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
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.

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

A mobile home permanently attached to the real estate of the owner may not be classified as personal property if the owner has filed a canceled certificate of title with the clerk of the county commission and has recorded it in the 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.

(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 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
3 [Enr. Com. Sub. for S. B. No. 320

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 is 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 ac-
quired 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, partner-
ship or limited liability company when the entities in-
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 commerce. 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 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 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
7 [Enr. Com. Sub. for S. B. No. 320]

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 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 nonmotivepropelled 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
(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 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 dependent returns to this state, whichever is later.

(f) 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 confined in 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 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.

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

(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 includes the application, transmission, recordation, transfer of ownership and storage of information in an electronic format.

(h) Notwithstanding any other provision contained in this section, nothing herein shall be considered to include modular homes as defined in subsection (i), section two, article fifteen, chapter thirty-seven of this code and built to the state building code as established by legislative rules promulgated by the state fire commission pursuant to section five-b, article three, chapter twenty-nine of this 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 mobile or manufactured home affixed to the real property
of the owner of the mobile or manufactured home. The person requesting the cancellation shall submit to the commissioner an application for cancellation together with the certificate of title. The application shall be on a form prescribed by the commissioner. The commissioner shall return one copy of the cancellation certificate to the owner and shall send a copy of the cancellation certificate to the clerk of the county commission to be recorded and indexed in the deed book with the owners name being indexed in the grantor index. The commissioner shall charge a fee of ten dollars per certificate of title canceled. Upon recordation in the county clerk's office the mobile or manufactured home shall be treated for all purposes as an appurtenance to the real estate to which it is affixed and be transferred only as real estate and the ownership interest in the mobile or manufactured home, together with all liens and encumbrances on the home, shall be transferred to and shall encumber the real property to which the mobile or manufactured home has become affixed.
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

President of the Senate

Speaker House of Delegates

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

Governor