WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 2002

ENROLLED

Committee Substitute for

SENATE BILL NO. 541

(By Senators Woollen and Rowe)

PASSED March 5, 2002

In Effect from Passage
ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 541

(SENATORS WOOTON AND ROWE, original sponsors)

[Passed March 8, 2002; in effect from passage]

AN ACT to amend and reenact sections three and four, article four-a, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to certificate to show liens and encumbrances; providing that liens and encumbrances placed on vehicles are void against lien creditors under particular circumstances; requiring a purchase money lien or encumbrance to be perfected on the date and time of delivery of same to the division; specifying the documents that will perfect a lien or encumbrance; requiring that an application for a certificate of title must be filed under certain time limitations in order to maintain perfected status; providing when an application is not filed within a certain time limitation that the division take action to void the perfected status of a lien or encumbrance;
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providing that no certificate of title will be delivered absent an application delivered to the division; and defining a "purchase money lien or encumbrance".

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 4A. LIENS AND ENCUMBRANCES ON VEHICLES TO BE SHOWN ON CERTIFICATE OF TITLE; NOTICE TO CREDITORS AND PURCHASERS.

§17A-4A-3. Notice of lien; noninventory lien created by voluntary act of the owner not shown on certificate of title or otherwise perfected void as to subsequent purchasers and lien creditors; exceptions.

(a) A certificate of title, when issued by the division and after the filing with the division of the application therefor or the notice of lien authorized in section four of this article adequate notice to the state and its agencies, boards and commissions, to the United States government and its agencies, boards and commissions, to creditors and to purchasers that a lien against the vehicle exists. (b) Notwithstanding any other provision of this code to the contrary, and subject to the provisions of subsection (c) of this section, any lien or encumbrance placed on a vehicle by the voluntary act of the owner shall be void as against:

(i) Any lien creditor who, without knowledge of the lien, acquires by attachment, levy or otherwise a lien thereupon, unless the lien or encumbrance is noted on the certificate of title, a filed application for certificate of title or the notice of lien authorized in section four of this article; and (ii) any purchaser who, without knowledge of the lien or encumbrance, purchases the vehicle, unless the lien or encumbrance is noted on the certificate of title, a filed application for certificate of title or the notice of lien
authorized in section four of this article; Provided, That a purchaser under this subsection who purchases the vehicle without knowledge of the lien or encumbrance and contemporaneously obtains actual physical possession of the vehicle and the certificate of title for the vehicle without the lien or encumbrance noted on the certificate of title, receives the vehicle free and clear of the lien or encumbrance.

(c) The creation and perfection of a lien against: (1) A vehicle held as inventory for sale by a registered dealer holding title by assignment; or (2) a vehicle for which a certificate of title has been issued and is held as inventory for lease by a vehicle rental agency or similar person engaged solely in the business of leasing vehicles in accordance with the provisions of article nine, chapter forty-six of this code shall be deemed adequate notice to the state and its agencies, boards and commissions, to the United States government and its agencies, boards and commissions, to creditors and to purchasers that a lien against the vehicle exists, subject to the provisions of section three hundred seven, article nine, chapter forty-six of this code, except that any lien or encumbrance on such a vehicle shall not be effective against the rights of any purchaser for value who purchases the vehicle primarily for personal, family, household or agricultural purposes unless such lien or encumbrance is recorded on the certificate of title or specified on the bill of sale.

§17A-4A-4. Purchase money lien or encumbrance; effective date of lien; dealer to record lien; fees.

(a) A purchase money lien or encumbrance upon any vehicle shall be perfected on the date and at time of delivery to the division of motor vehicles of either the application for a certificate of title with all supporting documents, or a completed notice of lien form in a format determined by the division. The notice of lien form may be submitted to the division in paper format, facsimile or in any other electronic format approved by the division.
(b) If perfection occurs through the notice of lien form pursuant to subsection (a) of this section, an application for certificate of title must be received by the division of motor vehicles within sixty days after the date of purchase of the vehicle or refinancing of such purchase in order to maintain the perfected status of such lien or encumbrance. When an application is not filed within the time prescribed, the lien or encumbrance shall become unperfected on the sixty-first day following the purchase or refinancing date of the vehicle. If an application for a certificate of title is received by the division on or after the sixty-first day, the new perfection date for the lien or encumbrance is the date the application for a certificate of title is received by the division. Nothing in this section extends the sixty-day title application filing requirement of section four, article four of this chapter. The name and address of the lien holder shall be recorded on this title by the division in either electronic or paper format.

(c) No certificate of title for a vehicle shall be issued unless an application is delivered to the division of motor vehicles.

(d) In all transactions involving a purchase money lien or encumbrance upon a motor vehicle, the motor vehicle 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 the 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.

(e) No fee may be charged by a motor vehicle dealer for its services required under this section except that fee authorized by section one-b, article six of this chapter or subdivision (6), subsection (a), section one hundred nine, article three, chapter forty-six-a of this code.
(f) For purposes of this section, a purchase money lien or encumbrance is defined to include: (1) A lien taken or retained by the seller or the vehicle to secure all or a part of its price; (2) a lien taken by a person who by making advances or incurring an obligation gives value to enable another to acquire rights in or the use of a vehicle if such value is so used; and (3) the refinancing of either of the foregoing for the sole purpose of repaying a loan secured by the vehicle.
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 from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within is approved this the 29th Day of March, 2002.

Governor