WEST VIRGINIA LEGISLATURE
Regular Session, 2002

ENROLLED

SENATE BILL NO. 105

(By Senator [Senator Name])

PASSED __March 9, 2002__

In Effect [Number Days] Days From Passage
ENROLLED

Senate Bill No. 105

(By Senators Love, Hunter, Anderson, Kessler, Caldwell, Rowe, Minear, Sprouse, Redd, Minard, Edgell, Snyder, Chafin, Fanning, Helmick, Ross, Unger, Mitchell and Facemyer)

[Passed March 9, 2002; in effect ninety days from passage.]

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, relating to exempting all senior service organizations that qualify for tax exemption under Title 26, §501 (c)(3) of the United States Internal Revenue Service Code and are recognized as bonafide senior services organizations by the senior services bureau from payment of the automobile titling privilege tax.

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 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; exceptions; fee on payments for leased vehicles; penalty for false swearing.

(a) Certificates of registration of any vehicle or registration plates for the vehicle, whether original issues or duplicates, may not be issued or furnished by the division of motor vehicles or any other officer or agent 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 in either an electronic or paper format. 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. A duly certified copy of the division's electronic record of a certificate of title shall be admissible in any civil, criminal or administrative proceeding in this state as evidence of ownership.

(b) A tax is 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) If the vehicle is new, the actual purchase price or consideration to the purchaser of the vehicle 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 of the vehicle 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 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. 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 of the vehicle 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 purchase, 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 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 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 vehicles.

(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 in-
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volved 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 possess-
ing 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 M
vehicles, as defined in section one, article ten of this
chapter, which are used or to be used in interstate com-
merce. Nor does the tax imposed by this section apply to
the titling of Class B vehicles registered at a gross weight
of fifty-five thousand pounds or more, or to the titling of
Class C semitrailers, full trailers, pole trailers and con-
verter 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 vehicles in excess
of fifty-five thousand pounds and Class C semitrailers, full
trailers, pole trailers and converter gear does 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 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 of this state, 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 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 the person to another person and transferred back to the person.

(11) The tax imposed by this section does not apply to any passenger vehicle offered for rent in the normal course of business by a daily passenger rental car business as licensed under the provisions of article six-d of this chapter. For purposes of this section, a daily passenger car means a Class A motor vehicle having a gross weight of eight thousand pounds or less and is registered in this state or any other state. In lieu of the tax imposed by this section, there is hereby imposed a tax of not less than one dollar nor more than one dollar and fifty cents for each day or part of the rental period. The commissioner shall propose an emergency rule in accordance with the provisions of article three, chapter twenty-nine-a of this code to establish this tax.

(12) The tax imposed by this article does not apply to the titling of any vehicle purchased by a senior citizen service organization which is exempt from the payment of income taxes under the United States Internal Revenue Service Code, Title 26 U.S.C. §501(c)(3) and which is recognized to be a bonafide senior citizen service organization by the senior services bureau existing under the provisions of article five, chapter sixteen of this code.

(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, manufactured homes, modular homes and similar
nonmotive propelled vehicles, except recreational vehicles and house trailers, 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, or any person, while acting as an agent of the division of motor vehicles, issues a vehicle registration without first collecting the fees and taxes or fails to perform any other duty required by this chapter to be performed before a vehicle registration is issued is, on the first offense, guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than five hundred dollars or be confined in the county or regional jail for a period not to exceed six months or, in the discretion of the court, both fined and confined. 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 a state correctional facility for not less than one year nor more than five years or, in the discretion of the court, both 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 the
person returns to this state or the date his or her depend-
et returns to this state, whichever is later.

(f) No person may transfer, purchase or sell a fac-
tory-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 hun-
dred dollars nor more than one thousand dollars, or be
confined in the county or regional jail for not more than
one year or, both fined and confined. For each subsequent
offense, the fine may be increased to not more than two
thousand dollars, with confinement in the county or
regional jail not more than one year or, both fined and
confined.

(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, and allows
for the recovery of damages, costs and reasonable attorney
fees.

(g) Notwithstanding any other provision to the contrary,
whenever reference is made to the application for or
issuance of any title or the recordation or release of any
lien, it shall be understood to include the application,
transmission, recordation, transfer of ownership and
storage of information in an electronic format.
The Joint Committee on Enrolled Bills hereby certifies that
the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

Speaker House of Delegates

The within bill is approved this the 25th Day of March, 2002.

Governor
PRESENTED TO THE
GOVERNOR

Date: 3/19/62
Time: 8:55 A.M.