

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

Introduced

House Bill 2328

BY DELEGATE SPONAUGLE

[Introduced February 10, 2017; Referred
to the Committee on Roads and Transportation then
Finance.]

1 A BILL to amend and reenact §17A-3-4 of the Code of West Virginia, 1931, as amended, relating
 2 to certain vehicles used in farming; and exempting Class X vehicles from the tax imposed
 3 upon the privilege of effecting the certification of title of a motor vehicle.

Be it enacted by the Legislature of West Virginia:

1 That §17A-3-4 of the Code of West Virginia, 1931, as amended, be amended and
 2 reenacted to read as follows:

**ARTICLE 3. ORIGINAL AND RENEWAL OF REGISTRATION; ISSUANCE OF
 CERTIFICATES OF TITLE.**

**§17A-3-4. Application for certificate of title; fees; abolishing privilege tax; prohibition of
 issuance of certificate of title without compliance with consumer sales and service
 tax provisions; exceptions.**

1 (a) Certificates of registration of any vehicle or registration plates for the vehicle, whether
 2 original issues or duplicates, may not be issued or furnished by the Division of Motor Vehicles or
 3 any other officer or agent charged with the duty, unless the applicant already has received, or at
 4 the same time makes application for and is granted, an official certificate of title of the vehicle in
 5 either an electronic or paper format. The application shall be upon a blank form to be furnished
 6 by the Division of Motor Vehicles and shall contain a full description of the vehicle, which
 7 description shall contain a manufacturer's serial or identification number or other number as
 8 determined by the commissioner and any distinguishing marks, together with a statement of the
 9 applicant's title and of any liens or encumbrances upon the vehicle, the names and addresses of
 10 the holders of the liens and any other information as the Division of Motor Vehicles may require.
 11 The application shall be signed and sworn to by the applicant. A duly certified copy of the division's
 12 electronic record of a certificate of title is admissible in any civil, criminal or administrative
 13 proceeding in this state as evidence of ownership.

14 (b) A tax is imposed upon the privilege of effecting the certification of title of each vehicle

15 in the amount equal to five percent of the value of the motor vehicle at the time of the certification,
16 to be assessed as follows:

17 (1) If the vehicle is new, the actual purchase price or consideration to the purchaser of the
18 vehicle is the value of the vehicle. If the vehicle is a used or secondhand vehicle, the present
19 market value at time of transfer or purchase is the value of the vehicle for the purposes of this
20 section: *Provided*, That so much of the purchase price or consideration as is represented by the
21 exchange of other vehicles on which the tax imposed by this section has been paid by the
22 purchaser shall be deducted from the total actual price or consideration paid for the vehicle,
23 whether the vehicle be new or secondhand. If the vehicle is acquired through gift or by any manner
24 whatsoever, unless specifically exempted in this section, the present market value of the vehicle
25 at the time of the gift or transfer is the value of the vehicle for the purposes of this section.

26 (2) No certificate of title for any vehicle may be issued to any applicant unless the applicant
27 has paid to the Division of Motor Vehicles the tax imposed by this section which is five percent of
28 the true and actual value of the vehicle whether the vehicle is acquired through purchase, by gift
29 or by any other manner whatsoever, except gifts between husband and wife or between parents
30 and children: *Provided*, That the husband or wife, or the parents or children, previously have paid
31 the tax on the vehicles transferred to the State of West Virginia.

32 (3) The Division of Motor Vehicles may issue a certificate of registration and title to an
33 applicant if the applicant provides sufficient proof to the Division of Motor Vehicles that the
34 applicant has paid the taxes and fees required by this section to a motor vehicle dealership that
35 has gone out of business or has filed bankruptcy proceedings in the United States bankruptcy
36 court and the taxes and fees so required to be paid by the applicant have not been sent to the
37 division by the motor vehicle dealership or have been impounded due to the bankruptcy
38 proceedings: *Provided*, That the applicant makes an affidavit of the same and assigns all rights
39 to claims for money the applicant may have against the motor vehicle dealership to the Division
40 of Motor Vehicles.

41 (4) The Division of Motor Vehicles shall issue a certificate of registration and title to an
42 applicant without payment of the tax imposed by this section if the applicant is a corporation,
43 partnership or limited liability company transferring the vehicle to another corporation, partnership
44 or limited liability company when the entities involved in the transfer are members of the same
45 controlled group and the transferring entity has previously paid the tax on the vehicle transferred.
46 For the purposes of this section, control means ownership, directly or indirectly, of stock or equity
47 interests possessing fifty percent or more of the total combined voting power of all classes of the
48 stock of a corporation or equity interests of a partnership or limited liability company entitled to
49 vote or ownership, directly or indirectly, of stock or equity interests possessing fifty percent or
50 more of the value of the corporation, partnership or limited liability company.

51 (5) The tax imposed by this section does not apply to vehicles to be registered as Class
52 H, ~~vehicles of Class M~~ or Class X vehicles, as defined in section one, article ten of this chapter,
53 which are used or to be used in interstate commerce. Nor does the tax imposed by this section
54 apply to the titling of Class B vehicles registered at a gross weight of fifty-five thousand pounds
55 or more, or to the titling of Class C semitrailers, full trailers, pole trailers and converter gear:
56 *Provided*, That if an owner of a vehicle has previously titled the vehicle at a declared gross weight
57 of fifty-five thousand pounds or more and the title was issued without the payment of the tax
58 imposed by this section, then before the owner may obtain registration for the vehicle at a gross
59 weight less than fifty-five thousand pounds, the owner shall surrender to the commissioner the
60 exempted registration, the exempted certificate of title and pay the tax imposed by this section
61 based upon the current market value of the vehicle: *Provided, however*, That notwithstanding the
62 provisions of section nine, article fifteen, chapter eleven of this code, the exemption from tax under
63 this section for Class B vehicles in excess of fifty-five thousand pounds and Class C semitrailers,
64 full trailers, pole trailers and converter gear does not subject the sale or purchase of the vehicles
65 to the consumers sales and service tax.

66 (6) The tax imposed by this section does not apply to titling of vehicles leased by residents

67 of West Virginia. A tax is imposed upon the monthly payments for the lease of any motor vehicle
68 leased by a resident of West Virginia, which tax is equal to five percent of the amount of the
69 monthly payment, applied to each payment, and continuing for the entire term of the initial lease
70 period. The tax shall be remitted to the Division of Motor Vehicles on a monthly basis by the lessor
71 of the vehicle.

72 (7) The tax imposed by this section does not apply to titling of vehicles by a registered
73 dealer of this state for resale only, nor does the tax imposed by this section apply to titling of
74 vehicles by this state or any political subdivision thereof, or by any volunteer fire department or
75 duly chartered rescue or ambulance squad organized and incorporated under the laws of this
76 state as a nonprofit corporation for protection of life or property. The total amount of revenue
77 collected by reason of this tax shall be paid into the State Road Fund and expended by the
78 Commissioner of Highways for matching federal funds allocated for West Virginia. In addition to
79 the tax, there is a charge of \$5 for each original certificate of title or duplicate certificate of title so
80 issued: *Provided*, That this state or any political subdivision of this state or any volunteer fire
81 department or duly chartered rescue squad is exempt from payment of the charge.

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

85 (9) If, by will or direct inheritance, a person becomes the owner of a motor vehicle and the
86 tax imposed by this section previously has been paid to the Division of Motor Vehicles on that
87 vehicle, he or she is not required to pay the tax.

88 (10) A person who has paid the tax imposed by this section is not required to pay the tax
89 a second time for the same motor vehicle, but is required to pay a charge of \$5 for the certificate
90 of retitle of that motor vehicle, except that the tax shall be paid by the person when the title to the
91 vehicle has been transferred either in this or another state from the person to another person and
92 transferred back to the person.

93 (11) The tax imposed by this section does not apply to any passenger vehicle offered for
94 rent in the normal course of business by a daily passenger rental car business as licensed under
95 the provisions of article six-d of this chapter. For purposes of this section, a daily passenger car
96 means a Class A motor vehicle having a gross weight of eight thousand pounds or less and is
97 registered in this state or any other state. In lieu of the tax imposed by this section, there is hereby
98 imposed a tax of not less than \$1 nor more than \$1.50 for each day or part of the rental period.
99 The commissioner shall propose an emergency rule in accordance with the provisions of article
100 three, chapter twenty-nine-a of this code to establish this tax.

101 (12) The tax imposed by this article does not apply to the titling of any vehicle purchased
102 by a senior citizen service organization which is exempt from the payment of income taxes under
103 the United States Internal Revenue Code, Title 26 U.S.C. §501(c)(3) and which is recognized to
104 be a bona fide senior citizen service organization by the senior services bureau existing under
105 the provisions of article five, chapter sixteen of this code.

106 (13) The tax imposed by this section does not apply to the titling of any vehicle operated
107 by an urban mass transit authority as defined in article twenty-seven, chapter eight of this code
108 or a nonprofit entity exempt from federal and state income tax under the Internal Revenue Code
109 and whose purpose is to provide mass transportation to the public at large designed for the
110 transportation of persons and being operated for the transportation of persons in the public
111 interest.

112 (14) The tax imposed by this section does not apply to the transfer of a title to a vehicle
113 owned and titled in the name of a resident of this state if the applicant:

114 (A) Was not a resident of this state at the time the applicant purchased or otherwise
115 acquired ownership of the vehicle;

116 (B) Presents evidence as the commissioner may require of having titled the vehicle in the
117 applicant's previous state of residence;

118 (C) Has relocated to this state and can present such evidence as the commissioner may

119 require to show bona-fide residency in this state;

120 (D) Presents an affidavit, completed by the assessor of the applicant's county of residence,
121 establishing that the vehicle has been properly reported and is on record in the office of the
122 assessor as personal property; and

123 (E) Makes application to the division for a title and registration, and pays all other fees
124 required by this chapter within thirty days of establishing residency in this state as prescribed in
125 subsection (a), section one-a of this article: *Provided*, That a period of amnesty of three months
126 be established by the commissioner during the calendar year 2007, during which time any
127 resident of this state, having titled his or her vehicle in a previous state of residence, may pay
128 without penalty any fees required by this chapter and transfer the title of his or her vehicle in
129 accordance with the provisions of this section.

130 (c) Notwithstanding any provisions of this code to the contrary, the owners of trailers,
131 semitrailers, recreational vehicles and other vehicles not subject to the certificate of title tax prior
132 to the enactment of this chapter are subject to the privilege tax imposed by this section: *Provided*,
133 That the certification of title of any recreational vehicle owned by the applicant on June 30, 1989,
134 is not subject to the tax imposed by this section: *Provided, however*, That mobile homes,
135 manufactured homes, modular homes and similar nonmotive propelled vehicles, except
136 recreational vehicles and house trailers, susceptible of being moved upon the highways but
137 primarily designed for habitation and occupancy, rather than for transporting persons or property,
138 or any vehicle operated on a nonprofit basis and used exclusively for the transportation of
139 intellectually disabled or physically disabled children when the application for certificate of
140 registration for the vehicle is accompanied by an affidavit stating that the vehicle will be operated
141 on a nonprofit basis and used exclusively for the transportation of intellectually disabled and
142 physically disabled children, are not subject to the tax imposed by this section, but are taxable
143 under the provisions of articles fifteen and fifteen-a, chapter eleven of this code.

144 (d) Beginning on July 1, 2008, the tax imposed under this subsection (b) of this section is

145 abolished and after that date no certificate of title for any motor vehicle may be issued to any
146 applicant unless the applicant provides sufficient proof to the Division of Motor Vehicles that the
147 applicant has paid the fees required by this article and the tax imposed under section three-b,
148 article fifteen, chapter eleven of this code.

149 (e) Any person making any affidavit required under any provision of this section who
150 knowingly swears falsely, or any person who counsels, advises, aids or abets another in the
151 commission of false swearing, or any person, while acting as an agent of the Division of Motor
152 Vehicles, issues a vehicle registration without first collecting the fees and taxes or fails to perform
153 any other duty required by this chapter or chapter eleven of this code to be performed before a
154 vehicle registration is issued is, on the first offense, guilty of a misdemeanor and, upon conviction
155 thereof, shall be fined not more than \$500 or be confined in jail for a period not to exceed six
156 months or, in the discretion of the court, both fined and confined. For a second or any subsequent
157 conviction within five years, that person is guilty of a felony and, upon conviction thereof, shall be
158 fined not more than \$5,000 or be imprisoned in a state correctional facility for not less than one
159 year nor more than five years or, in the discretion of the court, both fined and imprisoned.

160 (f) Notwithstanding any other provisions of this section, any person in the military stationed
161 outside West Virginia or his or her dependents who possess a motor vehicle with valid registration
162 are exempt from the provisions of this article for a period of nine months from the date the person
163 returns to this state or the date his or her dependent returns to this state, whichever is later.

164 (g) No person may transfer, purchase or sell a factory-built home without a certificate of
165 title issued by the commissioner in accordance with the provisions of this article:

166 (1) Any person who fails to provide a certificate of title upon the transfer, purchase or sale
167 of a factory-built home is guilty of a misdemeanor and, upon conviction thereof, shall for the first
168 offense be fined not less than \$100 nor more than \$1,000, or be confined in jail for not more than
169 one year, or both fined and confined. For each subsequent offense, the fine may be increased to
170 not more than \$2,000, with confinement in jail not more than one year, or both fined and confined.

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

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

176 (h) Notwithstanding any other provision to the contrary, whenever reference is made to
177 the application for or issuance of any title or the recordation or release of any lien, it includes the
178 application, transmission, recordation, transfer of ownership and storage of information in an
179 electronic format.

180 (i) Notwithstanding any other provision contained in this section, nothing herein shall be
181 considered to include modular homes as defined in subsection (i), section two, article fifteen,
182 chapter thirty-seven of this code and built to the State Building Code as established by legislative
183 rules promulgated by the State Fire Commission pursuant to section five-b, article three, chapter
184 twenty-nine of this code.

NOTE: The purpose of this bill is to exempt certain vehicles used in farming (Class X vehicles) from the tax imposed upon the privilege of effecting the certification of title of a motor vehicle.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.