

3  
3  
3  
FILED

2002 MAR 26 A 10: 31

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

*REGULAR SESSION, 2002*

—●—  
**ENROLLED**

SENATE BILL NO. 105

(By Senator LOVE, ET AL )

—●—  
PASSED MARCH 9, 2002

In Effect NINETY DAYS FROM Passage

FILED

2002 MAR 26 A 10:31

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

ENROLLED

## Senate Bill No. 105

(BY SENATORS LOVE, HUNTER, ANDERSON, KESSLER,  
CALDWELL, ROWE, MINEAR, SPROUSE, REDD, MINARD,  
EDGELL, SNYDER, CHAFIN, FANNING, HELMICK,  
ROSS, UNGER, MITCHELL AND FACEMYER)

---

[Passed March 9, 2002; in effect ninety days from passage.]

---

AN ACT to amend and reenact section four, article three, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to exempting all senior service organizations that qualify for tax exemption under Title 26, §501 (c)(3) of the United States Internal Revenue Service Code and are recognized as bonafide senior services organizations by the senior services bureau from payment of the automobile titling privilege tax.

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

That section four, article three, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and 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; tax for privilege of certification of title; exceptions; fee on payments for leased vehicles; penalty for false swearing.**

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

23 (b) A tax is imposed upon the privilege of effecting the  
24 certification of title of each vehicle in the amount equal to  
25 five percent of the value of the motor vehicle at the time of  
26 the certification, to be assessed as follows:

27 (1) If the vehicle is new, the actual purchase price or  
28 consideration to the purchaser of the vehicle is the value  
29 of the vehicle. If the vehicle is a used or secondhand  
30 vehicle, the present market value at time of transfer or  
31 purchase is the value of the vehicle for the purposes of this  
32 section: *Provided*, That so much of the purchase price or  
33 consideration as is represented by the exchange of other  
34 vehicles on which the tax imposed by this section has been

35 paid by the purchaser shall be deducted from the total  
36 actual price or consideration paid for the vehicle, whether  
37 the vehicle be new or secondhand. If the vehicle is ac-  
38 quired through gift or by any manner whatsoever, unless  
39 specifically exempted in this section, the present market  
40 value of the vehicle at the time of the gift or transfer is the  
41 value of the vehicle for the purposes of this section.

42 (2) No certificate of title for any vehicle may be issued to  
43 any applicant unless the applicant has paid to the division  
44 of motor vehicles the tax imposed by this section which is  
45 five percent of the true and actual value of the vehicle  
46 whether the vehicle is acquired through purchase, by gift  
47 or by any other manner whatsoever, except gifts between  
48 husband and wife or between parents and children:  
49 *Provided*, That the husband or wife, or the parents or  
50 children, previously have paid the tax on the vehicles  
51 transferred to the state of West Virginia.

52 (3) The division of motor vehicles may issue a certificate  
53 of registration and title to an applicant if the applicant  
54 provides sufficient proof to the division of motor vehicles  
55 that the applicant has paid the taxes and fees required by  
56 this section to a motor vehicle dealership that has gone out  
57 of business or has filed bankruptcy proceedings in the  
58 United States bankruptcy court and the taxes and fees so  
59 required to be paid by the applicant have not been sent to  
60 the division by the motor vehicle dealership or have been  
61 impounded due to the bankruptcy proceedings: *Provided*,  
62 That the applicant makes an affidavit of the same and  
63 assigns all rights to claims for money the applicant may  
64 have against the motor vehicle dealership to the division  
65 of motor vehicles.

66 (4) The division of motor vehicles shall issue a certificate  
67 of registration and title to an applicant without payment  
68 of the tax imposed by this section if the applicant is a  
69 corporation, partnership or limited liability company  
70 transferring the vehicle to another corporation, partner-  
71 ship or limited liability company when the entities in-

72 involved in the transfer are members of the same controlled  
73 group and the transferring entity has previously paid the  
74 tax on the vehicle transferred. For the purposes of this  
75 section, control means ownership, directly or indirectly, of  
76 stock or equity interests possessing fifty percent or more  
77 of the total combined voting power of all classes of the  
78 stock of a corporation or equity interests of a partnership  
79 or limited liability company entitled to vote or ownership,  
80 directly or indirectly, of stock or equity interests possess-  
81 ing fifty percent or more of the value of the corporation,  
82 partnership or limited liability company.

83 (5) The tax imposed by this section does not apply to  
84 vehicles to be registered as Class H vehicles or Class M  
85 vehicles, as defined in section one, article ten of this  
86 chapter, which are used or to be used in interstate com-  
87 merce. Nor does the tax imposed by this section apply to  
88 the titling of Class B vehicles registered at a gross weight  
89 of fifty-five thousand pounds or more, or to the titling of  
90 Class C semitrailers, full trailers, pole trailers and con-  
91 verter gear: *Provided*, That if an owner of a vehicle has  
92 previously titled the vehicle at a declared gross weight of  
93 fifty-five thousand pounds or more and the title was issued  
94 without the payment of the tax imposed by this section,  
95 then before the owner may obtain registration for the  
96 vehicle at a gross weight less than fifty-five thousand  
97 pounds, the owner shall surrender to the commissioner the  
98 exempted registration, the exempted certificate of title  
99 and pay the tax imposed by this section based upon the  
100 current market value of the vehicle: *Provided, however*,  
101 That notwithstanding the provisions of section nine,  
102 article fifteen, chapter eleven of this code, the exemption  
103 from tax under this section for Class B vehicles in excess  
104 of fifty-five thousand pounds and Class C semitrailers, full  
105 trailers, pole trailers and converter gear does not subject  
106 the sale or purchase of the vehicles to the consumers sales  
107 tax.

108 (6) The tax imposed by this section does not apply to  
109 titling of vehicles leased by residents of West Virginia. A

110 tax is imposed upon the monthly payments for the lease of  
111 any motor vehicle leased by a resident of West Virginia,  
112 which tax is equal to five percent of the amount of the  
113 monthly payment, applied to each payment, and continu-  
114 ing for the entire term of the initial lease period. The tax  
115 shall be remitted to the division of motor vehicles on a  
116 monthly basis by the lessor of the vehicle.

117 (7) The tax imposed by this section does not apply to  
118 titling of vehicles by a registered dealer of this state for  
119 resale only, nor does the tax imposed by this section apply  
120 to titling of vehicles by this state or any political subdivi-  
121 sion thereof, or by any volunteer fire department or duly  
122 chartered rescue or ambulance squad organized and  
123 incorporated under the laws of the state of West Virginia  
124 as a nonprofit corporation for protection of life or prop-  
125 erty. The total amount of revenue collected by reason of  
126 this tax shall be paid into the state road fund and ex-  
127 pended by the commissioner of highways for matching  
128 federal funds allocated for West Virginia. In addition to  
129 the tax, there is a charge of five dollars for each original  
130 certificate of title or duplicate certificate of title so issued:  
131 *Provided*, That this state or any political subdivision of  
132 this state, or any volunteer fire department or duly char-  
133 tered rescue squad is exempt from payment of the charge.

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

138 (9) If, by will or direct inheritance, a person becomes the  
139 owner of a motor vehicle and the tax imposed by this  
140 section previously has been paid, to the division of motor  
141 vehicles, on that vehicle, he or she is not required to pay  
142 the tax.

143 (10) A person who has paid the tax imposed by this  
144 section is not required to pay the tax a second time for the  
145 same motor vehicle, but is required to pay a charge of five

146 dollars for the certificate of retitling of that motor vehicle,  
147 except that the tax shall be paid by the person when the  
148 title to the vehicle has been transferred either in this or  
149 another state from the person to another person and  
150 transferred back to the person.

151 (11) The tax imposed by this section does not apply to  
152 any passenger vehicle offered for rent in the normal course  
153 of business by a daily passenger rental car business as  
154 licensed under the provisions of article six-d of this  
155 chapter. For purposes of this section, a daily passenger car  
156 means a Class A motor vehicle having a gross weight of  
157 eight thousand pounds or less and is registered in this state  
158 or any other state. In lieu of the tax imposed by this  
159 section, there is hereby imposed a tax of not less than one  
160 dollar nor more than one dollar and fifty cents for each  
161 day or part of the rental period. The commissioner shall  
162 propose an emergency rule in accordance with the provi-  
163 sions of article three, chapter twenty-nine-a of this code to  
164 establish this tax.

165 (12) The tax imposed by this article does not apply to the  
166 titling of any vehicle purchased by a senior citizen service  
167 organization which is exempt from the payment of income  
168 taxes under the United States Internal Revenue Service  
169 Code, Title 26 U.S.C. §501(c)(3) and which is recognized  
170 to be a bonafide senior citizen service organization by the  
171 senior services bureau existing under the provisions of  
172 article five, chapter sixteen of this code.

173 (c) Notwithstanding any provisions of this code to the  
174 contrary, the owners of trailers, semitrailers, recreational  
175 vehicles and other vehicles not subject to the certificate of  
176 title tax prior to the enactment of this chapter are subject  
177 to the privilege tax imposed by this section: *Provided*, That  
178 the certification of title of any recreational vehicle owned  
179 by the applicant on the thirtieth day of June, one thousand  
180 nine hundred eighty-nine, is not subject to the tax imposed  
181 by this section: *Provided, however*, That mobile homes,  
182 manufactured homes, modular homes and similar

183 nonmotive propelled vehicles, except recreational vehicles  
184 and house trailers, susceptible of being moved upon the  
185 highways but primarily designed for habitation and  
186 occupancy, rather than for transporting persons or prop-  
187 erty, or any vehicle operated on a nonprofit basis and used  
188 exclusively for the transportation of mentally retarded or  
189 physically handicapped children when the application for  
190 certificate of registration for the vehicle is accompanied by  
191 an affidavit stating that the vehicle will be operated on a  
192 nonprofit basis and used exclusively for the transportation  
193 of mentally retarded and physically handicapped children,  
194 are not subject to the tax imposed by this section, but are  
195 taxable under the provisions of articles fifteen and fifteen-  
196 a, chapter eleven of this code.

197 (d) Any person making any affidavit required under any  
198 provision of this section who knowingly swears falsely, or  
199 any person who counsels, advises, aids or abets another in  
200 the commission of false swearing, or any person, while  
201 acting as an agent of the division of motor vehicles, issues  
202 a vehicle registration without first collecting the fees and  
203 taxes or fails to perform any other duty required by this  
204 chapter to be performed before a vehicle registration is  
205 issued is, on the first offense, guilty of a misdemeanor and,  
206 upon conviction thereof, shall be fined not more than five  
207 hundred dollars or be confined in the county or regional  
208 jail for a period not to exceed six months or, in the discre-  
209 tion of the court, both fined and confined. For a second or  
210 any subsequent conviction within five years, that person  
211 is guilty of a felony and, upon conviction thereof, shall be  
212 fined not more than five thousand dollars or be imprisoned  
213 in a state correctional facility for not less than one year  
214 nor more than five years or, in the discretion of the court,  
215 both fined and imprisoned.

216 (e) Notwithstanding any other provisions of this section,  
217 any person in the military stationed outside West Virginia,  
218 or his or her dependents who possess a motor vehicle with  
219 valid registration, are exempt from the provisions of this

220 article for a period of nine months from the date the  
221 person returns to this state or the date his or her depend-  
222 ent returns to this state, whichever is later.

223 (f) No person may transfer, purchase or sell a fac-  
224 tory-built home without a certificate of title issued by the  
225 commissioner in accordance with the provisions of this  
226 article:

227 (1) Any person who fails to provide a certificate of title  
228 upon the transfer, purchase or sale of a factory-built home  
229 is guilty of a misdemeanor and, upon conviction thereof,  
230 shall for the first offense be fined not less than one hun-  
231 dred dollars nor more than one thousand dollars, or be  
232 confined in the county or regional jail for not more than  
233 one year or, both fined and confined. For each subsequent  
234 offense, the fine may be increased to not more than two  
235 thousand dollars, with confinement in the county or  
236 regional jail not more than one year or, both fined and  
237 confined.

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

243 (g) Notwithstanding any other provision to the contrary,  
244 whenever reference is made to the application for or  
245 issuance of any title or the recordation or release of any  
246 lien, it shall be understood to include the application,  
247 transmission, recordation, transfer of ownership and  
248 storage of information in an electronic format.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

*Cary Olm*  
.....  
Chairman Senate Committee

*[Signature]*  
.....  
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

*Parrell Stokes*  
.....  
Clerk of the Senate

*Bruce M. Boy*  
.....  
Clerk of the House of Delegates

*Carl Ray Tomblin*  
.....  
President of the Senate

*[Signature]*  
.....  
Speaker House of Delegates

The within is approved this the 25<sup>th</sup>  
Day of March, 2002.

*Bob Wise*  
.....  
Governor

PRESENTED TO THE  
GOVERNOR

Date 3/19/62

Time 8:55 am