

SB 320 S

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WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE
Regular Session, 2004



ENROLLED

Committee Substitute for

SENATE BILL NO. 320

(By Senator Hunter, et al)



PASSED March 13, 2004

In Effect 90 days from Passage

FILED

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 320

(SENATORS HUNTER, HELMICK AND ROSS, *original sponsors*)

[Passed March 13, 2004; in effect ninety days from passage.]

AN ACT to amend and reenact §11-5-12 of the code of West Virginia, 1931, as amended; to amend and reenact §17A-3-4 of said code; and to amend said code by adding thereto a new section, designated §17A-3-12b, all relating to certificates of title; permitting the filing of canceled certificates of title in the office of the clerk of the county commission; exempting mobile and manufactured homes from the prohibition against the transfer, purchase or sale of a mobile or manufactured home when a certificate of title has been cancelled; exempting modular homes from the need for certificates of title; and cancellation of certificates of title for mobile and manufactured homes permanently attached to real estate.

Be it enacted by the Legislature of West Virginia:

That §11-5-12 of the code of West Virginia, 1931, as amended, be amended and reenacted; that §17A-3-4 of said code be amended and reenacted; and that said code be amended by

adding thereto a new section, designated §17A-3-12b, all to read as follows:

CHAPTER 11. TAXATION.

ARTICLE 5. ASSESSMENT OF PERSONAL PROPERTY.

§11-5-12. Mobile homes situate upon property owned by a person other than owner of mobile home.

1 Mobile homes situate upon property owned by a person
2 other than the owner of the mobile home shall be classified
3 as personal property whether or not said mobile home is
4 permanently affixed to the real estate and, unless subject
5 to assessment as Class II property under section eleven of
6 this article or section two, article four of this chapter, shall
7 be assessed as Class III or Class IV personal property, as
8 may be appropriate in the circumstances.

9 A mobile home permanently attached to the real estate
10 of the owner may not be classified as personal property if
11 the owner has filed a canceled certificate of title with the
12 clerk of the county commission and has recorded it in the
13 same manner as deeds are recorded and indexed.

**CHAPTER 17A. MOTOR VEHICLE ADMINISTRATION,
REGISTRATION, CERTIFICATE OF TITLE,
AND ANTITHEFT PROVISIONS.**

**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.**

1 (a) Certificates of registration of any vehicle or registra-
2 tion plates for the vehicle, whether original issues or
3 duplicates, may not be issued or furnished by the division
4 of motor vehicles or any other officer or agent charged
5 with the duty, unless the applicant already has received, or
6 at the same time makes application for and is granted, an
7 official certificate of title of the vehicle in either an

8 electronic or paper format. The application shall be upon
9 a blank form to be furnished by the division of motor
10 vehicles and shall contain a full description of the vehicle,
11 which description shall contain a manufacturer's serial or
12 identification number or other number as determined by
13 the commissioner and any distinguishing marks, together
14 with a statement of the applicant's title and of any liens or
15 encumbrances upon the vehicle, the names and addresses
16 of the holders of the liens and any other information as the
17 division of motor vehicles may require. The application
18 shall be signed and sworn to by the applicant. A duly
19 certified copy of the division's electronic record of a
20 certificate of title is admissible in any civil, criminal or
21 administrative proceeding in this state as evidence of
22 ownership.

23 (b) A tax is imposed upon the privilege of effecting the
24 certification of title of each vehicle in the amount equal to
25 five percent of the value of the motor vehicle at the time of
26 the certification, to be assessed as follows:

27 (1) If the vehicle is new, the actual purchase price or
28 consideration to the purchaser of the vehicle is the value
29 of the vehicle. If the vehicle is a used or secondhand
30 vehicle, the present market value at time of transfer or
31 purchase is the value of the vehicle for the purposes of this
32 section: *Provided*, That so much of the purchase price or
33 consideration as is represented by the exchange of other
34 vehicles on which the tax imposed by this section has been
35 paid by the purchaser shall be deducted from the total
36 actual price or consideration paid for the vehicle, whether
37 the vehicle be new or secondhand. If the vehicle is ac-
38 quired through gift or by any manner whatsoever, unless
39 specifically exempted in this section, the present market
40 value of the vehicle at the time of the gift or transfer is the
41 value of the vehicle for the purposes of this section.

42 (2) No certificate of title for any vehicle may be issued to
43 any applicant unless the applicant has paid to the division
44 of motor vehicles the tax imposed by this section which is

45 five percent of the true and actual value of the vehicle
46 whether the vehicle is acquired through purchase, by gift
47 or by any other manner whatsoever, except gifts between
48 husband and wife or between parents and children:
49 *Provided*, That the husband or wife, or the parents or
50 children, previously have paid the tax on the vehicles
51 transferred to the state of West Virginia.

52 (3) The division of motor vehicles may issue a certificate
53 of registration and title to an applicant if the applicant
54 provides sufficient proof to the division of motor vehicles
55 that the applicant has paid the taxes and fees required by
56 this section to a motor vehicle dealership that has gone out
57 of business or has filed bankruptcy proceedings in the
58 United States bankruptcy court and the taxes and fees so
59 required to be paid by the applicant have not been sent to
60 the division by the motor vehicle dealership or have been
61 impounded due to the bankruptcy proceedings: *Provided*,
62 That the applicant makes an affidavit of the same and
63 assigns all rights to claims for money the applicant may
64 have against the motor vehicle dealership to the division
65 of motor vehicles.

66 (4) The division of motor vehicles shall issue a certificate
67 of registration and title to an applicant without payment
68 of the tax imposed by this section if the applicant is a
69 corporation, partnership or limited liability company
70 transferring the vehicle to another corporation, partner-
71 ship or limited liability company when the entities in-
72 volved in the transfer are members of the same controlled
73 group and the transferring entity has previously paid the
74 tax on the vehicle transferred. For the purposes of this
75 section, control means ownership, directly or indirectly, of
76 stock or equity interests possessing fifty percent or more
77 of the total combined voting power of all classes of the
78 stock of a corporation or equity interests of a partnership
79 or limited liability company entitled to vote or ownership,
80 directly or indirectly, of stock or equity interests possess-

81 ing fifty percent or more of the value of the corporation,
82 partnership or limited liability company.

83 (5) The tax imposed by this section does not apply to
84 vehicles to be registered as Class H vehicles or Class M
85 vehicles, as defined in section one, article ten of this
86 chapter, which are used or to be used in interstate com-
87 merce. Nor does the tax imposed by this section apply to
88 the titling of Class B vehicles registered at a gross weight
89 of fifty-five thousand pounds or more, or to the titling of
90 Class C semitrailers, full trailers, pole trailers and con-
91 verter gear: *Provided*, That if an owner of a vehicle has
92 previously titled the vehicle at a declared gross weight of
93 fifty-five thousand pounds or more and the title was issued
94 without the payment of the tax imposed by this section,
95 then before the owner may obtain registration for the
96 vehicle at a gross weight less than fifty-five thousand
97 pounds, the owner shall surrender to the commissioner the
98 exempted registration, the exempted certificate of title
99 and pay the tax imposed by this section based upon the
100 current market value of the vehicle: *Provided, however*,
101 That notwithstanding the provisions of section nine,
102 article fifteen, chapter eleven of this code, the exemption
103 from tax under this section for Class B vehicles in excess
104 of fifty-five thousand pounds and Class C semitrailers, full
105 trailers, pole trailers and converter gear does not subject
106 the sale or purchase of the vehicles to the consumers sales
107 tax.

108 (6) The tax imposed by this section does not apply to
109 titling of vehicles leased by residents of West Virginia. A
110 tax is imposed upon the monthly payments for the lease of
111 any motor vehicle leased by a resident of West Virginia,
112 which tax is equal to five percent of the amount of the
113 monthly payment, applied to each payment, and continu-
114 ing for the entire term of the initial lease period. The tax
115 shall be remitted to the division of motor vehicles on a
116 monthly basis by the lessor of the vehicle.

117 (7) The tax imposed by this section does not apply to
118 titling of vehicles by a registered dealer of this state for
119 resale only, nor does the tax imposed by this section apply
120 to titling of vehicles by this state or any political subdivi-
121 sion thereof, or by any volunteer fire department or duly
122 chartered rescue or ambulance squad organized and
123 incorporated under the laws of the state of West Virginia
124 as a nonprofit corporation for protection of life or prop-
125 erty. The total amount of revenue collected by reason of
126 this tax shall be paid into the state road fund and ex-
127 pended by the commissioner of highways for matching
128 federal funds allocated for West Virginia. In addition to
129 the tax, there is a charge of five dollars for each original
130 certificate of title or duplicate certificate of title so issued:
131 *Provided*, That this state or any political subdivision of
132 this state or any volunteer fire department or duly char-
133 tered rescue squad is exempt from payment of the charge.

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

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

143 (10) A person who has paid the tax imposed by this
144 section is not required to pay the tax a second time for the
145 same motor vehicle, but is required to pay a charge of five
146 dollars for the certificate of retitle of that motor vehicle,
147 except that the tax shall be paid by the person when the
148 title to the vehicle has been transferred either in this or
149 another state from the person to another person and
150 transferred back to the person.

151 (11) The tax imposed by this section does not apply to
152 any passenger vehicle offered for rent in the normal course

153 of business by a daily passenger rental car business as
154 licensed under the provisions of article six-d of this
155 chapter. For purposes of this section, a daily passenger car
156 means a Class A motor vehicle having a gross weight of
157 eight thousand pounds or less and is registered in this state
158 or any other state. In lieu of the tax imposed by this
159 section, there is hereby imposed a tax of not less than one
160 dollar nor more than one dollar and fifty cents for each
161 day or part of the rental period. The commissioner shall
162 propose an emergency rule in accordance with the provi-
163 sions of article three, chapter twenty-nine-a of this code to
164 establish this tax.

165 (12) The tax imposed by this article does not apply to the
166 titling of any vehicle purchased by a senior citizen service
167 organization which is exempt from the payment of income
168 taxes under the United States Internal Revenue Code, Title
169 26 U. S. C. §501(c)(3) and which is recognized to be a
170 bonafide senior citizen service organization by the senior
171 services bureau existing under the provisions of article
172 five, chapter sixteen of this code.

173 (c) Notwithstanding any provisions of this code to the
174 contrary, the owners of trailers, semitrailers, recreational
175 vehicles and other vehicles not subject to the certificate of
176 title tax prior to the enactment of this chapter are subject
177 to the privilege tax imposed by this section: *Provided*, That
178 the certification of title of any recreational vehicle owned
179 by the applicant on the thirtieth day of June, one thousand
180 nine hundred eighty-nine, is not subject to the tax imposed
181 by this section: *Provided, however*, That mobile homes,
182 manufactured homes, modular homes and similar
183 nonmotivepropelled vehicles, except recreational vehicles
184 and house trailers, susceptible of being moved upon the
185 highways but primarily designed for habitation and
186 occupancy, rather than for transporting persons or prop-
187 erty, or any vehicle operated on a nonprofit basis and used
188 exclusively for the transportation of mentally retarded or
189 physically handicapped children when the application for

190 certificate of registration for the vehicle is accompanied by
191 an affidavit stating that the vehicle will be operated on a
192 nonprofit basis and used exclusively for the transportation
193 of mentally retarded and physically handicapped children,
194 are not subject to the tax imposed by this section, but are
195 taxable under the provisions of articles fifteen and fif-
196 teen-a, chapter eleven of this code.

197 (d) Any person making any affidavit required under any
198 provision of this section who knowingly swears falsely, or
199 any person who counsels, advises, aids or abets another in
200 the commission of false swearing, or any person, while
201 acting as an agent of the division of motor vehicles, issues
202 a vehicle registration without first collecting the fees and
203 taxes or fails to perform any other duty required by this
204 chapter to be performed before a vehicle registration is
205 issued is, on the first offense, guilty of a misdemeanor and,
206 upon conviction thereof, shall be fined not more than five
207 hundred dollars or be confined in jail for a period not to
208 exceed six months or, in the discretion of the court, both
209 fined and confined. For a second or any subsequent
210 conviction within five years, that person is guilty of a
211 felony and, upon conviction thereof, shall be fined not
212 more than five thousand dollars or be imprisoned in a state
213 correctional facility for not less than one year nor more
214 than five years or, in the discretion of the court, both fined
215 and imprisoned.

216 (e) Notwithstanding any other provisions of this section,
217 any person in the military stationed outside West Virginia
218 or his or her dependents who possess a motor vehicle with
219 valid registration are exempt from the provisions of this
220 article for a period of nine months from the date the
221 person returns to this state or the date his or her depend-
222 ent returns to this state, whichever is later.

223 (f) No person may transfer, purchase or sell a fac-
224 tory-built home without a certificate of title issued by the
225 commissioner in accordance with the provisions of this
226 article:

227 (1) Any person who fails to provide a certificate of title
228 upon the transfer, purchase or sale of a factory-built home
229 is guilty of a misdemeanor and, upon conviction thereof,
230 shall for the first offense be fined not less than one hun-
231 dred dollars nor more than one thousand dollars, or be
232 confined in jail for not more than one year or, both fined
233 and confined. For each subsequent offense, the fine may
234 be increased to not more than two thousand dollars, with
235 confinement in jail not more than one year or, both fined
236 and confined.

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

242 (3) This subsection does not apply to a mobile or manu-
243 factured home for which a certificate of title has been
244 canceled pursuant to section twelve-b of this article.

245 (g) Notwithstanding any other provision to the contrary,
246 whenever reference is made to the application for or
247 issuance of any title or the recordation or release of any
248 lien, it includes the application, transmission, recordation,
249 transfer of ownership and storage of information in an
250 electronic format.

251 (h) Notwithstanding any other provision contained in
252 this section, nothing herein shall be considered to include
253 modular homes as defined in subsection (i), section two,
254 article fifteen, chapter thirty-seven of this code and built
255 to the state building code as established by legislative
256 rules promulgated by the state fire commission pursuant
257 to section five-b, article three, chapter twenty-nine of this
258 code.

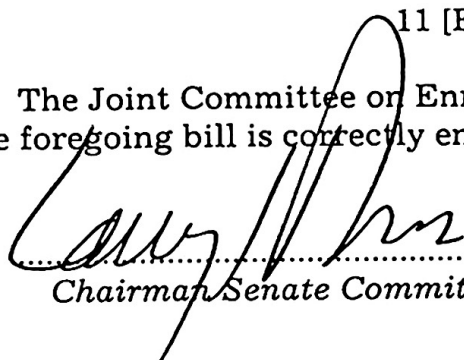
**§17A-3-12b. Canceled certificates of title for certain mobile and
manufactured homes.**

1 The commissioner may cancel a certificate of title for a
2 mobile or manufactured home affixed to the real property

3 of the owner of the mobile or manufactured home. The
4 person requesting the cancellation shall submit to the
5 commissioner an application for cancellation together
6 with the certificate of title. The application shall be on a
7 form prescribed by the commissioner. The commissioner
8 shall return one copy of the cancellation certificate to the
9 owner and shall send a copy of the cancellation certificate
10 to the clerk of the county commission to be recorded and
11 indexed in the deed book with the owners name being
12 indexed in the grantor index. The commissioner shall
13 charge a fee of ten dollars per certificate of title canceled.
14 Upon recordation in the county clerk's office the mobile or
15 manufactured home shall be treated for all purposes as an
16 appurtenance to the real estate to which it is affixed and
17 be transferred only as real estate and the ownership
18 interest in the mobile or manufactured home, together
19 with all liens and encumbrances on the home, shall be
20 transferred to and shall encumber the real property to
21 which the mobile or manufactured home has become
22 affixed.

11 [Enr. Com. Sub. for S. B. No. 320

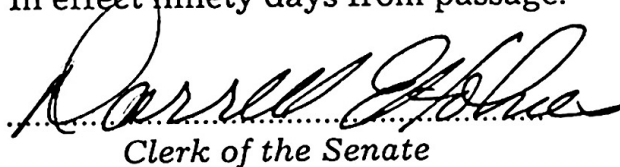
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.


.....
Chairman Senate Committee

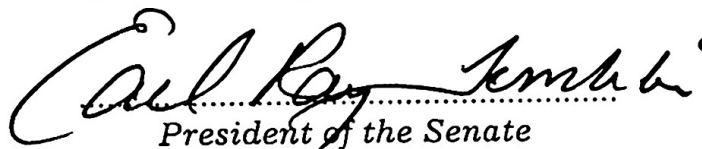

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Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

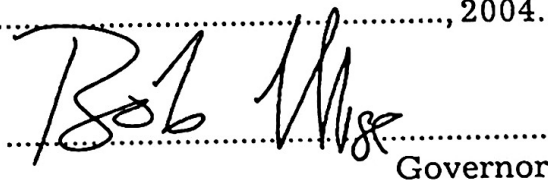

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Clerk of the Senate


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Clerk of the House of Delegates


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President of the Senate


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Speaker House of Delegates

The within is approved this the 2nd
Day of April, 2004.


.....
Governor

PRESENTED TO THE
GOVERNOR

DATE 3/24/04

TIME 3:15 pm