

# **WEST VIRGINIA LEGISLATURE**

**2023 REGULAR SESSION**

**Committee Substitute**

**for**

**Senate Bill 455**

BY SENATOR PHILLIPS

[Originating in the Committee on Transportation and  
Infrastructure; reported on February 15, 2023]



1 A BILL to amend and reenact §17A-6-1 of the Code of West Virginia, 1931, as amended, relating  
2 to modifying requirements for used motor vehicle dealers.

*Be it enacted by the Legislature of West Virginia:*

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

**§17A-6-1. Definitions.**

1 (a) Unless the context in which used clearly requires a different meaning, as used in this  
2 article:

3 (1) "New motor vehicle dealer" means every person (other than agents and employees, if  
4 any, while acting within the scope of their authority or employment), engaged in, or held out to the  
5 public to be engaged in, the business in this state of selling five or more new motor vehicles or  
6 new and used motor vehicles in any fiscal year of a type required to be registered under the  
7 provisions of this chapter, except, for the purposes of this article only, motorcycles.

8 (2) "Used motor vehicle dealer" means every person (other than agents and employees,  
9 if any, while acting within the scope of their authority or employment), engaged in, or held out to  
10 the public to be engaged in, the business in this state of selling ~~five~~ 10 or more used motor  
11 vehicles, and projecting to sell 10 or more used motor vehicles, in any fiscal year of a type required  
12 to be registered under the provisions of this chapter, except, for the purposes of this article only,  
13 motorcycles.

14 (3) "House trailer dealer" means every person (other than agents and employees, if any,  
15 while acting within the scope of their authority or employment), engaged in, or held out to the  
16 public to be engaged in, the business in this state of selling new or used house trailers, or both,  
17 or new or used, or both, house trailers and trailers or new or used, or both, manufactured homes,  
18 and mobile homes.

19           (4) "Trailer dealer" means every person (other than agents and employees, if any, while  
20 acting within the scope of their authority or employment), engaged in, or held out to the public to  
21 be engaged in, the business in this state of selling new or used trailers.

22           (5) "Motorcycle dealer" means every person (other than agents and employees, if any,  
23 while acting within the scope of their authority or employment), engaged in, or held out to the  
24 public to be engaged in, the business in this state of selling new or used motorcycles.

25           (6) "Used parts dealer" means every person (other than agents and employees, if any,  
26 while acting within the scope of their authority or employment), engaged in, or held out to the  
27 public to be engaged in, the business in this state of selling any used appliance, accessory,  
28 member, portion, or other part of any vehicle.

29           (7) "Wrecker/dismantler/rebuilder" means every person (other than agents and  
30 employees, if any, while acting within the scope of their authority or employment), engaged in, or  
31 held out to the public to be engaged in, the business in this state of dealing in wrecked or damaged  
32 motor vehicles or motor vehicle parts for the purpose of selling the parts thereof or scrap therefrom  
33 or who is in the business of rebuilding salvage motor vehicles for the purpose of resale to the  
34 public.

35           (8) "New motor vehicles" means all motor vehicles, except motorcycles and used motor  
36 vehicles, of a type required to be registered under the provisions of this chapter.

37           (9) "Used motor vehicles" means all motor vehicles, except motorcycles, of a type required  
38 to be registered under the provisions of this chapter which have been sold and operated, or which  
39 have been registered or titled, in this or any other state or jurisdiction.

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

43           (11) "Trailers" means all types of trailers other than house trailers, and shall include, but  
44 not be limited to, pole trailers and semitrailers but excluding recreational vehicles.

45           (12) "Sales instrument" means any document resulting from the sale of a vehicle, which  
46 shall include, but not be limited to, a bill of sale, invoice, conditional sales contract, chattel  
47 mortgage, chattel trust deed, security agreement or similar document.

48           (13) "Sell", "sale", or "selling", in addition to the ordinary definitions of the terms, includes  
49 offering for sale, soliciting sales of, negotiating for the sale of, displaying for sale or advertising  
50 for sale, any vehicle, whether at retail, wholesale or at auction. "Selling", in addition to the ordinary  
51 definition of that term, also includes buying and exchanging.

52           (14) "Applicant" means any person making application for an original or renewal license  
53 certificate under the provisions of this article.

54           (15) "Licensee" means any person holding any license certificate issued under the  
55 provisions of this article.

56           (16) "Predecessor" means the former owner or owners or operator or operators of any  
57 new motor vehicle dealer business or used motor vehicle dealer business.

58           (17) "Established place of business" means, in the case of a new motor vehicle dealer, a  
59 permanent location, not a temporary stand or other temporary quarters, owned or leased by the  
60 licensee or applicant and actually occupied or to be occupied by him or her, as the case may be,  
61 which is or is to be used exclusively for the purpose of selling new motor vehicles or new and  
62 used motor vehicles, which shall have space under roof for the display of at least one new motor  
63 vehicle and facilities and space therewith for the servicing and repair of at least one motor vehicle,  
64 which servicing and repair facilities and space is adequate and suitable to carry out servicing and  
65 to make repairs necessary to keep and carry out all representations, warranties, and agreements  
66 made or to be made by the dealer with respect to motor vehicles sold by him or her, which is  
67 easily accessible to the public, which conforms to all applicable laws of this state and the  
68 ordinances of the municipality in which it is located, if any, which displays thereon at least one  
69 permanent sign, clearly visible from the principal public street or highway nearest the location and  
70 clearly stating the business which is or shall be conducted thereat, and which has adequate

71 facilities to keep, maintain and preserve records, papers and documents necessary to carry on  
72 the business and to make the business available to inspection by the commissioner at all  
73 reasonable times: *Provided*, That each established place of business shall have a display area  
74 which may be outside or inside or a combination thereof of at least 1,200 square feet which is to  
75 be used exclusively for the display of vehicles which are offered for sale by the dealer, office  
76 space of at least 144 square feet and a telephone listed in the name of the dealership. Each  
77 established place of business shall be open to the public a minimum of 20 hours per week at least  
78 40 weeks per calendar year with at least 10 of those hours being between the hours of 9:30 a.m.  
79 and 8:30 p.m., Monday through Saturday: *Provided, however*, That the requirement of exclusive  
80 use is met even though: (A) Some new and any used motor vehicles sold or to be sold by the  
81 dealer or sold or are to be sold at a different location or locations not meeting the definition of an  
82 established place of business of a new motor vehicle dealer, if each location is or is to be served  
83 by other facilities and space of the dealer for the servicing and repair of at least one motor vehicle,  
84 adequate and suitable as aforesaid, and each location used for the sale of some new and any  
85 used motor vehicles otherwise meets the definition of an established place of business of a used  
86 motor vehicle dealer; (B) house trailers, trailers or motorcycles are sold or are to be sold thereat,  
87 if, subject to the provisions of section five of this article, a separate license certificate is obtained  
88 for each type of vehicle business, which license certificate remains unexpired, unsuspended and  
89 unrevoked; (C) farm machinery is sold thereat; (D) accessory, gasoline and oil, or storage  
90 departments are maintained thereat, if the departments are operated for the purpose of furthering  
91 and assisting in the licensed business or businesses; and (E) the established place of business  
92 has an attached single residential rental unit with an outside separate entrance and occupied by  
93 a person or persons with no financial or operational interest in the dealership where the  
94 established place of business has space under roof for the display of at least three new motor  
95 vehicles and facilities and space therewith for the concurrent servicing and repair of at least two  
96 motor vehicles and otherwise meets the requirements set forth in this subdivision.

97           (18) "Farm machinery" means all machines and tools used in the production, harvesting  
98 or care of farm products.

99           (19) "Established place of business", in the case of a used motor vehicle dealer, means a  
100 permanent location, not a temporary stand or other temporary quarters, owned or leased by the  
101 licensee or applicant and actually occupied or to be occupied by him or her, as the case may be,  
102 which is or is to be used ~~exclusively~~ for the purpose of selling used motor vehicles, which shall  
103 have facilities and space therewith for the servicing and repair of at least one motor vehicle, which  
104 servicing and repair facilities and space shall be adequate and suitable to carry out servicing and  
105 to make repairs necessary to keep and carry out all representations, warranties and agreements  
106 made or to be made by the dealer with respect to used motor vehicles sold by him or her, which  
107 is easily accessible to the public, conforms to all applicable laws of this state, and the ordinances  
108 of the municipality in which it is located, if any, which displays thereon at least one permanent  
109 sign, clearly visible from the principal public street or highway nearest the location and clearly  
110 stating the business which is or shall be conducted thereat, and which has adequate facilities to  
111 keep, maintain and preserve records, papers and documents necessary to carry on the business  
112 and to make the business available to inspection by the commissioner at all reasonable times:  
113 *Provided, That each established place of business shall have a display area which may be outside*  
114 *or inside or a combination thereof of at least one thousand two hundred square feet which is to*  
115 *be used exclusively for the display of vehicles which are offered for sale by the dealer, office*  
116 *space of at least one hundred forty four square feet and a telephone listed in the name of the*  
117 *dealership. Each established place of business shall be open to the public a minimum of twenty*  
118 *hours per week at least forty weeks per calendar year with at least ten of those hours being*  
119 *between the hours of 9:30 a.m. and 8:30 p.m., Monday through Saturday: Provided, however,*  
120 *That if a used motor vehicle dealer has entered into a written agreement or agreements with a*  
121 *person or persons owning or operating a servicing and repair facility or facilities adequate and*  
122 *suitable as aforesaid, the effect of which agreement or agreements is to provide the servicing and*

123 repair services and space in like manner as if the servicing and repair facilities and space were  
124 located in or on the dealer's place of business, then, so long as the agreement or agreements are  
125 in effect, it is not necessary for the dealer to maintain the servicing and repair facilities and space  
126 at the place of business in order for the place of business to be an established place of business  
127 as herein defined. ~~Provided further, That the requirement of exclusive use is met even though:~~  
128 ~~(A) House trailers, trailers or motorcycles are sold or are to be sold thereat, if, subject to the~~  
129 ~~provisions of section five of this article, a separate license certificate is obtained for each type of~~  
130 ~~vehicle business, which license certificate remains unexpired, unsuspended and unrevoked; (B)~~  
131 ~~farm machinery is sold thereat; (C) accessory, gasoline and oil, or storage departments are~~  
132 ~~maintained thereat, if the departments are operated for the purpose of furthering and assisting in~~  
133 ~~the licensed business or businesses; and (D) the established place of business has an attached~~  
134 ~~single residential rental unit with an outside separate entrance and occupied by a person or~~  
135 ~~persons with no financial or operational interest in the dealership where the established place of~~  
136 ~~business has space under roof for the display of at least three motor vehicles and facilities and~~  
137 ~~space therewith for the concurrent servicing and repair of at least two motor vehicles and~~  
138 ~~otherwise meets the requirements set forth herein.~~

139 (20) "Established place of business", in the case of a house trailer dealer, trailer dealer,  
140 recreational vehicle dealer, motorcycle dealer, used parts dealer and wrecker or dismantler,  
141 means a permanent location, not a temporary stand or other temporary quarters, owned or leased  
142 by the licensee or applicant and actually occupied or to be occupied by the licensee, as the case  
143 may be, which is easily accessible to the public, which conforms to all applicable laws of this state  
144 and the ordinances of the municipality in which it is located, if any, which displays thereon at least  
145 one permanent sign, clearly visible from the principal public street or highway nearest the location  
146 and clearly stating the business which is or shall be conducted thereat, and which has adequate  
147 facilities to keep, maintain and preserve records, papers and documents necessary to carry on



148 the business and to make the business available to inspection by the commissioner at all  
149 reasonable times.

150 (21) "Manufacturer" means every person engaged in the business of reconstructing,  
151 assembling, or reassembling vehicles with a special type of body required by the purchaser if the  
152 vehicle is subject to the title and registration provisions of this code.

153 (22) "Transporter" means every person engaged in the business of transporting vehicles  
154 to or from a manufacturing, assembling, or distributing plant to dealers or sales agents of a  
155 manufacturer, or purchasers.

156 (23) "Recreational vehicle dealer" means every person (other than agents and employees,  
157 if any, while acting within the scope of their authority or employment), engaged in, or held out to  
158 the public to be engaged in, the business in this state of selling new or used recreational vehicles,  
159 or both.

160 (24) "Motorboat" means any vessel propelled by an electrical, steam, gas, diesel or other  
161 fuel-propelled or -driven motor, whether or not the motor is the principal source of propulsion, but  
162 does not include a vessel which has a valid marine document issued by the bureau of customs of  
163 the United States government or any federal agency successor thereto.

164 (25) "Motorboat trailer" means every vehicle designed for or ordinarily used for the  
165 transportation of a motorboat.

166 (26) "All-terrain vehicle" (ATV) means any motor vehicle designed for off-highway use and  
167 designed to travel on not less than three low-pressure or nonhighway tires, is 50 inches or less in  
168 width and intended by the manufacturer to be used by a single operator or is specifically designed  
169 by the manufacturer with seating for each passenger. "All-terrain vehicle" and "ATV" does not  
170 include mini trucks, golf carts, riding lawnmowers, or tractors.

171 (27) "Travel trailer" means every vehicle, mounted on wheels, designed to provide  
172 temporary living quarters for recreational, camping or travel use of such size or weight as not to

173 require special highway movement permits when towed by a motor vehicle and of gross trailer  
174 area less than 400 square feet.

175 (28) "Fold-down camping trailer" means every vehicle consisting of a portable unit  
176 mounted on wheels and constructed with collapsible partial sidewalls which fold for towing by  
177 another vehicle and unfold at the camp site to provide temporary living quarters for recreational,  
178 camping or travel use.

179 (29) "Motor home" means every vehicle, designed to provide temporary living quarters,  
180 built into an integral part of or permanently attached to a self-propelled motor vehicle, chassis or  
181 van including: (1) Type A motor home built on an incomplete truck chassis with the truck cab  
182 constructed by the second-stage manufacturer; (2) Type B motor home consisting of a van-type  
183 vehicle which has been altered to provide temporary living quarters; and (3) Type C motor home  
184 built on an incomplete van or truck chassis with a cab constructed by the chassis manufacturer.

185 (30) "Snowmobile" means a self-propelled vehicle intended for travel primarily on snow  
186 and driven by a track or tracks in contact with the snow and steered by a ski or skis in contact  
187 with the snow.

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

190 (32) "Major component" means any one of the following subassemblies of a motor vehicle:  
191 (A) Front clip assembly consisting of fenders, grille, hood, bumper, and related parts; (B) engine;  
192 (C) transmission; (D) rear clip assembly consisting of quarter panels and floor panel assembly; or  
193 (E) two or more doors.

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

196 (34) "Manufactured home" has the same meaning as the term is defined in §21-9-2 of this  
197 code which meets the National Manufactured Housing Construction and Safety Standards Act of  
198 1974 (42 U. S. C. § 5401 *et seq.*), effective on June 15, 1976, and the federal manufactured home

199 construction and safety standards and regulations promulgated by the Secretary of the United  
200 States Department of Housing and Urban Development.

201 (35) "Mobile home" means a transportable structure that is wholly, or in substantial part,  
202 made, fabricated, formed or assembled in manufacturing facilities for installation or assembly and  
203 installation on a building site and designed for long-term residential use and built prior to  
204 enactment of the federal Manufactured Housing Construction and Safety Standards Institute  
205 (ANSI) — A119.1 standards for mobile homes.

206 (36) "Utility terrain vehicle" means any motor vehicle with four or more low-pressure or  
207 nonhighway tires designed for off-highway use and is greater than 50 inches in width. "Utility  
208 terrain vehicle" does not include mini trucks, golf carts, riding lawnmowers, or tractors.

209 (b) Under no circumstances whatever may the terms "new motor vehicle dealer", "used  
210 motor vehicle dealer", "house trailer dealer", "trailer dealer", "recreational vehicle dealer",  
211 "motorcycle dealer", "used parts dealer" or "wrecker/dismantler/ rebuilder" be construed or  
212 applied under this article in such a way as to include a banking institution, insurance company,  
213 finance company, or other lending or financial institution, or other person, the state or any agency  
214 or political subdivision thereof, or any municipality, who or which owns or comes in possession or  
215 ownership of, or acquires contract rights, or security interests in or to, any vehicle or vehicles or  
216 any part thereof and sells the vehicle or vehicles or any part thereof for purposes other than  
217 engaging in and holding out to the public to be engaged in the business of selling vehicles or any  
218 part thereof.

219 (c) It is recognized that throughout this code the term "trailer" or "trailers" is used to include,  
220 among other types of trailers, house trailers. It is also recognized that throughout this code the  
221 term "trailer" or "trailers" is seldom used to include semitrailers or pole trailers. However, for the  
222 purposes of this article only, the term "trailers" has the meaning ascribed to it in subsection (a) of  
223 this section.