: Provided further, That the department of 
motor vehicles may issue a certificate of registration and 
title to an applicant if the applicant provides sufficient 
proof to the department of motor vehicles that the applicant 
has paid the taxes and fees required by this section to a 
motor vehicle dealership that has filed bankruptcy 
proceedings in the United States bankruptcy court and the 
taxes and fees so required to be paid by the applicant have 
been impounded due to the bankruptcy proceedings: And 
provided further, That the applicant makes an affidavit of 
the same and assigns all rights to claims for money the 
applicant may have against the motor vehicle dealership to 
the department of motor vehicles.

The tax imposed by this section shall not apply to vehicles 
to be registered as Class H vehicles, or Class S vehicles, as 
defined in section one, article ten of this chapter, which are 
used or to be used in interstate commerce, nor shall the tax 
imposed by this section apply to titling of vehicles by a 
registered dealer of this state for resale only, nor shall the 
tax imposed by this section apply to titling of vehicles by 
this state or any political subdivision thereof, or by any 
volunteer fire department or duly chartered rescue or 
ambulance squad organized and incorporated under the 
laws of the state of West Virginia as a nonprofit corporation 
for protection of life or property. The total amount of 
revenue collected by reason of this tax shall be paid into the 
state road fund and expended by the commissioner of 
highways for matching federal funds allocated for West 
Virginia. In addition to said tax, there shall be a charge of 
five dollars for each original certificate of title or duplicate 
certificate of title so issued: *Provided, That this state or any 
political subdivision thereof, or any volunteer fire 
department, or duly chartered rescue squad, shall be 
exempted from payment of such charge.
Such certificate shall be good for the life of the vehicle, so long as the same is owned or held by the original holder of such certificate, and need not be renewed annually, or any other time, except as herein provided.

If, by will or direct inheritance, a person becomes the owner of a motor vehicle and the tax herein imposed previously has been paid, to the department of motor vehicles, on that vehicle, he shall not be required to pay such tax.

A person who has paid the tax imposed by this section shall not be required to pay the tax a second time for the same motor vehicle, but he shall be required to pay a charge of five dollars for the certificate of retitle of that motor vehicle, except that the tax shall be paid by the person when the title to the vehicle has been transferred either in this or another state from such person to another person and transferred back to such person.

Notwithstanding any provisions of this code to the contrary, the owners of trailers, semitrailers, recreational vehicles and other vehicles not subject to the certificate of title tax prior to the enactment of this chapter shall be subject to the privilege tax imposed by this section:

Provided, That the certification of title of any recreational vehicle owned by the applicant on the thirtieth day of June, one thousand nine hundred eighty-nine, shall not be subject to the tax imposed by this section: Provided, however, That mobile homes, house trailers, modular homes and similar nonmotive propelled vehicles, except recreational vehicles, susceptible of being moved upon the highways but primarily designed for habitation and occupancy, rather than for transporting persons or property, or any vehicle operated on a nonprofit basis and used exclusively for the transportation of mentally retarded or physically handicapped children when the application for certificate of registration for such vehicle is accompanied by an affidavit stating that such vehicle will be operated on a nonprofit basis and used exclusively for the transportation of mentally retarded and physically handicapped children, shall not be subject to the tax imposed by this section, but shall be taxable under the provisions of articles fifteen and fifteen-a, chapter eleven of this code.
If any person making any affidavit required under any provision of this section, shall therein knowingly swear falsely, or if any person shall counsel, advise, aid or abet another in the commission of false swearing, he shall on first offense be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than five hundred dollars or be imprisoned in the county jail for a period not to exceed six months, or in the discretion of the court be subject to both such fine and imprisonment; for a second or any subsequent conviction within five years he shall be guilty of a felony, and, upon conviction thereof, shall be fined not more than five thousand dollars or be imprisoned in the penitentiary for not less than one year nor more than five years or in the discretion of the court be subject to both fine and imprisonment.

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.

The department upon receiving an application for a certificate of title to a vehicle, trailer, semitrailer, pole trailer or recreational vehicle for which a certificate of title is required under article three of this chapter, all of which are hereinafter in this article referred to as vehicles, showing liens or encumbrances upon such vehicle, shall, upon issuing to the owner thereof a certificate of title therefor, show upon the face of the certificate of title all liens or encumbrances disclosed by such application. All such liens or encumbrances shall be shown in the order of their priority being according to the information contained in such application. When such an application shows liens and encumbrances, such information as evidence of the lien in connection therewith as the department may deem necessary shall also be furnished. Such information shall include the name and address of the lienholder, the nature and kind of his lien, the date thereof, and the amount thereby secured. However, only the name and address of the lienholder will be endorsed on the title certificate. Upon issuing the certificate, the department shall thereupon send or deliver it to the holder of the first lien.
ARTICLE 6. LICENSING OF DEALERS AND WRECKERS OR DISMANTLERS; SPECIAL PLATES; TEMPORARY PLATES OR MARKERS, ETC.

PART I. DEFINITIONS; LEGISLATIVE FINDINGS AND PUBLIC POLICY.

§17A-6-1. Definitions.

1 (a) Unless the context in which used clearly requires a different meaning, as used in this article:
2 (1) "New motor vehicle dealer" means every person (other than his agents and employees, if any, while acting within the scope of their authority or employment), engaged in, or who holds himself out to the public to be engaged in, the business in this state of selling five or more new motor vehicles or new and used motor vehicles in any fiscal year of a type required to be registered under the provisions of this chapter, except, for the purposes of this article only, motorcycles.
3 (2) "Used motor vehicle dealer" means every person (other than his agents and employees, if any, while acting within the scope of their authority or employment), engaged in, or holds himself out to the public to be engaged in, the business in this state of selling five or more used motor vehicles in any fiscal year of a type required to be registered under the provisions of this chapter, except, for the purposes of this article only, motorcycles.
4 (3) "House trailer dealer" means every person (other than his agents and employees, if any, while acting within the scope of their authority or employment), engaged in, or who holds himself out to the public to be engaged in, the business in this state of selling new and/or used house trailers, or new and/or used house trailers and trailers.
5 (4) "Trailer dealer" means every person (other than his agents and employees, if any, while acting within the scope of their authority or employment), engaged in, or who holds himself out to the public to be engaged in, the business in this state of selling new and/or used trailers.
6 (5) "Motorcycle dealer" means every person (other than his agents and employees, if any, while acting within the scope of their authority or employment), engaged in, or who holds himself out to the public to be engaged in, the business in this state of selling new and/or used motorcycles.
(6) "Used parts dealer" means every person (other than his agents and employees, if any, while acting within the scope of their authority or employment), engaged in, or who holds himself out to the public to be engaged in, the business in this state of selling any used appliance, accessory, member, portion or other part of any vehicle.

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

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

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

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

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

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

(13) "Sell," "sale" or "selling" shall, in addition to the ordinary definitions of such terms, include offering for sale, soliciting sales of, negotiating for the sale of, displaying for sale, or advertising for sale, any vehicle, whether at retail, wholesale or at auction. "Selling" shall, in addition to the ordinary definition of that term, also include buying and exchanging.
(14) "Applicant" means any person making application for an original or renewal license certificate under the provisions of this article.

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

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

(17) "Established place of business" shall, in the case of a new motor vehicle dealer, mean a permanent location, not a temporary stand or other temporary quarters, owned or leased by the licensee or applicant and actually occupied or to be occupied by him, as the case may be, which is or is to be used exclusively for the purpose of selling new motor vehicles or new and used motor vehicles, which shall have space under roof for the display of at least one new motor vehicle and facilities and space therewith for the servicing and repair of at least one motor vehicle, which servicing and repair facilities and space shall be adequate and suitable to carry out servicing and to make repairs necessary to keep and carry out all representations, warranties and agreements made or to be made by such dealer with respect to motor vehicles sold by him, which shall be easily accessible to the public, which shall conform to all applicable laws of the state of West Virginia and the ordinances of the municipality in which it is located, if any, which shall display thereon at least one permanent sign, clearly visible from the principal public street or highway nearest said location and clearly stating the business which is or shall be conducted thereat, and which shall have adequate facilities to keep, maintain and preserve records, papers and documents necessary to carry on such business and to make the same available to inspection by the commissioner at all reasonable times: Provided, That the requirement of exclusive use shall be met even though (i) some new and any used motor vehicles sold or to be sold by such dealer or sold or are to be sold at a different location or locations not meeting the definition of an established place of business of a new motor vehicle dealer, if each such location is or is to be served by other facilities and space of such dealer for the servicing and repair of at least one motor vehicle, adequate and suitable as aforesaid, and each such
location used for the sale of some new and any used motor
vehicles otherwise meets the definition of an established
place of business of a used motor vehicle dealer; (ii) house
trailers, trailers and/or motorcycles are sold or are to be
sold thereat, if, subject to the provisions of section five of
this article, a separate license certificate is obtained for
each such type of vehicle business, which license certificate
remains unexpired, unsuspended and unrevoked; (iii) farm
machinery is sold thereat; and (iv) accessory, gasoline and
oil, or storage departments are maintained thereat, if such
departments are operated for the purpose of furthering and
assisting in the licensed business or businesses.

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

(19) "Established place of business" shall, in the case of
a used motor vehicle dealer, mean a permanent location, not
a temporary stand or other temporary quarters, owned or
leased by the licensee or applicant and actually occupied or
to be occupied by him, as the case may be, which is or is to be
used exclusively for the purpose of selling used motor
vehicles, which shall have facilities and space therewith for
the servicing and repair of at least one motor vehicle, which
servicing and repair facilities and space shall be adequate
and suitable to carry out servicing and to make repairs
necessary to keep and carry out all representations,
warranties and agreements made or to be made by such
dealer with respect to used motor vehicles sold by him,
which shall be easily accessible to the public, shall conform
to all applicable laws of the state of West Virginia, and the
ordinances of the municipality in which it is located, if any,
which shall display thereon at least one permanent sign,
clearly visible from the principal public street or highway
nearest said location and clearly stating the business which
is or shall be conducted thereat, and which shall have
adequate facilities to keep, maintain and preserve records,
papers and documents necessary to carry on such business
and to make the same available to inspection by the
commissioner at all reasonable times: Provided, That if a
used motor vehicle dealer has entered into a written
agreement or agreements with a person or persons owning
or operating a servicing and repair facility or facilities
adequate and suitable as aforesaid, the effect of which
agreement or agreements is to provide such servicing and
repair services and space in like manner as if said servicing
and repair facilities and space were located in or on said
dealer's place of business, then, so long as such an
agreement or agreements are in effect, it shall not be
necessary for such dealer to maintain such servicing and
repair facilities and space at his place of business in order
for such place of business to be an established place of
business as herein defined: Provided, however, That the
requirement of exclusive use shall be met even though (i)
house trailers, trailers and/or motorcycles are sold or are to
be sold thereat, if, subject to the provisions of section five of
this article, a separate license certificate is obtained for
each such type of vehicle business, which license certificate
remains unexpired, unsuspended and unrevoked; (ii) farm
machinery is sold thereat; and (iii) accessory, gasoline and
oil, or storage departments are maintained thereat, if such
departments are operated for the purpose of furthering and
assisting in the licensed business or businesses.

(20) "Established place of business" shall, in the case of
a house trailer dealer, trailer dealer, recreational vehicle
dealer, motorcycle dealer, used parts dealer and wrecker or
dismantler, mean a permanent location, not a temporary
stand or other temporary quarters, owned or leased by the
licensee or applicant and actually occupied or to be
occupied by him, as the case may be, which shall be easily
accessible to the public, which shall conform to all
applicable laws of the state of West Virginia and the
ordinances of the municipality in which it is located, if any,
which shall display thereon at least one permanent sign,
clearly visible from the principal public street or highway
nearest said location and clearly stating the business which
is or shall be conducted thereat, and which shall have
adequate facilities to keep, maintain and preserve records,
papers and documents necessary to carry on such business
and to make the same available to inspection by the
commissioner at all reasonable times.

(21) "Manufacturer" means every person engaged in the
business of reconstructing, assembling or reassembling
vehicles with a special type body required by the purchaser
if said vehicle is subject to the title and registration
 provision of the code.
(22) "Transporter" means every person engaged in the business of transporting vehicles to or from a manufacturing, assembling or distributing plant to dealers or sales agents of a manufacturer, or purchasers.

(23) "Recreational vehicle dealer" means every person (other than his agents and employees, if any, while acting within the scope of their authority or employment), engaged in, or who holds himself out to the public to be engaged in, the business in this state of selling new and/or used recreational vehicles.

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

(25) "Motorboat trailer" means every vehicle designed for or ordinarily used for the transportation of a motorboat.

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

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

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

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

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

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

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

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

§17A-6-2. Legislative findings and declaration of public policy.

1 The Legislature hereby determines and finds that in the past some few persons engaged in the business of selling new or used motor vehicles, house trailers, trailers, recreational vehicles, motorcycles, or used motor vehicle
parts, and in the business of wrecking or dismantling motor
vehicles, have not had the necessary qualifications, staff,
equipment or facilities to adequately serve the public; that
some few persons engaged in said businesses have made
false and deceptive claims and advertisements to the public
and have engaged in fraud and other illegal conduct; that
certain citizens of this state have sustained financial losses
as a result thereof; and that in some of said cases there has
been no adequate means to prevent said conduct or protect
the interests of the citizens of West Virginia. It is, therefore,
declared to be the public policy of this state that the
business of new motor vehicle dealer, used motor vehicle
dealer, house trailer dealer, trailer dealer, recreational
vehicle dealer, motorcycle dealer, used parts dealer, or
wrecker or dismantler, affects the general welfare of this
state and its citizens; that persons without the necessary
qualifications, staff, equipment or facilities to adequately
serve the public, and persons not of good character or who
have or are likely to attempt to misrepresent their product
or engage in fraudulent or other illegal conduct should not
engage in such businesses; and that such evils may best be
prevented and the interests of the public best served by
requiring persons in such businesses to meet the
qualifications set forth in this article and to be licensed by
the commissioner of motor vehicles as provided in this
article.

The provisions of this article relating to recreational
vehicles and recreational vehicle dealers shall become
effective on the first day of July, one thousand nine hundred
and eighty-nine.

PART II. LICENSE CERTIFICATE PROVISIONS.

§17A-6-3. License certificate required; engaging in more than
one business; established place of business
required; existing licenses.

(a) No person shall engage or represent or advertise that
he is engaged or intends to engage in the business of new
motor vehicle dealer, used motor vehicle dealer, house
trailer dealer, trailer dealer, recreational vehicle dealer,
motorcycle dealer, used parts dealer, or wrecker or
dismantler, in this state, unless and until he shall first
obtain a license certificate therefor as provided in this
article, which license certificate remains unexpired, unsuspended and unrevoked. Any person desiring to engage in more than one such business must, subject to the provisions of section five of this article, apply for and obtain a separate license certificate for each such business.

(b) Except for the qualification contained in subdivision (17), subsection (a), section one of this article with respect to a new motor vehicle dealer, each place of business of a new motor vehicle dealer, used motor vehicle dealer, house trailer dealer, trailer dealer, recreational vehicle dealer, motorcycle dealer, used parts dealer and wrecker or dismantler, must be an established place of business as defined for such business in said section one.

c) Any license certificate and special plates issued by the commissioner under the former provisions of article six or article seven or section six, article ten of this chapter, and which have not been canceled, suspended or revoked prior to the effective date of this article shall be governed by the provisions of this article and shall remain valid until their expiration, unless such license certificate is sooner suspended or revoked in accordance with the provisions of this article.

§17A-6-4. Application for license certificate; insurance; bonds; investigation; information confidential.

(a) Application for any license certificate required by section three of this article shall be made on such form as may be prescribed by the commissioner. There shall be attached to the application a certificate of insurance certifying that the applicant has in force an insurance policy issued by an insurance company authorized to do business in this state insuring the applicant and any other person, as insured, using any vehicle or vehicles owned by the applicant with the express or implied permission of such named insured, against loss from the liability imposed by law for damages arising out of the ownership, operation, maintenance or use of such vehicle or vehicles, subject to minimum limits, exclusive of interest and costs, with respect to each such vehicle, as follows: Twenty thousand dollars because of bodily injury to or death of one person in any one accident and, subject to said limit for one person, forty thousand dollars because of bodily injury to or death...
(b) In the case of an application for a license certificate to engage in the business of new motor vehicle dealer, used motor vehicle dealer or house trailer dealer, such application shall disclose, but not be limited to, the following:

1. The type of business for which a license certificate is sought;
2. If the applicant be an individual, the full name and address of the applicant and any trade name under which he will engage in said business;
3. If the applicant be a copartnership, the full name and address of each partner therein, the name of the copartnership, its post office address and any trade name under which it will engage in said business;
4. If the applicant be a corporation, its name, the state of its incorporation, its post office address and the full name and address of each officer and director thereof;
5. The location of each place in this state at which the applicant will engage in said business and whether the same is owned or leased by the applicant;
6. Whether the applicant, any partner, officer or director thereof has previously engaged in said business or any other business required to be licensed under the provisions of this article and if so, with or for whom, at what location and for what periods of time;
7. Whether the applicant, any partner, officer, director or employer thereof has previously applied for a license certificate under the provisions of this article or a similar license certificate in this or any other state, and if so, whether such license certificate was issued or refused, and, if issued, whether it was ever suspended or revoked;
8. A statement of previous general business experience and past history of the applicant; and
9. Such other information as the commissioner may reasonably require which may include information relating to any contracts, agreements or understandings between the applicant and other persons respecting the transaction of said business, and any criminal record of the applicant if
an individual, or of each partner if a copartnership, or of
each officer and director, if a corporation.

c) In the case of an application for a license certificate
to engage in the business of new motor vehicle dealer, such
application shall, in addition to the matters outlined in
subsection (b) of this section disclose:
(1) The make or makes of new motor vehicles which the
applicant will offer for sale in this state during the ensuing
fiscal year; and
(2) The exact number of new motor vehicles, if any, sold
at retail in this state by such applicant or his predecessor, if
any, during the preceding fiscal year, and if no new motor
vehicles were sold at retail in this state by such applicant or
his predecessor, if any, during the preceding fiscal year, the
number of new motor vehicles the applicant reasonably
expects to sell at retail in this state during the ensuing fiscal
year.

d) In the case of an application for a license certificate
to engage in the business of used motor vehicle dealer, such
application shall in addition to the matters outlined in
subsection (b) of this section, disclose the exact number of
used motor vehicles, if any, sold at retail in this state by such
applicant or his predecessor, if any, during the preceding
fiscal year, and if no used motor vehicles were sold at retail
in this state by such applicant or his predecessor, if any,
during the preceding fiscal year, the number of used motor
vehicles the applicant reasonably expects to sell at retail in
this state during the ensuing fiscal year.

e) In the case of an application for a license certificate
to engage in the business of trailer dealer, recreational
vehicle dealer, motorcycle dealer, used parts dealer, or
wrecker or dismantler, such application shall disclose such
information as the commissioner may reasonably require.

f) Such application shall be verified by the oath or
affirmation of the applicant, if an individual, or if the
applicant is a copartnership or corporation, by a partner or
officer thereof, as the case may be. Such application must be
accompanied by a bond of the applicant in the penal sum of
two thousand dollars, in such form as may be prescribed by
the commissioner, conditioned that the applicant will not in
the conduct of his business practice any fraud which, or
make any fraudulent representation which, shall cause a
financial loss to any purchaser, seller or financial
institution or agency, or the state of West Virginia, with a
corporate surety thereon authorized to do business in this
state, which bond shall be effective as of the date on which
the license certificate sought is issued.

(g) Upon receipt of any such fully completed
application, together with any bond required as aforesaid,
the certificate of insurance as aforesaid and the appropriate
fee as hereinafter provided in section ten of this article, the
commissioner may conduct such investigation, as he deems
necessary to determine the accuracy of any statements
contained in such application and the existence of any other
facts which he deems relevant in considering such
application. To facilitate such investigation, the
commissioner may withhold issuance or refusal of the
license certificate for a period not to exceed twenty days.

(h) Any application for a license certificate under the
provisions of this article and any information submitted
therewith shall be confidential for the use of the
department. No person shall divulge any information
contained in any such application or any information
submitted therewith except in response to a valid subpoena
or subpoena duces tecum issued pursuant to law.

§17A-6-5. License certificate exemption.

Any new motor vehicle dealer, used motor vehicle dealer,
house trailer dealer, trailer dealer, recreational vehicle
dealer or motorcycle dealer receiving a vehicle in trade of a
type other than that he is licensed to sell hereunder may sell
such vehicle without obtaining a license certificate to
engage in the business of selling vehicles of such type and
without being considered to be a dealer in vehicles of such
type.

§17A-6-6. Refusal or issuance of license certificate; license
certificate not transferable.

(a) Upon the basis of the application and all other
information before him, the commissioner shall make and
enter an order denying the application for a license
certificate and refusing the license certificate sought, which
denial and refusal shall be final and conclusive unless an
appeal is taken in accordance with the provisions of section twenty-one of this article, if the commissioner finds that the applicant (individually, if an individual, or the partners, if a copartnership, or the officers and directors, if a corporation):

(1) Has failed to furnish the required bond;
(2) Has failed to furnish the required certificate of insurance;
(3) Has knowingly made false statement of a material fact in his application;
(4) Has habitually defaulted on financial obligations;
(5) Has been convicted of a felony within five years immediately preceding receipt of the application by the commissioner;
(6) So far as can be ascertained, has not complied with and will not comply with the registration and title laws of this state;
(7) Does not or will not have and/or maintain at each place of business (subject to the qualification contained in subdivision (17), subsection (a), section one of this article with respect to a new motor vehicle dealer) and established place of business as defined for the business in question in said section one;
(8) Has been guilty of any fraudulent act in connection with the business of new motor vehicle dealer, used motor vehicle dealer, house trailer dealer, trailer dealer, recreational vehicle dealer, motorcycle dealer, used parts dealer, or wrecker or dismantler; or
(9) Has done any act or has failed or refused to perform any duty for which the license certificate sought could be suspended or revoked were it then issued and outstanding.

Otherwise, the commissioner shall issue to the applicant the appropriate license certificate which shall entitle the licensee to engage in the business of new motor vehicle dealer, used motor vehicle dealer, house trailer dealer, trailer dealer, recreational vehicle dealer, motorcycle dealer, used parts dealer, or wrecker or dismantler, as the case may be, during the period, unless sooner suspended or revoked, for which the license certificate is issued.

(b) A license certificate issued in accordance with the provisions of this article shall not be transferable.
PART III. FEES AND DEALER SPECIAL PLATES
GENERALLY.

§17A-6-10. Fee required for license certificate; dealer special plates.

1. (a) The initial application fee for a license certificate to engage in the business of a new motor vehicle dealer, used motor vehicle dealer, house trailer dealer, trailer dealer, motorcycle dealer, recreational vehicle dealer, house trailer dealer, or used parts dealer, or wrecker, or dismantler, shall be two hundred and fifty dollars: Provided, That if an application for a license certificate is denied or refused in accordance with section six of this article, one hundred twenty-five dollars shall be refunded to the applicant. The initial application fee shall entitle the licensee to dealer special plates as prescribed by subsections (b), (c), (d) and (e) of this section.

2. (b) The annual renewal fee required for a license certificate to engage in the business of new motor vehicle dealer shall be one hundred dollars. This fee shall also entitle such licensee to one dealer's special plate which shall be known as a Class D special plate. Up to nine additional Class D special plates shall be issued to any such licensee upon application therefor on a form prescribed by the commissioner for such purpose and the payment of a fee of five dollars for each additional Class D special plate. Any such licensee who obtains a total of ten Class D special plates as aforesaid shall be entitled to receive additional Class D special plates on a formula basis, that is, one additional Class D special plate per twenty new motor vehicles sold at retail in this state by such licensee or his predecessor during the preceding fiscal year, upon application therefor on a form prescribed by the commissioner for such purpose and the payment of a fee of five dollars for each such additional Class D special plate: Provided, That in the case of a licensee who did not own or operate such business during such preceding fiscal year and who has no predecessor who owned or operated such business during the preceding fiscal year, additional Class D special plates shall be issued, for the ensuing fiscal year only, on a formula basis of one additional Class D special plate per twenty new motor vehicles which such licensee estimates on his application for his license certificate he
will sell at retail in this state during said ensuing fiscal year. Any such licensee may obtain Class D special plates in addition to the ten plates authorized above and any authorized on a formula basis, but the cost of each such Class D special plate shall be thirty dollars.

(c) The annual renewal fee required for a license certificate to engage in the business of used motor vehicle dealer shall be one hundred dollars. This fee shall also entitle such licensee to one dealer's special plate which shall be known as a Class D-U/C special plate. Up to four additional Class D-U/C special plates shall be issued to any such licensee upon application therefor on a form prescribed by the commissioner for such purpose and the payment of a fee of five dollars for each additional Class D-U/C special plate. Any such licensee who obtains a total of five Class D-U/C special plates as aforesaid shall be entitled to receive additional Class D-U/C special plates on a formula basis, that is, one additional Class D-U/C special plate per thirty used motor vehicles sold at retail in this state by such licensee or his predecessor during the preceding fiscal year, upon application therefor on a form prescribed by the commissioner for such purpose and the payment of a fee of five dollars for each such additional Class D-U/C special plate: Provided, That in the case of a licensee who did not own or operate such business during such preceding fiscal year and who has no predecessor who owned or operated such business during the preceding fiscal year, additional Class D-U/C special plates shall be issued, for the ensuing fiscal year only, on a formula basis of one additional Class D-U/C special plate per thirty used motor vehicles which such licensee estimates on his application for his license certificate he will sell at retail in this state during said ensuing fiscal year. Any such licensee may obtain Class D-U/C special plates, in addition, to the five plates authorized above and any authorized on a formula basis, but the cost of each such Class D-U/C special plate shall be thirty dollars.

(d) The annual renewal fee required for a license certificate to engage in the business of house trailer dealer or trailer dealer, as the case may be, shall be twenty-five dollars. This fee shall also entitle such licensee to four
dealer’s special plates which shall be known as Class D-T/R
special plates. Additional Class D-T/R special plates shall
be issued to any such licensee upon application therefor on
a form prescribed by the commissioner for such purpose
and the payment of a fee of five dollars for each such
additional Class D-T/R special plate.

(e) The annual renewal fee required for a license
certificate to engage in the business of recreational vehicle
dealer shall be one hundred dollars. This fee shall also
entitle such licensee to four dealer’s special plates which
shall be known as Class D-R/V special plates. Additional
Class D-R/V special plates shall be issued to any such
licensee upon application therefor on a form prescribed by
the commissioner for such purpose on the payment of a fee
of twenty-five dollars for each such additional Class D-R/V
special plate.

(f) The annual renewal fee required for a license
certificate to engage in the business of motorcycle dealer
shall be ten dollars. This fee shall also entitle such licensee
to two dealer’s special plates which shall be known as Class
F special plates. Additional Class F special plates shall be
issued to any such dealer upon application therefor on a
form prescribed by the commissioner for such purpose and
the payment of a fee of five dollars for each such additional
Class F special plate.

(g) The annual renewal fee required for a license
certificate to engage in the business of used parts dealer, or
wrecker, or dismantler, as the case may be, shall be fifteen
dollars. Upon payment of the fee for said license certificate,
a licensee shall be entitled to up to four special license
plates which shall be known as Class WD special plates.
Such plates shall be issued to any such licensee upon
application therefor on a form prescribed by the
commissioner for such purpose and the payment of a fee of
twenty-five dollars for each such plate. Such plate issued
under the provisions of this subsection shall have the words
“Towing Only” affixed thereon.

(h) All of the special plates provided for in this section
shall be of such form and design and contain such other
distinguishing marks or characteristics as the
commissioner may prescribe.
§17A-6-13. Use of special plates; records to be maintained by dealer.

(a) The Class D special plates and the Class D-U/C special plates herein authorized may be used for any purpose on any motor vehicle owned by the dealer to whom issued and which is being operated with his knowledge and consent and not otherwise: Provided, That under no circumstances whatever shall a Class D special plate or Class D-U/C special plate be used on any work or service vehicle owned by a dealer, on any vehicle owned by a dealer and offered for hire or lease, or on any vehicle which has been sold by a dealer to a customer.

(b) Under no circumstances whatever shall a Class D-T/R special plate be used for the purpose of operating a motor vehicle upon the streets and highways, or on any house trailer or other trailer owned by a dealer and offered for hire or lease, or on any house trailer or other trailer which has been sold by a dealer to a customer: Provided, That notwithstanding such sale or any provision of this code to the contrary, a Class D-T/R special plate may be used in moving a house trailer sold by a house trailer dealer to a customer for one trip only from the house trailer dealer's established place of business to a place designated by such customer.

(c) Under no circumstances whatever shall a Class D-R/V special plate be used for the purpose of operating a motor vehicle upon the streets and highways, or on any recreational vehicle owned by a dealer and offered for hire or lease, or on any recreational vehicle which has been sold by a dealer to a customer: Provided, That notwithstanding any provision of this code to the contrary, a Class D-R/V special plate may be used upon the streets and highways for demonstration purposes only on those recreational vehicles that are subject to registration under article three of this chapter.

(d) Under no circumstances whatever shall a Class F special plate be used for the purpose of operating any type of motor vehicle other than a motorcycle on the streets and highways, or on a motorcycle owned by a dealer and offered for hire or lease, or on any motorcycle which has been sold by a dealer to a customer.
(e) Every dealer entitled to and issued a special plate or plates under the provisions of this article shall keep a written record of the salesman, mechanic, employee, agent, officer, or other person, to whom a special plate or plates have been assigned by such dealer. Every such record shall be open to inspection by the commissioner or his representatives or any law-enforcement officer.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within day of March, 1988.