

SB 95

FILED

2002 APR -1 A 10: 11

OFFICE WEST VIRGINIA
SECRETARY OF STATE

~~FILED~~

~~2002 MAR 32 A 10: 06~~

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WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 2002



ENROLLED

COMMITTEE SUBSTITUTE FOR

SENATE BILL NO. 541

(By Senators Wooten AND Rowe)



PASSED MARCH 8, 2002

In Effect From Passage

FILED

2002 APR -1 A 10: 11

OFFICE WEST VIRGINIA
SECRETARY OF STATE

~~FILED~~

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~~OFFICE WEST VIRGINIA
SECRETARY OF STATE~~

ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 541

(SENATORS WOOTON AND ROWE, *original sponsors*)

[Passed March 8, 2002; in effect from passage.]

AN ACT to amend and reenact sections three and four, article four-a, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to certificate to show liens and encumbrances; providing that liens and encumbrances placed on vehicles are void against lien creditors under particular circumstances; requiring a purchase money lien or encumbrance to be perfected on the date and time of delivery of same to the division; specifying the documents that will perfect a lien or encumbrance; requiring that an application for a certificate of title must be filed under certain time limitations in order to maintain perfected status; providing when an application is not filed within a certain time limitation that the division take action to void the perfected status of a lien or encumbrance;

providing that no certificate of title will be delivered absent an application delivered to the division; and defining a "purchase money lien or encumbrance".

Be it enacted by the Legislature of West Virginia:

That sections three and four, article four-a, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, all to read as follows:

ARTICLE 4A. LIENS AND ENCUMBRANCES ON VEHICLES TO BE SHOWN ON CERTIFICATE OF TITLE; NOTICE TO CREDITORS AND PURCHASERS.

§17A-4A-3. Notice of lien; noninventory lien created by voluntary act of the owner not shown on certificate of title or otherwise perfected void as to subsequent purchasers and lien creditors; exceptions.

1 (a) A certificate of title, when issued by the division
2 showing a lien or encumbrance, shall be considered from
3 and after the filing with the division of the application
4 therefor or the notice of lien authorized in section four of
5 this article adequate notice to the state and its agencies,
6 boards and commissions, to the United States government
7 and its agencies, boards and commissions, to creditors and
8 to purchasers that a lien against the vehicle exists. (b)
9 Notwithstanding any other provision of this code to the
10 contrary, and subject to the provisions of subsection (c) of
11 this section, any lien or encumbrance placed on a vehicle
12 by the voluntary act of the owner shall be void as against:
13 (i) Any lien creditor who, without knowledge of the lien,
14 acquires by attachment, levy or otherwise a lien there-
15 upon, unless the lien or encumbrance is noted on the
16 certificate of title, a filed application for certificate of title
17 or the notice of lien authorized in section four of this
18 article; and (ii) any purchaser who, without knowledge of
19 the lien or encumbrance, purchases the vehicle, unless the
20 lien or encumbrance is noted on the certificate of title, a
21 filed application for certificate of title or the notice of lien

22 authorized in section four of this article: *Provided*, That a
23 purchaser under this subsection who purchases the vehicle
24 without knowledge of the lien or encumbrance and
25 contemporaneously obtains actual physical possession of
26 the vehicle and the certificate of title for the vehicle
27 without the lien or encumbrance noted on the certificate
28 of title, receives the vehicle free and clear of the lien or
29 encumbrance.

30 (c) The creation and perfection of a lien against: (1) A
31 vehicle held as inventory for sale by a registered dealer
32 holding title by assignment; or (2) a vehicle for which a
33 certificate of title has been issued and is held as inventory
34 for lease by a vehicle rental agency or similar person
35 engaged solely in the business of leasing vehicles in
36 accordance with the provisions of article nine, chapter
37 forty-six of this code shall be deemed adequate notice to
38 the state and its agencies, boards and commissions, to the
39 United States government and its agencies, boards and
40 commissions, to creditors and to purchasers that a lien
41 against the vehicle exists, subject to the provisions of
42 section three hundred seven, article nine, chapter forty-six
43 of this code, except that any lien or encumbrance on such
44 a vehicle shall not be effective against the rights of any
45 purchaser for value who purchases the vehicle primarily
46 for personal, family, household or agricultural purposes
47 unless such lien or encumbrance is recorded on the certifi-
48 cate of title or specified on the bill of sale.

**§17A-4A-4. Purchase money lien or encumbrance; effective date
of lien; dealer to record lien; fees.**

1 (a) A purchase money lien or encumbrance upon any
2 vehicle shall be perfected on the date and at time of
3 delivery to the division of motor vehicles of either the
4 application for a certificate of title with all supporting
5 documents, or a completed notice of lien form in a format
6 determined by the division. The notice of lien form may be
7 submitted to the division in paper format, facsimile or in
8 any other electronic format approved by the division.

9 (b) If perfection occurs through the notice of lien form
10 pursuant to subsection (a) of this section, an application
11 for certificate of title must be received by the division of
12 motor vehicles within sixty days after the date of purchase
13 of the vehicle or refinancing of such purchase in order to
14 maintain the perfected status of such lien or encumbrance.
15 When an application is not filed within the time pre-
16 scribed, the lien or encumbrance shall become unperfected
17 on the sixty-first day following the purchase or refinanc-
18 ing date of the vehicle. If an application for a certificate of
19 title is received by the division on or after the sixty-first
20 day, the new perfection date for the lien or encumbrance
21 is the date the application for a certificate of title is
22 received by the division. Nothing in this section extends
23 the sixty-day title application filing requirement of section
24 four, article four of this chapter. The name and address of
25 the lien holder shall be recorded on this title by the
26 division in either electronic or paper format.

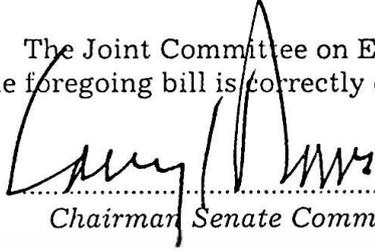
27 (c) No certificate of title for a vehicle shall be issued
28 unless an application is delivered to the division of motor
29 vehicles.

30 (d) In all transactions involving a purchase money lien or
31 encumbrance upon a motor vehicle, the motor vehicle
32 dealer shall collect and remit to the division of motor
33 vehicles the title, tax and registration fees required under
34 section four, article three of this chapter and file and
35 record with the division of motor vehicles any lien created
36 as a result of the transaction: *Provided*, That a motor
37 vehicle dealer may remit the title, tax and registration fees
38 through any license service that is licensed by the division
39 of motor vehicles.

40 (e) No fee may be charged by a motor vehicle dealer for
41 its services required under this section except that fee
42 authorized by section one-b, article six of this chapter or
43 subdivision (6), subsection (a), section one hundred nine,
44 article three, chapter forty-six-a of this code.

45 (f) For purposes of this section, a purchase money lien or
46 encumbrance is defined to include: (1) A lien taken or
47 retained by the seller or the vehicle to secure all or a part
48 of its price; (2) a lien taken by a person who by making
49 advances or incurring an obligation gives value to enable
50 another to acquire rights in or the use of a vehicle if such
51 value is so used; and (3) the refinancing of either of the
52 foregoing for the sole purpose of repaying a loan secured
53 by the vehicle.

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

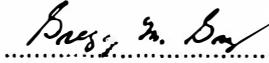

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Chairman Senate Committee

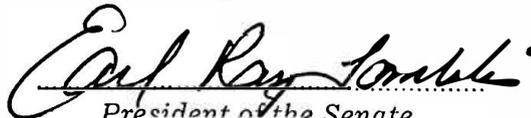

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Chairman House Committee

Originated in the Senate.

In effect from passage.


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Clerk of the Senate


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Clerk of the House of Delegates


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President of the Senate


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Speaker House of Delegates

The within is approved this the 29th
Day of March, 2002.


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Governor

PRESENTED TO THE
GOVERNOR

Date 3/19/02

Time 9:05 AM