WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1939

ENROLLED

HOUSE BILL No. 136

(By Mr. Strauss)

PASSED March 4, 1939

In Effect from Passage
ENROLLED

House Bill No. 136

(By Mr. Strouss)

[Passed March 4, 1939; in effect from passage.]

AN ACT repealing article twelve, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, and chapter eighty-seven, acts of the Legislature, second extraordinary session, one thousand nine hundred thirty-three; and enacting in lieu thereof a new article twelve, chapter eleven, providing for and requiring state licenses to engage in or prosecute certain businesses, activities, trades or employments; and repealing all acts or parts of acts inconsistent therewith.

Be it Enacted by the Legislature of West Virginia:

That article twelve, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, and chapter eighty-seven, acts of the Legislature, second extraordinary session, one thousand nine hundred thirty-three, are hereby repealed; and a new article twelve, chapter eleven, providing for and requiring
state licenses to engage in or prosecute certain businesses, activities or employments, as specified herein, is hereby enacted to read as follows:

Article 12. License Taxes.

Section 1. Definition. When used in this article the term "person" shall mean and include natural persons, partnerships, associations, corporations, and all other organizations or groups by means of which any of the hereinafter specified businesses, activities, trades or employments are engaged in or prosecuted.

Sec. 2. License Fees Levied. No person shall, without a license, engage in or prosecute, within the state of West Virginia, any of the businesses, activities, trades or employments named in the following sections of this article. The license fees hereinafter specified are hereby levied on every person engaging in or prosecuting, within this state, any such businesses, activities, trades or employments.

Sec. 3. Hotel, Eating Place or Restaurant. The annual license fee to keep or maintain a hotel, tavern or tourists' home, where rooms are kept or maintained for transient guests, the charge for which is for a period of less than three
days, or to keep or maintain a restaurant, or other eating
place, not operated in connection with a hotel, tavern or
tourists' home, shall be ten dollars.

Every building where food and lodging are usually furn-
ished to travelers, and payment therefor required, shall be
deemed a hotel or tavern. Every person licensed to keep or
maintain a hotel or tavern shall constantly provide the same
with lodging and food for travelers. If any person so licensed
fails to comply with this section the license shall be revoked,
pursuant to section fifty-four of this article.

Sec. 4. Brokers. The annual license fee to practice the
business of stockbroker, or other broker (except pawnbroker)
by buying or selling for others, stocks, securities or other per-
sonal property, for commission or reward, shall be one hun-
dred dollars.

Sec. 5. Pawnbrokers. The annual license fee to act as a
pawnbroker shall be one hundred dollars.

Sec. 6. Retail Dealers in Tobacco. The annual license fee
to sell at retail cigarettes, cigarette papers or wrappers, and
cigars, tobacco, snuff and other preparations of tobacco shall
be ten dollars; and, to sell at retail cigars, tobacco, snuff and
other preparations of tobacco other than cigarettes or cigarette papers or wrappers shall be five dollars. The giving away or furnishing of cigarette papers or wrappers in connection with the sale of tobacco, or other thing of value, shall be deemed to be a sale thereof under the provisions of this section.

Sec. 7. Bowling Alleys. The annual license fee to keep or maintain a bowling alley for public use where any charge is made for the use of the same, shall be twenty-five dollars; but if more than one be kept or maintained in the same building by the same person, the fee shall be twenty-five dollars for the first one and fifteen dollars for each additional one. The licensee, his agents or employees, shall not permit any person in any manner to bet or wager anything of value upon any game played upon such bowling alley. Such licensee, his agents or employees, shall not permit anyone to bring any intoxicating liquors of any kind into such building or other place where such bowling alley is located.

Sec. 8. Billiard or Pool Tables. The annual license fee to keep or maintain a billiard or pool table, or table of like kind, for public use, where any charge is made for the use
of the same, shall be twenty-five dollars; but if more than
one of such tables be kept in the same building, by the same
person, the fee shall be twenty-five dollars for the first one
and fifteen dollars for each additional one.

The licensee, his agents or employees, shall not permit any
person under the age of eighteen years to play at such billiard
or pool tables, and shall not permit any such person under the
age of eighteen years to remain or loiter, whether playing at
such billiard or pool tables or not, in the room where such
billiard or pool tables are located; and such licensee, his
agents or employees, shall not in any manner permit any-
one to bet or wager anything of value upon any game played
upon such billiard or pool tables. Such licensee, his agents or
employees, shall not permit anyone to bring any intoxicating
liquors of any kind into such building or other place where
such billiard or pool tables are located.

Sec. 9. Bagatelle Tables. The annual license fee to keep
or maintain a bagatelle table, or other table of like kind, for
public use, where any charge is made for the use of the same,
shall be ten dollars; but if more than one of such tables be
kept or maintained in the same building, by the same person,
the fee shall be ten dollars for the first one, and five dollars for each additional one.

The licensee, his agents or employees, shall not permit any person under the age of eighteen years to play at such bagatelle table, or table of like kind, and shall not permit any such person under the age of eighteen years to remain or loiter, whether playing at such bagatelle table, or other table of like kind, or not, in the room where such table is located; and such licensee, his agents or employees, shall not in any manner permit anyone to bet or wager anything of value upon any game played upon such bagatelle table, or table of like kind. Such licensee, his agents or employees, shall not permit anyone to bring any intoxicating liquors of any kind into such building or other place where such tables are located.

Sec. 10. Slot Machines and Automatic Devices. The annual license fee to keep or maintain an automatic baggage or parcel checking machine, or device, which is used for the storage of baggage or parcels of any character, shall be fifty cents for each section of any such device which is operated on the coin-in-the-slot principle; the annual license fee to keep or maintain any automatic toilet locker or device, shall
be fifty cents for every such locker or device; the annual li-
cense fee to keep or maintain any other automatic penny slot
machine or device, which is not a gambling device under any
law of this state, shall be two dollars for every such machine
or device; and, the annual license fee to keep or maintain any
other automatic slot machine or device, which is not a
gambling device, as aforesaid, shall be five dollars for every
such machine or device.

The term "slot machine" when used in this section shall
not be deemed to mean or include any pay telephone or post-
age stamp vending machine operated on the coin-in-the-slot
principle.

In the event the owner of any automatic machine or de-
vice refuses, neglects or fails to pay the license fee due upon
any such machine or device, then the proprietor or owner of
the business conducted in the store room or place where such
machine is installed, operated or maintained, shall be liable
for the payment of such license fee, and upon his refusal
or failure to pay such fee the tax commissioner or his agents
may take such machine or device into possession and deliver
the same to the sheriff of the county in which such machine
or device is found, or the sheriff of such county on his own 
initiative or upon order or direction of the state tax com-
missioner, or his agents, may take such machine or device into 
possession, and in either event said machine or device shall 
be impounded until such license fee is paid; in the event the 
license fee and penalties are not paid to such sheriff within 
ten days from and after the date of such impounding, then 
the sheriff shall sell such machine or device in the manner 
provided by law for the sale of personal property for taxes, 
and from the proceeds thereof shall discharge and pay the 
license fee due on such machine or device and his costs, in-
cluding costs of impounding, storage, penalties and other 
fees due the state and the sheriff; and the balance, if any 
there be, shall be forfeited to the state.

Sec. 11. Taxicab Stands. The annual license fee to keep 
or maintain a taxicab stand, or any place of like kind, shall 
be ten dollars.

The term “taxicab stand” as used in this section, shall 
mean and include any building or part thereof, parking 
place, telephone, or any other place from which one, or more, 
taxicab operates, even though such place may be kept or
maintained in conjunction with any other business or businesses.

The licensee, his agents or employees, shall not permit any unnecessary noise or disorderly conduct in such place, and shall not permit any intoxicating liquors to be brought in, or stored or kept in such place.

**Sec. 12. Merry-go-rounds and Other Amusement Devices.**

The license fee to operate a roller coaster, a merry-go-round, scenic railway, or device of like kind, for one week, shall be ten dollars; for three months, shall be thirty dollars; for six months, shall be fifty dollars; and for one year, shall be one hundred dollars. The license fee to run or operate a doll baby rack, cane rack, knife rack, striking machine, jingle board, artful dodger, candy wheel, or other scheme or device by which merchandise or other thing of value is disposed of by game of chance or like device, or human laundry device or dip device, for one week, shall be five dollars; for three months, shall be twenty dollars; for six months, shall be thirty dollars, and for one year shall be fifty dollars: *Provided, however,* That in the event a doll baby rack, cane rack, knife rack, striking machine, jingle board, artful dodger,
candy wheel, or other scheme or device by which merchandise
or other thing of value is disposed of by game of chance or
like device, or human laundry device, or dip device, are run or
operated within a street or other carnival or show or in the
vicinity of such carnival or show, the license fee shall be as
provided in section nineteen of this article.

Sec. 13. Skating Rinks. The annual license fee to keep or
maintain a skating rink for public use in a city or town with a
population of thirty thousand or more, according to the last
official census, shall be one hundred dollars; in a city or town
with a population of more than ten thousand but less than
thirty thousand population, as afresaid, the fee shall be fifty
dollars; in a city or town with a population of more than
five thousand but less than ten thousand population, as afore-
said, the fee shall be twenty-five dollars; and in a city or
town with a population not exceeding five thousand, as afore-
said, or at any other location within this state, the fee shall
be fifteen dollars: Provided, however, That if such skating
rink be kept or maintained outside of but within one mile of
the corporate limits of any city or town, the license fee shall
be the same as if such skating rink were kept or maintained
16 within such city or town; and if outside of but within one
17 mile of the corporate limits of two or more cities or towns,
18 the license fee shall be the same as if such skating rink were
19 kept or maintained within the largest of such cities or towns.

Sec. 14. Public Parks. The annual license fee to keep or
2 maintain a public park for which admission is charged, in
3 counties of over thirty thousand population, according to the
4 last official census, shall be twenty-five dollars; in counties of
5 less than thirty thousand but more than twenty thousand
6 population, as aforesaid, the fee shall be fifteen dollars; in
7 counties of less than twenty thousand population, as aforesaid,
8 the fee shall be ten dollars. Such license for such public
9 park shall not be construed to cover or include any other
10 activity for which a license is now required by law at or in
11 the vicinity of such park.

Sec. 15. Shooting Galleries. The annual license fee to keep
2 or maintain a shooting gallery for public use, shall be twenty-
3 five dollars.

Sec. 16. Theatrical Performances. The license fee to con-
2 duct a theatrical performance of any kind, if such perform-
3 ance be given in a city or town with a population of twenty
thousand, or more, according to the last official census, shall be twenty dollars for each week; if in a city or town with a population of more than ten thousand but less than twenty thousand, as aforesaid, the fee shall be fifteen dollars for each week; if in a city or town with a population of less than ten thousand, as aforesaid, or at any other place within this state, the fee shall be ten dollars for each week; but if such theatrical performance be conducted outside of but within one mile of the corporate limits of any city or town, the license fee shall be the same as if such performance were given within such city or town; and if outside of but within one mile of the corporate limits of two or more cities or towns, the fee for such performance shall be the same as if it had been given within the largest of such cities or towns.

No license for any such theatrical performance shall be issued for a period of less than one week.

Provided, however, That in lieu of the fees for conducting a theatrical performance, as above set out, a theatre, opera house or other permanent place for public shows, may be kept or maintained upon the payment of the license fee hereinafter specified. In a city or town with a population of
thirty thousand or more, according to the last official cen-
sus, for three months, the fee shall be one hundred dollars;
for six months, one hundred thirty dollars; and for one year,
one hundred sixty dollars. In a city or town with a popula-
tion of less than thirty thousand but more than twenty thou-
sand, as aforesaid, for three months, the fee shall be seventy-
five dollars; for six months, one hundred dollars; and for one
year, one hundred twenty-five dollars. In a city or town with
a population of less than twenty thousand but more than ten
thousand, as aforesaid, for three months, the fee shall be
forty dollars; for six months, sixty dollars; and for one year,
one hundred dollars. In a city or town with a population of
less than ten thousand but more than five thousand, as afore-
said, for three months, the fee shall be twenty dollars; for
six months, thirty dollars; and for one year, forty dollars.
In a city or town with a population of less than five thou-
said but more than two thousand, as aforesaid, for three
months, the fee shall be ten dollars; for six months, fifteen
dollars; and for one year, twenty dollars. In a city or town
with a population of less than two thousand, as aforesaid, or
at any other place within the state, for three months, the
fee shall be five dollars; for six months, eight dollars; and
for one year, ten dollars.

Provided, further, That if such theatre, opera house, or
other permanent place for public shows is conducted outside
of but within one mile of the corporate limits of any city or
town, the license fee shall be the same as if such perform-
ance were given within such city or town; and, if outside of
but within one mile of the corporate limits of two or more
cities or towns, the license fee shall be the same as if it had
been given within the largest of such cities or towns.

Sec. 17. Show Boats. The license fee to conduct theatrical
or other performances of any kind, when such performances
are confined exclusively to show boats plying the navigable
streams of this state, for three months, shall be twenty-five
dollars; for six months, shall be fifty dollars; and for one
year, shall be one hundred dollars. Such license shall be
issued by the state tax commissioner, and shall be coextensive
with the state, but confined to the navigable streams of this
state.

Sec. 18. Exempt Entertainments. The provisions of sec-
tions sixteen, seventeen and nineteen shall not apply to, and
no license fee shall be assessed against or collected from any
educational, literary, dramatic, musical or benevolent society
not conducted for private profit, where such performance or
exhibitions are confined to one county, unless professional
or paid talent, other than director, is employed in such per-
formances or exhibitions.

Sec. 19. Circuses, Carnivals and Other Public Shows. The
license fee to exhibit a circus or menagerie, a circus and
menagerie combined, wild west show, or other itinerant show
not exhibited in a theatre, opera house or other permanent
place for public shows, shall be based upon the number of
railroad cars or motor trucks used to transport the property or
equipment of such shows, but not including railroad cars or
motor trucks used to transport the personnel thereof. If
railroad cars are used the fee shall be four dollars for each
car for each day on which any performance is given; if mo-
tor trucks are used the fee shall be three dollars for each
truck for each day on which any performance is given.
The license fee to exhibit a street or other carnival shall
be five dollars a week for each entertainment, performance or
exhibition given at or in the vicinity of any such carnival.
Each such entertainment, performance or exhibition shall require a separate license, whether or not shown under the same canvas and whether or not exhibited for additional compensation; and upon any such entertainment, performance or exhibition being concluded, so that an additional fee for admission is charged, an additional license fee shall be required for any further or additional entertainment, performance or exhibition. To operate any riding device of any kind at or in the vicinity of any street or carnival show, the fee shall be ten dollars a week for each such device. To keep or maintain any concession stand selling service, goods, wares or merchandise, such as food, soft drinks, ice cream, candy floss and the like, at or in the vicinity of such street or carnival show, the fee shall be five dollars a week for each such concession. To maintain any concession stand such as ball games, bingo, cane rack, penny pitch, pitch-till-you-win, striking machine, weighing machine, shooting gallery, artful dodger, bumper, fish pond, dart game, or other legitimate games of skill, none of which shall be controlled by the operator, at or in the vicinity of any street or carnival show, the fee shall be ten dollars a week for each such concession. To
operate or maintain a candy wheel or any other legitimate
merchandise wheels, when operated without control of the op-
erator, shall be twenty-five dollars a day. To operate or main-
tain rides of all kinds shall be ten dollars each a week: Pro-
vided, however, That such games as roll downs, blowers, spin-
ners, swinging ball, creepers, race tracks, spot the spot, and
all other games controlled by the operator are hereby for-
bidden and no license shall be granted to any circus, show or
street carnival where such games are operated: Provided, fur-
ther, That no circus, show or street carnival shall be licensed
which has any gypsy fortune tellers or gypsies connected
therewith in any manner.

Sec. 20. Fortune Telling. The annual license to act as a
fortune teller, palmist, phrenologist, spiritualist, medium,
clairvoyant, mind reader, or any other person who performs
the art or profession of telling the past or forecasting the fu-
ture, shall be two hundred dollars; but such fee shall not be
divisible.

Sec. 21. Sale of Weapons. The annual license fee to sell or
offer for sale pistols, revolvers, dirks, slung shots, billies,
b;bowie knives, metallic or other false knuckles, or other weapons of like kind, shall be ten dollars.

Sec. 22. Trading Stamps. The annual license fee to sell or offer for sale merchants' trading stamps, premium stamps or stamps or certificates of like nature, or to undertake to redeem such stamps or certificates in money or goods, shall be one hundred dollars.

Sec. 23. Private Banker or Money Broker. The annual license fee to carry on the business of money broker or private banker, shall be twenty-five dollars. The term "money broker" or "private banker" shall include every person, other than a regularly organized banking institution or national banking association, that lends money on real or personal security, discounts paper, cashes time slips or script, or engages in any business of a similar or like character.

Sec. 24. Employment Agent. The annual license fee to conduct the business of an employment agent, to receive applications for employment, to hire or contract with persons for employment shall be two hundred dollars, except that the annual license fee for an agency or registry for the employ-
ment of nurses, practical nurses or undergraduate nurses, shall be twenty-five dollars.

When used in this section the term "employment agent" shall be deemed to mean and include the same persons as defined in section four of article two of chapter twenty-one of this Code.

Sec. 25. Goods Sold at Auction. Any person offering for sale or furnishing for sale at auction, any goods, wares or merchandise, not assessed for taxation in any county in this state, pursuant to section eight, article five of this chapter, shall be required to obtain a permit from the clerk of the county court of such county before offering or furnishing such goods, wares or merchandise for sale at such auction; for which permit a fee of two dollars on every one hundred dollars' valuation of such goods shall be charged. Any person offering any goods, wares or merchandise for sale, in any county in this state, not assessed for taxation in such county, pursuant to said section eight, shall be required to have the same assessed by the assessor of such county, and such assessment shall be the same as other assessments in such county. In case any person shall refuse or neglect to obtain the per-
mit as aforesaid, or to have such goods, wares or merchandise assessed as herein required, he shall be liable in the first instance to double the license required, and in the second instance, the assessor shall add as penalty for such failure, one hundred percent to the taxes assessed. Such license fee shall be collected in the same manner as are other license fees.

Sec. 26. Auctioneers. The annual license fee to act as an auctioneer shall be five dollars; provided, however, that, if such auctioneer act as such within an incorporated city or town, an additional fee of two dollars for every one thousand population of such city or town, according to the last official census, shall be added. Such license shall be coextensive with the entire state, and shall not be subject to the restrictions of section forty-four of this article.

The term "auctioneer" when used in this section shall not be deemed to mean or include any trustee, personal representative, guardian or committee selling property belonging to the estate or trust under his charge, or any officer or commissioner selling property under the order, decree, execution or process of any court of this state or of the United States.
Sec. 27. Sale of Monuments, etc. The annual license fee to engage in the business of selling, offering for sale, soliciting or receiving orders for monuments, mausoleums, grave stones and grave markers, shall be one dollar.

Sec. 28. Collection Agencies. The annual license fee to conduct the business of a collection agency in a city or town with a population of ten thousand or more according to the last official census shall be one hundred dollars; and in a city or town with a population not exceeding ten thousand, as aforesaid, or at any other location within this state, the fee shall be twenty-five dollars. The provisions of this section shall also apply to nonresident agencies which do business in this state through or by means of one or more agents or solicitors: Provided, however, That before such certificate of license shall be issued to any person as defined in section one of this article, such person shall execute a continuing bond with some solvent surety company as surety thereon in the penalty of two thousand dollars, payable to the state of West Virginia, conditioned that such person will pay all damages accruing to anyone by reason of any unlawful act or action done, performed or taken by such person in and about the conduct
of such collection agency. Said bond shall be approved as to such surety by the issuing agent thereof, and such bond shall be recorded in the office of the clerk of the county court of the county in which such collection agency is, or is proposed to be, operated; and the fact of the execution of such bond, the amount thereof, and the book and page number in which recorded shall be stamped upon the face of the certificate of license herein to be issued.

Sec. 29. Non-resident Fur Dealer. The annual license fee on a non-resident of this state to engage in the business of buying or offering to buy any fur, pelt, hide or skin within this state, shall be fifty dollars.

Sec. 30. Soft Drinks. The annual license fee to conduct the business of wholesaler, distributor, or manufacturer of any and all preparations of every kind, character and nature, whether carbonated or not, commonly known as soft drinks, including bevo, pablo, milo, moxie, ginger ale, near beer, coca cola, grape juice, fruit juices and pop, shall be one hundred dollars; and on every retailer of any of the above products, shall be five dollars: Provided, however, That this section shall not be construed as requiring a license of any person
engaged in the wholesale or retail grocery business, who sells, as an incident thereof, canned or bottled fruit juices as herein defined. The provisions of section forty-three of this article shall apply to wholesalers, distributors, manufacturers, and retailers as defined in this section only to the extent of permitting the municipality within which any place of business or warehouse of such wholesalers, distributors, manufacturers or retailers is situated, to levy and enforce a municipal license fee on such businesses. And no other city or town shall levy or enforce a municipal license fee on any such businesses.

Sec. 31. Junk Dealers. (a) The term "junk" as used in this section shall mean old or scrap gold, copper, brass, rope, rags, batteries, paper, rubber, automobile parts, iron, steel and other old or scrap ferrous or non-ferrous metals. The term "junk dealers" shall include all persons engaged in the business of buying or selling junk as hereinabove defined.

The term "junk dealer's agents" shall include all persons who buy or sell junk as hereinbefore defined for or on behalf of a junk dealer, as hereinabove defined, but the term...
"junk dealer's agent" shall not be construed to include any persons regularly employed upon a salary by a regularly licensed junk dealer engaged in such business within the state of West Virginia.

The term "itinerant junk collector" shall include only such persons who gather junk from place to place with the aid of a cart or vehicle, hand drawn or propelled, who have no fixed place of business.

The term "non-resident junk dealer" or "non-resident junk dealer's agent" shall include all persons who act as junk dealers or junk dealer's agents who are non-residents of West Virginia, and all firms so engaged whose members are non-residents of West Virginia and all corporations which have not been admitted to hold property and transact business in the state of West Virginia.

(b) No person within the state of West Virginia shall engage in the business of junk dealer, junk dealer's agent or itinerant junk collector without a state license therefor, which license shall be issued as provided in this article: Provided, however, That no resident license shall be issued to any junk dealer, junk dealer's agent or itinerant junk collector
who has not been a resident of the state of West Virginia for
a period of at least one year prior to the application for
such license.

(c) No corporation or firm shall engage in the business
of junk dealer or junk dealer's agent in the state of West
Virginia unless the officers or agents of such corporation or
firm who engage in the business of junk dealer or junk
dealer's agent, in behalf of such corporation or firm shall
be eligible to be duly licensed as resident junk dealers or
junk dealers agents in accordance with the provisions of
this section.

(d) The annual license fee to act as a resident junk dealer
shall be twenty-five dollars; to act as a junk dealer's agent,
ten dollars; to act as a non-resident junk dealer or his agent
who buys or solicits for the purchase of junk within the state,
one hundred fifty dollars; to act as an itinerant junk collector,
two dollars. Such licenses shall be coextensive with the state,
but no non-resident licensee shall be permitted to maintain a
fixed place of business within the state: Provided, however,
That any non-resident junk dealer may purchase junk from
any resident junk dealer without complying with the pro-
visions of this section, but if said non-resident junk dealer comes into the state in any motor vehicle or horse drawn vehicle, said non-resident junk dealer shall not be permitted to transport from the state in said vehicle or horse drawn wagon, junk purchased from resident junk dealers, unless there is a compliance with this section.

(e) Every resident junk dealer shall certify to the clerk of the county court issuing the license, the name or names of the agents for whom he desires a license certificate and shall give to each agent so engaged by him a certificate of authority, which certificate the agent shall at all times keep with his license and no such junk dealer's agent's license shall be valid and effective without such certificate of authority. The clerk of the county court who issues the licenses shall give to each license certificate a numerically designated permit, and such permit so given shall be plainly stenciled or printed as "Dealer's Permit No. ......", "Agent's Permit No. ......", "Itinerant Collector's Permit No. ......", "Non-resident Permit No. ......", as the case may be, upon both sides of all trucks or other vehicles used in the collecting and transporting of junk. But the clerk shall not issue a junk dealer's agent's license until
the applicant therefor shall first have presented a certificate
from a duly licensed junk dealer showing such authorization,
and no license shall be issued to a junk dealer's agent or itiner-
erant junk collector unless he shall file with the clerk an affi-
davit setting out that such applicant has not been convicted of
a felony; that he has not been convicted of a misdemeanor in
connection with the junk business within a five year period
prior to the time of his application, and that in the event the
application is for a resident dealer's license that he has resided
in the state for a period of one year next preceding the date of
his application, which said certificate and affidavit shall be
filed by the clerk issuing the license in his office.

The license fee herein provided shall not be divisible. No
license hereunder shall be transferable.

No one who has been convicted of a felony shall be licensed
as a junk dealer, junk dealer's agent, or itinerant junk col-
lector, and no one convicted of a misdemeanor in connection
with the junk business within a five year period prior to the
passage of this article shall be licensed as a junk dealer, junk
dealer's agent or itinerant junk collector.

No person, engaged in the junk business shall engage a
person as a junk dealer's agent who is ineligible to receive a resident junk dealer's or junk dealer's agent's license.

Any license issued upon false affidavit or any improper license issued hereunder shall be ipso facto void.

(f) It shall be unlawful for any person or persons to barter, purchase, exchange, buy or accept from any person whatsoever, except plumbers, the owner or owners of buildings from which the material is taken, coal companies, industrial, manufacturing and public utility companies, or the authorized agents of such companies, lawful owners and licensed junk dealers, copper trolley wire, aluminum wire, brass bearings or fittings, tools, drilling equipment, casings, tubing, pipe, machinery of all kinds and characters, or lead, shipped or delivered from points within this state. Every junk dealer purchasing any of the items mentioned in this subsection from the aforesaid persons, shall accurately list such purchase in a permanent record showing kind and character of junk purchased, date of purchase and from whom purchased, which shall be open to the inspection of all law enforcement officers.

It shall be unlawful for any junk dealer to purchase any of the items mentioned in this sub-section, except from the persons...
named aforesaid, without securing from the seller a bill of sale, receipt or other proof of lawful ownership, which shall be retained by such purchaser or dealer, and the said purchaser or dealer shall list in a record book the full name and address of the seller, a complete description of the kind and character of the junk or material purchased, the hour and day purchased, and the license number of any automobile or truck which may be used in making delivery of such junk or material, which record shall be open to the inspection of all law enforcement officers, and be preserved for a period of not less than one year. Every non-resident junk dealer or non-resident junk dealer's agent, or itinerant junk collector, before transporting any of the items mentioned in this section from this state, shall register with the sheriff of the county where such purchase was made, a complete description of the property he proposes to transport from the state, showing the date of purchase, the names of the buyer and seller, the party to whom it is to be consigned, and the license number of any automobile or truck which may be employed in transporting such junk and shall leave such junk material in the county where purchased for
136 not less than five days after reporting to the sheriff, before
137 removing from the county.
138 (g) Any person who shall violate any of the provisions of
139 this section shall be guilty of a misdemeanor, and upon convic-
140 tion thereof shall be fined not less than fifty dollars and not
141 more than five hundred dollars, and upon a second conviction
142 for an offense under this section, in addition to the fine, the
143 license of the person so convicted of a second offense shall be
144 revoked and no further license shall be granted to the said
145 person so convicted; and it shall be the duty of any law en-
146 forcement officer to arrest, without a warrant, any person in
147 charge of any vehicle used in the transportation of junk which
148 does not have displayed thereon the permit number of the junk
149 dealer or junk dealer's agent for whom such junk is being
150 transported. The arresting officer shall hold in his possession
151 any vehicle operated without a license until any fine imposed
152 upon the driver or owner of the vehicle is paid and a proper
153 license is obtained; upon failure to pay the fine and secure the
154 license within ten days from conviction, the sheriff of the
155 county in which said vehicle is held shall confiscate the same,
156 and the sheriff shall give notice to the owner of the vehicle by
publication in a newspaper of general circulation in said county, at least ten days prior to the date of sale, that the said vehicle will be sold at public auction to the highest bidder, and out of the funds derived the sheriff shall pay first to the justice of the peace the costs and fine, and secondly shall pay to the state of West Virginia a sufficient sum of money to secure a proper license, and any sums of money remaining in his hands shall be promptly transmitted to the owner of the truck by registered mail or otherwise. A report of said sale shall be made by the sheriff to the justice of the peace, who shall record the same in his docket where the record of the convictions and the fines is kept.

Any person engaged in any business other than the junk business shall have the right to convey junk which may have accumulated in connection with his business by vehicle or otherwise for the purpose of disposal or sale without complying with the provisions of this section, or may purchase and transport junk used in the operation of his business: Provided, however, That this section shall not apply to vehicles used by common carriers in the transportation of junk as an incident to the business of such common carriers.
Sec. 32. *Hawkers and Peddlers.* (a) The annual license fee to act as a hawker or peddler, if the person licensed travels without a motor vehicle, shall be ten dollars; if he travels with a motor vehicle of not more than one-half ton capacity, fifteen dollars; if he travels with a motor vehicle of more than one-half ton capacity, but not exceeding one ton capacity, fifty dollars; if he travels with a motor vehicle of more than one ton capacity, but not exceeding two tons' capacity, one hundred dollars; and if he travels with a motor vehicle of more than two tons' capacity, one hundred fifty dollars, plus one hundred dollars for each additional ton or fraction thereof over two tons' capacity; and the person licensed shall pay at the same rate for each and every motor vehicle so used. Such person shall carry his license in some conspicuous place in his vehicle or about his pack; and in addition thereto he shall cause to be painted or stenciled in a conspicuous place on the left-hand side of his vehicle the number of such license and the words "West Virginia Hawker and Peddler" and the license year for which said license is issued, which said information shall be in black letters on a white background, and the whole thereof shall be at least eight by twenty inches in
Such license shall be coextensive with the state, shall not be subject to the restrictions of section forty-four of this article, and shall not be assignable to any other person. When used in this section, the term "sale" shall mean and include both sales for money payment or for barter, and offers to make any such sales.

Any person who shall carry goods, wares or merchandise from place to place, either in person or by agent or employee, and sell, for delivery at the same time, any such goods, wares or merchandise to any purchaser, at wholesale or retail, shall be deemed a hawker or peddler under this section.

(b) The provisions of this section shall not apply to any person who sells any goods, wares or merchandise to be delivered in the future; or to any of the following who offer immediate delivery of the goods, wares or merchandise being sold:

1. Any person or persons engaged within this state in the business or calling of agriculture, horticulture or grazing, who sells or sell individually or collectively, one or more for the other or others, the products derived from his or their business or calling aforesaid;
2. Any person engaged in the maintenance or operation of a retail merchandise store to exchange goods, wares or merchandise from such store for agricultural, horticultural or grazing products or to resell any such products received in due course of such business; nor to any other retail business concern, established and operating continuously for one year or more within this state in the sale of any product or products over regular routes;

3. Any wholesaler or jobber selling soft drinks or non-intoxicating beer for which he is duly licensed under other provisions of this chapter;

4. Any person who sells petroleum products, ice, wood, meats, milk, ice cream, bread, cakes, pies, and other bakery products, butter and eggs, manufactured, grown or produced by any such person and not purchased by him for resale;

5. Any sales by societies, groups or organizations acting for charitable, religious or benevolent purposes.

6. Any agent or salesman selling manufactured products, except green groceries and canned or bottled fruit products, produced by his employer, and who sells the same to retail dealers for the purpose of resale.
Provided, however, That any person exempt from license as above provided, shall obtain from the clerk of the county court of the county of his residence a license receipt, without cost, showing that he is so exempt, which shall be effective for the period as provided for annual licenses in this article and shall be coextensive with the entire state; but to obtain such license receipt he shall make an affidavit and produce such other evidence as to the facts entitling him to such exemption as the clerk, in his discretion, may require, which shall be on a form to be prescribed by the tax commissioner of this state.

Sec. 33. Itinerant Vendors. (a) When used in this section the term "itinerant vendor" shall mean and include all persons who engage or conduct within this state, either in one locality, or in traveling from place to place, a temporary or transient business of selling goods, wares and merchandise; and who, for the purpose of carrying on such business, use, lease or occupy either in whole or in part, a room, building or other structure, or who use, lease or occupy for such purposes a room or rooms in any hotel or lodging house, for the exhibition and sale of such goods, wares and merchandise; and the person so engaged shall not be relieved from the pro-
visions of this section by reason of association temporarily with any local dealer, trader, merchant or auctioneer, or by conducting such temporary or transient business in connection with or as part of the business of, or in the name of, any local dealer, trader, merchant or auctioneer. The provisions of this section shall not apply to sales made to persons by commercial travelers, or selling agents in the usual course of business, nor to bona fide sales of goods, wares or merchandise by sample for future delivery; nor to hawkers or peddlers in the streets, roads or highways, from packs or vehicles, nor to persons selling meat or the products of the farm, garden or dairy, nor to any sales of goods, wares or merchandise on the grounds of any agricultural association during the continuance of any annual fair held by such association; nor to any sales by societies acting for charitable, religious or benevolent purposes; nor to judicial sales directed by law, or under the orders of any court; nor to the sales of the common necessities of life in any public market place.

(b) No itinerant vendor shall advertise, represent or hold forth a sale of goods, wares or merchandise as a bankrupt, insolvent, assignee, trustee, estate, executor, administrator,
receiver, attorney, manufacturer's, wholesale or closing-out
sale, or a sale of any goods damaged by smoke, fire, water or
otherwise, unless before so doing he shall state in writing,
under oath, to the clerk of the county in which such business
is proposed to be conducted at the time he makes application
for a license, hereinafter provided for, all the facts relating
to the reason and character of such special sale or advertised,
held forth, or represented, including a statement of the names
of the persons from whom such goods, wares or merchandise
were purchased, and the date of the delivery of the same to
the person applying for license; the place, if any, where such
goods, wares or merchandise were previously exposed for sale,
and such details as are necessary to exactly locate and fully
identify all such goods, wares and merchandise proposed to be
sold. And such itinerant vendor shall also include in such
statement the name and residence of the owner or owners in
whose interest the business is conducted, to be kept on file in
the office of such clerk of the county court, and a record shall
be kept by said clerk of all such statements, in convenient form
and open to public inspection.

(c) Every itinerant vendor desiring to do business within
this state shall deposit with such clerk of the county court the
sum of five hundred dollars, as a special deposit, before a
license shall be issued to him, as hereinafter provided, au-
thorizing him to do business in this state, in conformity with
the provisions of this article. Such deposit shall be held by
such clerk for a period of thirty days after such itinerant
vendor ceases to do business within this state, and after satis-
fying all claims which shall be made against him under the
next following subsection hereof, such clerk shall return such
deposit or such portion thereof as remains in his hands to
such itinerant vendor who deposited the same.
(d) The deposits so made with such clerk shall be subject
to attachment and execution on behalf of creditors, whose
claims arise in connection with the business conducted within
this state, and to the payment of fines and penalties incurred
by such itinerant vendor in violation of this article as may be
fixed by the judgment of appropriate courts having jurisdic-
tion thereof, as well as for any unpaid taxes assessed, laid or
charged, by any proper authorities, upon such goods, wares
and merchandise, and such deposit or any remaining portion
thereof shall not be paid to such itinerant vendor until all
outstanding claims or notices of claims, presented within thirty days after he ceases to do business, are settled in full.

(e) The annual license fee to carry on the business of itinerant vendor, shall be five hundred dollars, and no such license shall be issued, or such license tax assessed, for any period of less than one year.

(f) Every itinerant vendor who sells or exhibits for sale at public or private sale, any goods, wares or merchandise without first obtaining a license therefor, and in all other respects complying with the provisions of this article, or who makes any false statement in reference to the matter set out in subsection (b) hereof, or who fails to comply with the requirements of any of the sections of this article, and every person, whether principal or agent, who, by circular, handbill, newspaper, or in any manner advertises such sale, as herein described, before proper licenses are issued to the vendor, and before he has complied with the provisions of this article, shall be guilty of a violation of this article, and shall be punished accordingly.

Sec. 34. Ferries. The annual license fee to operate a ferry for public use shall be five dollars.
Sec. 40. *Application for and Issuance of Licenses.* All the licenses provided for in this article shall be issued by the clerk of the county court of the county where such business, activity, trade or employment is proposed to be engaged in or prosecuted, or by any other official expressly designated as issuing agent, to any person making proper application, and tendering in full the proper fee as specified in this article. The said clerk, or other issuing agent, shall collect in full the proper fee and determine to his satisfaction that all the conditions precedent to the granting of such license have been fulfilled by the applicant before issuing a certificate of license. The clerk of the county court, or other issuing agent, may obtain a certificate of license from the clerk of the circuit court in the same manner and under the same conditions as another person may obtain such certificate from the clerk of the county court. The clerk of the circuit court, in relation to such certificate issued by him, shall perform the same duties and be subject to the same penalties as the clerk of the county court would be in relation to a certificate issued by him.

Sec. 41. *Conditions Precedent to Doing Business.* Payment in full of the proper fee as specified in this article, the issu-
ance of a certificate of license under the provisions of the
preceding section, and the fulfillment of all terms and condi-
tions of such grant shall be conditions precedent to the trans-
action of any business, activity, trade or employment for
which a license is required by this article.

Sec. 42. Effect of State License. Nothing in this article,
and no payment or issuance of any certificate of license under
the provisions hereof, shall be deemed to legalize any act
which otherwise may be in violation of law, or to exempt any
person from any penalty prescribed for such violation.

Sec. 43. Effect of State License Within Municipalities.
When any municipality is authorized by its charter or by
any law of this state to impose a penalty for engaging in or
prosecuting any business, activity, trade or employment
within the limits of such municipality without first having
obtained a license therefor pursuant to the ordinances of such
town, no state license issued under this article shall exonerate
the licensee from any such penalty, unless otherwise expressly
provided, whether such penalty be greater or less than that
imposed for the violation of the provisions of this article.

Sec. 44. Designation of Specific Location on Certificate.
Every certificate of license issued under the provisions of section forty of this article shall designate the location of such business, activity, trade or employment at some specified building or other definite place, unless expressly provided otherwise. Exercising any of the privileges granted by any such license elsewhere than at such specified building or other definite place shall be deemed to have been done without a license. Any certificate which does not contain the designation required by this section shall be null and void.

**Sec. 45. Time for Which Licenses Granted.** All annual licenses issued under the provisions of this article shall be for a period of one year beginning on the first day of July and ending on the thirtieth day of the following June: Provided, however, That in the event any business, activity, trade or employment is begun after the first day of July of any year a license effective until the thirtieth day of the following June shall be issued upon the payment of that proportion of the annual fee designated by this article as the number of months remaining until the following thirtieth day of June, including the month during which such license shall have been issued, bears to twelve: Provided further, however, That no license
for any purpose for any length of time shall be issued for
less than two dollars. Each of the provisions of this section
shall be deemed subject to expressly contrary provisions else-
where in this article.

Sec. 46. Appeals to Tax Commissioner. Any person feeling
aggrieved by the decision of the clerk of the county court in
refusing to issue any license provided for in this article, in
the amount of the fee assessed therefor, or in any other re-
spect, or by the revocation of any such license by the county
court may, within thirty days from the date of such decision,
file a written petition with the state tax commissioner to re-
view such decision. The tax commissioner, or his specially
designated agent, shall review the decision and in his discre-
tion affirm, reverse or alter the same in any respect; and by
written notice direct the county clerk to issue or revoke the
certificate of license, or alter any of the conditions or terms
of its issuance, to conform to the findings of the tax commis-
sioner. The tax commissioner, or his agents, in reviewing such
decision, may administer oaths, take testimony, require the
attendance of any witnesses having knowledge of the matter
in controversy, and examine any pertinent books, papers, records, memoranda or equipment of the petitioner.

Sec. 47. Review by Circuit Court. Any person feeling aggrieved by the decision of the state tax commissioner under the provisions of the preceding section may, within thirty days from the date of such decision, file a petition with the Circuit Court of the county in which he resides, or in which he has exercised or proposes to exercise the privileges of the license in question, to review such decision. The Circuit Court shall review the decision and in its discretion affirm, reverse or alter the same in any respect; and enter an order directed to the county clerk to issue or revoke the certificate of license or alter any of the conditions or terms of its issuance, to conform to the finding of the Circuit Court. Ten days' written notice of such hearing before the Circuit Court shall be given the state tax commissioner.

Sec. 48. Appeals to Supreme Court. Any person feeling aggrieved by the decision of the circuit court under the provisions of the preceding section may appeal to the Supreme Court of Appeals as in other civil cases.

Sec. 49. Exhibition of Licenses. Every person to whom a
certificate of license shall be issued under the provisions of this article shall keep such certificate posted in a conspicuous position in the place where the privileges of such license are exercised.

Such certificate of license shall be produced for inspection whenever required by the tax commissioner or his deputies or by the prosecuting attorney or sheriff of the county wherein the privileges of such license are exercised.

Sec. 50. Licenses, a Personal Privilege. Every license issued under the provisions of this article shall confer a personal privilege only to transact the business, activity, trade or employment which may be the subject of the license and shall not be exercised except by the person holding the same unless and until assigned under the terms of the next section. After any such assignment, the license shall be a personal privilege of the assignee and shall not be exercised by any person other than such assignee, unless and until again assigned under the terms of the next section.

Sec. 51. Assignment of License. Any license issued under the provisions of this article may, unless otherwise specifically provided, be assigned in the manner set out in this section to
any person to whom it might have been originally granted, and in the event of the death of the licensee the license may be assigned by his personal representative in like manner and with like effect as might have been done by the licensee himself. A memorandum of the same shall be endorsed on the face of the certificate of license by the assignor, and such memorandum attested by the clerk of the county court who granted the license, the state tax commissioner, or any of his agents. If the assignee would have been subject to a greater fee than the assignor, had the license originally been granted to him, such assignment shall be valid only after the payment of the difference between such two fees, prorated however in the same manner as provided by section forty-five of this article for the original issuance of licenses.

Sec. 52. Effect of Change in Partnership or Name of Firm. No changes in the name of the firm, nor the taking in of one or more new partners, nor the withdrawal of one or more members of the firm, so long as at least one member remains the same, shall be considered as terminating the privileges of any license granted to such partners or firm.

Sec. 53. Alteration of Place of Business. Any license is-
sued under the provisions of this article may, unless otherwise specifically provided, be altered in the manner set out in this section so as to permit removal of such business, activity, trade or employment to another location within the same county if it might have been originally granted under such altered conditions. A memorandum of the same shall be endorsed on the face of the certificate of license by the holder thereof, and such memorandum attested by the clerk of the county court who granted the license, the state tax commissioner, or any of his agents. If the holder thereof would have been subject to a greater fee at the date of issuance than he actually paid, had the license originally been granted to be exercised at the proposed altered location, such alteration shall be valid only after the payment of the difference between such two fees, prorated however in the same manner as provided by section forty-five of this article for the original issuance of licenses.

Sec. 54. Revocation of License. Any license issued under the provisions of this article may be revoked, or any of the terms and conditions of its issuance altered by the county court whose clerk shall have granted the same, or by the
state tax commissioner, upon written petition of any interested person or upon its or his own motion, if a showing is made of the violation by the licensee of any of the terms or conditions of the license, or of any of the provisions of this article. Ten days' written notice of the proposed revocation and the privilege of being heard in person or by counsel shall be given the licensee. In the event the license is revoked any fee paid on account thereof shall be forfeited to the state.

Sec. 55. Transmittal to State Auditor. The clerk of every county court shall transmit to the state auditor on or before the fifteenth day of each month a true and complete list of all persons to whom certificates of licenses have been issued in his county during the next preceding month together with all the fees collected therefor, specifying in such list the date of every certificate, the amount of the fee assessed therefor, the amount actually paid and such other particulars as may be required by the state tax commissioner. Such list shall be verified by the affidavit of the clerk. If no certificate of license was issued during any month, such fact shall be reported to the auditor by the clerk of the county court, verified by his affidavit.
Sec. 56. **Enforcement Against County Clerk.** In the event
any county clerk fails to account as required by the preceding
section, the state auditor may, at any time after three months
following such failure, proceed by notice of motion or other
appropriate action in any court having jurisdiction against
such defaulting officer and the sureties on his official bond.
Judgment shall be entered in the case as the law and equity
may require, together with interest thereon at the rate of
twelve per centum per annum from the time of such failure
to account until actually paid.

Sec. 57. **Penalty for Neglect of Duty.** If any clerk of any
county court, or any other public official, shall fail to per-
form any duty required of him by this article, or to obey any:
lawful instructions of the state tax commissioner, pursuant
to section fifty-eight of this article, he shall be liable to a
penalty of not less than ten dollars, nor more than one hun-
dred dollars for every such offense, in addition to all other
penalties provided by law.

Sec. 58. **Instructions by Tax Commissioner.** The state tax
commissioner shall give such instructions from time to time
to the county courts, to the clerks of the county courts, sher-
Enrolled H. B. No. 136] 50

4. State and other public officials respecting their duties under
5. this article, as may seem to him expedient. He shall also
6. supply such officials with such forms to be used in carrying
7. out the provisions of this article as may seem to him ex-
8. pedient; and all certificates of licenses issued shall be in sub-
9. stantial compliance therewith.

Sec. 59. Enforcement by Tax Commissioner. In the event
2. the tax commissioner shall discover any person transacting
3. any business, activity, trade or employment for which a li-
4. cense is required by this article, without having obtained
5. such license, he shall issue a certificate of license to such per-
6. son and collect the amount of the fee due. He shall keep a
7. full and accurate record of all the licenses issued and fees
8. collected by him and make return thereof to the state auditor
9. in the manner prescribed by section fifty-five of this article
10. for like reports of county clerks. He may require the serv-
11. ices of the sheriff in making collections. The state tax com-
12. missioner, with the approval of the governor, may appoint agents
13. to collect fees required by, or to enforce in any other re-
14. spect, the provisions of this article or article eleven of this
15. chapter. The compensation of such agents shall be paid out
of the taxes so collected. The tax commissioner, or his agents,
shall charge, either for issuing a certificate of license or for
attesting a memorandum of change or alteration on any cer-
tificate, the same fees as provided for county clerks in section
ten, article one, chapter fifty-nine of this Code.

Sec. 60. Collection by Distraint: The clerk of the county
court, the state tax commissioner, or his deputies, may dis-
train upon any personal property, including intangibles, of
any person delinquent in the payment of fees and penalties
accrued and unpaid under the provisions of this article. The
clerk of the county court, the tax commissioner, or his deput-
ties, may require the assistance of the sheriff of any county
in levying such distress in the county in which such sheriff
is an officer. A sheriff so collecting taxes due hereunder shall
be entitled to compensation in the amount of all penalties
collected over and above the principal amount of the tax due,
but in no case shall such compensation exceed twenty-five
dollars. All taxes and penalties so collected, less the com-
pensation above, shall be remitted within ten days after
collection to the issuing agent at whose request distraint was
made. The tax commissioner shall prescribe by general regu-
lation the manner of remittance of such funds and of allowing the collecting officer the compensation due him under this section. The sheriff shall be authorized to distraint immediately upon request, as aforesaid, for the amount with which any person may have been assessed under the provisions of this article, and to sell upon ten days’ notice so much of said person’s personal property, subject to such distraint, as may be necessary to pay the tax so assessed, including penalties.

Sec. 61. Injunction Against Unlicensed Business. If any person engages in or prosecutes any business, activity, trade or employment contrary to any of the provisions of this article, whether without obtaining a license therefor before commencing the same, or by continuing the same after the termination of the effective period of any such license, the circuit court, or the judge thereof in vacation, of the county in which such violation occurred, shall, upon proper application in the name of the state, and after ten days’ written notice thereof to such person, grant an injunction prohibiting such person from continuing such business, activity, trade or employment until he has fully complied with the provisions
of this article. The remedy provided in this section shall be
in addition to all other penalties and remedies provided by
law.

Sec. 62. Additional Penalties When Business Transacted

Without License. Any person engaging in or prosecuting any
business, activity, trade or employment contrary to the pro-
visions of this article, whether without obtaining a license
therefor before commencing the same, or by continuing the
same after the termination of the effective period of any such
license, shall, in addition to paying the license fee, be liable
to the following penalties: If the license fee to which he is
subject is an annual one, or for a period of one month or
more, ten per cent of such fee for each month or part thereof
during which he had been in default; if the license fee afore-
said is for any period less than one month, ten per cent of
such fee for each such period or part thereof during which he
has been in default; and if the license fee aforesaid is for the
doing of a single act, ten per cent of such fee or each such act
done while in default. Such penalty shall be deemed a license
fee and shall be assessed and collected in the manner prescribed
in this article for other license fees, except that the certifi-
19. A certificate of license issued therefor and the report thereof made to
20. the state auditor shall indicate separately the amount of the
21. license fee and the penalty. It shall be the duty of the officer
22. who issues the certificate of license to state therein the full
23. amount of the tax thereof and the penalty separately; and it
24. shall be the duty of the officer charged with the collection of
25. the tax on such license to collect the full amount thereof and
26. the penalty. It shall be the duty of the auditor to charge the
27. officer with the full amount of such tax and penalty.

Sec. 63. Collection of Back Taxes. Any person engaging
2. in or prosecuting any business, activity, trade or employment
3. contrary to the provisions of this article, whether without ob-
4. taining a license therefor before commencing the same, or by
5. continuing the same after the termination of the effective
6. period of any such license, shall, in addition to all other pen-
7. alties provided for in this article, be liable to the payment of
8. all back taxes and penalties for a period not exceeding five
9. years.

Sec. 64. Criminal Liability for Acting Without License.
2. Any person violating any of the provisions of this article
3. shall be guilty of a misdemeanor and upon conviction thereof
shall be fined not less than twenty nor more than one hundred dollars, or confined in jail not more than three months, or both, in the discretion of the court; and each day or part thereof that any violation shall continue shall be deemed to constitute a distinct and separate offense and be punishable accordingly. Justices of the peace shall have concurrent jurisdiction with any other courts having jurisdiction for the trial of all misdemeanors arising under this section.

Sec. 65. Provisions Remedial. The foregoing sections of this article shall in all cases be construed as remedial and not penal.

Sec. 66. Interpretation of Sections Forty Through Sixty-Five. None of the provisions of sections forty through sixty-five, inclusive, of this article, shall affect any of the following sections dealing with corporation land-holding or charter taxes, unless specifically so provided.

Sec. 75. Tax on Corporations Holding Land. Every corporation, including railroad and other corporations, holding more than ten thousand acres of land in this state shall pay to the state a tax of five cents per acre for the privilege of acquiring and holding of land so acquired and held by it in
addition to ten thousand acres. Such corporations shall, under the hand of the president and seal of the corporation, and attested by the secretary, apply to the secretary of state for a certificate authorizing the holding of the number of acres stated in such application, and pay the tax thereon; and it shall be the duty of the secretary of state to issue to such corporation a certificate stating the amount of tax paid and the number of acres on which paid, and the number of acres the corporation is thereby entitled to hold. Hereafter a domestic corporation shall state in its agreement for incorporation and a foreign corporation shall state in its application for authority to hold property and transact business in this state, the number of acres it desires to hold, and pay the taxes thereon to the secretary of state before the certificate of incorporation or of authority is issued. If any corporation desires to increase the number of acres it may hold, it shall make application therefore to the secretary of state. Such application shall be signed by the president of the corporation, sealed with its corporate seal, and attested by the secretary, and shall state the number of acres it then holds and the number of acres it desires to hold. The secretary of state
shall collect the proper amount of tax and shall issue to the
 corporation a certificate reciting the number of acres the
corporation may hold and the amount of tax paid to him. If
any corporation shall fail to comply with the provisions of
this section it shall be liable to a fine of not less than twenty-
five nor more than five hundred dollars, and be liable to pay
such tax due to the state with a penalty of ten per cent on the
total amount due, and be liable to all the provisions of sec-
tions eighty-six and eighty-seven of this article so far as
they are applicable. All moneys received by the secretary
of state under the provisions of this section shall be reported
to the auditor, and paid into the state treasury in the man-
er prescribed for the payment of other moneys received by
him. No corporation shall be required to pay the said tax of
five cents per acre for license to hold any land in this state in
excess of ten thousand acres for which such corporation shall
have already paid a license tax at the time this law takes effect.
A corporation which has paid said tax may assign,
without further payment by the assignee of the tax required
hereunder, its license or authority to hold lands in excess of
ten thousand acres provided the assignee shall be a corpora-
tion organized solely to conduct the same general business and
with the same stock ownership as the original licensee and
such assignment be accompanied by a conveyance and trans-
fer to such assignee corporation of all the lands and other
assets of the original licensee. Such assignment shall be filed
with the secretary of state who, upon being satisfied that the
assignee corporation has conformed to the foregoing require-
ments, shall issue a certificate authorizing such assignee cor-
poration to hold the same number of acres the original li-
censee was authorized to hold.

Section 76. Tax on Charters; Classification of Corpor-
atons. For convenience in classification for prescribing and
assessing license tax on charters or certificates of incorpor-
ation, corporations are divided into two classes, domestic and
foreign. A domestic corporation is (a) one incorporated by
or under the laws of this State, or (b) under the laws of the
State of Virginia before the twentieth day of June, eighteen
hundred and sixty-three, and which has its principal place
of business and chief works (if it have chief works) in this
State. Every other corporation is a foreign corporation.

Section 77. Relief from Assessment of Corporation License
2. **Tax.** Any corporation feeling aggrieved at the assessment of its license tax by the auditor, under the provisions of this article may apply to the board of public works for relief; and the board shall have authority to consider such case, and also cases of the insolvency or financial distress of any corporation or any other case involving such license tax. In any such case the board may fix the amount to be paid by such corporation in full discharge of the license tax and penalties due the State for the period named in the order made therein.

11. Every such order shall be entered in the record of the board and a certified copy thereof shall be delivered to the auditor by the secretary of the board.

Sec. 78. **Amount of License Tax on Domestic Corporations.**

2. Every domestic corporation shall pay an annual license tax on its charter for the fiscal year beginning on the first day of July of each year, based on its authorized capital stock as follows: If the authorized capital stock be five thousand dollars, or less, twenty dollars; if more than five thousand dollars and not more than ten thousand dollars, thirty dollars; if more than ten thousand dollars and not more than twenty-five thousand dollars, forty dollars; if more than
twenty-five thousand dollars, and not more than fifty thousand dollars, fifty dollars; if more than fifty thousand dollars and not more than seventy-five thousand dollars, eighty dollars; if more than seventy-five thousand dollars and not more than one hundred thousand dollars, one hundred dollars; if more than one hundred thousand dollars and not more than one hundred and twenty-five thousand dollars, one hundred and ten dollars; if more than one hundred and twenty-five thousand dollars and not more than one hundred and fifty thousand dollars, one hundred and twenty dollars; if more than one hundred and fifty thousand dollars and not more than one hundred and seventy-five thousand dollars, one hundred and forty dollars; if more than one hundred and seventy-five thousand dollars and not more than two hundred thousand dollars, one hundred and fifty dollars; if more than two hundred thousand dollars and not more than one million dollars, one hundred and eighty dollars, and an additional twenty cents on each one thousand dollars, or fraction thereof, in excess of two hundred thousand dollars; if more than one million dollars and not more than fifteen million dollars, three hundred and forty dollars, and an ad-
additional fifteen cents on each one thousand dollars, or fraction thereof, in excess of one million dollars; if more than fifteen million dollars, twenty-five hundred dollars. The license tax collected hereunder shall be in addition to the annual fee, if any, payable to the auditor as statutory attorney in fact. For the purpose of the assessment of the license tax provided by this section, and that provided by sections eighty and eighty-one of this article, and for no other purpose, shares of stock having no par value shall be presumed to be of the par value of twenty-five dollars each; Provided, however, That if such stock was originally issued for a consideration greater than twenty-five dollars per share, such license taxes as are required to be paid to the auditor under the provisions of sections seventy-nine, eighty and eighty-one of this article shall be computed upon the basis of the consideration for which such stock was issued.

Sec. 79. Assessment and Collection of Tax on Domestic Corporations. When application is made to the secretary of state for a certificate of incorporation, it shall be his duty to make the assessment and collect the license tax for the first year before issuing such certificate. If such certificate be is-
6 sued after the last day of the third month of the license
7 year, he shall assess one-tenth of the amount of the annual
8 tax for each month, or fractional part of a month, to ensue
9 before the first day of the next license tax year; but in no
10 case shall the amount assessed and collected be less than ten
11 dollars in addition to the fee, if any, payable to the auditor
12 as statutory attorney in fact. Thereafter, on or before the
13 first day of the license tax year following the date of the
14 certificate of incorporation, and on or before the first day of
15 each succeeding license tax year, the auditor shall collect such
16 tax for a full year together with the statutory attorney fee;
17 except that if the certificate of incorporation be issued on or
18 after the first day of the second month preceding the be-
19 ginning of the license tax year and before the first day of
20 the ensuing license tax year, the secretary of state shall as-
21 sess and collect the tax for the full year beginning on such
22 first day of the license tax year in addition to the initial tax,
23 together with the statutory attorney fee. The money so re-
24 ceived by the secretary of state and the auditor shall be paid
25 by them into the state treasury. Any corporation authorized
26 by its charter to issue stock having no par value shall, within
sixty days after its board of directors shall have authorized
the issue of all or a portion of such stock under the provisions
of article one, chapter thirty-one of this Code, make a report
to the auditor stating the number of shares of stock so author-
ized to be issued and the consideration for which such stock
is authorized to be issued. Such report shall be verified by
the affidavit of the president, secretary or other executive
officer of such corporation.

Section 80. **License Tax on Foreign Corporations.** Every

foreign corporation holding property or doing business in
this State shall make report to the auditor annually in the
third month preceding the beginning of the license tax year,
in which report shall be set out: (a) The name of each cor-
poration, the name of the state or county by which incorp-
ored, the date of the incorporation, the date of the certificate
of the secretary of state authorizing it to do business in this
State, the place of its principal office, the names and post-
office addresses of its president, secretary, and of its officers,
if any, charged with the duty of making returns of its prop-
erty for taxation and the name and post-office address of its
attorney of record in this State; (b) the number of shares
14 of its authorized capital stock having a par value and the
15 par value of each share, and the number of its issued and
16 outstanding shares and the par value of each share; (c) the
17 number of shares of its authorized capital stock having no
18 par value, the number of shares of such stock authorized to
19 be issued and the considerations fixed for the issue of each
20 share of the same by its charter or board of directors, and
21 the number of shares thereof issued and outstanding; (d) the
22 value of the property owned and used by such corporation
23 within this State, where situate, of what it consists, and the
24 number of acres of land it holds in this State, and the value
25 of its property owned and used without this State; and (e)
26 the proportion of its capital stock which is represented by
27 property owned and used in the State of West Virginia. Such
28 report shall be verified by the affidavit of the president, sec-
29 retary or other executive officers of such corporation.
30 It shall be the duty of the auditor to assess and fix the
31 license tax of such corporation according to the proportion of
32 its issued and outstanding capital stock which is represented
33 by its property owned and used in this State, which license
34 tax shall be at the rate prescribed in section seventy-eight
of this article, plus fifty per cent of such tax: Provided, That
no such corporation shall pay an annual license tax of less
than one hundred and fifty dollars, which shall be in ad-
dition to the fee of the auditor as statutory attorney in fact.
The auditor may in any case require such additional infor-
mation as he may deem necessary to enable him to assess and
fix the just amount of license tax of such corporation; and it
shall be his duty to notify every such corporation of the
amount so assessed by him, and it shall be the duty of the
corporation to pay the same to the auditor of the State within
thirty days thereafter, and if it fail to do so it shall be liable
to the penalties prescribed in sections eighty-six and eighty-
seven of this article.

Sec. 81. Preliminary Report by Foreign Corporations; As-
essment; Collection of Taxes. Every foreign corporation at
the time of its application for the certificate mentioned in
section seventy-nine, article one of chapter thirty-one of this
Code, shall file with the secretary of state a report prelimin-
ary to the annual report hereinbefore provided for, which
preliminary report shall contain sufficient information upon
which to base an assessment of its license tax for the then
current year. It shall be the duty of the secretary of state to
make assessment of its license tax for such year, and he may
require such further information as he may deem necessary
for that purpose. Before issuing such certificate the secretary
of state shall collect the amount of license tax he finds to be
proper for the license tax year ending with the thirtieth day
of the last month of the license tax year. If the certificate be
issued after the last day of the third month of the license tax
year and before the first day of the ensuing license tax year,
the secretary of state shall assess and collect such taxes at
the rate of one-tenth the amount of the annual license tax
for each month or fractional part of a month to ensue be-
fore the first day of the ensuing license tax year. Thereafter
on or before the first day of the license tax year next follow-
ing the date of the certificate of authority and on or before
every succeeding first day of the license tax year the auditor
shall collect such tax for a full year: Provided, That if the
certificate be issued in either of the last two months of the
license tax year, the secretary of state shall assess and collect
the license tax for such month, as well as for a full year be-
ing with the first day of the ensuing license tax year.
30 When the auditor shall assess and collect the tax on any
31 such foreign corporation, he may include in the tax for any
32 year any amount that such corporation should have paid for
33 any previous year and failed to pay. The collections here-
34 under shall be in addition to the annual fee of the auditor as
35 statutory attorney in fact. All moneys collected by the secre-
36 tary of state and the auditor shall be paid into the state
37 treasury in the manner prescribed by law.

Sec. 82. Annual Fee of Auditor as Attorney in Fact. Every
2 foreign corporation, and every domestic corporation whose
3 principal place of business or chief works is located without
4 this State, shall pay an annual fee of ten dollars for the
5 services of the auditor as attorney in fact for such corpor-
6 ation, which fee shall be due and payable at the same time,
7 collected by the same officers, and accounted for in the same
8 way, as the annual license tax.

Sec. 83. Notice to Corporations Taxable; Statement on Pay-
2 ment; Tax as Lien. It shall be the duty of the auditor, be-
3 tween the fifteenth day of the third month next preceding the
4 first day of the license tax year and the fifteenth day of the
5 second month next preceding the first day of the license tax
year, in each year, to notify every corporation, liable to the
tax imposed by this article, of the time of payment of such
tax and the amount thereof, together with the fee, if any,
payable to the auditor as statutory attorney in fact; such
notices may be sent through the mails, addressed to the cor-
poration at its last known post-office address as shown by the
records in the office of the secretary of state. If the auditor
shall make a mistake in the amount of such tax such corpora-
tion may file a sworn certificate of the president, vice pres-
ident or secretary of the corporation, showing such mistake,
or showing the actual amount of tax due; and, in that event,
it shall be the duty of the auditor to accept the amount due
as shown by such certificate, unless contrary to provisions of
this article. At the time of making payment to the auditor
every domestic corporation shall deliver to him a statement
which shall show the name of the corporation, the date of its
charter, the name and post-office address of its attorney of
record in this state, if any, the names and post-office addresses
of its president, secretary and treasurer, the amount of its
authorized capital stock, the number of acres of land it holds
in this state if the number exceeds ten thousand acres, and
such other facts as the auditor may require. Such statement
shall be signed by the president, secretary or treasurer of the
corporation. The amount of such tax shall be deemed a debt
due the state, and shall be a lien as to an innocent purchaser
for value, on the property and assets of the corporation prior
to all other liens, except the lien of the taxes levied on its
property for state, county and district purposes, from the
time a notice of such lien, specifying the year and the amount
for which the lien is claimed, is filed in the office of the clerk
of the county court of the county in which the property sub-
ject to such liens is situated. Such clerk shall, upon the filing
in his office of any such notice, record such notice in a sep-
arate docket in his office to be known as "Corporation License
Tax Lien Docket", and index the same in the name of the
corporation against whom the lien is claimed. Upon payment
of such lien debt there shall be executed by the auditor and
delivered to the clerk of the county court in whose office
notice of such lien is filed a release thereof, which said re-
lease shall be filed and recorded by such clerk in like manner
as releases of judgment liens are filed and recorded. Such
tax shall be a preferred debt in case of insolvency.
Sec. 84. List of Delinquent Corporations. The auditor shall,  
2 between the first and fifteenth day of the second month of  
3 the license tax year in every year, publish in some daily news-  
4 paper of general circulation printed in this State, a list of all  
5 corporations failing to pay the license tax, or any part there-  
6 of, due therefrom on or before the first day of the first month  
7 of the license tax year. Such list shall contain the names of  
8 such delinquent corporations, arranged in two classes, do-  
9 mestic and foreign. The cost of such publication shall be paid  
10 by the auditor, when allowed by the board of public works,  
11 out of the moneys in the treasury. Any such delinquent cor-  
12 poration may, on or before the first day of the fifth month  
13 of the license tax year following or at any time before judg-  
14 ment or decree is entered as hereinafter provided, pay the  
15 amount of such tax and a penalty of one per cent per month  
16 for each month or fractional part thereof that such failure  
17 continued, but the amount of such penalty shall not be less  
18 than five dollars. After the publication of the list of delin-  
19 quent corporations by the auditor, he shall mail to the last  
20 known post-office address of each of such corporations a sup-  
21 plemental notice, together with a statement of the total
amount of tax and penalties due therefrom, which notice shall be mailed at least thirty days before the first day of the fifth month of the license tax year.

Sec. 85. Investigation of Corporation Delinquencies. The auditor, with the approval of the governor, may appoint agents to investigate all violations of the provisions of this article concerning land holding or charter license taxes on corporations, and also for the purpose of collecting such taxes from all corporations which have not paid the same, whether due from domestic or foreign corporations. The compensation of all such agents shall be fixed by the board of public works.

Sec. 86. Suit to Enforce Payment of Corporation License Tax. Within thirty days after such first day of the fifth month of the license tax year the auditor shall certify to the governor and the secretary of state a list of all such delinquent corporations, domestic and foreign. The secretary of state shall preserve the list in his office, and a certificate from him that the name of any corporation mentioned in such certificate is delinquent in the payment of the license tax imposed by this article shall be prima facie evidence thereof. Within thirty days after receiving such list from the auditor the
11 governor shall issue his proclamation, in which he shall de-
12clare the delinquency of every such corporation. A copy of
13such proclamation shall be filed and recorded in the office of
14the secretary of state, and be published in such newspapers
15as the governor may designate, not exceeding one in each con-
gressional district; the costs of such publication shall be paid
17by the governor when allowed by the board of public works,
18sixty days after the date of the publication of such proclama-
tion, it shall be the duty of the attorney general to institute
on the chancery side of the circuit court, in the county in
which the seat of government is, a suit or proceeding, or suits
or proceedings, in the name of the State, in which such de-
linquent corporations shall be made defendants; in the bill
or petition so filed it shall only be necessary to allege that the
corporations therein made defendants have failed to pay such
license tax, and that each of them justly owes to the State the.
amount of license tax, penalty and fines stated therein, in
connection with the name of the corporation, which amount
shall be computed up to the first day of the month succeeding
that in which such bill or petition is filed. No such corpora-
tion shall interpose as a plea or defense in such suit the fact
32 that the auditor failed to notify it as prescribed in this ar-
33 ticle, or that it failed to receive such notice, or that its name
34 was not included in the list or proclamation hereinbefore
35 mentioned. Upon the hearing of such suit, if it shall appear
36 to the court that any such corporation has failed to pay any
37 such license tax and the penalties and fines assessed against
38 it, the court shall enter a decree or judgment against such
39 corporation for the amount due, including the costs of the
40 proceeding, or such portion of such costs as the court shall
41 apportion to be paid by such corporation, and, if the same
42 be not then and there paid, the court shall enter a decree if it
43 be a domestic corporation, forfeiting its charter, rights and
44 franchises; and if it be a foreign corporation, revoking its
45 rights and privileges to hold property and transact business
46 in this State. The amount of the judgment or decree including
47 costs, entered against any corporation, and interest thereon
48 until paid, may be collected by the attorney general, or be
49 collected by the auditor in the same manner that other claims
50 due the State are collected. In any such suit or proceeding
51 the court may make such orders and decrees as it shall deem
52 necessary and proper for a court of equity; and may appoint
a receiver for any such corporation and order its assets mar-
shalled and distributed among its creditors; and may, on
motion of the attorney general, grant an injunction against
any such corporation restraining it from the exercise of any
franchise or the transaction of any business within this State,
until such tax and the costs be paid. Any person or persons
who shall exercise or attempt to exercise any powers under
the charter of any such corporation, after the issuing of the
governor's proclamation, shall be guilty of a misdemeanor,
and shall be punished by imprisonment not exceeding one
year, or a fine not exceeding one thousand dollars, or both,
in the discretion of the court. The words "license tax" used
in this section include, in addition to the amount of license
tax proper, all penalties and fines accruing for failure to pay
such tax, the annual fee of the auditor as statutory attorney
in fact, and the cost of any suit or proceeding to enforce the
collection of the same. When two or more corporations are
included in one suit or proceeding the court shall apportion
the cost thereof among them as it may deem just.

Sec. 87. Process in Such Suit; Record of Forfeiture, Revo-
cation or Dissolution. In any such suit or proceeding process
shall be served in the manner provided by law. The attorney
general may cause a copy of any order of publication to be
mailed to each corporation at its last known post-office ad-
dress as aforesaid. It shall be the duty of the clerk of every
court of this State in which any proceedings are had which
result in the forfeiture of the charter of any corporation
issued under the laws of this State, or result in the dissolu-
tion or extinction of any such corporation, or in the revoca-
tion of the rights and privileges, of any foreign corporation
to do business in this State, to notify the secretary of state of
any such forfeiture, dissolution, extinction or revocation, in
which report he shall state the name of the court, the name
of the corporation, the nature of the proceedings and the date
of the order, decree or judgment, and such other pertinent
matter as may be required by the secretary of state; and the
secretary of state shall file and record such report in his
office, and aptly note the same in the indexes of corporations
kept in his office. If any clerk fail to make such report he
shall be liable to a fine of not exceeding one hundred dollars.

Sec. 88. Corporations Exempt from License Tax. Nothing
in sections seventy-five through eighty-nine inclusive of this
3 article shall be construed as imposing a license tax on cor-
4 porations chartered strictly for educational, literary, agricul-
5 tural, scientific, religious or charitable purposes, or upon
6 charters incorporating cemeteries or lodges of masons, odd
7 fellows, or the like, or other charitable, fraternal or patriotic
8 societies not incorporated for profit to the stockholders; but
9 the secretary of state shall require full proof as to the charac-
10 ter of any such corporation claiming such exemption from the
11 payment of license tax. Every such corporation, however,
12 shall, in the third month preceding the first day of the license
13 tax year in each year, deliver to the auditor the statement
14 required in section eighty-three of this article.

Sec. 89. Monthly Report by Secretary of State to Auditor
as to Corporations. The secretary of state shall within twenty
3 days after the close of each month make a report to the
4 auditor for the preceding month, in which he shall set out the
5 name of every corporation to which he issued a certificate of
6 incorporation during the month, as well as the name of each
7 corporation to which he issued a certificate under section
8 seventy-nine, article one, chapter thirty-one, of this code, with
9 the amount of license tax paid to him by each; also he shall
set out in such report the names of all corporations to which he issued, during such preceding month, certificates of increase or decrease of stock, or of shares of stock, or of par value of shares of stock; certificates of change of name or of change of location of principal office; and a statement of all moneys received by him during such preceding month from all sources and due to the State, and pay the same into the treasury; if he fail to do so it shall be the duty of the auditor to report such failure to the governor.

Sec. 90. When Article Takes Effect. This article shall take effect from passage: Provided, however, That all licenses herefore issued shall remain in full force and effect during the period for which issued.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

G. E. WISEMAN  
Chairman Senate Committee

H. E. W. Walker  
Chairman House Committee

Originated in the House of Delegates

Takes effect from passage

Charles W. Mccoy  
Clerk of the Senate

W. D. Vance  
Clerk of the House of Delegates

J. W. Harris  
President of the Senate

J. M. Lanham  
Speaker House of Delegates

The within approved this the

day of January, 1939.

Governor.

Filed in the office of the Secretary of State of West Virginia.  
MARCH 17, 1939  
Wm. S. O'FRIEN,  
Secretary of State