WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1957

ENROLLED

HOUSE BILL No. 87

(By Mr. Myles)

PASSED March 8, 1957

In Effect July 1, 1957
ENROLLED

House Bill No. 87
(By Mr. Myles)

[Passed March 3, 1957; in effect July 1, 1957.]

AN ACT to repeal article thirteen-a, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, and to enact in lieu thereof a new article thirteen-a, chapter eleven, relating to the license for establishing, maintaining or operating a store.

Be it enacted by the Legislature of West Virginia:

That article thirteen-a, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed, and that a new article, thirteen-a, be enacted to read as follows:

Section 1. Definitions.—The term “person” shall include any group or combination acting as a unit, individual, committee, guardian, trustee, executor, administrator, partnership, co-partnership, joint adventure, association, trust, firm or corporation, either domestic or foreign,
which is controlled or held with others by majority stock
ownership or ultimately controlled or directed by one
management or association of ultimate management.

The term “special store” as used in this article shall be
construed to mean and include any store or stores or any
mercantile establishment or establishments, in which
goods, wares, or merchandise of any kind except cigar-
ettes, tobacco products and soft drinks are purchased,
ordered, sold or offered for sale, either at retail or whole-
sale, and which contains no coin operated device, or de-
vices, owned and operated by the store proprietor.

The term “general store” as used in this article shall be
construed to mean and include any store or stores or any
mercantile establishment or establishments, in which
goods, wares, or merchandise of any kind are purchased,
ordered, sold or offered for sale either at retail or whole-
sale.

For the purpose of this article, no coin operated device,
or devices, shall be construed to be a store.

Sec. 2. Unlawful to Operate Store Without License.—
It shall be unlawful for any person to establish, operate
or maintain any store in this state without first having obtained a license so to do from the state tax commissioner as hereinafter provided.

Sec. 3. Annual License Tax.—Every person establishing, operating or maintaining one or more special stores within this state under the same general management, supervision or ownership shall pay the annual license taxes hereinafter prescribed for the privilege of establishing, operating or maintaining such stores: (1) For one store or more, but not to exceed five stores, five dollars for each store; (2) for six stores, or more, but not to exceed ten stores, twenty dollars for each additional store; (3) for eleven stores, or more, but not to exceed fifteen stores, forty dollars for each additional store; (4) for sixteen stores, or more, but not to exceed twenty stores, sixty dollars for each additional store; (5) for twenty-one stores or more, but not to exceed thirty stores, eighty dollars for each additional store; (6) for thirty-one stores, or more, but not to exceed fifty stores, two hundred dollars for each additional store; (7) for fifty-one stores, or more, but not to exceed seventy-five stores,
four hundred dollars for each additional store; (8) for each store in excess of seventy-five, five hundred dollars for each additional store.

Every person establishing, operating or maintaining one or more general stores within this state under the same general management, supervision or ownership shall pay the annual license taxes hereinafter prescribed for the privilege of establishing, operating or maintaining such stores: (1) For one store or more, but not to exceed five stores, fifteen dollars for each store; (2) for six stores, or more, but not to exceed ten stores, forty dollars for each additional store; (3) for eleven stores, or more, but not to exceed fifteen stores, eighty dollars for each additional store; (4) for sixteen stores, or more, but not to exceed twenty stores, one hundred twenty dollars for each additional store; (5) for twenty-one stores or more, but not to exceed thirty stores, one hundred sixty dollars for each additional store; (6) for thirty-one stores, or more. but not to exceed fifty stores, four hundred dollars for each additional store; (7) for fifty-one stores, or more. but not to exceed seventy-five stores, eight hundred dol-
lars for each additional store; (8) for each store in excess of seventy-five, one thousand dollars for each additional store.

Sec. 4. Exemptions.—The establishment, operation or maintenance of stores by the following shall be exempt from the license tax imposed by this article: (1) The United States of America, the state of West Virginia and its political subdivisions; (2) religious and charitable organizations; (3) any person or persons engaged within this state in the business of producing agricultural products who, individually or collectively, sell in such store only agricultural products which he or they have produced.

Sec. 5. License Tax for Part Year.—Each license issued prior to the first day of January of any year shall be charged for at the full rate and each license issued on or after the first day of January shall be charged for at one-half of the full rate, as prescribed in section three.

Sec. 6. Application for License; Filing Fee.—Any person desiring to establish, operate or maintain a store in this state shall apply to the state tax commissioner for a
license so to do. The application for a license shall be
made on the form which shall be prescribed and furnished
by the state tax commissioner and shall set forth the name
and address of the applicant, the name and location of
such store, and such other facts as the state tax com-
missioner may require. If the applicant desires to operate
more than one such store, he shall make a separate appli-
cation for each such store. Each such application shall
be accompanied by a filing fee of fifty cents for each license
requested, and by the license tax prescribed in section
three.

Sec. 7. Return of Application for Correction; Granting
and Display of License.—As soon as practicable after the
receipt of any such application, the state tax commissioner
shall carefully examine such application to ascertain
whether it is in proper form and contains the necessary
and requisite information. If, upon examination, the state
tax commissioner shall find that any such application is
not in proper form and does not contain the necessary and
requisite information, he shall return such application
for correction. If an application is found to be satisfactory,
and if the filing fee and license tax, as herein prescribed, shall have been paid, the state tax commissioner shall issue to the applicant a license for each store for which an application for license shall have been made. Each licensee shall display the license so issued in a conspicuous place in the store for which such license is issued.

Sec. 8. License not Assignable and not Transferable.—The license imposed by this article shall not be assignable and shall not be transferable.

Sec. 9. Change of Location of Store.—Licenses issued under the provisions of this article may be altered so as to permit removal of the store to another location. In order to be effective at the new location, however, the certificate of license must show upon its face an endorsement of the change by the state tax commissioner.

Sec. 10. Expiration and Renewal of License.—All licenses shall be so issued as to expire on the thirtieth day of June of each year. On or before the first day of July of each year, every person having a license shall apply to the state tax commissioner for a renewal for the year
next ensuing, unless such person has ceased to operate
such store or does not propose to continue operation of
the store during the year next ensuing, in which event
he shall notify the state tax commissioner that he has
ceased operation of the store or that he proposes to cease
operation of the store prior to the first day of July of the
year next ensuing. All applications for renewal shall be
made on the forms prescribed by the state tax commis-
sioner. Each application for a renewal shall be accom-
pained by a filing fee of fifty cents for each license re-
quested and by the license tax as prescribed in section
three.

Sec. 11. Penalties.—Any person who establishes, oper-
ates or maintains a store without obtaining a license
therefor or continues to operate the same after the termi-
nation of a license therefor shall, in addition to paying the
license tax, be subject to a penalty of ten per cent of such
license tax for each month or part thereof during which
he had been in default. This penalty shall be assessed
and collected in the same manner as the license tax.

Sec. 12. Injunction Against Unlicensed Store.—If any
person establishes, operates or maintains a store without obtaining a license therefor, or continues to operate or maintain such store after the termination of the effective period of any such license, the circuit court, or the judge thereof in vacation, of the county in which such violation occurred, shall, upon proper application in the name of the state, and after ten days written notice thereof to such person, grant an injunction prohibiting such person from continuing the operation of such store until he has fully complied with the provisions of this article.

Sec. 13. Collection of License Taxes for Past Years.—

Any person establishing, operating or maintaining a store contrary to the provisions of this article, whether without obtaining a license therefor before commencing the same, or by continuing the same after the termination of the effective period of any such license, shall, in addition to all other penalties provided for in this article, be liable to the payment of all license taxes and penalties for a period not exceeding five years.

Sec. 14. Collection by Action or Suit.—The state tax commissioner may collect any license tax and penalty
unpaid under the provisions of this article by action in
debt, motion for judgment or other appropriate proceed-
ing, including suit in the court of any justice, in the county
in which the store or any one of the stores is located.

Sec. 15. Injunction Against Collection of License Tax;

Payment Under Protest.—No injunction shall issue from
any court in this state enjoining the collection of any
license tax provided herein, but the party claiming that
any license tax is not due, for any reason, shall pay the
same under protest and petition for refund in accordance
with the provisions of section two-a, article one of this
chapter.

Sec. 16. Criminal Liability for Violations of this Article.

—Any person who violates any of the provisions of this
article shall be guilty of a misdemeanor and upon convic-
tion thereof shall be fined not less than twenty-five dollars
nor more than one hundred dollars and each and every
day that such violation shall continue shall constitute a
separate and distinct offense.

Sec. 17. Cost of Administration; Disposition of Money

Collected.—Any and all expenses incurred by the state
tax commissioner in the administration of this article shall be paid out of the funds accruing from the taxes and fees imposed by and collected under the provisions of this article. All money collected under the provisions of this article shall be paid into the state treasury, monthly, by the state tax commissioner, and shall be added to and shall constitute a part of the general fund for the elementary schools.

Sec. 18. Effective Date; Refund of Duplicate Tax.—

This article shall become effective on the first day of July, one thousand nine hundred fifty-seven. The state tax commissioner shall refund to each licensee one-half of the tax and filing fee which the licensee has paid for the calendar year one thousand nine hundred fifty-seven by the issuance of his requisition in accordance with the refund procedure provided in section two-a, article one of this chapter. Return of the old license to the state tax commissioner together with application, tax and filing fee for the new license, shall constitute a sufficient petition for the refund provided herein.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

E. H. McCourt
Chairman Senate Committee

Chairman House Committee

Originated in the House of Delegates

Takes effect July 1, 1957

Herbert H. Haynes
Clerk of the Senate

C. W. Blankenship
Clerk of the House of Delegates

Ralph J. Bean
President of the Senate

W. C. Cawley
Speaker, House of Delegates

The within approved this the 15th day of March 1, 1957.

D. Anderson
Governor

Filed in the Office of the Secretary of State of West Virginia
D. Pitt O'Brien
Secretary of State

MAR 15 1957