WEST VIRGINIA LEGISLATURE
SECOND REGULAR SESSION, 1992

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ENROLLED

Com. Sub. for
HOUSE BILL No. 4156

(By Delegates Reid and L. White)

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Passed March 7, 1992

In Effect July 1, 1992—Passage—

SECRETARY OF STATE
OFFICE OF WEST VIRGINIA
1992 APR 1 PM 4:41
RECEIVED
AN ACT to amend and reenact section four, article three, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact sections four, ten and thirteen, article six of said chapter, all relating to automobile dealers and owners; vehicle owners’ application for certificate of title; tax for privilege of certification of title; providing that the division of motor vehicles may issue a certificate of registration and title to an applicant if the applicant provides proof that the dealership has gone out of business and not paid the fees to the division; providing for transfer of certificates of registration and title among members of the same controlled group; criminal penalty for false swearing; application for license certificate; information required in an application; insurance; requiring an applicant for a new or used motor vehicle dealer’s license to disclose on the application form information regarding retail and wholesale sales of motor vehicles during the preceding fiscal year; requiring a license applicant who sold no motor vehicles during the preceding fiscal year to disclose the information regarding anticipated sales during the ensuing fiscal year; authorizing the increase from two thousand dollars to ten thousand dollars the
amount of the surety bond to be posted by an applicant for a motor vehicles dealer's license; application and renewal fees; issuance of dealers' plates; changing the formula under which new and used car dealers apply for and receive dealers' plates; limiting the use of dealer plates on courtesy vehicles to one per dealership; and maintenance of records.

Be it enacted by the Legislature of West Virginia:

That section four, article three, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that sections four, ten and thirteen, article six of said chapter be amended and reenacted, all to read as follows:

ARTICLE 3. ORIGINAL AND RENEWAL OF REGISTRATION; ISSUANCE OF CERTIFICATES OF TITLE.

§17A-3-4. Application for certificate of title; tax for privilege of certification of title; penalty for false swearing.

(a) Certificates of registration of any vehicle or registration plates therefor, whether original issues or duplicates, shall not be issued or furnished by the division of motor vehicles or any other officer charged with the duty, unless the applicant therefor already has received, or at the same time makes application for and is granted, an official certificate of title of the vehicle. The application shall be upon a blank form to be furnished by the division 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 division of motor vehicles may require. The application shall be signed and sworn to by the applicant.

(b) 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 the motor
vehicle at the time of the certification. If the vehicle is
new, the actual purchase price or consideration to the
purchaser thereof is the value of the vehicle; if the
vehicle is a used or secondhand vehicle, the present
market value at time of transfer or purchase is 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 imposed be this section 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 is 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 is 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 has paid to the division of motor
vehicles the tax imposed by this section which is five
percent of the true and actual value of the vehicle
whether the vehicle is 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 transferred to the state of West Virginia:
Provided further, That the division of motor vehicles
may issue a certificate of registration and title to an
applicant if the applicant provides sufficient proof to the
division of motor vehicles that the applicant has paid the
taxes and fees required by this section to a motor vehicle
dealership that has gone out of business or has filed
bankruptcy proceedings in the United States bank-
ruptcy court and the taxes and fees so required to be
paid by the applicant have not been sent to the division
by the motor vehicle dealership or 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 division of motor vehicles: And provided further,
That the division of motor vehicles shall issue a
certificate of registration and title to an applicant
without payment of the tax imposed by this section if
the applicant is a corporation, partnership or limited
liability company transferring the vehicle to another
corporation, partnership or limited liability company
when the entities involved in the transfer are members
of the same controlled group and the transferring entity
has previously paid the tax on the vehicle transferred.
For the purposes of this section, control means owner-
ship, directly or indirectly, of stock or equity interests
possessing fifty percent or more of the total combined
voting power of all classes of the stock of a corporation
or equity interests of a partnership or limited liability
company entitled to vote or ownership, directly or
indirectly, of stock or equity interests possessing fifty
percent or more of the value of the corporation,
partnership or limited liability company.

The tax imposed by this section does 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 does the tax imposed by this section
apply to the titling of Class B, Class K or Class E
vehicles registered at a gross weight of fifty-five
thousand pounds or more, or to the titling of Class C or
Class L semitrailers, full trailers, pole trailers, and
converter gear: Provided, That if an owner of a vehicle
has previously titled the vehicle at a declared gross
weight of fifty-five thousand pounds or more and the
title was issued without the payment of the tax imposed
by this section, then before the owner may obtain
registration for the vehicle at a gross weight less than
fifty-five thousand pounds, the owner must surrender to
the commissioner the exempted registration, the exemp-
ted certificate of title, and pay the tax imposed by this
section based upon the current market value of the
vehicle: Provided, however, That notwithstanding the
provisions of section nine, article fifteen, chapter eleven
of this code, the exemption from tax under this section
for Class B, Class K or Class E vehicles in excess of fifty-
five thousand pounds and Class C or Class L semitrail-
ers, full trailers, pole trailers and converter gear shall
not subject the sale or purchase of the vehicles to the consumers sales tax. The tax imposed by this section does not apply to titling of vehicles by a registered dealer of this state for resale only, nor does 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 the tax, there is a charge of five dollars for each original certificate of title or duplicate certificate of title so issued: Provided further, That this state or any political subdivision thereof, or any volunteer fire department, or duly chartered rescue squad, is exempt from payment of the charge.

The certificate is good for the life of the vehicle, so long as the same is owned or held by the original holder of the certificate, and need not be renewed annually, or any other time, except as provided in this section.

If, by will or direct inheritance, a person becomes the owner of a motor vehicle and the tax imposed by this section previously has been paid, to the division of motor vehicles, on that vehicle, he or she is not required to pay the tax.

A person who has paid the tax imposed by this section is not required to pay the tax a second time for the same motor vehicle, but is 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.

(c) 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 are 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, is not 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 the vehicle is accompanied by an affidavit stating that the vehicle will be operated on a nonprofit basis and used exclusively for the transportation of mentally retarded and physically handicapped children, are not subject to the tax imposed by this section, but are taxable under the provisions of articles fifteen and fifteen-a, chapter eleven of this code.

(d) Any person making any affidavit required under any provision of this section, who knowingly swears falsely, or any person who counsels, advises, aids or abets another in the commission of false swearing, is on the first offense 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, both fined and imprisoned. For a second or any subsequent conviction within five years, that person is 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, fined and imprisoned.

(e) Notwithstanding any other provisions of this section, any person in the military stationed outside West Virginia, or his or her dependents who possess a motor vehicle with valid registration, are exempt from
the provisions of this article for a period of nine months
from the date that that person returns to this state or
the date his or her dependent returns to this state,
whichever is later.

ARTICLE 6. LICENSING OF DEALERS AND WRECKERS OR
DISMANTLERS; SPECIAL PLATES; TEMPORARY
PLATES OR MARKERS, ETC.

§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 a form
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 the
named insured, against loss from the liability imposed
by law for damages arising out of the ownership,
operation, maintenance or use of the vehicle or vehicles,
subject to minimum limits, exclusive of interest and
costs, with respect to each vehicle, as follows: Twenty
thousand dollars because of bodily injury to or death of
one person in any one accident and, subject to the limit
for one person, forty thousand dollars because of bodily
injury to or death of two or more persons in any one
accident, and ten thousand dollars because of injury to
or destruction of property of others in any one accident.

(b) In the case of an application for a license certif-
icate to engage in the business of new motor vehicle
dealer, used motor vehicle dealer or house trailer dealer,
the 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 is an individual, the full name and
address of the applicant and any trade name under
which he or she will engage in the business;
(3) If the applicant is 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 the business;

(4) If the applicant is 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 the business and whether the business is owned or leased by the applicant;

(6) Whether the applicant, any partner, officer or director thereof has previously engaged in the 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 the 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 the past history of the applicant; and

(9) Any other information that 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 the 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, the 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
enuring fiscal year; and

(2) The exact number of new and used motor vehicles, if any, sold at retail and wholesale by the applicant or his or her predecessor, if any, during the preceding fiscal year, and if no new and used motor vehicles were sold at retail and wholesale by the applicant or his or her predecessor, if any, during the preceding fiscal year, the number of new and used motor vehicles the applicant reasonably expects to sell at retail and wholesale 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, the 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 and wholesale by the applicant or his or her predecessor, if any, during the preceding fiscal year, and if no used motor vehicles were sold at retail and wholesale by the applicant or his or her predecessor, if any, during the preceding fiscal year, the number of used motor vehicles the applicant reasonably expects to sell at retail and wholesale 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/dismantler/rebuilder, the application shall disclose any information that the commissioner may reasonably require.

(f) The 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. The application must be accompanied by a bond of the applicant in the penal sum of ten thousand dollars, in the form prescribed by the commissioner, conditioned that the applicant will not in the conduct of his or her 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 fully completed application,
together with any bond required under subsection (f) of
this section, the certificate of insurance as aforesaid and
the appropriate fee provided for in section ten of this
article, the commissioner may conduct any investiga-
tion, as he considers necessary to determine the
accuracy of any statements contained in the application
and the existence of any other facts which he deems
relevant in considering such application. To facilitate
the 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
with the application is confidential for the use of the
division. No person shall divulge any information
contained in any application or any information submit-
ted with the application except in response to a valid
subpoena or subpoena duces tecum issued pursuant to
law.

PART III. FEES AND DEALER SPECIAL PLATES GENERALLY.

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

(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 or
wrecker dismantler/ rebuilder is 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 entitles the licensee to dealer special
plates as prescribed by subsections (b),(c),(d) and (e) of
this section.
(b) The annual renewal fee required for a license certificate to engage in the business of new motor vehicle dealer is one hundred dollars. This fee shall also entitle the licensee to one dealer's special plate which shall be known as a Class D special plate. Up to two additional Class D special plates shall be issued to the licensee upon application 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 licensee is also entitled to receive additional Class D special plates on a formula basis, that is, one additional Class D special plate per twenty new and used motor vehicles sold at retail and wholesale by the licensee or predecessor during the preceding fiscal year, upon application 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: Provided, That in the case of a licensee who did not own or operate the business during the preceding fiscal year and who has no predecessor who owned or operated a business during the fiscal year, additional Class D plates shall be issued for the ensuing fiscal year only on a formula basis of one additional Class D plate per twenty new and used motor vehicles which the licensee estimates on his or her application for his or her license certificate he or she will sell at retail and wholesale during the ensuing fiscal year. The licensee may revise his or her estimate if actual sales of new and used motor vehicles in the initial year exceed the estimate by filing an amended application for his or her license certificate. Additional Class D plates shall be issued for the remaining portion of the fiscal year only on a formula basis of one additional Class D plate per twenty new and used vehicles in the revised estimate.

(c) The annual renewal fee required for a license certificate to engage in the business of used motor vehicle dealer is one hundred dollars. This fee also entitles the licensee to one dealer's special plate which shall be known as a Class D-U/C special plate. Up to two additional Class D-U/C special plates shall be issued to the licensee upon application 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 any licensee is also 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 twenty used motor vehicles sold at retail and/or wholesale by the licensee or his or her 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 additional Class D-U/C special plate: Provided, That in the case of a licensee who did not own or operate the business during the preceding fiscal year and who has no predecessor who owned or operated the business during the preceding fiscal year, additional Class D-U/C plates shall be issued for the ensuing fiscal year only on a formula basis of one additional Class D-U/C plate per twenty used motor vehicles which the licensee estimates on his or her application for the license certificate he or she will sell at retail and/or wholesale during the ensuing fiscal year. The licensee may revise his or her estimate if actual sales of used motor vehicles in the ensuing fiscal year exceed the estimate by filing an amended application for his or her license certificate. Additional Class D-U/C plates shall be issued for the remaining portion of the fiscal year only on a formula basis of one additional Class D-U/C plate per twenty used vehicles in the revised estimate.

(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, is twenty-five dollars. This fee also entitles the 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 the 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 is one hundred dollars. This fee shall also entitle the licensee to four dealer 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 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 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
is ten dollars. This fee shall also entitle the 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 the 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
additional Class F special plate.

(g) The annual renewal fee required for a license
certificate to engage in the business of wrecker/
dismantler/rebuilder, is fifteen dollars. Upon payment
of the fee for the license certificate, a licensee is entitled
to up to four special license plates which shall be known
as Class WD special plates. The plates shall be issued
to any 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
plate. The plate issued under the provisions of this
subsection shall have the words “Towing Only” affixed
thereon. A wrecker/dismantler/rebuilder is entitled to
one special plate known as a Class WD/Demo special
plate upon payment of a twenty-five dollar fee. This
plate shall only be used for demonstrating rebuilt
automobiles owned by the wrecker/dismantler/
rebuilder.

(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 commis-
sioner 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 authorized in this article may be used for
any purpose on any motor vehicle owned by the dealer
to whom issued and which is being operated with his
or her 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: Provided, however, That a dealer
is authorized to use a Class D or Class D-U/C special
plate on no more than one courtesy vehicle per
dealership.

(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 the sale or any provi-
sion 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 the 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 the dealer. Every record shall be open to inspection by the commissioner or his or her 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

Originating in the House.

Takes effect July 1, 1992

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within is approved this the 1st day of April, 1992.

Governor
PRESENTED TO THE
GOVERNOR.
Date 3/30/42
Time 2:45 pm