

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1939



ENROLLED

HOUSE BILL No. 136

(By Mr. Strauss)



PASSED March 4, 1939

In Effect from Passage

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House Bill No. 136
(By Mr. STROUSS)

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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eighty-seven, acts of the Legislature, second extraordinary session, one thousand nine hundred thirty-three, are hereby repealed; and a new article twelve, chapter eleven, providing for and requiring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
2 "person" shall mean and include natural persons, partner-
3 ships, associations, corporations, and all other organizations or
4 groups by means of which any of the hereinafter specified
5 businesses, activities, trades or employments are engaged in
6 or prosecuted.

Sec. 2. *License Fees Levied.* No person shall, without a
2 license, engage in or prosecute, within the state of West Vir-
3 ginia, any of the businesses, activities, trades or employments
4 named in the following sections of this article. The license
5 fees hereinafter specified are hereby levied on every person
6 engaging in or prosecuting, within this state, any such busi-
7 nesses, activities, trades or employments.

Sec. 3. *Hotel, Eating Place or Restaurant.* The annual
2 license fee to keep or maintain a hotel, tavern or tourists'
3 home, where rooms are kept or maintained for transient
4 guests, the charge for which is for a period of less than three

5 days, or to keep or maintain a restaurant, or other eating
6 place, not operated in connection with a hotel, tavern or
7 tourists' home, shall be ten dollars.

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

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

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

Sec. 6. *Retail Dealers in Tobacco.* The annual license fee
2 to sell at retail cigarettes, cigarette papers or wrappers, and
3 cigars, tobacco, snuff and other preparations of tobacco shall
4 be ten dollars; and, to sell at retail cigars, tobacco, snuff and

5 other preparations of tobacco other than cigarettes or cigarette
6 papers or wrappers shall be five dollars. The giving away or
7 furnishing of cigarette papers or wrappers in connection
8 with the sale of tobacco, or other thing of value, shall be
9 deemed to be a sale thereof under the provisions of this sec-
10 tion.

Sec. 7. *Bowling Alleys.* The annual license fee to keep or
2 maintain a bowling alley for public use where any charge is
3 made for the use of the same, shall be twenty-five dollars;
4 but if more than one be kept or maintained in the same
5 building by the same person, the fee shall be twenty-five dol-
6 lars for the first one and fifteen dollars for each additional one.

7 The licensee, his agents or employees, shall not permit any
8 person in any manner to bet or wager anything of value upon
9 any game played upon such bowling alley. Such licensee, his
10 agents or employees, shall not permit anyone to bring any in-
11 toxicating liquors of any kind into such building or other
12 place where such bowling alley is located.

Sec. 8. *Billiard or Pool Tables.* The annual license fee to
2 keep or maintain a billiard or pool table, or table of like
3 kind, for public use, where any charge is made for the use

4 of the same, shall be twenty-five dollars; but if more than
5 one of such tables be kept in the same building, by the same
6 person, the fee shall be twenty-five dollars for the first one
7 and fifteen dollars for each additional one.

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

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

6 the fee shall be ten dollars for the first one, and five dollars
7 for each additional one.

8 The licensee, his agents or employees, shall not permit any
9 person under the age of eighteen years to play at such baga-
10 telle table, or table of like kind, and shall not permit any such
11 person under the age of eighteen years to remain or loiter,
12 whether playing at such bagatelle table, or other table of like
13 kind, or not, in the room where such table is located; and such
14 licensee, his agents or employees, shall not in any manner
15 permit anyone to bet or wager anything of value upon any
16 game played upon such bagatelle table, or table of like kind.
17 Such licensee, his agents or employees, shall not permit any-
18 one to bring any intoxicating liquors of any kind into such
19 building or other place where such tables are located.

Sec. 10. *Slot Machines and Automatic Devices.* The an-
2 nual license fee to keep or maintain an automatic baggage or
3 parcel checking machine, or device, which is used for the
4 storage of baggage or parcels of any character, shall be fifty
5 cents for each section of any such device which is operated
6 on the coin-in-the-slot principle; the annual license fee to
7 keep or maintain any automatic toilet locker or device, shall

8 be fifty cents for every such locker or device; the annual li-
9 cense fee to keep or maintain any other automatic penny slot
10 machine or device, which is not a gambling device under any
11 law of this state, shall be two dollars for every such machine
12 or device; and, the annual license fee to keep or maintain any
13 other automatic slot machine or device, which is not a
14 gambling device, as aforesaid, shall be five dollars for every
15 such machine or device.

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

20 In the event the owner of any automatic machine or de-
21 vice refuses, neglects or fails to pay the license fee due upon
22 any such machine or device, then the proprietor or owner of
23 the business conducted in the store room or place where such
24 machine is installed, operated or maintained, shall be liable
25 for the payment of such license fee, and upon his refusal
26 or failure to pay such fee the tax commissioner or his agents
27 may take such machine or device into possession and deliver
28 the same to the sheriff of the county in which such machine

29 or device is found, or the sheriff of such county on his own
30 initiative or upon order or direction of the state tax com-
31 missioner, or his agents, may take such machine or device into
32 possession, and in either event said machine or device shall
33 be impounded until such license fee is paid; in the event the
34 license fee and penalties are not paid to such sheriff within
35 ten days from and after the date of such impounding, then
36 the sheriff shall sell such machine or device in the manner
37 provided by law for the sale of personal property for taxes,
38 and from the proceeds thereof shall discharge and pay the
39 license fee due on such machine or device and his costs, in-
40 cluding costs of impounding, storage, penalties and other
41 fees due the state and the sheriff; and the balance, if any
42 there be, shall be forfeited to the state.

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

4 The term "taxicab stand" as used in this section, shall
5 mean and include any building or part thereof, parking
6 place, telephone, or any other place from which one, or more,
7 taxicab operates, even though such place may be kept or

8 maintained in conjunction with any other business or busi-
9 nesses.

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

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

2 The license fee to operate a roller coaster, a merry-go-round,
3 scenic railway, or device of like kind, for one week, shall be
4 ten dollars; for three months, shall be thirty dollars; for
5 six months, shall be fifty dollars; and for one year, shall be
6 one hundred dollars. The license fee to run or operate a doll
7 baby rack, cane rack, knife rack, striking machine, jingle
8 board, artful dodger, candy wheel, or other scheme or device
9 by which merchandise or other thing of value is disposed of
10 by game of chance or like device, or human laundry device or
11 dip device, for one week, shall be five dollars; for three
12 months, shall be twenty dollars; for six months, shall be
13 thirty dollars, and for one year shall be fifty dollars: *Pro-*
14 *vided, however,* That in the event a doll baby rack, cane rack,
15 knife rack, striking machine, jingle board, artful dodger,

16 candy wheel, or other scheme or device by which merchandise
17 or other thing of value is disposed of by game of chance or
18 like device, or human laundry device, or dip device, are run or
19 operated within a street or other carnival or show or in the
20 vicinity of such carnival or show, the license fee shall be as
21 provided in section nineteen of this article.

Sec. 13. *Skating Rinks.* The annual license fee to keep or
2 maintain a skating rink for public use in a city or town with a
3 population of thirty thousand or more, according to the last
4 official census, shall be one hundred dollars; in a city or town
5 with a population of more than ten thousand but less than
6 thirty thousand population, as aforesaid, the fee shall be fifty
7 dollars; in a city or town with a population of more than
8 five thousand but less than ten thousand population, as afore-
9 said, the fee shall be twenty-five dollars; and in a city or
10 town with a population not exceeding five thousand, as afore-
11 said, or at any other location within this state, the fee shall
12 be fifteen dollars: *Provided, however,* That if such skating
13 rink be kept or maintained outside of but within one mile of
14 the corporate limits of any city or town, the license fee shall
15 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 afore-
8 said, the fee shall be ten dollars. Such license for such pub-
9 lic 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

4 thousand, or more, according to the last official census, shall
5 be twenty dollars for each week; if in a city or town with a
6 population of more than ten thousand but less than twenty
7 thousand, as aforesaid, the fee shall be fifteen dollars for
8 each week; if in a city or town with a population of less than
9 ten thousand, as aforesaid, or at any other place within this
10 state, the fee shall be ten dollars for each week; but if such
11 theatrical performance be conducted outside of but within
12 one mile of the corporate limits of any city or town, the
13 license fee shall be the same as if such performance were
14 given within such city or town; and if outside of but within
15 one mile of the corporate limits of two or more cities or
16 towns, the fee for such performance shall be the same as if
17 it had been given within the largest of such cities or towns.

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

20 *Provided, however,* That in lieu of the fees for conducting
21 a theatrical performance, as above set out, a theatre, opera
22 house or other permanent place for public shows, may be
23 kept or maintained upon the payment of the license fee
24 hereinafter specified. In a city or town with a population of

25 thirty thousand or more, according to the last official cen-
26 sus, for three months, the fee shall be one hundred dollars;
27 for six months, one hundred thirty dollars; and for one year,
28 one hundred sixty dollars. In a city or town with a popula-
29 tion of less than thirty thousand but more than twenty thou-
30 sand, as aforesaid, for three months, the fee shall be seventy-
31 five dollars; for six months, one hundred dollars; and for one
32 year, one hundred twenty-five dollars. In a city or town with
33 a population of less than twenty thousand but more than ten
34 thousand, as aforesaid, for three months, the fee shall be
35 forty dollars; for six months, sixty dollars; and for one year,
36 one hundred dollars. In a city or town with a population of
37 less than ten thousand but more than five thousand, as afore-
38 said, for three months, the fee shall be twenty dollars; for
39 six months, thirty dollars; and for one year, forty dollars.
40 In a city or town with a population of less than five thou-
41 said but more than two thousand, as aforesaid, for three
42 months, the fee shall be ten dollars; for six months, fifteen
43 dollars; and for one year, twenty dollars. In a city or town
44 with a population of less than two thousand, as aforesaid, or
45 at any other place within the state, for three months, the

46 fee shall be five dollars; for six months, eight dollars; and
47 for one year, ten dollars.

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

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

Sec. 18. *Exempt Entertainments.* The provisions of sec-
2 tions sixteen, seventeen and nineteen shall not apply to, and

3 no license fee shall be assessed against or collected from any
4 educational, literary, dramatic, musical or benevolent society
5 not conducted for private profit, where such performance or
6 exhibitions are confined to one county, unless professional
7 or paid talent, other than director, is employed in such per-
8 formances or exhibitions.

Sec. 19. *Circuses, Carnivals and Other Public Shows.* The
2 license fee to exhibit a circus or menagerie, a circus and
3 menagerie combined, wild west show, or other itinerant show
4 not exhibited in a theatre, opera house or other permanent
5 place for public shows, shall be based upon the number of
6 railroad cars or motor trucks used to transport the property or
7 equipment of such shows, but not including railroad cars or
8 motor trucks used to transport the personnel thereof. If
9 railroad cars are used the fee shall be four dollars for each
10 car for each day on which any performance is given; if mo-
11 tor trucks are used the fee shall be three dollars for each
12 truck for each day on which any performance is given.

13 The license fee to exhibit a street or other carnival shall
14 be five dollars a week for each entertainment, performance or
15 exhibition given at or in the vicinity of any such carnival.

16 Each such entertainment, performance or exhibition shall
17 require a separate license, whether or not shown under the
18 same canvas and whether or not exhibited for additional
19 compensation; and upon any such entertainment, perform-
20 ance or exhibition being concluded, so that an additional fee
21 for admission is charged, an additional license fee shall be
22 required for any further or additional entertainment, per-
23 formance or exhibition. To operate any riding device of any
24 kind at or in the vicinity of any street or carnival show, the
25 fee shall be ten dollars a week for each such device. To keep
26 or maintain any concession stand selling service, goods, wares
27 or merchandise, such as food, soft drinks, ice cream, candy
28 floss and the like, at or in the vicinity of such street or car-
29 nival show, the fee shall be five dollars a week for each such
30 concession. To maintain any concession stand such as ball
31 games, bingo, cane rack, penny pitch, pitch-till-you-win, strik-
32 ing machine, weighing machine, shooting gallery, artful
33 dodger, bumper, fish pond, dart game, or other legitimate
34 games of skill, none of which shall be controlled by the oper-
35 ator, at or in the vicinity of any street or carnival show, the
36 fee shall be ten dollars a week for each such concession. To

37 operate or maintain a candy wheel or any other legitimate
38 merchandise wheels, when operated without control of the op-
39 erator, shall be twenty-five dollars a day. To operate or main-
40 tain rides of all kinds shall be ten dollars each a week: *Pro-*
41 *vided, however,* That such games as roll downs, blowers, spin-
42 ners, swinging ball, creepers, race tracks, spot the spot, and
43 all other games controlled by the operator are hereby for-
44 bidden and no license shall be granted to any circus, show or
45 street carnival where such games are operated: *Provided, fur-*
46 *ther,* That no circus, show or street carnival shall be licensed
47 which has any gypsy fortune tellers or gypsies connected
48 therewith in any manner.

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

Sec. 21. *Sale of Weapons.* The annual license fee to sell or
2 offer for sale pistols, revolvers, dirks, slung shots, billies,

3 bowie knives, metallic or other false knuckles, or other weap-
4 ons of like kind, shall be ten dollars.

Sec. 22. *Trading Stamps.* The annual license fee to sell
2 or offer for sale merchants' trading stamps, premium stamps
3 or stamps or certificates of like nature, or to undertake to re-
4 deem such stamps or certificates in money or goods, shall be
5 one hundred dollars.

Sec. 23. *Private Banker or Money Broker.* The annual
2 license fee to carry on the business of money broker or pri-
3 vate banker, shall be twenty-five dollars. The term "money
4 broker" or "private banker" shall include every person,
5 other than a regularly organized banking institution or nat-
6 ional banking association, that lends money on real or per-
7 sonal security, discounts paper, cashes time slips or script, or
8 engages in any business of a similar or like character.

Sec. 24. *Employment Agent.* The annual license fee to
2 conduct the business of an employment agent, to receive ap-
3 plications for employment, to hire or contract with persons
4 for employment shall be two hundred dollars, except that the
5 annual license fee for an agency or registry for the employ-

6 ment of nurses, practical nurses or undergraduate nurses,
7 shall be twenty-five dollars.

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

Sec. 25. *Goods Sold at Auction.* Any person offering for
2 sale or furnishing for sale at auction, any goods, wares or
3 merchandise, not assessed for taxation in any county in this
4 state, pursuant to section eight, article five of this chapter,
5 shall be required to obtain a permit from the clerk of the
6 county court of such county before offering or furnishing
7 such goods, wares or merchandise for sale at such auction;
8 for which permit a fee of two dollars on every one hundred
9 dollars' valuation of such goods shall be charged. Any per-
10 son offering any goods, wares or merchandise for sale, in any
11 county in this state, not assessed for taxation in such county,
12 pursuant to said section eight, shall be required to have the
13 same assessed by the assessor of such county, and such assess-
14 ment shall be the same as other assessments in such county.
15 In case any person shall refuse or neglect to obtain the per-

16 mit as aforesaid, or to have such goods, wares or merchan-
17 dise assessed as herein required, he shall be liable in the
18 first instance to double the license required, and in the sec-
19 ond instance, the assessor shall add as penalty for such fail-
20 ure, one hundred percent to the taxes assessed. Such license
21 fee shall be collected in the same manner as are other license
22 fees.

Sec. 26. *Auctioneers.* The annual license fee to act as an
2 auctioneer shall be five dollars; *Provided, however,* That, if
3 such auctioneer act as such within an incorporated city or
4 town, an additional fee of two dollars for every one thou-
5 sand population of such city or town, according to the last
6 official census, shall be added. Such license shall be coexten-
7 sive with the entire state, and shall not be subject to the re-
8 strictions of section forty-four of this article.

9 The term "auctioneer" when used in this section shall not
10 be deemed to mean or include any trustee, personal repre-
11 sentative, guardian or committee selling property belonging
12 to the estate or trust under his charge, or any officer or com-
13 missioner selling property under the order, decree, execution
14 or process of any court of this state or of the United States.

Sec. 27. *Sale of Monuments, etc.* The annual license fee
2 to engage in the business of selling, offering for sale, solicit-
3 ing or receiving orders for monuments, mausoleums, grave
4 stones and grave markers, shall be one dollar.

Sec. 28. *Collection Agencies.* The annual license fee to con-
2 duct the business of a collection agency in a city or town with
3 a population of ten thousand or more according to the last
4 official census shall be one hundred dollars; and in a city or
5 town with a population not exceeding ten thousand, as afore-
6 said, or at any other location within this state, the fee shall be
7 twenty-five dollars. The provisions of this section shall also
8 apply to nonresident agencies which do business in this state
9 through or by means of one or more agents or solicitors:
10 *Provided, however,* That before such certificate of license
11 shall be issued to any person as defined in section one of this
12 article, such person shall execute a continuing bond with some
13 solvent surety company as surety thereon in the penalty of
14 two thousand dollars, payable to the state of West Virginia,
15 conditioned that such person will pay all damages accruing to
16 anyone by reason of any unlawful act or action done, per-
17 formed or taken by such person in and about the conduct

18 of such collection agency. Said bond shall be approved as to
19 such surety by the issuing agent thereof, and such bond shall
20 be recorded in the office of the clerk of the county court of
21 the county in which such collection agency is, or is proposed
22 to be, operated; and the fact of the execution of such bond,
23 the amount thereof, and the book and page number in which
24 recorded shall be stamped upon the face of the certificate
25 of license herein to be issued.

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

Sec. 30. *Soft Drinks.* The annual license fee to conduct
2 the business of wholesaler, distributor, or manufacturer of
3 any and all preparations of every kind, character and nature,
4 whether carbonated or not, commonly known as soft drinks,
5 including bevo, pablo, milo, moxie, ginger ale, near beer, coca
6 cola, grape juice, fruit juices and pop, shall be one hundred
7 dollars; and on every retailer of any of the above products,
8 shall be five dollars: *Provided, however,* That this section
9 shall not be construed as requiring a license of any person

10 engaged in the wholesale or retail grocery business, who
11 sells, as an incident thereof, canned or bottled fruit juices as
12 herein defined.

13 The provisions of section forty-three of this article shall
14 apply to wholesalers, distributors, manufacturers, and re-
15 tailers as defined in this section only to the extent of per-
16 mitting the municipality within which any place of business
17 or warehouse of such wholesalers, distributors, manufacturers
18 or retailers is situated, to levy and enforce a municipal license
19 fee on such businesses. And no other city or town shall levy
20 or enforce a municipal license fee on any such businesses.

Sec. 31. *Junk Dealers.* (a) The term "junk" as used in
2 this section shall mean old or scrap gold, copper, brass, rope,
3 rags, batteries, paper, rubber, automobile parts, iron, steel
4 and other old or scrap ferrous or non-ferrous metals.

5 The term "junk dealers" shall include all persons engaged
6 in the business of buying or selling junk as hereinabove de-
7 fined.

8 The term "junk dealer's agents" shall include all persons
9 who buy or sell junk as hereinbefore defined for or on be-
10 half of a junk dealer, as hereinabove defined, but the term

11 “junk dealer’s agent” shall not be construed to include any
12 persons regularly employed upon a salary by a regularly
13 licensed junk dealer engaged in such business within the state
14 of West Virginia.

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

19 The term “non-resident junk dealer” or “non-resident
20 junk dealer’s agent” shall include all persons who act as
21 junk dealers or junk dealer’s agents who are non-residents
22 of West Virginia, and all firms so engaged whose members
23 are non-residents of West Virginia and all corporations
24 which have not been admitted to hold property and transact
25 business in the state of West Virginia.

26 (b) No person within the state of West Virginia shall en-
27 gage in the business of junk dealer, junk dealer’s agent or
28 itinerant junk collector without a state license therefor,
29 which license shall be issued as provided in this article: *Pro-*
30 *vided, however,* That no resident license shall be issued to any
31 junk dealer, junk dealer’s agent or itinerant junk collector

32 who has not been a resident of the state of West Virginia for
33 a period of at least one year prior to the application for
34 such license.

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

43 (d) The annual license fee to act as a resident junk dealer
44 shall be twenty-five dollars; to act as a junk dealer's agent,
45 ten dollars; to act as a non-resident junk dealer or his agent
46 who buys or solicits for the purchase of junk within the state,
47 one hundred fifty dollars; to act as an itinerant junk collector,
48 two dollars. Such licenses shall be coextensive with the state,
49 but no non-resident licensee shall be permitted to maintain a
50 fixed place of business within the state: *Provided, however,*
51 That any non-resident junk dealer may purchase junk from
52 any resident junk dealer without complying with the pro-

53 visions of this section, but if said non-resident junk dealer
54 comes into the state in any motor vehicle or horse drawn
55 vehicle, said non-resident junk dealer shall not be permitted
56 to transport from the state in said vehicle or horse drawn
57 wagon, junk purchased from resident junk dealers, unless
58 there is a compliance with this section.

59 (e) Every resident junk dealer shall certify to the clerk of
60 the county court issuing the license, the name or names of the
61 agents for whom he desires a license certificate and shall give to
62 each agent so engaged by him a certificate of authority, which
63 certificate the agent shall at all times keep with his license and
64 no such junk dealer's agent's license shall be valid and effective
65 without such certificate of authority. The clerk of the county
66 court who issues the licenses shall give to each license certificate
67 a numerically designated permit, and such permit so given
68 shall be plainly stenciled or printed as "Dealer's Permit
69 No.....", "Agent's Permit No.....", "Itinerant Collec-
70 tor's Permit No.....", "Non-resident Permit No.....",
71 as the case may be, upon both sides of all trucks or other
72 vehicles used in the collecting and transporting of junk. But
73 the clerk shall not issue a junk dealer's agent's license until

74 the applicant therefor shall first have presented a certificate
75 from a duly licensed junk dealer showing such authorization,
76 and no license shall be issued to a junk dealer's agent or itin-
77 erant junk collector unless he shall file with the clerk an affi-
78 davit setting out that such applicant has not been convicted of
79 a felony ; that he has not been convicted of a misdemeanor in
80 connection with the junk business within a five year period
81 prior to the time of his application, and that in the event the
82 application is for a resident dealer's license that he has resided
83 in the state for a period of one year next preceding the date of
84 his application, which said certificate and affidavit shall be
85 filed by the clerk issuing the license in his office.

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

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

94 No person, engaged in the junk business shall engage a

95 person as a junk dealer's agent who is ineligible to receive a
96 resident junk dealer's or junk dealer's agent's license.

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

99 (f) It shall be unlawful for any person or persons to barter,
100 purchase, exchange, buy or accept from any person whatso-
101 ever, except plumbers, the owner or owners of buildings from
102 which the material is taken, coal companies, industrial, manu-
103 facturing and public utility companies, or the authorized
104 agents of such companies, lawful owners and licensed junk
105 dealers, copper trolley wire, aluminum wire, brass bearings or
106 fittings, tools, drilling equipment, casings, tubing, pipe, ma-
107 chinery of all kinds and characters, or lead, shipped or de-
108 livered from points within this state. Every junk dealer pur-
109 chasing any of the items mentioned in this subsection from the
110 aforesaid persons, shall accurately list such purchase in a per-
111 manent record showing kind and character of junk purchased,
112 date of purchase and from whom purchased, which shall be
113 open to the inspection of all law enforcement officers.

114 It shall be unlawful for any junk dealer to purchase any of
115 the items mentioned in this sub-section, except from the persons

116 named aforesaid, without securing from the seller a bill of sale,
117 receipt or other proof of lawful ownership, which shall be re-
118 tained by such purchaser or dealer, and the said purchaser or
119 dealer shall list in a record book the full name and address of
120 the seller, a complete description of the kind and character of
121 the junk or material purchased, the hour and day purchased,
122 and the license number of any automobile or truck which may
123 be used in making delivery of such junk or material, which
124 record shall be open to the inspection of all law enforcement
125 officers, and be preserved for a period of not less than one year.

126 Every non-resident junk dealer or non-resident junk dealer's
127 agent, or itinerant junk collector, before transporting any of
128 the items mentioned in this section from this state, shall
129 register with the sheriff of the county where such purchase was
130 made, a complete description of the property he proposes to
131 transport from the state, showing the date of purchase, the
132 names of the buyer and seller, the party to whom it is to be
133 consigned, and the license number of any automobile or truck
134 which may be employed in transporting such junk and shall
135 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

157 publication in a newspaper of general circulation in said
158 county, at least ten days prior to the date of sale, that the said
159 vehicle will be sold at public auction to the highest bidder, and
160 out of the funds derived the sheriff shall pay first to the justice
161 of the peace the costs and fine, and secondly shall pay to the
162 state of West Virginia a sufficient sum of money to secure a
163 proper license, and any sums of money remaining in his hands
164 shall be promptly transmitted to the owner of the truck by reg-
165 istered mail or otherwise. A report of said sale shall be made
166 by the sheriff to the justice of the peace, who shall record
167 the same in his docket where the record of the convictions
168 and the fines is kept.

169 Any person engaged in any business other than the junk
170 business shall have the right to convey junk which may have
171 accumulated in connection with his business by vehicle or
172 otherwise for the purpose of disposal or sale without com-
173 plying with the provisions of this section, or may purchase
174 and transport junk used in the operation of his business:
175 *Provided, however,* That this section shall not apply to ve-
176 hicles used by common carriers in the transportation of junk
177 as an incident to the business of such common carriers.

Sec. 32. *Hawkers and Peddlers.* (a) The annual license
2 fee to act as a hawker or peddler, if the person licensed travels
3 without a motor vehicle, shall be ten dollars; if he travels
4 with a motor vehicle of not more than one-half ton capacity,
5 fifteen dollars; if he travels with a motor vehicle of more than
6 one-half ton capacity, but not exceeding one ton capacity,
7 fifty dollars; if he travels with a motor vehicle of more than
8 one ton capacity, but not exceeding two tons' capacity, one
9 hundred dollars; and if he travels with a motor vehicle of
10 more than two tons' capacity, one hundred fifty dollars, plus
11 one hundred dollars for each additional ton or fraction
12 thereof over two tons' capacity; and the person licensed shall
13 pay at the same rate for each and every motor vehicle so used.
14 Such person shall carry his license in some conspicuous place
15 in his vehicle or about his pack; and in addition thereto he
16 shall cause to be painted or stenciled in a conspicuous place on
17 the left-hand side of his vehicle the number of such license and
18 the words "West Virginia Hawker and Peddler" and the
19 license year for which said license is issued, which said infor-
20 mation shall be in black letters on a white background, and
21 the whole thereof shall be at least eight by twenty inches in

22 size. Such license shall be coextensive with the state, shall not
23 be subject to the restrictions of section forty-four of this
24 article, and shall not be assignable to any other person.

25 When used in this section, the term "sale" shall mean and
26 include both sales for money payment or for barter, and
27 offers to make any such sales.

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

33 (b) The provisions of this section shall not apply to any
34 person who sells any goods, wares or merchandise to be de-
35 livered in the future; or to any of the following who offer
36 immediate delivery of the goods, wares or merchandise being
37 sold:

38 1. Any person or persons engaged within this state in the
39 business or calling of agriculture, horticulture or grazing, who
40 sells or sell individually or collectively, one or more for the
41 other or others, the products derived from his or their busi-
42 ness or calling aforesaid;

43 2. Any person engaged in the maintenance or operation of
44 a retail merchandise store to exchange goods, wares or mer-
45 chandise from such store for agricultural, horticultural or
46 grazing products or to resell any such products received in
47 due course of such business; nor to any other retail business
48 concern, established and operating continuously for one year
49 or more within this state in the sale of any product or prod-
50 ucts over regular routes;

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

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

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

60 6. Any agent or salesman selling manufactured products,
61 except green groceries and canned or bottled fruit products,
62 produced by his employer, and who sells the same to retail
63 dealers for the purpose of resale.

64 *Provided, however,* That any person exempt from license as
65 above provided, shall obtain from the clerk of the county
66 court of the county of his residence a license receipt, without
67 cost, showing that he is so exempt, which shall be effective for
68 the period as provided for annual licenses in this article and
69 shall be coextensive with the entire state; but to obtain such
70 license receipt he shall make an affidavit and produce such
71 other evidence as to the facts entitling him to such exemption
72 as the clerk, in his discretion, may require, which shall be on
73 a form to be prescribed by the tax commissioner of this state.

Sec. 33. *Itinerant Vendors.* (a) When used in this section
2 the term "itinerant vendor" shall mean and include all per-
3 sons who engage or conduct within this state, either in one
4 locality, or in traveling from place to place, a temporary or
5 transient business of selling goods, wares and merchandise;
6 and who, for the purpose of carrying on such business, use,
7 lease or occupy either in whole or in part, a room, building
8 or other structure, or who use, lease or occupy for such pur-
9 poses a room or rooms in any hotel or lodging house, for the
10 exhibition and sale of such goods, wares and merchandise;
11 and the person so engaged shall not be relieved from the pro-

12 visions of this section by reason of association temporarily
13 with any local dealer, trader, merchant or auctioneer, or by
14 conducting such temporary or transient business in connec-
15 tion with or as part of the business of, or in the name of, any
16 local dealer, trader, merchant or auctioneer. The provisions
17 of this section shall not apply to sales made to persons by
18 commercial travelers, or selling agents in the usual course of
19 business, nor to bona fide sales of goods, wares or merchandise
20 by sample for future delivery ; nor to hawkers or peddlers in
21 the streets, roads or highways, from packs or vehicles, nor to
22 persons selling meat or the products of the farm, garden or
23 dairy, nor to any sales of goods, wares or merchandise on the
24 grounds of any agricultural association during the continu-
25 ance of any annual fair held by such association ; nor to any
26 sales by societies acting for charitable, religious or benevolent
27 purposes ; nor to judicial sales directed by law, or under the
28 orders of any court ; nor to the sales of the common necessities
29 of life in any public market place.

30 (b) No itinerant vendor shall advertise, represent or hold
31 forth a sale of goods, wares or merchandise as a bankrupt,
32 insolvent, assignee, trustee, estate, executor, administrator,

33 receiver, attorney, manufacturer's, wholesale or closing-out
34 sale, or a sale of any goods damaged by smoke, fire, water or
35 otherwise, unless before so doing he shall state in writing,
36 under oath, to the clerk of the county in which such business
37 is proposed to be conducted at the time he makes application
38 for a license, hereinafter provided for, all the facts relating
39 to the reason and character of such special sale or advertised,
40 held forth, or represented, including a statement of the names
41 of the persons from whom such goods, wares or merchandise
42 were purchased, and the date of the delivery of the same to
43 the person applying for license; the place, if any, where such
44 goods, wares or merchandise were previously exposed for sale,
45 and such details as are necessary to exactly locate and fully
46 identify all such goods, wares and merchandise proposed to be
47 sold. And such itinerant vendor shall also include in such
48 statement the name and residence of the owner or owners in
49 whose interest the business is conducted, to be kept on file in
50 the office of such clerk of the county court, and a record shall
51 be kept by said clerk of all such statements, in convenient form
52 and open to public inspection.

53 (c) Every itinerant vendor desiring to do business within

54 this state shall deposit with such clerk of the county court the
55 sum of five hundred dollars, as a special deposit, before a
56 license shall be issued to him, as hereinafter provided, au-
57 thorizing him to do business in this state, in conformity with
58 the provisions of this article. Such deposit shall be held by
59 such clerk for a period of thirty days after such itinerant
60 vendor ceases to do business within this state, and after satis-
61 fying all claims which shall be made against him under the
62 next following subsection hereof, such clerk shall return such
63 deposit or such portion thereof as remains in his hands to
64 such itinerant vendor who deposited the same.

65 (d) The deposits so made with such clerk shall be subject
66 to attachment and execution on behalf of creditors, whose
67 claims arise in connection with the business conducted within
68 this state, and to the payment of fines and penalties incurred
69 by such itinerant vendor in violation of this article as may be
70 fixed by the judgment of appropriate courts having jurisdic-
71 tion thereof, as well as for any unpaid taxes assessed, laid or
72 charged, by any proper authorities, upon such goods, wares
73 and merchandise, and such deposit or any remaining portion
74 thereof shall not be paid to such itinerant vendor until all

75 outstanding claims or notices of claims, presented within
76 thirty days after he ceases to do business, are settled in full.

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

81 (f) Every itinerant vendor who sells or exhibits for sale at
82 public or private sale, any goods, wares or merchandise with-
83 out first obtaining a license therefor, and in all other respects
84 complying with the provisions of this article, or who makes
85 any false statement in reference to the matter set out in sub-
86 section (b) hereof, or who fails to comply with the require-
87 ments of any of the sections of this article, and every person,
88 whether principal or agent, who, by circular, handbill, news-
89 paper, or in any manner advertises such sale, as herein de-
90 scribed, before proper licenses are issued to the vendor, and
91 before he has complied with the provisions of this article, shall
92 be guilty of a violation of this article, and shall be punished
93 accordingly.

Sec. 34. *Ferries.* The annual license fee to operate a ferry
2 for public use shall be five dollars.

Sec. 40. *Application for and Issuance of Licenses.* All the
2 licenses provided for in this article shall be issued by the clerk
3 of the county court of the county where such business, ac-
4 tivity, trade or employment is proposed to be engaged in or
5 prosecuted, or by any other official expressly designated as
6 issuing agent, to any person making proper application, and
7 tendering in full the proper fee as specified in this article.
8 The said clerk, or other issuing agent, shall collect in full the
9 proper fee and determine to his satisfaction that all the con-
10 ditions precedent to the granting of such license have been
11 fulfilled by the applicant before issuing a certificate of license.
12 The clerk of the county court, or other issuing agent, may
13 obtain a certificate of license from the clerk of the circuit
14 court in the same manner and under the same conditions as
15 another person may obtain such certificate from the clerk of
16 the county court. The clerk of the circuit court, in relation to
17 such certificate issued by him, shall perform the same duties
18 and be subject to the same penalties as the clerk of the county
19 court would be in relation to a certificate issued by him.

Sec. 41. *Conditions Precedent to Doing Business.* Payment
2 in full of the proper fee as specified in this article, the issu-

3 ance of a certificate of license under the provisions of the
4 preceding section, and the fulfillment of all terms and condi-
5 tions of such grant shall be conditions precedent to the trans-
6 action of any business, activity, trade or employment for
7 which a license is required by this article.

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

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

 Sec. 44. *Designation of Specific Location on Certificate.*

2 Every certificate of license issued under the provisions of
3 section forty of this article shall designate the location of such
4 business, activity, trade or employment at some specified
5 building or other definite place, unless expressly provided
6 otherwise. Exercising any of the privileges granted by any
7 such license elsewhere than at such specified building or other
8 definite place shall be deemed to have been done without a
9 license. Any certificate which does not contain the designation
10 required by this section shall be null and void.

Sec. 45. *Time for Which Licenses Granted.* All annual
2 licenses issued under the provisions of this article shall be for
3 a period of one year beginning on the first day of July and
4 ending on the thirtieth day of the following June: *Provided,*
5 *however,* That in the event any business, activity, trade or
6 employment is begun after the first day of July of any year
7 a license effective until the thirtieth day of the following June
8 shall be issued upon the payment of that proportion of the
9 annual fee designated by this article as the number of months
10 remaining until the following thirtieth day of June, including
11 the month during which such license shall have been issued,
12 bears to twelve: *Provided further, however,* That no license

13 for any purpose for any length of time shall be issued for
14 less than two dollars. Each of the provisions of this section
15 shall be deemed subject to expressly contrary provisions else-
16 where in this article.

Sec. 46. *Appeals to Tax Commissioner.* Any person feeling
2 aggrieved by the decision of the clerk of the county court in
3 refusing to issue any license provided for in this article, in
4 the amount of the fee assessed therefor, or in any other re-
5 spect, or by the revocation of any such license by the county
6 court may, within thirty days from the date of such decision,
7 file a written petition with the state tax commissioner to re-
8 view such decision. The tax commissioner, or his specially
9 designated agent, shall review the decision and in his discre-
10 tion affirm, reverse or alter the same in any respect; and by
11 written notice direct the county clerk to issue or revoke the
12 certificate of license, or alter any of the conditions or terms
13 of its issuance, to conform to the findings of the tax commis-
14 sioner. The tax commissioner, or his agents, in reviewing such
15 decision, may administer oaths, take testimony, require the
16 attendance of any witnesses having knowledge of the matter

17 in controversy, and examine any pertinent books, papers,
18 records, memoranda or equipment of the petitioner.

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

Sec. 48. *Appeals to Supreme Court.* Any person feeling
2 aggrieved by the decision of the circuit court under the pro-
3 visions of the preceding section may appeal to the Supreme
4 Court of Appeals as in other civil cases.

Sec. 49. *Exhibition of Licenses.* Every person to whom a

2 certificate of license shall be issued under the provisions of
3 this article shall keep such certificate posted in a conspicu-
4 ous position in the place where the privileges of such license
5 are exercised.

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

Sec. 50. *Licenses, a Personal Privilege.* Every license is-
2 sued under the provisions of this article shall confer a per-
3 sonal privilege only to transact the business, activity, trade
4 or employment which may be the subject of the license and
5 shall not be exercised except by the person holding the same
6 unless and until assigned under the terms of the next section.
7 After any such assignment, the license shall be a personal
8 privilege of the assignee and shall not be exercised by any
9 person other than such assignee, unless and until again as-
10 signed under the terms of the next section.

Sec. 51. *Assignment of License.* Any license issued under
2 the provisions of this article may, unless otherwise specifically
3 provided, be assigned in the manner set out in this section to

4 any person to whom it might have been originally granted,
5 and in the event of the death of the licensee the license may
6 be assigned by his personal representative in like manner and
7 with like effect as might have been done by the licensee him-
8 self. A memorandum of the same shall be endorsed on the
9 face of the certificate of license by the assignor, and such
10 memorandum attested by the clerk of the county court who
11 granted the license, the state tax commissioner, or any of his
12 agents. If the assignee would have been subject to a greater
13 fee than the assignor, had the license originally been granted
14 to him, such assignment shall be valid only after the pay-
15 ment of the difference between such two fees, prorated how-
16 ever in the same manner as provided by section forty-five of
17 this article for the original issuance of licenses.

Sec. 52. *Effect of Change in Partnership or Name of*
2 *Firm.* No changes in the name of the firm, nor the taking in
3 of one or more new partners, nor the withdrawal of one or
4 more members of the firm, so long as at least one member re-
5 mains the same, shall be considered as terminating the privi-
6 leges of any license granted to such partners or firm.

Sec. 53. *Alteration of Place of Business.* Any license is-

2 sued under the provisions of this article may, unless other-
3 wise specifically provided, be altered in the manner set out in
4 this section so as to permit removal of such business, activity,
5 trade or employment to another location within the same
6 county if it might have been originally granted under such al-
7 tered conditions. A memorandum of the same shall be en-
8 dorsed on the face of the certificate of license by the holder
9 thereof, and such memorandum attested by the clerk of the
10 county court who granted the license, the state tax commis-
11 sioner, or any of his agents. If the holder thereof would have
12 been subject to a greater fee at the date of issuance than he
13 actually paid, had the license originally been granted to be
14 exercised at the proposed altered location, such alteration
15 shall be valid only after the payment of the difference be-
16 tween such two fees, prorated however in the same manner as
17 provided by section forty-five of this article for the original
18 issuance of licenses.

Sec. 54. *Revocation of License.* Any license issued under
2 the provisions of this article may be revoked, or any of the
3 terms and conditions of its issuance altered by the county
4 court whose clerk shall have granted the same, or by the

5 state tax commissioner, upon written petition of any inter-
6 ested person or upon its or his own motion, if a showing is
7 made of the violation by the licensee of any of the terms or
8 conditions of the license, or of any of the provisions of this
9 article. Ten days' written notice of the proposed revocation
10 and the privilege of being heard in person or by counsel shall
11 be given the licensee. In the event the license is revoked any
12 fee paid on account thereof shall be forfeited to the state.

Sec. 55. *Transmittal to State Auditor.* The clerk of every
2 county court shall transmit to the state auditor on or before
3 the fifteenth day of each month a true and complete list of
4 all persons to whom certificates of licenses have been issued in
5 his county during the next preceding month together with
6 all the fees collected therefor, specifying in such list the date
7 of every certificate, the amount of the fee assessed therefor,
8 the amount actually paid and such other particulars as may
9 be required by the state tax commissioner. Such list shall be
10 verified by the affidavit of the clerk. If no certificate of li-
11 cense was issued during any month, such fact shall be re-
12 ported to the auditor by the clerk of the county court, veri-
13 fied by his affidavit.

Sec. 56. *Enforcement Against County Clerk.* In the event
2 any county clerk fails to account as required by the preceding
3 section, the state auditor may, at any time after three months
4 following such failure, proceed by notice of motion or other
5 appropriate action in any court having jurisdiction against
6 such defaulting officer and the sureties on his official bond.
7 Judgment shall be entered in the case as the law and equity
8 may require, together with interest thereon at the rate of
9 twelve per centum per annum from the time of such failure
10 to account until actually paid.

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

Sec. 58. *Instructions by Tax Commissioner.* The state tax
2 commissioner shall give such instructions from time to time
3 to the county courts, to the clerks of the county courts, sher-

4 iffs 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 commis-
12 sioner, 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

16 of the taxes so collected. The tax commissioner, or his agents,
17 shall charge; either for issuing a certificate of license or for
18 attesting a memorandum of change or alteration on any cer-
19 tificate, the same fees as provided for county clerks in section
20 ten, article one, chapter fifty-nine of this Code.

Sec. 60. *Collection by Distraint.* The clerk of the county
2 court, the state tax commissioner, or his deputies, may dis-
3 train upon any personal property, including intangibles, of
4 any person delinquent in the payment of fees and penalties
5 accrued and unpaid under the provisions of this article. The
6 clerk of the county court, the tax commissioner, or his depu-
7 ties, may require the assistance of the sheriff of any county
8 in levying such distress in the county in which such sheriff
9 is an officer. A sheriff so collecting taxes due hereunder shall
10 be entitled to compensation in the amount of all penalties
11 collected over and above the principal amount of the tax due,
12 but in no case shall such compensation exceed twenty-five
13 dollars. All taxes and penalties so collected, less the com-
14 pensation above, shall be remitted within ten days after
15 collection to the issuing agent at whose request distraint was
16 made. The tax commissioner shall prescribe by general regu-

17 lation the manner of remittance of such funds and of allow-
18 ing the collecting officer the compensation due him under this
19 section. The sheriff shall be authorized to distrain imme-
20 diately upon request, as aforesaid, for the amount with
21 which any person may have been assessed under the pro-
22 visions of this article, and to sell upon ten days' notice so
23 much of said person's personal property, subject to such dis-
24 tress, as may be necessary to pay the tax so assessed, includ-
25 ing penalties.

Sec. 61. *Injunction Against Unlicensed Business.* If any
2 person engages in or prosecutes any business, activity, trade
3 or employment contrary to any of the provisions of this ar-
4 ticle, whether without obtaining a license therefor before
5 commencing the same, or by continuing the same after the
6 termination of the effective period of any such license, the
7 circuit court, or the judge thereof in vacation, of the county
8 in which such violation occurred, shall, upon proper applica-
9 tion in the name of the state, and after ten days' written no-
10 tice thereof to such person, grant an injunction prohibiting
11 such person from continuing such business, activity, trade or
12 employment until he has fully complied with the provisions

13 of this article. The remedy provided in this section shall be
14 in addition to all other penalties and remedies provided by
15 law.

Sec. 62. *Additional Penalties When Business Transacted*
2 *Without License.* Any person engaging in or prosecuting any
3 business, activity, trade or employment contrary to the pro-
4 visions of this article, whether without obtaining a license
5 therefor before commencing the same, or by continuing the
6 same after the termination of the effective period of any such
7 license, shall, in addition to paying the license fee, be liable
8 to the following penalties: If the license fee to which he is
9 subject is an annual one, or for a period of one month or
10 more, ten per cent of such fee for each month or part thereof
11 during which he had been in default; if the license fee afore-
12 said is for any period less than one month, ten per cent of
13 such fee for each such period or part thereof during which he
14 has been in default; and if the license fee aforesaid is for the
15 doing of a single act, ten per cent of such fee or each such act
16 done while in default. Such penalty shall be deemed a license
17 fee and shall be assessed and collected in the manner prescribed
18 in this article for other license fees, except that the certifi-

19 cate 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

4 shall be fined not less than twenty nor more than one hundred
5 dollars, or confined in jail not more than three months, or
6 both, in the discretion of the court; and each day or part
7 thereof that any violation shall continue shall be deemed to
8 constitute a distinct and separate offense and be punishable
9 accordingly. Justices of the peace shall have concurrent jur-
10 isdiction with any other courts having jurisdiction for the
11 trial of all misdemeanors arising under this section.

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

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

Sec. 75. *Tax on Corporations Holding Land.* Every cor-
2 poration, including railroad and other corporations, holding
3 more than ten thousand acres of land in this state shall pay
4 to the state a tax of five cents per acre for the privilege of
5 acquiring and holding of land so acquired and held by it in

6 addition to ten thousand acres. Such corporations shall, un-
7 der the hand of the president and seal of the corporation, and
8 attested by the secretary, apply to the secretary of state for
9 a certificate authorizing the holding of the number of acres
10 stated in such application, and pay the tax thereon; and it
11 shall be the duty of the secretary of state to issue to such
12 corporation a certificate stating the amount of tax paid and
13 the number of acres on which paid, and the number of acres
14 the corporation is thereby entitled to hold. Hereafter a do-
15 mestic corporation shall state in its agreement for incorpor-
16 ation and a foreign corporation shall state in its application
17 for authority to hold property and transact business in this
18 state, the number of acres it desires to hold, and pay the
19 taxes thereon to the secretary of state before the certificate
20 of incorporation or of authority is issued. If any corporation
21 desires to increase the number of acres it may hold, it shall
22 make application therefor to the secretary of state. Such ap-
23 plication shall be signed by the president of the corporation,
24 sealed with its corporate seal, and attested by the secretary,
25 and shall state the number of acres it then holds and the
26 number of acres it desires to hold. The secretary of state

27 shall collect the proper amount of tax and shall issue to the
28 corporation a certificate reciting the number of acres the
29 corporation may hold and the amount of tax paid to him. If
30 any corporation shall fail to comply with the provisions of
31 this section it shall be liable to a fine of not less than twenty-
32 five nor more than five hundred dollars, and be liable to pay
33 such tax due to the state with a penalty of ten per cent on the
34 total amount due, and be liable to all the provisions of sec-
35 tions eighty-six and eighty-seven of this article so far as
36 they are applicable. All moneys received by the secretary
37 of state under the provisions of this section shall be reported
38 to the auditor, and paid into the state treasury in the man-
39 ner prescribed for the payment of other moneys received by
40 him. No corporation shall be required to pay the said tax of
41 five cents per acre for license to hold any land in this state in
42 excess of ten thousand acres for which such corporation shall
43 have already paid a license tax at the time this law takes effect.

44 A corporation which has paid said tax may assign,
45 without further payment by the assignee of the tax required
46 hereunder, its license or authority to hold lands in excess of
47 ten thousand acres provided the assignee shall be a corpora-

48 tion organized solely to conduct the same general business and
49 with the same stock ownership as the original licensee and
50 such assignment be accompanied by a conveyance and trans-
51 fer to such assignee corporation of all the lands and other
52 assets of the original licensee. Such assignment shall be filed
53 with the secretary of state who, upon being satisfied that the
54 assignee corporation has conformed to the foregoing require-
55 ments, shall issue a certificate authorizing such assignee cor-
56 poration to hold the same number of acres the original li-
57 censee was authorized to hold.

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

Section 77. *Relief from Assessment of Corporation License*

2 *Tax.* Any corporation feeling aggrieved at the assessment of
3 its license tax by the auditor, under the provisions of this ar-
4 ticle may apply to the board of public works for relief; and
5 the board shall have authority to consider such case, and also
6 cases of the insolvency or financial distress of any corpor-
7 ation or any other case involving such license tax. In any
8 such case the board may fix the amount to be paid by such
9 corporation in full discharge of the license tax and penalties
10 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
12 and a certified copy thereof shall be delivered to the auditor
13 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
3 on its charter for the fiscal year beginning on the first day
4 of July of each year, based on its authorized capital stock
5 as follows: If the authorized capital stock be five thousand
6 dollars, or less, twenty dollars; if more than five thousand
7 dollars and not more than ten thousand dollars, thirty dol-
8 lars; if more than ten thousand dollars and not more than
9 twenty-five thousand dollars, forty dollars; if more than

10 twenty-five thousand dollars, and not more than fifty thou-
11 sand dollars, fifty dollars; if more than fifty thousand dol-
12 lars and not more than seventy-five thousand dollars, eighty
13 dollars; if more than seventy-five thousand dollars and not
14 more than one hundred thousand dollars, one hundred dollars;
15 if more than one hundred thousand dollars and not more than
16 one hundred and twenty-five thousand dollars, one hundred
17 and ten dollars; if more than one hundred and twenty-five
18 thousand dollars and not more than one hundred and fifty
19 thousand dollars, one hundred and twenty dollars; if more
20 than one hundred and fifty thousand dollars and not more
21 than one hundred and seventy-five thousand dollars, one hun-
22 dred and forty dollars; if more than one hundred and
23 seventy-five thousand dollars and not more than two hundred
24 thousand dollars, one hundred and fifty dollars; if more
25 than two hundred thousand dollars and not more than one
26 million dollars, one hundred and eighty dollars, and an ad-
27 ditional twenty cents on each one thousand dollars, or frac-
28 tion thereof, in excess of two hundred thousand dollars; if
29 more than one million dollars and not more than fifteen mil-
30 lion dollars, three hundred and forty dollars, and an ad-

31 ditional fifteen cents on each one thousand dollars, or frac-
32 tion thereof, in excess of one million dollars; if more than
33 fifteen million dollars, twenty-five hundred dollars. The li-
34 cense tax collected hereunder shall be in addition to the an-
35 nual fee, if any, payable to the auditor as statutory attorney
36 in fact. For the purpose of the assessment of the license tax
37 provided by this section, and that provided by sections eighty
38 and eighty-one of this article, and for no other purpose,
39 shares of stock having no par value shall be presumed to be
40 of the par value of twenty-five dollars each: *Provided, how-*
41 *ever,* That if such stock was originally issued for a consider-
42 ation greater than twenty-five dollars per share, such license
43 taxes as are required to be paid to the auditor under the pro-
44 visions of sections seventy-nine, eighty and eighty-one of this
45 article shall be computed upon the basis of the consideration
46 for which such stock was issued.

Sec. 79. *Assessment and Collection of Tax on Domestic*
2 *Corporations.* When application is made to the secretary of
3 state for a certificate of incorporation, it shall be his duty
4 to make the assessment and collect the license tax for the first
5 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 next 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

27 sixty days after its board of directors shall have authorized
28 the issue of all or a portion of such stock under the provisions
29 of article one, chapter thirty-one of this Code, make a report
30 to the auditor stating the number of shares of stock so author-
31 ized to be issued and the consideration for which such stock
32 is authorized to be issued. Such report shall be verified by
33 the affidavit of the president, secretary or other executive
34 officer of such corporation.

Section 80. *License Tax on Foreign Corporations.* Every
2 foreign corporation holding property or doing business in
3 this State shall make report to the auditor annually in the
4 third month preceding the beginning of the license tax year,
5 in which report shall be set out: (a) The name of each cor-
6 poration, the name of the state or county by which incorpor-
7 ated, the date of the incorporation, the date of the certificate
8 of the secretary of state authorizing it to do business in this
9 State, the place of its principal office, the names and post-
10 office addresses of its president, secretary, and of its officers,
11 if any, charged with the duty of making returns of its prop-
12 erty for taxation and the name and post-office address of its
13 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

35 of this article, plus fifty per cent of such tax: *Provided, That*
36 no such corporation shall pay an annual license tax of less
37 than one hundred and fifty dollars, which shall be in ad-
38 dition to the fee of the auditor as statutory attorney in fact.
39 The auditor may in any case require such additional infor-
40 mation as he may deem necessary to enable him to assess and
41 fix the just amount of license tax of such corporation; and it
42 shall be his duty to notify every such corporation of the
43 amount so assessed by him, and it shall be the duty of the
44 corporation to pay the same to the auditor of the State within
45 thirty days thereafter, and if it fail to do so it shall be liable
46 to the penalties prescribed in sections eighty-six and eighty-
47 seven of this article.

Sec. 81. *Preliminary Report by Foreign Corporations; As-*
2 *essment; Collection of Taxes.* Every foreign corporation at
3 the time of its application for the certificate mentioned in
4 section seventy-nine, article one of chapter thirty-one of this
5 Code, shall file with the secretary of state a report prelimin-
6 ary to the annual report hereinbefore provided for, which
7 preliminary report shall contain sufficient information upon
8 which to base an assessment of its license tax for the then

9 current year. It shall be the duty of the secretary of state to
10 make assessment of its license tax for such year, and he may
11 require such further information as he may deem necessary
12 for that purpose. Before issuing such certificate the secretary
13 of state shall collect the amount of license tax he finds to be
14 proper for the license tax year ending with the thirtieth day
15 of the last month of the license tax year. If the certificate be
16 issued after the last day of the third month of the license tax
17 year and before the first day of the ensuing license tax year,
18 the secretary of state shall assess and collect such taxes at
19 the rate of one-tenth the amount of the annual license tax
20 for each month or fractional part of a month to ensue be-
21 fore the first day of the ensuing license tax year. Thereafter
22 on or before the first day of the license tax year next follow-
23 ing the date of the certificate of authority and on or before
24 every succeeding first day of the license tax year the auditor
25 shall collect such tax for a full year: *Provided*, That if the
26 certificate be issued in either of the last two months of the
27 license tax year, the secretary of state shall assess and collect
28 the license tax for such month, as well as for a full year be-
29 ginning 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

6 year, in each year, to notify every corporation, liable to the
7 tax imposed by this article, of the time of payment of such
8 tax and the amount thereof, together with the fee, if any,
9 payable to the auditor as statutory attorney in fact; such
10 notices may be sent through the mails, addressed to the cor-
11 poration at its last known post-office address as shown by the
12 records in the office of the secretary of state. If the auditor
13 shall make a mistake in the amount of such tax such corpora-
14 tion may file a sworn certificate of the president, vice pres-
15 ident or secretary of the corporation, showing such mistake,
16 or showing the actual amount of tax due; and, in that event,
17 it shall be the duty of the auditor to accept the amount due
18 as shown by such certificate, unless contrary to provisions of
19 this article. At the time of making payment to the auditor
20 every domestic corporation shall deliver to him a statement
21 which shall show the name of the corporation, the date of its
22 charter, the name and post-office address of its attorney of
23 record in this state, if any, the names and post-office addresses
24 of its president, secretary and treasurer, the amount of its
25 authorized capital stock, the number of acres of land it holds
26 in this state if the number exceeds ten thousand acres, and

27 such other facts as the auditor may require. Such statement
28 shall be signed by the president, secretary or treasurer of the
29 corporation. The amount of such tax shall be deemed a debt
30 due the state, and shall be a lien as to an innocent purchaser
31 for value, on the property and assets of the corporation prior
32 to all other liens, except the lien of the taxes levied on its
33 property for state, county and district purposes, from the
34 time a notice of such lien, specifying the year and the amount
35 for which the lien is claimed, is filed in the office of the clerk
36 of the county court of the county in which the property sub-
37 ject to such liens is situated. Such clerk shall, upon the filing
38 in his office of any such notice, record such notice in a sep-
39 arate docket in his office to be known as "Corporation License
40 Tax Lien Docket", and index the same in the name of the
41 corporation against whom the lien is claimed. Upon payment
42 of such lien debt there shall be executed by the auditor and
43 delivered to the clerk of the county court in whose office
44 notice of such lien is filed a release thereof, which said re-
45 lease shall be filed and recorded by such clerk in like manner
46 as releases of judgment liens are filed and recorded. Such
47 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

22 amount of tax and penalties due therefrom, which notice shall
23 be mailed at least thirty days before the first day of the fifth
24 month of the license tax year.

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

Sec. 86. *Suit to Enforce Payment of Corporation License*
2 *Tax.* Within thirty days after such first day of the fifth
3 month of the license tax year the auditor shall certify to the
4 governor and the secretary of state a list of all such delin-
5 quent corporations, domestic and foreign. The secretary of
6 state shall preserve the list in his office, and a certificate from
7 him that the name of any corporation mentioned in such cer-
8 tificate is delinquent in the payment of the license tax imposed
9 by this article shall be prima facie evidence thereof. Within
10 thirty days after receiving such list from the auditor the

11 governor shall issue his proclamation, in which he shall de-
12 clare the delinquency of every such corporation. A copy of
13 such proclamation shall be filed and recorded in the office of
14 the secretary of state, and be published in such newspapers
15 as the governor may designate, not exceeding one in each con-
16 gressional district; the costs of such publication shall be paid
17 by the governor when allowed by the board of public works,
18 sixty days after the date of the publication of such proclama-
19 tion, it shall be the duty of the attorney general to institute
20 on the chancery side of the circuit court, in the county in
21 which the seat of government is, a suit or proceeding, or suits
22 or proceedings, in the name of the State, in which such de-
23 linquent corporations shall be made defendants; in the bill
24 or petition so filed it shall only be necessary to allege that the
25 corporations therein made defendants have failed to pay such
26 license tax, and that each of them justly owes to the State the
27 amount of license tax, penalty and fines stated therein, in
28 connection with the name of the corporation, which amount
29 shall be computed up to the first day of the month succeeding
30 that in which such bill or petition is filed. No such corpora-
31 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

53 a receiver for any such corporation and order its assets mar-
54 shalled and distributed among its creditors; and may, on
55 motion of the attorney general, grant an injunction against
56 any such corporation restraining it from the exercise of any
57 franchise or the transaction of any business within this State,
58 until such tax and the costs be paid. Any person or persons
59 who shall exercise or attempt to exercise any powers under
60 the charter of any such corporation, after the issuing of the
61 governor's proclamation, shall be guilty of a misdemeanor,
62 and shall be punished by imprisonment not exceeding one
63 year, or a fine not exceeding one thousand dollars, or both,
64 in the discretion of the court. The words "license tax" used
65 in this section include, in addition to the amount of license
66 tax proper, all penalties and fines accruing for failure to pay
67 such tax, the annual fee of the auditor as statutory attorney
68 in fact, and the cost of any suit or proceeding to enforce the
69 collection of the same. When two or more corporations are
70 included in one suit or proceeding the court shall apportion
71 the cost thereof among them as it may deem just.

Sec. 87. *Process in Such Suit; Record of Forfeiture, Reva-*
2 *cation or Dissolution.* In any such suit or proceeding process

3 shall be served in the manner provided by law. The attorney
4 general may cause a copy of any order of publication to be
5 mailed to each corporation at its last known post-office ad-
6 dress as aforesaid. It shall be the duty of the clerk of every
7 court of this State in which any proceedings are had which
8 result in the forfeiture of the charter of any corporation
9 issued under the laws of this State, or result in the dissolu-
10 tion or extinction of any such corporation, or in the revoca-
11 tion of the rights and privileges, of any foreign corporation
12 to do business in this State, to notify the secretary of state of
13 any such forfeiture, dissolution, extinction or revocation, in
14 which report he shall state the name of the court, the name
15 of the corporation, the nature of the proceedings and the date
16 of the order, decree or judgment, and such other pertinent
17 matter as may be required by the secretary of state; and the
18 secretary of state shall file and record such report in his
19 office, and aptly note the same in the indexes of corporations
20 kept in his office. If any clerk fail to make such report he
21 shall be liable to a fine of not exceeding one hundred dollars.

Sec. 88. *Corporations Exempt from License Tax.* Nothing
2 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*
2 *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

10 set out in such report the names of all corporations to which
11 he issued, during such preceding month, certificates of in-
12 crease or decrease of stock, or of shares of stock, or of par
13 value of shares of stock; certificates of change of name or of
14 change of location of principal office; and a statement of all
15 moneys received by him during such preceding month from
16 all sources and due to the State, and pay the same into the
17 treasury; if he fail to do so it shall be the duty of the auditor
18 to report such failure to the governor.

Sec. 90. *When Article Takes Effect.* This article shall take
2 effect from passage: *Provided, however,* That all licenses here-
3 tofore issued shall remain in full force and effect during the
4 period for which issued.

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

E. O. Wiseman

Chairman Senate Committee

Lee W. Walker

Chairman House Committee

Originated in the *House of Delegates*

Takes effect *from* passage

Charles H. ...

Clerk of the Senate

Mo S. Hall

Clerk of the House of Delegates

Wm. M. ...

President of the Senate

James Kay Thomas

Speaker House of Delegates

The within *approved* this the *17th*

day of *March*, 1939.

James ...

Governor.



Filed in the office of the Secretary of State
of West Virginia **MAR 17 1939**
Wm. S. O'BRIEN,
Secretary of State