WEST VIRGINIA LEGISLATURE
Regular Session, 2004

ENROLLED
Committee Substitute for
SENATE BILL NO. 505

(By Senators Ross and Cave)

PASSED March 13, 2004

In Effect 90 days from Passage
ENROLLED
COMMITTEE SUBSTITUTE
FOR
Senate Bill No. 505
(SENATORS ROSS AND LOVE, original sponsors)

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

AN ACT to amend and reenact §17A-1-1 of the code of West Virginia, 1931, as amended; to amend and reenact §17A-3-2 of said code; and to amend and reenact §17A-6-3 and §17A-6-18 of said code, all relating to creating a motor vehicle classification of "low-speed vehicle".

Be it enacted by the Legislature of West Virginia:

That §17A-1-1 of the code of West Virginia, 1931, as amended, be amended and reenacted; that §17A-3-2 of said code be amended and reenacted; and that §17A-6-3 and §17A-6-18 of said code 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
2 following words and phrases, when used in this chapter,
shall have the meanings respectively ascribed to them in this article:

(a) "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.

(b) "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.

(c) "Motorcycle" means every motor vehicle, including 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.

(d) "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.

(e) "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.

(f) "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.

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

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

(j) "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.

(k) "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.

(l) "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.

(m) "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.

(n) "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.
(o) "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.

(p) "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.

(q) "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 may not be let for hire at any time.

(r) "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, road construction or maintenance machinery, ditch-digging apparatus, stone crushers, air compressors, power shovels, graders, rollers, well-drillers, wood-sawing equipment, asphalt spreaders, bituminous mixers, bucket loaders, ditches, 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 may not operate to exclude other such vehicles which are within the general terms of this subdivision.

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

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

"Commissioner" means the commissioner of motor vehicles of this state.

"Division" means the division of motor vehicles of this state acting directly or through its duly authorized officers and agents.

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

"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.

"Nonresident" means every person who is not a resident of this state.

"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.

"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, house trailer dealer, trailer dealer, recreational vehicle dealer or motorcycle dealer, or all of the
(cc) "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, house trailer 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.

(dd) "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.

(ee) "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 books and records are kept and a large share of his business is transacted.

(ff) "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.

(gg) "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 may 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.

(hh) "Motorboat trailer" means every vehicle designed for or ordinarily used for the transportation of a motorboat.
(ii) "All-terrain vehicle" (ATV) means any motor vehicle designed for off-highway use having a seat or saddle designed to be straddled by the operator and handlebars for steering control.

(jj) "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.

(kk) "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.

(ll) "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 manufacturer; (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.

(mm) "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.

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

(oo) "Mobile equipment" means every self-propelled vehicle not designed or used primarily for the transporta-
tion of persons or property over the highway but which may infrequently or incidentally travel over the highways among job sites, equipment storage sites or repair sites, including farm equipment, implements of husbandry, well-drillers, cranes and wood-sawing equipment.

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

(qq) "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 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 the federal manufactured home construction and safety standards and regulations promulgated by the secretary of the United States department of housing and urban development.

(rr) "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.

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

(tt) "Parking enforcement vehicle" means a motor vehicle which does not fit into any other classification of vehicle in this chapter, has three or four wheels and is designed for use in an incorporated municipality by a city,
county, state or other governmental entity primarily for
parking enforcement or other governmental purposes with
an operator area with sides permanently enclosed with
rigid construction and a top which may be convertible,
sealed beam headlights, turn signals, brake lights, horn, at
least one rear view mirror on each side and such other
equipment that will enable it to pass a standard motorcy-
cle vehicle inspection.

(uu) "Low-speed vehicle" means a four-wheeled motor
vehicle whose attainable speed in one mile on a paved level
surface is more than twenty miles per hour but not more
than twenty-five miles per hour.

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 is 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 division as authorized under this chapter;

(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 hus-
bandry which is used exclusively for agricultural or
horticultural purposes on lands owned or leased by the
owner of the implement 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 desig-
nated by the commissioner of the division of highways
from one point of the owner's land to another part of the
owner's land, 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 attached to the implement, to
and from a repair shop for repairs. The exemption in this
subdivision from registration and license requirements
also applies to any vehicle described in this subsection 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 of the trailer 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 sea-
sonal operation:

(A) The exemptions contained in this section 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 is owned by the same or different
persons;

(B) Any vehicle exempted under this subsection from the
requirements of annual registration certificate and license
plates and fees for the registration certificate and license
plate may not use the highways between sunset and
sunrise unless the vehicle is classified as a Class A motor
vehicle with a farm-use exemption under the provisions of
section one, article ten of this chapter and has a valid and
current inspection sticker as required by the provisions of
article sixteen, chapter seventeen-c of this code and is
classified as a vehicle exempt under the provisions of
this section for the purpose of moving farm produce and
livestock from one tract of land to another over a distance
of twenty-five miles or less;

(C) Any vehicle exempted under this section from the
requirements of annual registration certificate and license
plates may use the highways as provided in this section
whether the exempt vehicle is self-propelled, towed by
another exempt vehicle or towed by another vehicle required to be registered;

(D) Any vehicle used as an implement of husbandry exempt under this section shall 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 provided 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 to the applicant upon his or her determination pursuant to an examination 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, which shall be retained by the assessor;

(ii) A farm-use exemption certificate shall not exempt the applicant from maintaining the security 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 the offense of operating a vehicle without a farm-use exemption certificate, if required under this section, may be convicted of the offense if he or she produces 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 which is owned by the government of the United States;
(5) Any wrecked or disabled vehicle towed by a licensed wrecker or dealer on the public highways of this state;
(6) The following recreational vehicles are exempt from the requirements of annual registration, license plates and fees, unless otherwise specified by law, but are subject to the certificate of title provisions of this chapter regardless of highway use: Motorboats, all-terrain vehicles and snowmobiles; and
(7) Any special mobile equipment as defined in subsection (r), section one, article one of this chapter.
(b) Notwithstanding the provisions of subsection (a) of this section:
(1) Mobile homes or manufactured homes are exempt from the requirements of annual registration, license plates and fees;
(2) House trailers may be registered and licensed; and
(3) Factory-built homes are subject to the certificate of title provisions of this chapter.
(c) The division shall title and register low-speed vehicles if the manufacturer’s certificate of origin clearly identifies the vehicle as a low-speed vehicle. The division may not title or register homemade low-speed vehicles or retrofitted golf carts and such vehicles do not qualify as low-speed vehicles in this state. In addition to all other motor vehicle laws and regulations, except as specifically exempted below, low-speed vehicles are subject to the following restrictions and requirements:
(1) Low-speed vehicles shall only be operated on private roads and on public roads and streets within the corporate limits of a municipality where the speed limit is not more than twenty-five miles per hour;
(2) Notwithstanding any provisions in this code to the contrary, low-speed vehicles shall meet the requirements of 49 C. F. R. §571.500 (2003);
124 (3) In lieu of annual inspection, the owner of a low-speed
125 vehicle shall, upon initial application for registration and
126 each renewal thereafter, certify under penalty of false
127 swearing, that all lights, brakes, tires and seat belts are in
128 good working condition; and
129
130 (4) Any person operating a low-speed vehicle must hold
131 a valid driver's license, not an instruction permit.

ARTICLE 6. LICENSING OF DEALERS AND WRECKERS OR
DISMANTLERS; SPECIAL PLATES; TEMPORARY
PLATES OR MARKERS.

PART II. LICENSE CERTIFICATE PROVISIONS.

§17A-6-3. License certificate required; engaging in more than
one business; established place of business re­
quired; civil penalties.

1 (a) No person shall engage or represent or advertise that
2 he or she is engaged or intends to engage in the business of
3 new motor vehicle dealer, used motor vehicle dealer, house
4 trailer dealer, trailer dealer, recreational vehicle dealer,
5 motorcycle dealer, used parts dealer or wrecker or
6 dismantler in this state unless and until he or she first
7 obtains a license certificate therefor as provided in this
8 article, which license certificate remains unexpired,
9 unsuspended and unrevoked. Any person desiring to
10 engage in more than one such business must, subject to the
11 provisions of section five of this article, apply for and
12 obtain a separate license certificate for each such business.

13 (b) A person in business as a new motor vehicle or
14 recreational vehicle dealer may sell low-speed vehicles as
15 defined in section one, article one of this chapter.

16 (c) Except for the qualification contained in subdivision
17 (17), subsection (a), section one of this article with respect
18 to a new motor vehicle dealer, each place of business of a
19 new motor vehicle dealer, used motor vehicle dealer, house
20 trailer dealer, trailer dealer, recreational vehicle dealer,
21 motorcycle dealer, used parts dealer and wrecker or
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22 dismantler must be an established place of business as
defined for such business in said section one.

24 (d) Any person who violates this section shall, in addi-
tion to any other penalty prescribed by law, be subject to
a civil penalty levied by the commissioner in an amount
not to exceed one thousand dollars for the first violation,
two thousand dollars for the second violation and five
thousand dollars for every subsequent violation.

30 (e) The commissioner shall promulgate rules, in accor-
dance with the provisions of chapter twenty-nine-a of this
code, establishing procedures whereby persons against
whom such civil penalties are to be assessed shall be
afforded all due process required pursuant to the provi-
sions of the West Virginia constitution.

§17A-6-18. Investigation; matters confidential; grounds for
suspending or revoking license or imposing fine;
suspension and revocation generally.

1 (a) The commissioner may conduct an investigation to
determine whether any provisions of this chapter have
been or are about to be violated by a licensee. Any investi-
gation shall be kept in strictest confidence by the commis-
sioner, the division, the licensee, any complainant and all
other persons, unless and until the commissioner suspends
or revokes the license certificate of the licensee involved or
fines the licensee: Provided, That the commissioner may
advise the motor vehicle dealers advisory board of pending
actions and may disclose to the motor vehicle dealers
advisory board any information that enables it to perform
its advisory function in imposing penalties. The commis-
sioner may suspend or revoke a license certificate, suspend
a special dealer plate or plates, impose a fine or take any
combination of these actions if the commissioner finds
that the licensee:

17 (1) Has failed or refused to comply with the laws of this
state relating to the registration and titling of vehicles and
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the giving of notices of transfers, the provisions and
requirements of this article, or any reasonable rules
authorized in section nine, article two of this chapter and
promulgated to implement the provisions of this article by
the commissioner in accordance with the provisions of
article three, chapter twenty-nine-a of this code;

(2) Has given any check in the payment of any fee
required under the provisions of this chapter which is
dishonored;

(3) In the case of a dealer, has knowingly made or
permitted any unlawful use of any dealer special plate or
plates issued to him or her;

(4) In the case of a dealer, has a dealer special plate or
plates to which he or she is not lawfully entitled;

(5) Has knowingly made false statement of a material
fact in his or her application for the license certificate then
issued and outstanding;

(6) Has habitually defaulted on financial obligations;

(7) Does not have and maintain at each place of business,
(subject to the qualification contained in subdivision (17),
subsection (a), section one of this article with respect to a
new motor vehicle dealer) an established place of business
as defined for the business in question in section one of
this article;

(8) Has been guilty of any fraudulent act in connection
with the business of new motor vehicle dealer, used motor
vehicle dealer, house trailer dealer, trailer dealer, motorcy-
cle dealer, used parts dealer or wrecker or dismantler;

(9) Has defrauded or is attempting to defraud any buyer
or any other person, to the damage of the buyer or other
person, in the conduct of the licensee's business;

(10) Has defrauded or is attempting to defraud the state
or any political subdivision of the state of any taxes or fees
in connection with the sale or transfer of any vehicle;
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(11) Has committed fraud in the registration of a vehicle;
(12) Has knowingly purchased, sold or otherwise dealt in a stolen vehicle or vehicles;
(13) Has advertised by any means, with intent to defraud, any material representation or statement of fact which is untrue, misleading or deceptive in any particular relating to the conduct of the licensed business;
(14) Has willfully failed or refused to perform any legally binding written agreement with any buyer;
(15) Has made a fraudulent sale or purchase;
(16) Has failed or refused to assign, reassign or transfer a proper certificate of title;
(17) Has a license certificate to which he or she is not lawfully entitled;
(18) Has misrepresented a customer’s credit or financial status to obtain financing; or
(19) Has failed to reimburse, when ordered, any claim against the dealer recovery fund as prescribed in section two-a of this article.

The commissioner shall also suspend or revoke the license certificate of a licensee if he or she finds the existence of any ground upon which the license certificate could have been refused or any ground which would be cause for refusing a license certificate to the licensee were he or she then applying for the license certificate.

(b) Whenever a licensee fails to keep the bond, unless exempt from the requirement pursuant to section two-a of this article or liability insurance required by section four of this article, in full force and effect, or fails to provide evidence of the bond or liability insurance, the commissioner shall automatically suspend the license certificate of the licensee unless and until a bond or certificate of
insurance as required by section four of this article is furnished to the commissioner. When the licensee furnishes the bond or certificate of insurance to the commissioner and pays all reinstatement fees, the commissioner shall vacate the suspension.

(c) Suspensions under this section shall continue until the cause for the suspension has been eliminated or corrected. Revocation of a license certificate shall not preclude application for a new license certificate. The commissioner shall process the application for a new license certificate in the same manner and issue or refuse to issue the license certificate on the same grounds as any other application for a license certificate is processed, considered and passed upon, except that the commissioner may give any previous suspension and the revocation such weight in deciding whether to issue or refuse the license certificate as is correct and proper under all of the circumstances.
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
PRESENTED TO THE GOVERNOR

Date 4.1.04
Time 10:00 AM