WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1996

ENROLLED
Committee Substitute for
SENATE BILL NO. 82

(By Senators Bitum, Anderson)

PASSED March 9, 1996
In Effect July 1, 1996 Passage
AN ACT to amend and reenact section one, article one, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections two and four, article three of said chapter; to amend and reenact sections one, four and fifteen, article four-a of said chapter; to amend and reenact section one, article six of said chapter; and to amend and reenact section one, article six-c of said chapter, all relating to factory-built homes; definitions; requiring certificate of title for factory-built homes; criminal penalties; requiring certificate of titles to show lienholders; requiring factory-built home dealers to perfect lien on factory-built homes; extending the expiration date of liens on factory-built homes; automobile auctions; and clarifying that automobile auctions shall only sell to licensed motor vehicle dealers.
Be it enacted by the Legislature of West Virginia:

That section one, article one, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that sections two and four, article three of said chapter be amended and reenacted; that sections one, four and fifteen, article four-a of said chapter be amended and reenacted; that section one, article six of said chapter be amended and reenacted; and that section one, article six-c of said chapter 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 (1) "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.

3 (2) "Bus" means every motor vehicle designed to carry more than seven passengers and used to transport persons; and every motor vehicle, other than a taxicab, designed and used to transport persons for compensation.

4 (3) "Commissioner" means the commissioner of motor vehicles of this state.

5 (4) "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, factory-built home dealer, recreational vehicle dealer, trailer dealer or motorcycle dealer, as defined in section one, article six of this chapter, or all of the dealers or a combination thereof, and in some instances a new motor vehicle dealer or dealers in another state.
(5) "Division" means the division of motor vehicles of this state acting directly or through its duly authorized officers and agents.

(6) "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.

(7) "Factory-built home" includes mobile homes, house trailers and manufactured homes.

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

(9) "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.

(10) "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.

(11) "House trailers" means all trailers designed primarily for highway use, but used for human occupancy on a continual nonrecreational basis, but shall not include fold down camping and travel trailers, mobile homes or manufactured homes.

(12) "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 the vehicle shall not be let for hire at any time.

(13) "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, factory-built home dealer, trailer dealer, recreational vehicle dealer or motorcycle dealer, or all of the dealers or a combination thereof, licensed under the provisions of article six of this chapter.

(14) "Manufactured home" has the same meaning as the term is defined in section two, article nine, chapter twenty-one of this code which meets the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. §5401 et seq.), effective on the fifteenth day of June, one thousand nine hundred seventy-six, and the federal manufactured home construction and safety standards and regulations promulgated by the secretary of the United States department of housing and urban development.

(15) "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 the manufacturer where his or her books and records are kept and a large share of his or her business is transacted.

(16) "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.

(17) "Mobile home" means a transportable structure that is wholly, or in substantial part, made, fabricated, formed or assembled in manufacturing facilities for installation or assembly and installation on a building site and designed for long-term residential use and built prior to enactment of the federal Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. §5401 et seq.), effective on the fifteenth day of June, one thousand nine hundred seventy-six, and
usually built to the voluntary industry standard of the
American national standards institute (ANSI) — A119.1
standards for mobile homes.

(18) "Motorboat" means any vessel propelled by an
electrical, steam, gas, diesel or other fuel propelled or
driven motor, whether or not the 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.

(19) "Motorcycle" means every motor vehicle, includ-
ing 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.

(20) "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 manufac-
turer; (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.

(21) "Motorboat trailer" means every vehicle designed
for or ordinarily used for the transportation of a motor-
boat.

(22) "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.

(23) "Nonresident" means every person who is not a
resident of this state.
"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 the conditional vendee or lessee or mortgagor shall be deemed the owner for the purpose of this chapter.

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

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

"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.

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

"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.

"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, factory-built home dealer, trailer dealer, recreational vehicle dealer or motorcycle dealer, or all of the dealers or a combination thereof, licensed under the provisions of article six of this chapter.
(31) "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.

(32) "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.

(33) "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.

(34) "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.

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

(36) "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.

(37) "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.

(38) "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.

(39) "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.

(40) "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.

(41) "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.

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

(43) "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.

(44) "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.

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.

(a) 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 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 commissioner of the division of highways 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 may not exceed twenty-five 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 the trailer is used, when the trailer is used by the owner thereof for the purpose of moving farm produce and livestock from the farm along a public highway for a
distance not to exceed twenty-five miles to a storage
house or packing plant, when the use is a seasonal
operation:

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

(B) Any vehicle exempted hereunder from the require-
ments of annual registration certificate and license
plates and fees therefor shall not be permitted to use the
highways between sunset and sunrise.

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

(D) 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.
Any vehicle which would be subject to registration as a
Class A or B vehicle if not exempted by this section shall
display a farm use exemption certificate on the lower
driver's side of the windshield:

(i) The farm use exemption certificate shall be pro-
vided by the commissioner and shall be issued annually
by the assessor of the applicant's county of residence.
The assessor shall issue a farm use exemption certificate
upon his or her determination pursuant to an examina-
tion of the property books or documentation provided by
the applicant that the vehicle has been properly assessed
as Class I personal property. The assessor shall charge
a fee of two dollars for each certificate, one dollar of the
fee shall be retained by the assessor and one dollar shall
be remitted by the assessor to the commissioner of the
division of motor vehicles to be deposited in a special
revolving fund to be used in the administration of this
section.

(ii) A farm use exemption certificate shall in no way
exempt the applicant from maintaining the security as
required by chapter seventeen-d of this code on any
vehicle being operated on the roads or highways of this
state.

(iii) No person charged with operating a vehicle
without a farm use exemption certificate, if required
under this section, shall be convicted if he or she pro-
duces in court or in the office of the arresting officer a
valid farm use exemption certificate for the vehicle in
question within five days;

(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.

(b) The provisions of this article relating to recrea-
tional vehicles shall become effective on the first day of
July, one thousand nine hundred eighty-nine.

(c) Notwithstanding the provisions of subsections (a)
and (b) of this section:

(1) Mobile homes or manufactured homes are exempt
from the requirements of annual registration, license
§17 A-3-4. Application for certificate of title; tax for privilege of certification of title; exceptions; privilege tax on payments for leased vehicles; revenue allocations; transfers; 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, to be assessed as follows:

(1) (A) If the vehicle is new, the actual purchase price or consideration to the purchaser thereof is the value of the vehicle.

(B) 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 consid-
eration as is represented by the exchange of other
vehicles on which the tax imposed by this section has
been paid by the purchaser shall be deducted from the
total actual price or consideration paid for the vehicle,
whether the vehicle be new or secondhand.

(C) 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.

(2) No certificate of title for any vehicle may 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 pur-
chase, by gift or by any other manner whatsoever except
gifts between husband and wife or between parents and
children: *Provided,* 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.

(3) The division of motor vehicles may issue a certifi-
cate 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 dealer-
ship that has gone out of business or has filed bank-
ruptcy proceedings in the United States bankruptcy
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: *Provided,* 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 vehi-
cles.
(4) 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 ownership, 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.

(5) 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 shall surrender to the commissioner the exempted registration, the exempted 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 semitrailers, full trailers, pole trailers and converter gear shall not subject the sale or purchase of the vehicles to the consumers sales tax.

(6) The tax imposed by this section does not apply to titling of vehicles leased by residents of West Virginia. A tax is hereby imposed upon the monthly payments for the lease of any motor vehicle leased by a resident of West Virginia, which tax is equal to five percent of the amount of the monthly payment, applied to each payment, and continuing for the entire term of the initial lease period. The tax shall be remitted to the division of motor vehicles on a monthly basis by the lessor of the vehicle.

(7) 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, 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.

(8) The certificate is good for the life of the vehicle, so long as the vehicle 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.
(9) 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.

(10) 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 retile 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 the person to another person and transferred back to the 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 factory-built homes, 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 non-profit 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 or regional 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 committed to the custody of the division of corrections for not less than one year nor more than five years or, in the discretion of the court, or 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 person returns to this state or the date his or her dependent returns to this state, whichever is later.

(f) After the first day of July, one thousand nine hundred ninety-five, no person may transfer, purchase or sell a factory-built home without a certificate of title issued by the commissioner in accordance with the provisions of this article.

(1) Any person who fails to provide a certificate of title upon the transfer, purchase or sale of a factory-built home is guilty of a misdemeanor, and, upon conviction thereof, shall for the first offense be fined not less than one hundred dollars nor more than one thousand dollars, or be imprisoned in the county or regional jail for not more than one year, or, in the discretion of the court, both fined and imprisoned. For each subsequent offense, the fine may be increased to not more than two thousand
dollars, with imprisonment in the county or regional jail for not more than one year, or, in the discretion of the court, the person may be both fined and imprisoned.

(2) Failure of the seller to transfer a certificate of title upon sale or transfer of the factory-built home gives rise to a cause of action, upon prosecution thereof, allows for the recovery of damages, costs and attorney fees.

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 division upon receiving an application for a certificate of title to a vehicle, trailer, semitrailer, pole trailer, factory-built home 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 the 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 the application. All liens or encumbrances shall be shown in the order of their priority being according to the information contained in the application.

When an application shows liens and encumbrances, the information as evidence of the lien in connection therewith as the division may deem necessary shall also be furnished. The information shall include the name and address of the lienholder, the nature and kind of the 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 division shall thereupon send or deliver it to the holder of the first lien.

§17A-4A-4. Deferred purchase money lien or encumbrance may be filed within sixty days after purchase; effective date of lien; dealer to record lien; fees.
(a) A deferred purchase money lien or encumbrance upon any motor vehicle and factory-built home may be perfected by recording the name and address of the lienholder upon the face of the certificate of title for such motor vehicle and factory-built home. If an application for such a certificate of title is filed with the division of motor vehicles within sixty days after the date of purchase of the motor vehicle and factory-built home, the effective date of the lien or encumbrance shall be the date the lien or encumbrance was created. If an application for such a certificate of title is not filed within such sixty-day period, the lien shall be perfected from the date it was filed with the division of motor vehicles.

(b) In all transactions involving a deferred purchase money lien or encumbrance upon a motor vehicle and factory-built home, the motor vehicle dealer and the factory-built home dealer shall collect and remit to the division of motor vehicles the title, tax and registration fees required under section four, article three of this chapter and file and record with the division of motor vehicles any lien created as a result of such transaction: Provided, That a motor vehicle dealer may remit the title, tax and registration fees through any license service that is licensed by the division of motor vehicles.

(c) No fee may be charged by a motor vehicle dealer or a factory-built home dealer for its services required under this section, except that fee authorized by subdivision (6), subsection (a), section one hundred nine, article three, chapter forty-six-a of this code.

§17A-4A-15. Expiration of lien or encumbrance; refiling.

The filing of any lien or encumbrance and its recordation upon the face of a certificate of title to any vehicle as provided in this article shall be valid for a period of ten years only from the date of filing, unless the lien or encumbrance is refilled in the manner provided in this article for filing and recordation in the first instance, in which event the lien or encumbrance shall be valid for
successive additional periods of two years from the date of each refiling: *Provided*, That in the case of a factory-built home, the filing of any lien or encumbrance and its recordation upon the face of a certificate of title to the factory-built home shall be valid for a period of thirty-three years from the date of filing.

When the last lien or encumbrance shown on a certificate of title becomes invalid by the passage of time as provided in this section, the commissioner of motor vehicles shall not be required to maintain a lien index as to the certificate of title.

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

§17A-6-1. Definitions.

(a) Unless the context in which used clearly requires a different meaning, as used in this article:

(1) “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.

(2) “Applicant” means any person making application for an original or renewal license certificate under the provisions of this article.

(3) “Established place of business” shall, in the case of a factory-built home 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 the licensee, as the case may be, which shall be easily accessible to the public, which shall conform to all applicable laws of this state 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 the 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 the business and to make the business available to inspection by the commissioner at all reasonable times.

(4) "Established place of business" means, in the case of a new motor vehicle dealer, 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 or her, 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 the dealer with respect to motor vehicles sold by him or her, which shall be easily accessible to the public, which shall conform to all applicable laws of this state 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 the business and to make the business available to inspection by the commissioner at all reasonable times: Provided, That each established place of business shall have a display area which may be outside or inside or a combination thereof of at least twelve hundred square feet which is to be used exclusively for the display of vehicles which are offered for sale by the dealer, office
space of at least one hundred forty-four square feet and
a telephone listed in the name of the dealership. Each
established place of business shall be open to the public
a minimum of twenty hours per week at least forty weeks
per calendar year with at least ten of those hours being
between the hours of nine-thirty a.m. and eight-thirty
p.m., Monday through Saturday: Provided, however,
That the requirement of exclusive use shall be met even
though: (A) Some new and any used motor vehicles sold
or to be sold by the 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 location is or is to be served by
other facilities and space of the dealer for the servicing
and repair of at least one motor vehicle, adequate and
suitable as aforesaid, and each 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; (B) 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 type of
vehicle business, which license certificate remains
unexpired, unsuspended and unrevoked; (C) farm
machinery is sold thereat; and (D) accessory, gasoline
and oil, or storage departments are maintained thereat,
if the departments are operated for the purpose of
furthering and assisting in the licensed business or
businesses.

(5) "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 or her, 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 the dealer with respect to used motor vehicles sold by him or her, which shall be easily accessible to the public, shall conform to all applicable laws of this state 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 the 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 the business and to make the business available to inspection by the commissioner at all reasonable times: Provided, That each established place of business shall have a display area which may be outside or inside or a combination thereof of at least twelve hundred square feet which is to be used exclusively for the display of vehicles which are offered for sale by the dealer, office space of at least one hundred forty-four square feet and a telephone listed in the name of the dealership. Each established place of business shall be open to the public a minimum of twenty hours per week at least forty weeks per calendar year with at least ten of those hours being between the hours of nine-thirty a.m. and eight-thirty p.m., Monday through Saturday: Provided, however, 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 the servicing and repair services and space in like manner as if the servicing and repair facilities and space were located in or on the dealer's place of business, then, so long as the agreement or agreements are in effect, it shall not be necessary for the dealer to maintain the servicing and repair facilities and space at the place of business in order for the place of business to be an established place of business as herein defined: Pro-
vided further, That the requirement of exclusive use shall be met even though: (A) 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 type of vehicle business, which license certificate remains unexpired, unsuspended and unrevoked; (B) farm machinery is sold thereat; and (C) accessory, gasoline and oil, or storage departments are maintained thereat, if the departments are operated for the purpose of furthering and assisting in the licensed business or businesses.

(6) “Factory-built home” includes mobile homes, house trailers and manufactured homes.

(7) “Factory-built home dealer” means every person (other than agents and employees, if any, while acting within the scope of their authority or employment) engaged in, or held out to the public to be engaged in, the business in this state of selling new and/or used house trailers, new and/or used manufactured homes, or new and/or used mobile homes.

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

(9) “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.

(10) “House trailers” means all trailers designed primarily for highway use, but used for human occupancy on a continual nonrecreational basis, but shall not include fold down camping and travel trailers, mobile homes or manufactured homes.

(11) “Licensee” means any person holding any license certificate issued under the provisions of this article.
(12) "Major component" means any one of the following subassemblies of a motor vehicle: (A) Front clip assembly consisting of fenders, grille, hood, bumper and related parts; (B) engine; (C) transmission; (D) rear clip assembly consisting of quarter panels and floor panel assembly; or (E) two or more doors.

(13) "Manufactured home" has the same meaning as the term is defined in section two, article nine, chapter twenty-one of this code which meets the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. §5401 et seq.), effective on the fifteenth day of June, one thousand nine hundred seventy-six, and the federal manufactured home construction and safety standards and regulations promulgated by the secretary of the United States department of housing and urban development.

(14) "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 vehicles are subject to the title and registration provisions of this code.

(15) "Mobile home" means a transportable structure that is wholly, or in substantial part, made, fabricated, formed or assembled in manufacturing facilities for installation or assembly and installation on a building site and designed for long-term residential use and built prior to enactment of the federal manufactured housing construction and safety standards institute (ANSI) — A119.1 standards for mobile homes.

(16) "Motorboat" means any vessel propelled by an electrical, steam, gas, diesel or other fuel propelled or driven motor, whether or not the 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.

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

(18) "Motorcycle dealer" means every person (other than agents and employees, if any, while acting within the scope of their authority or employment), engaged in, or held out to the public to be engaged in, the business in this state of selling new and/or used motorcycles.

(19) "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: (A) Type A motor home built on an incomplete truck chassis with the truck cab constructed by the second stage manufacturer; (B) Type B motor home consisting of a van-type vehicle which has been altered to provide temporary living quarters; and (C) Type C motor home built on an incomplete van or truck chassis with a cab constructed by the chassis manufacturer.

(20) "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.

(21) "New motor vehicle dealer" means every person (other than agents and employees, if any, while acting within the scope of their authority or employment) engaged in, or held 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.

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

(23) "Recreational vehicle" means a motorboat, motorboat trailer, all-terrain vehicle, travel trailer, fold down camping trailer, motor home or snowmobile.
(24) "Recreational vehicle dealer" means every person (other than agents and employees, if any, while acting within the scope of their authority or employment) engaged in, or held out to the public to be engaged in, the business in this state of selling new and/or used recreational vehicles.

(25) "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.

(26) "Sell", "sale" or "selling" shall, in addition to the ordinary definitions of the 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.

(27) "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.

(28) "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.

(29) "Trailer dealer" means every person (other than agents and employees, if any, while acting within the scope of their authority or employment) engaged in, or held out to the public to be engaged in, the business in this state of selling new and/or used trailers.

(30) "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.

(31) "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.

(32) “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.

(33) “Used motor vehicle dealer” means every person (other than agents and employees, if any, while acting within the scope of their authority or employment) engaged in, held 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.

(34) “Used parts dealer” means every person (other than agents and employees, if any, while acting within the scope of their authority or employment) engaged in, or held 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.

(35) “Wrecker/dismantler/rebuilder” means every person (other than agents and employees, if any, while acting within the scope of their authority or employment) engaged in, or held 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 or who is in the business of rebuilding salvage motor vehicles for the purpose of resale to the public.

(b) Under no circumstances whatever shall the terms “new motor vehicle dealer”, “used motor vehicle dealer”, “factory-built home dealer”, “trailer dealer”, “recreational vehicle dealer”, “motorcycle dealer”, “used parts
dealer" or "wrecker/dismantler/rebuilder" 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 comes in possession or ownership of, or acquires contract rights, or security interests in or to, any vehicle or vehicles or any part thereof and sells the vehicle or vehicles or any part thereof for purposes other than engaging in and holding 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" has the meaning ascribed to it in subsection (a) of this section.

ARTICLE 6C. AUTOMOBILE AUCTION BUSINESSES.

§17A-6C-1. License certificate required; application form; prohibited acts; reassignment of title; and exemption from privilege tax.

(a) A person, partnership or corporation may not engage in, represent or advertise that he, she or it is in the business of conducting automobile auctions without first obtaining a license certificate from the office of the commissioner. The commissioner shall provide an application form for applicants seeking a license certificate. The applicant shall provide full information required by the commissioner on the application form. The applicant, if a person, shall verify the information on the form by oath or affirmation. If the applicant is a partnership or corporation, the oath or affirmation shall be made by a partner or an officer of the corporation.

(b) For the purposes of this article, the term "automobile auction" means an auction or other sale where
twenty or more used motor vehicles are offered for sale
by auction within a license year, but does not include a
sale or auction of surplus vehicles by an agency of this
state, a municipality of this state or of the federal
government or a sale or auction of repossessed vehicles
by a financial institution or a sale or auction by a
licensed motor vehicle dealer of vehicles owned by said
dealer. For purposes of this definition, a used motor
vehicle does not mean a vehicle for which a salvage
certificate has been issued.

(c) The automobile auction may auction or sell vehicles
owned by the auction or may auction vehicles which are
owned by others, but only to dealers licensed by the
division of motor vehicles under article six of this
chapter. The automobile auction may not sell or auction
a vehicle for which a salvage certificate has been issued.

(d) When the transferee of a vehicle is an automobile
auction which holds the same for resale and lawfully
operates the same under Class AA plates, such automobile auction shall not be required to obtain a new registration of said vehicle or be required to forward the certificate of title to the division, but upon transfer of title or interest to another person the automobile auction shall execute and acknowledge an assignment and warranty of title upon the certificate of title and deliver the same not later than sixty days from date of sale to the person to whom such transfer is made.

(e) The tax imposed by section four, article three of this chapter does not apply to the titling of vehicles pur-
chased for resale by an automobile auction.
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.
To take effect July 1, 1996.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within is adopted this the 1st day of April 1996.

Governor