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SECRETARY OF STATE

# WEST VIRGINIA LEGISLATURE

SECOND REGULAR SESSION, 1992



# ENROLLED

*Com. Sub. For*

HOUSE BILL No. *H.136*

(By Delegates *Reid and Bress*)



Passed *March 7,* 1992

In Effect *Ninety Days From* Passage

**ENROLLED**  
COMMITTEE SUBSTITUTE  
FOR  
**H. B. 4136**  
(By DELEGATES REID AND BRUM)

[Passed March 7, 1992; in effect ninety days from passage.]

AN ACT to amend and reenact section one, article six, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to licensed motor vehicle dealers; and mandating minimum requirements relating to the display area, office space, telephone service and public hours of operation for a motor vehicle dealer's established place of business.

*Be it enacted by the Legislature of West Virginia:*

That section one, article six, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

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

**§17A-6-1. Definitions.**

- 1 (a) Unless the context in which used clearly requires
- 2 a different meaning, as used in this article:
- 3 (1) "New motor vehicle dealer" means every person
- 4 (other than his agents and employees, if any, while
- 5 acting within the scope of their authority or employ-
- 6 ment), engaged in, or who holds himself out to the public

7 to be engaged in, the business in this state of selling five  
8 or more new motor vehicles or new and used motor  
9 vehicles in any fiscal year of a type required to be  
10 registered under the provisions of this chapter, except,  
11 for the purposes of this article only, motorcycles.

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

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

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

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

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

47 (7) "Wrecker/dismantler/rebuilder" means every  
48 person (other than his agents and employees, if any,  
49 while acting within the scope of their authority or  
50 employment), engaged in, or who holds himself out to  
51 the public to be engaged in, the business in this state  
52 of dealing in wrecked or damaged motor vehicles or  
53 motor vehicle parts for the purpose of selling the parts  
54 thereof or scrap therefrom or who are in the business  
55 of rebuilding salvage motor vehicles for the purpose of  
56 resale to the public.

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

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

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

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

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

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

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

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

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

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

127 forty-four square feet, and a telephone listed in the name  
128 of the dealership. Each established place of business  
129 shall be open to the public a minimum of twenty hours  
130 per week at least forty weeks per calendar year with at  
131 least ten of those hours being between the hours of nine-  
132 thirty a.m. and eight-thirty p.m., Monday through  
133 Saturday: *Provided, however,* That the requirement of  
134 exclusive use shall be met even though (i) some new and  
135 any used motor vehicles sold or to be sold by such dealer  
136 or sold or are to be sold at a different location or  
137 locations not meeting the definition of an established  
138 place of business of a new motor vehicle dealer, if each  
139 such location is or is to be served by other facilities and  
140 space of such dealer for the servicing and repair of at  
141 least one motor vehicle, adequate and suitable as  
142 aforesaid, and each such location used for the sale of  
143 some new and any used motor vehicles otherwise meets  
144 the definition of an established place of business of a  
145 used motor vehicle dealer; (ii) house trailers, trailers  
146 and/or motorcycles are sold or are to be sold thereat, if,  
147 subject to the provisions of section five of this article,  
148 a separate license certificate is obtained for each such  
149 type of vehicle business, which license certificate  
150 remains unexpired, unsuspended and unrevoked; (iii)  
151 farm machinery is sold thereat; and (iv) accessory,  
152 gasoline and oil, or storage departments are maintained  
153 thereat, if such departments are operated for the  
154 purpose of furthering and assisting in the licensed  
155 business or businesses.

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

159 (19) "Established place of business" shall, in the case  
160 of a used motor vehicle dealer, mean a permanent  
161 location, not a temporary stand or other temporary  
162 quarters, owned or leased by the licensee or applicant  
163 and actually occupied or to be occupied by him, as the  
164 case may be, which is or is to be used exclusively for  
165 the purpose of selling used motor vehicles, which shall  
166 have facilities and space therewith for the servicing and  
167 repair of at least one motor vehicle, which servicing and

168 repair facilities and space shall be adequate and suitable  
169 to carry out servicing and to make repairs necessary to  
170 keep and carry out all representations, warranties and  
171 agreements made or to be made by such dealer with  
172 respect to used motor vehicles sold by him or her, which  
173 shall be easily accessible to the public, shall conform to  
174 all applicable laws of the state of West Virginia, and the  
175 ordinances of the municipality in which it is located, if  
176 any, which shall display thereon at least one permanent  
177 sign, clearly visible from the principal public street or  
178 highway nearest said location and clearly stating the  
179 business which is or shall be conducted thereat, and  
180 which shall have adequate facilities to keep, maintain  
181 and preserve records, papers and documents necessary  
182 to carry on such business and to make the same  
183 available to inspection by the commissioner at all  
184 reasonable times: *Provided*, That each established place  
185 of business shall have a display area which may be  
186 outside or inside or a combination thereof of at least  
187 twelve hundred square feet which is to be used exclu-  
188 sively for the display of vehicles which are offered for  
189 sale by the dealer, office space of at least one hundred  
190 forty-four square feet, and a telephone listed in the name  
191 of the dealership. Each established place of business  
192 shall be open to the public a minimum of twenty hours  
193 per week at least forty weeks per calendar year with at  
194 least ten of those hours being between the hours of nine-  
195 thirty a.m. and eight-thirty p.m., Monday through  
196 Saturday: *Provided, however*, That if a used motor  
197 vehicle dealer has entered into a written agreement or  
198 agreements with a person or persons owning or operat-  
199 ing a servicing and repair facility or facilities adequate  
200 and suitable as aforesaid, the effect of which agreement  
201 or agreements is to provide such servicing and repair  
202 services and space in like manner as if said servicing  
203 and repair facilities and space were located in or on said  
204 dealer's place of business, then, so long as such an  
205 agreement or agreements are in effect, it shall not be  
206 necessary for such dealer to maintain such servicing and  
207 repair facilities and space at the place of business in  
208 order for such place of business to be an established  
209 place of business as herein defined: *Provided further*,

210 That the requirement of exclusive use shall be met even  
211 though (i) house trailers, trailers and/or motorcycles are  
212 sold or are to be sold thereat, if, subject to the provisions  
213 of section five of this article, a separate license  
214 certificate is obtained for each such type of vehicle  
215 business, which license certificate remains unexpired,  
216 unsuspended and unrevoked; (ii) farm machinery is sold  
217 thereat; and (iii) accessory, gasoline and oil, or storage  
218 departments are maintained thereat, if such depart-  
219 ments are operated for the purpose of furthering and  
220 assisting in the licensed business or businesses.

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

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

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

249 (23) "Recreational vehicle dealer" means every person



250 (other than his agents and employees, if any, while  
251 acting within the scope of their authority or employ-  
252 ment), engaged in, or who holds himself out to the public  
253 to be engaged in, the business in this state of selling new  
254 and/or used recreational vehicles.

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

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

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

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

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

282 (29) "Motor home" means every vehicle, designed to  
283 provide temporary living quarters, built into an integral  
284 part of or permanently attached to a self-propelled  
285 motor vehicle, chassis or van including: (1) Type A  
286 motor home built on an incomplete truck chassis with  
287 the truck cab constructed by the second stage manufac-  
288 turer; (2) Type B motor home consisting of a van-type

289 vehicle which has been altered to provide temporary  
290 living quarters; and (3) Type C motor home built on an  
291 incomplete van or truck chassis with a cab constructed  
292 by the chassis manufacturer.

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

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

300 (32) "Major component" means any one of the follow-  
301 ing subassemblies of a motor vehicle: (i) Front clip  
302 assembly consisting of fenders, grille, hood, bumper and  
303 related parts; (ii) engine; (iii) transmission; (iv) rear clip  
304 assembly consisting of quarter panels and floor panel  
305 assembly; or (v) two or more doors.

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

323 (c) It is recognized that throughout this code the term  
324 "trailer" or "trailers" is used to include, among other  
325 types of trailers, house trailers. It is also recognized that  
326 throughout this code the term "trailer" or "trailers" is  
327 seldom used to include semitrailers or pole trailers.  
328 However, for the purposes of this article only, the term

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329 “trailers” shall have the meaning ascribed to it in  
330 subsection (a) of this section.

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

*James Lee*  
-----  
Chairman Senate Committee

*Ernest C Moore*  
-----  
Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

*Harrell Edkins*  
-----  
Clerk of the Senate

*Donald L Kay*  
-----  
Clerk of the House of Delegates

*Paul Budette*  
-----  
President of the Senate

*Bob Zell*  
-----  
Speaker of the House of Delegates

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

*Yaston Caperton*  
-----  
Governor

PRESENTED TO THE

GOVERNOR

Date 3/27/92

Time 3:45 pm