

WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

Introduced

Senate Bill 722

BY SENATORS BOLEY, AZINGER, BALDWIN, CLEMENTS,
CLINE, FACEMIRE, HAMILTON, IHLENFELD, JEFFRIES,
LINDSAY, PALUMBO, PITSENBARGER, PLYMALE, ROMANO,
SMITH, SWOPE, TARR, UNGER, HARDESTY, PREZIOSO,
AND STOLLINGS

[Introduced February 6, 2020; referred
to the Committee on Transportation and
Infrastructure]

1 A BILL to amend and reenact §11-15-3c of the Code of West Virginia, 1931, as amended; and to
 2 amend and reenact §17A-3-23 of said code, all relating to special license plates for
 3 vehicles titled in the name of the Division of Public Transit or purchased by the Division of
 4 Public Transit for public use; and exempting those vehicles from motor vehicle sales tax.

Be it enacted by the Legislature of West Virginia:

CHAPTER 11. TAXATION.

ARTICLE 15. CONSUMERS SALES AND SERVICE TAX.

§11-15-3c. Imposition of consumers sales tax on motor vehicle sales; rate of tax; use of motor vehicle purchased out of state; definition of sale; definition of motor vehicle; exemptions; collection of tax by Division of Motor Vehicles; dedication of tax to highways; legislative and emergency rules.

1 (a) Notwithstanding any provision of this article or §11-15A-1 *et seq.* of this code to the
 2 contrary, beginning on July 1, 2008, all motor vehicle sales to West Virginia residents shall be
 3 subject to the consumers sales tax imposed by this article.

4 (b) *Rate of tax on motor vehicles.* — Notwithstanding any provision of this article or §11-
 5 15A-1 *et seq.* of this code to the contrary, the rate of tax on the sale and use of a motor vehicle
 6 shall be five percent of its sale price, as defined in §11-15B-2 of this code: *Provided,* That so
 7 much of the sale price or consideration as is represented by the exchange of other vehicles on
 8 which the tax imposed by this section or §17A-3-4 of this code has been paid by the purchaser
 9 shall be deducted from the total actual sale price paid for the motor vehicle, whether the motor
 10 vehicle be new or used. However, beginning July 1, 2017, the rate of tax imposed by this section
 11 shall increase to six percent of the sales price for purchases of motor vehicles made on and after
 12 that date.

13 (c) *Motor vehicles purchased out of state.* — Notwithstanding this article or §11-15A-1 *et*
 14 *seq.* of this code to the contrary, the tax imposed by this section shall apply to all motor vehicles,

15 used as defined by §11-15A-1 of this code, within this state, regardless of whether the vehicle
16 was purchased in a state other than West Virginia.

17 (d) *Definition of sale.* — Notwithstanding any provision of this article or §11-15A-1 *et seq.*
18 of this code to the contrary, for purposes of this section, “sale”, “sales” or “selling” means any
19 transfer or lease of the possession or ownership of a motor vehicle for consideration, including
20 isolated transactions between individuals not being made in the ordinary course of repeated and
21 successive business and also including casual and occasional sales between individuals not
22 conducted in a repeated manner or in the ordinary course of repetitive and successive
23 transactions.

24 (e) *Definition of motor vehicle.* — For purposes of this section, “motor vehicle” means
25 every propellable device in or upon which any person or property is or may be transported or
26 drawn upon a highway including, but not limited to: Automobiles; buses; motor homes;
27 motorcycles; motorboats; all-terrain vehicles; snowmobiles; low-speed vehicles; trucks, truck
28 tractors and road tractors having a weight of less than 55,000 pounds; trailers, semitrailers, full
29 trailers, pole trailers and converter gear having a gross weight of less than two thousand pounds;
30 and motorboat trailers, fold-down camping trailers, traveling trailers, house trailers and motor
31 homes; except that the term “motor vehicle” does not include: Modular homes, manufactured
32 homes, mobile homes, similar nonmotive propelled vehicles susceptible of being moved upon the
33 highways but primarily designed for habitation and occupancy; devices operated regularly for the
34 transportation of persons for compensation under a certificate of convenience and necessity or
35 contract carrier permit issued by the Public Service Commission; mobile equipment as defined in
36 §17A-1-1 of this code; special mobile equipment as defined in §17A-1-1 of this code; trucks, truck
37 tractors and road tractors having a gross weight of 55,000 pounds or more; trailers, semitrailers,
38 full trailers, pole trailers and converter gear having weight of 2,000 pounds or greater: *Provided,*
39 That notwithstanding the provisions of §11-15-9 of this code, the exemption from tax under this
40 section for mobile equipment as defined in §17A-1-1 of this code; special mobile equipment

41 defined in §17A-1-1 of this code; Class B trucks, truck tractors and road tractors registered at a
42 gross weight of 55,000 pounds or more; and Class C trailers, semitrailers, full trailers, pole trailers
43 and converter gear having weight of 2,000 pounds or greater does not subject the sale or
44 purchase of the vehicle to the consumers sales and service tax imposed by §11-15-3 of this code.

45 (f) *Exemptions.* — Notwithstanding any other provision of this code to the contrary, the tax
46 imposed by this section shall not be subject to any exemption in this code other than the following:

47 (1) The tax imposed by this section does not apply to any passenger vehicle offered for
48 rent in the normal course of business by a daily passenger rental car business as licensed under
49 the provisions of §17A-6D-1 *et seq.* of this code. For purposes of this section, a daily passenger
50 car means a motor vehicle having a gross weight of 8,000 pounds or less and is registered in this
51 state or any other state. In lieu of the tax imposed by this section, there is hereby imposed a tax
52 of not less than \$1 nor more than \$1.50 for each day or part of the rental period. The
53 Commissioner of the Division of Motor Vehicles shall propose an emergency rule in accordance
54 with the provisions of §29A-3-1 *et seq.* of this code to establish this tax.

55 (2) The tax imposed by this section does not apply where the motor vehicle has been
56 acquired by a corporation, partnership or limited liability company from another corporation,
57 partnership or limited liability company that is a member of the same controlled group and the
58 entity transferring the motor vehicle has previously paid the tax on that motor vehicle imposed by
59 this section. For the purposes of this section, control means ownership, directly or indirectly, of
60 stock or equity interests possessing 50 percent or more of the total combined voting power of all
61 classes of the stock of a corporation or equity interests of a partnership or limited liability company
62 entitled to vote or ownership, directly or indirectly, of stock or equity interests possessing 50
63 percent or more of the value of the corporation, partnership or limited liability company.

64 (3) The tax imposed by this section does not apply where motor vehicle has been acquired
65 by a senior citizen service organization which is exempt from the payment of income taxes under
66 the United States Internal Revenue Code, Title 26 U. S. C. §501(c)(3) and which is recognized to

67 be a bona fide senior citizen service organization by the Bureau of Senior Services existing under
68 the provisions of §16-5P-1 *et seq.* of this code.

69 (4) The tax imposed by this section does not apply to any active duty military personnel
70 stationed outside of West Virginia who acquires a motor vehicle by sale within nine months from
71 the date the person returns to this state.

72 (5) The tax imposed by this section does not apply to motor vehicles acquired by registered
73 dealers of this state for resale only.

74 (6) The tax imposed by this section does not apply to motor vehicles acquired by this state
75 or any political subdivision thereof or by any volunteer fire department or duly chartered rescue
76 or ambulance squad organized and incorporated under the laws of this state as a nonprofit
77 corporation for protection of life or property.

78 (7) The tax imposed by this section does not apply to ~~motor vehicles acquired~~ the titling of
79 any vehicle operated by an urban mass transit authority, as defined in §8-27-1 *et seq.* of this code,
80 ~~or~~ a nonprofit entity exempt from federal and state income tax under the Internal Revenue Code
81 ~~for the~~ and whose purpose of providing is to provide mass transportation to the public at large ~~or~~
82 designed for the transportation of persons and being operated for the transportation of persons
83 in the public interest, or operated in the name of a public transit provider or nonprofit transit
84 provider receiving assistance through the West Virginia Division of Public Transit.

85 (8) The tax imposed by this section does not apply to the registration of a vehicle owned
86 and titled in the name of a resident of this state if the applicant:

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

89 (B) Presents evidence as the Commissioner of the Division of Motor Vehicles may require
90 of having titled the vehicle in the applicant's previous state of residence;

91 (C) Has relocated to this state and can present such evidence as the Commissioner of the
92 Division of Motor Vehicles may require to show bona fide residency in this state; and

93 (D) Makes application to the Division of Motor Vehicles for a title and registration and pays
94 all other fees required by chapter 17A of this code within 30 days of establishing residency in this
95 state. as prescribed in ~~subsection (a), section one-a of this article~~ §17A-3-1a(a) of this code.

96 (9) On and after January 1, 2009, the tax imposed by this section does not apply to Class
97 B trucks, truck tractors and road tractors registered at a gross weight of 55,000 pounds or more
98 or to Class C trailers, semitrailers, full trailers, pole trailers and converter gear having a weight of
99 2,000 pounds or greater. If an owner of a vehicle has previously titled the vehicle at a declared
100 gross weight of 55,000 pounds or more and the title was issued without the payment of the tax
101 imposed by this section, then before the owner may obtain registration for the vehicle at a gross
102 weight less than 55,000 pounds, the owner shall surrender to the commissioner the exempted
103 registration, the exempted certificate of title and pay the tax imposed by this section based upon
104 the current market value of the vehicle.

105 (10) The tax imposed by this section does not apply to vehicles leased by residents of
106 West Virginia. On or after January 1, 2009, a tax is imposed upon the monthly payments for the
107 lease of any motor vehicle leased under a written contract of lease by a resident of West Virginia
108 for a contractually specified continuous period of more than 30 days, which tax is equal to five
109 percent of the amount of the monthly payment, applied to each payment, and continuing for the
110 entire term of the initial lease period. The tax shall be remitted to the Division of Motor Vehicles
111 on a monthly basis by the lessor of the vehicle. Leases of 30 days or less are taxable under the
112 provisions of this article and §11-15A-1 *et seq.* of this code without reference to this section.

113 (g) *Division of Motor Vehicles to collect.* — Notwithstanding any provision of this article,
114 §11-15A-1 *et seq.* and §11-10-1 *et seq.* of this code to the contrary, the Division of Motor Vehicles
115 shall collect the tax imposed by this section: *Provided,* That such tax is imposed upon the monthly
116 payments for the lease of any motor vehicle leased by a resident of West Virginia, which tax is
117 equal to five percent of the amount of the monthly payment, applied to each payment, and
118 continuing for the entire term of the initial lease period. The tax shall be remitted to the Division

119 of Motor Vehicles on a monthly basis by the lessor of the vehicle.

120 (h) *Dedication of tax to highways.* — Notwithstanding any provision of this article or §11-
121 15A-1 *et seq.* of this code to the contrary, all taxes collected pursuant to this section, after
122 deducting the amount of any refunds lawfully paid, shall be deposited in the State Road Fund in
123 the State Treasury and expended by the Commissioner of Highways for design, maintenance and
124 construction of roads in the state highway system.

125 (i) *Legislative rules; emergency rules.* — Notwithstanding any provision of this article, §11-
126 15A-1 *et seq.* and §11-10-1 *et seq.* of this code to the contrary, the Commissioner of the Division
127 of Motor Vehicles shall promulgate legislative rules explaining and implementing this section,
128 which rules shall be promulgated in accordance with the provisions of §29A-3-1 *et seq.* of this
129 code and should include a minimum taxable value and set forth instances when a vehicle is to be
130 taxed at fair market value rather than its purchase price. The authority to promulgate rules
131 includes authority to amend or repeal those rules. ~~If proposed legislative rules for this section are
132 filed in the State Register before June 15, 2008, those rules may be promulgated as emergency
133 legislative rules as provided in article three, chapter twenty-nine-a of this code~~

134 (j) Notwithstanding any other provision of this code, effective January 1, 2009, no
135 municipal sales or use tax or local sales or use tax or special downtown redevelopment district
136 excise tax or special district excise tax shall be imposed under §7-22-1 *et seq.*, §8-13-1 *et seq.*,
137 §8-13B-1 *et seq.*, or §8-38-1 *et seq.*, or any other provision of this code, except this section, on
138 sales of motor vehicles as defined in this article or on any tangible personal property excepted or
139 exempted from tax under this section. Nothing in this subsection shall be construed to prevent
140 the application of the municipal business and occupation tax on motor vehicle retailers and leasing
141 companies.

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-3-23. Registration plates to state, county, municipal and other governmental
vehicles; use for undercover activities.**

1 (a) Any motor vehicle designed to carry passengers, owned or leased by the State of West
2 Virginia, or any of its departments, bureaus, commissions, or institutions, except vehicles used
3 by the Governor, Treasurer, not to exceed eight vehicles operated by investigators of the Office
4 of the Attorney General, three vehicles per elected office of the Board of Public Works not
5 otherwise specified, vehicles operated by the State Police, not to exceed five vehicles operated
6 by the office of the Secretary of Military Affairs and Public Safety, not to exceed five vehicles
7 operated by the Division of Homeland Security and Emergency Management, vehicles operated
8 by natural resources police officers of the Division of Natural Resources, not to exceed 10 vehicles
9 operated by the arson investigators of the Office of State Fire Marshal, not to exceed two vehicles
10 operated by the Division of Protective Services, not to exceed 16 vehicles operated by inspectors
11 of the Office of the Alcohol Beverage Control Commissioner, vehicles operated by the West
12 Virginia Wing of the Civil Air Patrol, and vehicles operated by probation officers employed under
13 the Supreme Court of Appeals may not be operated or driven by any person unless it has
14 displayed and attached to the front thereof, in the same manner as regular motor vehicle
15 registration plates are attached, a plate of the same size as the regular registration plate, with
16 white lettering on a green background bearing the words "West Virginia" in one line and the words
17 "State Car" in another line, and the lettering for the words "State Car" shall be of sufficient size to
18 be plainly readable from a distance of 100 feet during daylight: *Provided*, That beginning January
19 1, 2019, state vehicle license plates shall be gold with blue lettering.

20 The vehicle shall also have attached to the rear a plate bearing a number and any other
21 words and figures as the Commissioner of Motor Vehicles shall prescribe. The rear plate shall

22 also be green with the number in white: *Provided*, That beginning January 1, 2019, state vehicle
23 license plates shall be gold with blue lettering.

24 (b) Registration plates issued to vehicles owned by counties shall be white on red with the
25 word "County" on top of the plate and the words "West Virginia" on the bottom.

26 (c) Registration plates issued to a city or municipality shall be white on blue with the word
27 "City" on top and the words "West Virginia" on the bottom.

28 (d) Registration plates issued to a city or municipality law-enforcement department shall
29 include blue lettering on a white background with the words "West Virginia" on top of the plate
30 and shall be further designed by the commissioner to include a law-enforcement shield together
31 with other insignia or lettering sufficient to identify the motor vehicle as a municipal law-
32 enforcement department motor vehicle. The colors may not be reversed and shall be of
33 reflectorized material. The registration plates issued to counties, municipalities, and other
34 governmental agencies authorized to receive colored plates hereunder shall be affixed to both
35 the front and rear of the vehicles.

36 (e) (1) Registration plates issued to vehicles operated by county sheriffs shall be designed
37 by the commissioner in cooperation with the sheriffs' association with the word "Sheriff" on top of
38 the plate and the words "West Virginia" on the bottom. The plate shall contain a gold shield
39 representing the sheriff's star and a number assigned to that plate by the commissioner. Every
40 county sheriff shall provide the commissioner with a list of vehicles operated by the sheriff, unless
41 otherwise provided in this section, and a fee of \$10 for each vehicle submitted by July 1, 2002.

42 (2) Registration plates issued to vehicles operated by the West Virginia Wing of the Civil
43 Air Patrol shall be designed by the commissioner in cooperation with the Civil Air Patrol and
44 include the words "Civil Air Patrol" on the plate. The Civil Air Patrol shall provide the commissioner
45 with a list of vehicles operated by the Civil Air Patrol, unless otherwise provided in this section,
46 and a fee of \$10 for each new vehicle for which a Civil Air Patrol license plate is requested.

47 (f) The commissioner is authorized to designate the colors and design of any other

48 registration plates that are issued without charge to any other agency or nonstate government
49 entity entitled to registration plates at no charge in accordance with the motor vehicle
50 laws: *Provided*, That where the institutions of higher education opt to have their logo displayed on
51 the state license plate, such institution shall bear any additional costs of those added features:
52 *Provided, however*, That no public service districts or designated nongovernmental organizations
53 shall be issued a license plate designated for vehicles owned or leased by the State of West
54 Virginia, or any of its departments, bureaus, commissions, or institutions.

55 (g) Upon application, the commissioner is authorized to issue a maximum of five Class A
56 license plates per applicant to be used by county sheriffs and municipalities on law-enforcement
57 vehicles while engaged in undercover investigations.

58 (h) The commissioner is authorized to issue a maximum of five Class A license plates to
59 be used on vehicles assigned to the Division of Motor Vehicles investigators for commercial driver
60 examination fraud investigation and driver's license issuance fraud detection and fraud
61 prevention.

62 (i) The commissioner is authorized to issue an unlimited number of license plates per
63 applicant to authorized drug and violent crime task forces in the State of West Virginia when the
64 chairperson of the control group of a drug and violent crime task force signs a written affidavit
65 stating that the vehicle or vehicles for which the plates are being requested will be used only for
66 official undercover work conducted by a drug and violent crime task force.

67 (j) The commissioner is authorized to issue 20 Class A license plates to the Criminal
68 Investigation Division of the Department of Revenue for use by its investigators.

69 (k) The commissioner may issue a maximum of 10 Class A license plates to the Division
70 of Natural Resources for use by natural resources police officers. The commissioner shall
71 designate the color and design of the registration plates to be displayed on the front and the rear
72 of all other state-owned vehicles owned by the Division of Natural Resources and operated by
73 natural resources police officers.

74 (l) The commissioner is authorized to issue an unlimited number of Class A license plates
75 to the Commission on Special Investigations for state-owned vehicles used for official undercover
76 work conducted by the Commission on Special Investigations.

77 (m) The commissioner is authorized to issue a maximum of two Class A plates to the
78 Division of Protective Services for state-owned vehicles used by the Division of Protective
79 Services in fulfilling its mission.

80 (n) The commissioner is authorized to issue Class A registration plates for vehicles used
81 by the Medicaid Fraud Control Unit created by §9-7-7 of this code.

82 (o) The commissioner is authorized to issue Class A registration plates for vehicles used
83 by the West Virginia Insurance Fraud Unit created by §33-41-8 of this code.

84 (p) No other registration plate may be issued for, or attached to, any state-owned vehicle.

85 (q) The Commissioner of Motor Vehicles shall have a sufficient number of both front and
86 rear plates produced to attach to all state-owned or leased vehicles.

87 (r) The commissioner shall, after consultation with the Fleet Management Division
88 established pursuant to §5A-12-1 *et seq.* of this code and the Enterprise Resource Planning
89 Board established pursuant to §12-6D-1 *et seq.* of this code, develop and adopt a standardized
90 naming convention for the title, registration, and licensing of state vehicles, pursuant to §17A-3-
91 25 of this code. The naming convention adopted shall be consistent with the naming convention
92 adopted for the centralized accounting system as maintained by the Enterprise Resource
93 Planning Board for the purpose of creating and maintaining an accurate and up to date inventory
94 of the state vehicle fleet.

95 (s) It is the duty of each office, department, bureau, commission, or institution furnished
96 any vehicle to have plates as described herein affixed thereto prior to the operation of the vehicle
97 by any official or employee.

98 (t) The commissioner may issue special registration plates for motor vehicles titled in the
99 name of the Division of Public Transit or in the name of a public transit authority as defined in this

100 subsection and operated by a public transit authority or a public transit provider to transport
101 persons in the public interest. For purposes of this subsection, “public transit authority” means an
102 urban mass transportation authority created pursuant to §8-27-1 *et seq.* of this code, or a public
103 transit provider or private nonprofit transit provider that receives assistance through the West
104 Virginia Division of Public Transit, or a nonprofit entity exempt from federal and state income taxes
105 under the Internal Revenue Code and whose purpose is to provide mass transportation to the
106 public at-large, or to specialized client populations. The special registration plate shall be
107 designed by the commissioner and shall display the words “public transit” or words or letters of
108 similar effect to indicate the public purpose of the use of the vehicle. The special registration plate
109 shall be issued without charge.

110 (u) Each green registration plate with white letters affixed to a state vehicle, and each
111 corresponding title and registration certificate for all state vehicles, other than those vehicles with
112 Class A registration plates as provided in this section, terminates at midnight on December 31,
113 2018. Each spending unit assigned a state vehicle that is required to display a state vehicle
114 license plate and registration shall obtain a new title, new registration card, and new state vehicle
115 license plate prior to January 1, 2019: *Provided*, That no state vehicle license plate shall be issued
116 unless the spending unit has provided an affirmative statement that the vehicle is a state asset
117 recorded in the central accounting system as maintained by the Enterprise Resource Planning
118 Board, and the same has been verified by the commissioner, as required by §17A-3-25 of this
119 code. When new registrations are issued pursuant to this article and for subsequent, nonClass A
120 registrations of state owned or leased vehicles, the state vehicle registration plate and certificate
121 shall be valid for a period of not more than 24 months and shall be required to be renewed every
122 two years.

123 (v) The commissioner is authorized to prepare and promulgate emergency rules, pursuant
124 to §29A-3-1 *et seq.* of this code in order to implement amendments to this section.

125 (w) Any person who violates the provisions of this section is guilty of a misdemeanor and,

126 upon conviction thereof, shall be fined not less than \$50 nor more than \$100. Magistrates have
127 concurrent jurisdiction with circuit courts for the enforcement of this section.

NOTE: The purpose of this bill is to authorize public and private nonprofit transit providers, that serve our venerable senior and disabled populations, and receive transit vehicles through the Division of Public Transit to register these service vehicles and have "Public Transit Authority" license plates. Historically, DMV has issued these service providers TA license plates. After reviewing the statute, it was apparent that these providers were not eligible for a TA plate. This bill corrects that problem.

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