

No. 1986-170

AN ACT

HB 349

Amending Title 75 (Vehicles) of the Pennsylvania Consolidated Statutes, further providing for vehicles exempt from registration and for the titling of all-terrain vehicles; and defining certain terms for purposes of the oil company franchise tax for highway maintenance and construction.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Section 1302 of Title 75 of the Pennsylvania Consolidated Statutes is amended by adding a paragraph to read:

§ 1302. Vehicles exempt from registration.

The following types of vehicles are exempt from registration:

* * *

(18) Any farm and garden vehicle under 16 horsepower driven incidentally upon a highway, as determined by the department.

Section 2. Section 7706 of Title 75 is amended to read:

§ 7706. Restricted receipts fund.

(a) Deposit and use of moneys.—The department shall deposit all moneys received from the registration of snowmobiles and *the registration and issuance of certificates of title for* ATV's, the sale of snowmobile and ATV registration information, snowmobile and ATV publications and other services provided by the department, and all fees collected under this chapter in a restricted receipts fund, from which the department shall draw moneys for use in carrying out the registration *and the issuance of certificates of title*, safety education and enforcement requirements of this chapter as well as the establishment, construction and maintenance of trails and any equipment and supplies necessary to carry out the purposes of this chapter. All moneys in said fund not heretofore paid into the General Fund shall remain in said restricted receipts fund to be used as specified in this chapter.

(b) Audit of moneys.—The restricted receipts fund shall be audited every two years.

Section 3. The heading of Subchapter B of Chapter 77 of Title 75 is amended to read:

CHAPTER 77
SNOWMOBILES AND ALL-TERRAIN VEHICLES

* * *

SUBCHAPTER B
CERTIFICATES OF TITLE AND REGISTRATION

* * *

Section 4. The heading and subsection (c) of section 7712 of Title 75 are amended to read:

§ 7712. Registration of snowmobiles and *registration and issuance of certificates of title for ATV's.*

* * *

(c) Fees.—Fees for registration of snowmobiles and *registration and issuance of certificates of title for ATV's* to be collected by the department under this chapter are as follows:

(1) Each individual resident registration for two years, \$10 for a snowmobile and \$20 for an ATV.

(2) Each individual nonresident registration for two years, \$10 for a snowmobile and \$20 for an ATV.

(3) Each dealer registration for one year, \$25.

(4) Replacement of a lost, mutilated or destroyed certificate or decal, \$1.

(5) Transfers of snowmobile and ATV registrations as described in section 7713 (relating to certificates of registration and decals), \$3.

(6) *Certificate of title for an ATV, \$15.*

* * *

Section 5. Title 75 is amended by adding sections to read:

§ 7712.1. *Certificate of title for ATV's required.*

(a) *General rule.—Except as otherwise provided in this section, every owner of a Class I or Class II ATV which is in this Commonwealth and for which no certificate of title has been issued shall make application to the department for a certificate of title to the ATV.*

(b) *Exception.—The provisions of this section which require every owner of an ATV to make application for and receive a certificate of title shall not apply to any person who has registered an ATV on or before the effective date of this section unless that owner resells the registered ATV.*

(c) *Contents of application.—Application for a certificate of title shall be made upon a form prescribed and furnished by the department and shall contain a full description of the ATV, date of purchase, the actual or bona fide name and address of the owner, a statement of the title of applicant, together with any other information or documents the department requires to identify the ATV and to enable the department to determine whether the owner is entitled to a certificate of title.*

(d) *Signing and filing of application.—Application for a certificate of title shall be made within 15 days of the sale or transfer of an ATV or its entry into this Commonwealth from another jurisdiction, whichever is later. The application shall be accompanied by the fee prescribed in this subchapter, and any tax payable by the applicant under the laws of this Commonwealth in connection with the acquisition or use of an ATV or evidence to show that the tax has been paid or collected. The application shall be signed and verified by oath or affirmation by the applicant if a natural person; in the case of an association or partnership, by a member or a partner; and in the case of a corporation, by an executive officer or some person specifically authorized by the corporation to sign the application.*

(e) *ATV's purchased from dealers or manufactures.—If the application refers to an ATV purchased from a dealer or manufacturer, the dealer or*

manufacturer shall mail or deliver to the department the certificate of title and any other required forms within 15 days of the date of purchase. Any dealer or manufacturer violating this subsection is guilty of a summary offense and shall, upon conviction, be sentenced to pay a fine of \$50 for each violation. The requirement that the dealer or manufacturer mail or deliver the application to the department does not apply to ATV's purchased by governmental agencies.

(f) ATV's not requiring certificate of title.—No certificate of title is required for:

(1) An ATV owned by the United States unless it is registered in this Commonwealth.

(2) A new ATV owned by a manufacturer or registered dealer before and until sale.

(3) Any ATV which meets the requirements of subsection (b) prior to any resale.

(g) Registration without certificate prohibited.—Except as provided in subsection (b), the department shall not register or renew the registration of an ATV unless a certificate of title has been issued by the department to the owner or an application for a certificate of title has been delivered by the owner to the department.

(h) Refusing issuance of certificate of title.—The department may refuse issuance of a certificate of title when it has reasonable grounds to believe:

(1) That any required fee has not been paid.

(2) That any taxes payable under the laws of this Commonwealth on or in connection with, or resulting from the acquisition or use of, the ATV have not been paid.

(3) That the applicant is not the owner of the ATV.

(4) That the application contains a false or fraudulent statement.

(5) That the applicant has failed to furnish required information or documents or any additional information the department reasonably requires.

(i) Suspension and cancellation of certificate of title.—

(1) The department may cancel the certificate of title issued for a new ATV when it is shown by satisfactory evidence that the ATV has been returned within 45 days to the manufacturer or dealer from whom obtained.

(2) The department, upon receipt of certification from the clerk of any court showing conviction for a misstatement of facts on any application for a certificate of title or any transfer of a certificate of title, shall suspend the certificate of title and require that the certificate be returned immediately to the department, whereupon the department may cancel the certificate.

(3) The department may suspend a certificate of title when a check received in payment of the fee is not paid on demand or when the fee for the certificate is unpaid and owing.

(j) Transfer of ownership of ATV.—

(1) *In the event of the sale or transfer of the ownership of an ATV within this Commonwealth, the owner shall execute an assignment and warranty of title to the transferee in the space provided on the certificate or as the department prescribes, sworn to before a notary public or other officer empowered to administer oaths, and deliver the certificate to the transferee at the time of the delivery of the ATV.*

(2) *Except as otherwise provided in section 7712.2 (relating to transfer to or from manufacturer or dealer), the transferee shall, within 15 days of the assignment or reassignment of the certificate of title, apply for a new title by presenting to the department the properly completed certificate of title, sworn to before a notary public or other officer empowered to administer oaths, and accompanied by such forms as the department may require.*

(3) *Any person violating subsection (a) shall be guilty of a summary offense and shall, upon conviction, be sentenced:*

(i) *For a first offense, to pay a fine of \$100.*

(ii) *For a subsequent offense, to pay a fine of not less than \$300 nor more than \$1,000.*

§ 7712.2. *Transfer to or from manufacturer or dealer.*

(a) *Transfer to manufacturer or dealer.—When the purchaser or transferee of an ATV is a manufacturer or registered dealer who holds the ATV for resale, a certificate of title need not be applied for as provided for in section 7712.1 (relating to certificate of title for ATV's required), but the transferee shall, within seven days from the date of assignment of the certificate of title to the manufacturer or dealer, forward to the department, upon a form prescribed and furnished by the department, notification of the acquisition of the ATV. Notification as authorized in this section may not be used in excess of three consecutive transactions after which time an application shall be made for a certificate of title.*

(b) *Execution and display of notice of transfer.—The manufacturer or dealer making notification as to any ATV acquired pursuant to subsection (a) shall execute at least three copies, the original of which shall be forwarded to the department, one copy to accompany the ATV on any subsequent transfer and one copy to be retained by the manufacturer or dealer for at least one year after a subsequent transfer, to be exhibited, with the assigned certificate of title, upon request of any police officer or authorized department employee.*

(c) *Transfer from manufacturer or dealer.—Except as otherwise provided in this section when the transferee is another manufacturer or dealer:*

(1) *The manufacturer or dealer, upon transferring their interest in the ATV, shall execute an assignment and warranty of title to the transferee in the space provided on the certificate or as the department prescribes.*

(2) *The transferee shall complete the application for certificate of title in the name of the transferee.*

(3) *The manufacturer or dealer shall forward the certificate of title and any other required forms to the department within 15 days of the transfer.*

(d) Exception for repossessed ATV's.—This section does not apply to an ATV repossessed upon default of performance of a lease, contract of conditional sale or similar agreement.

(e) Penalty.—Any manufacturer or dealer violating any of the provisions of this section is guilty of a summary offense and shall, upon conviction, be sentenced to pay a fine of \$50 for each violation.

§ 7712.3. Transfer of ATV by operation of law.

(a) General rule.—If the interest of an owner in an ATV passes to another other than by voluntary transfer, the transferee shall, except as otherwise provided, promptly mail or deliver to the department the last certificate of title, if available, and shall apply for a new certificate of title on a form prescribed and furnished by the department. The application shall be accompanied by such instruments or documents of authority, or certified copies thereof, as may be sufficient or required by law to evidence or effect a transfer of title or interest in or to chattels in such case.

(b) Transfer to surviving spouse.—Transfer of a certificate of title to a surviving spouse, or any person designated by the spouse, may be made without the necessity of filing for letters of administration notwithstanding the fact that there are minor children surviving the decedent provided the surviving spouse files an affidavit that all the debts of the decedent have been paid.

(c) Surrender of certificate.—A person holding a certificate of title, whose interest in an ATV has been extinguished or transferred other than by voluntary transfer, shall immediately surrender the certificate of title to the person to whom the right to possession of the ATV has passed. Upon request of the department, such person shall mail or deliver the certificate to the department. Delivery of the certificate pursuant to the request of the department does not affect the rights of the person surrendering the certificate.

§ 7712.4. Correction of certificate of title.

(a) General rule.—When any certificate of title has been issued in error to a person not entitled to the certificate or contains incorrect information or information has been omitted from the certificate, the department shall notify in writing the person to whom the certificate has been issued or delivered, and such person shall immediately return the certificate of title within 48 hours, together with any other information necessary for the adjustment of the department records, and, upon receipt of the certificate, the department shall cancel the certificate and issue a corrected certificate of title.

(b) Change in material information on certificate.—If any material information on the certificate of title is changed or different from the information originally set forth, the owner shall immediately inform the department and apply for a corrected certificate of title. For the purposes of this subsection, a change of address shall not be deemed material.

(c) Seizure of certificate on conviction.—Upon summary conviction for violation of the provisions of this section, the department may delegate authority to any department employee or police officer to seize the certificate of title.

§ 7712.5. Issuance of new certificate following transfer.

(a) *Voluntary transfer.*—The department, upon receipt of a properly assigned certificate of title with an application for a new certificate of title, the required fee and any other required documents and articles, shall issue a new certificate of title in the name of the transferee as owner and mail it to the first lienholder named in the certificate or, if none, to the owner.

(b) *Involuntary transfer.*—The department, upon receipt of an application for a new certificate of title by a transferee other than by voluntary transfer, on a form prescribed and furnished by the department together with proper proof satisfactory to the department of the transfer, the required fee and any other required documents and articles, shall issue a new certificate of title in the name of the transferee as owner.

(c) *Filing and retention of surrendered certificate.*—The department shall file and retain for five years every surrendered certificate of title, or a copy, in such a manner as to permit the tracing of title of the ATV.

§ 7712.6. Suspension and cancellation of certificate of title.

(a) *Return of new ATV.*—The department may cancel the certificate of title issued for a new ATV when it is shown by satisfactory evidence that the ATV has been returned within the time specified in the department regulations to the manufacturer or dealer from whom obtained.

(b) *ATV's sold to nonresidents.*—The department may cancel certificates of title for ATV's sold to residents of other states or foreign countries when the ATV is to be registered in the other jurisdiction.

(c) *Surrender of Pennsylvania certificate in other jurisdiction.*—The department, upon receipt of notification from another state or foreign country that a certificate of title issued by the department has been surrendered by the owner in conformity with the laws of the other state or foreign country, may cancel the certificate of title.

(d) *Surrender of foreign certificate to department.*—When an owner surrenders a certificate of title from another state or foreign country to the department, the department may notify the state or foreign country in order that the certificate of title may be canceled or otherwise disposed of in accordance with the law of the other jurisdiction.

(e) *Conviction for misstatement of facts.*—The department, upon receipt of certification from the clerk of any court showing conviction for a misstatement of facts on any application for an original or duplicate certificate of title or any transfer of a certificate of title, shall suspend the certificate of title and require that the certificate be returned immediately to the department, whereupon the department may cancel the certificate.

(f) *Nonpayment of fee.*—The department may suspend a certificate of title when a check received in payment of the fee is not paid on demand or when the fee for the certificate is unpaid and owing.

(g) *Security interest unaffected by suspension or cancellation.*—Suspension or cancellation of a certificate of title does not, in itself, affect the validity of a security interest noted on the certificate.

(h) *Surrender of certificate.*—The department may request the return of certificates of title which have been suspended or canceled. The owner or

person in possession of the certification of title shall immediately mail or deliver the certificate to the department.

§ 7712.7. Application for certificate of title by agent.

(a) Authorization to make application.—No person shall make application for a certificate of title when acting for another person unless authorization to make the application is in effect and is verified by oath or affirmation of the other person, made, excepting as between lessors and fleet owners as lessees, not more than 15 days before the application is received by the department. Lessors may authorize fleet owners to make application for certificates of title for leased ATV's for periods of up to one year.

(b) Certificate not to be assigned in blank.—No person shall make application for, or assign or physically possess, a certificate of title, or direct or allow another person in his employ or control to make application for, or assign or physically possess, a certificate of title, unless the name of the transferee is placed on the assignment of certificate of title simultaneously with the name of the transferor and duly notarized.

(c) Persons authorized to hold certificate.—No person shall receive, obtain or hold a certificate of title recorded in the name of another person for the other person who is not in the regular employ of, or not a member of the family of, the other person, unless the person receiving, obtaining or holding the certificate of title has a valid undischarged lien recorded in the department against the ATV represented by the certificate of title.

(d) Penalty.—Any person violating any of the provisions of this section is guilty of a summary offense and shall, upon conviction, be sentenced to pay a fine of \$100.

Section 6. The definitions of "consideration" and "petroleum revenue" in section 9501 of Title 75 are amended and the section is amended by adding a definition to read:

§ 9501. Definitions.

The following words and phrases when used in this chapter shall have, unless the context clearly indicates otherwise, the meanings given to them in this section:

"Average wholesale price." The average wholesale price per gallon of all taxable petroleum products, excluding the Federal excise tax and all liquid fuels taxes, as determined by the department. In no case shall the average wholesale price be less than 90¢ or more than \$1.25 per gallon.

["Consideration." All proceeds received, whether in cash, credits or property of any kind or nature, without any deduction therefrom on account of the cost of the property sold, the cost of materials used, labor or services, or other costs, interest or discount allowed, or any other expense whatsoever, except that deductions are allowed for returned merchandise.]

* * *

"Petroleum revenue." [All consideration derived from the first sale of petroleum products otherwise subject to liquid fuels taxes to wholesale or retail dealers in this Commonwealth for marketing and distribution or to a direct user. In no case shall the consideration be deemed to be less than 90¢ or more than \$1.25 per gallon. In the event that the consideration derived

from the sale to a wholesale dealer includes Federal gasoline taxes, such taxes shall not be part of the petroleum revenue. If no consideration is received or if the person owned or controlled by the selling entity or to a division within the selling entity does not reflect the consideration which would have been received in an arm's length transaction with an unrelated person, then the selling entity shall be deemed to have received from such sale revenue equal to the consideration it would have received in an arm's length transaction with an unrelated person. Receipts from the sale] *An amount derived by multiplying the number of gallons of petroleum products, otherwise subject to liquid fuels taxes, at the time of their first sale to wholesale or retail dealers in this Commonwealth for marketing and distribution or to a direct user plus the number of gallons used by the first seller in this Commonwealth by the average wholesale price. A deduction shall be allowed for returned merchandise.* Sales of petroleum products are allocable to this Commonwealth if the property is delivered or shipped to a purchaser located within this Commonwealth regardless of the F.O.B. point or other conditions of the sale. The importation of petroleum products into this Commonwealth upon which this tax has not been imposed or collected shall constitute a sale within this Commonwealth and the importing purchaser shall be deemed an oil company for the purposes of this chapter. Subsequent exportation of these imported products from this Commonwealth shall constitute a deduction from taxable revenue.

Section 7. (a) Section 6 of this act, amending section 9501 of Title 75, shall take effect on the first day of the third month following the month of its enactment.

(b) The remainder of this act shall take effect in 60 days.

APPROVED—The 12th day of December, A. D. 1986.

DICK THORNBURGH