

# WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1957

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# ENROLLED

HOUSE BILL No. 87

(By Mr. Myler)

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PASSED March 8 1957

In Effect July 1, 1957 Passage

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**ENROLLED**  
**House Bill No. 87**  
(By MR. MYLES)

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[Passed March 8, 1957; in effect July 1, 1957.]

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article thirteen-a, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed, and that a new article, thirteen-a, be enacted to read as follows: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

2 any group or combination acting as a unit, individual,

3 committee, guardian, trustee, executor, administrator,

4 partnership, co-partnership, joint adventure, association,

5 trust, firm or corporation, either domestic or foreign,

6 which is controlled or held with others by majority stock  
7 ownership or ultimately controlled or directed by one  
8 management or association of ultimate management.

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

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

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

Sec. 2. *Unlawful to Operate Store Without License.*—

2 It shall be unlawful for any person to establish, operate

3 or maintain any store in this state without first having  
4 obtained a license so to do from the state tax commis-  
5 sioner as hereinafter provided.

Sec. 3. *Annual License Tax*.—Every person establish-  
2 ing, operating or maintaining one or more special stores  
3 within this state under the same general management,  
4 supervision or ownership shall pay the annual license  
5 taxes hereinafter prescribed for the privilege of estab-  
6 lishing, operating or maintaining such stores: (1) For  
7 one store or more, but not to exceed five stores, five dol-  
8 lars for each store; (2) for six stores, or more, but not to  
9 exceed ten stores, twenty dollars for each additional  
10 store; (3) for eleven stores, or more, but not to exceed  
11 fifteen stores, forty dollars for each additional store; (4)  
12 for sixteen stores, or more, but not to exceed twenty  
13 stores, sixty dollars for each additional store; (5) for  
14 twenty-one stores or more, but not to exceed thirty stores,  
15 eighty dollars for each additional store; (6) for thirty-  
16 one stores, or more, but not to exceed fifty stores, two  
17 hundred dollars for each additional store; (7) for fifty-  
18 one stores, or more, but not to exceed seventy-five stores,

19 four hundred dollars for each additional store; (8) for  
20 each store in excess of seventy-five, five hundred dollars  
21 for each additional store.

22 Every person establishing, operating or maintaining one  
23 or more general stores within this state under the same  
24 general management, supervision or ownership shall pay  
25 the annual license taxes hereinafter prescribed for the  
26 privilege of establishing, operating or maintaining such  
27 stores: (1) For one store or more, but not to exceed five  
28 stores, fifteen dollars for each store; (2) for six stores, or  
29 more, but not to exceed ten stores, forty dollars for each  
30 additional store; (3) for eleven stores, or more, but not  
31 to exceed fifteen stores, eighty dollars for each additional  
32 store; (4) for sixteen stores, or more, but not to exceed  
33 twenty stores, one hundred twenty dollars for each ad-  
34 ditional store; (5) for twenty-one stores or more, but not  
35 to exceed thirty stores, one hundred sixty dollars for  
36 each additional store; (6) for thirty-one stores, or more.  
37 but not to exceed fifty stores, four hundred dollars for  
38 each additional store; (7) for fifty-one stores, or more.  
39 but not to exceed seventy-five stores, eight hundred dol-

40 lars for each additional store; (8) for each store in excess  
41 of seventy-five, one thousand dollars for each additional  
42 store.

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

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

Sec. 6. *Application for License; Filing Fee.*—Any per-  
2 son desiring to establish, operate or maintain a store in  
3 this state shall apply to the state tax commissioner for a

4 license so to do. The application for a license shall be  
5 made on the form which shall be prescribed and furnished  
6 by the state tax commissioner and shall set forth the name  
7 and address of the applicant, the name and location of  
8 such store, and such other facts as the state tax com-  
9 missioner may require. If the applicant desires to operate  
10 more than one such store, he shall make a separate appli-  
11 cation for each such store. Each such application shall  
12 be accompanied by a filing fee of fifty cents for each license  
13 requested, and by the license tax prescribed in section  
14 three.

Sec. 7. *Return of Application for Correction; Granting*  
2 *and Display of License.*—As soon as practicable after the  
3 receipt of any such application, the state tax commissioner  
4 shall carefully examine such application to ascertain  
5 whether it is in proper form and contains the necessary  
6 and requisite information. If, upon examination, the state  
7 tax commissioner shall find that any such application is  
8 not in proper form and does not contain the necessary and  
9 requisite information, he shall return such application  
10 for correction. If an application is found to be satisfactory,

11 and if the filing fee and license tax, as herein prescribed,  
12 shall have been paid, the state tax commissioner shall  
13 issue to the applicant a license for each store for which  
14 an application for license shall have been made. Each  
15 licensee shall display the license so issued in a con-  
16 spicuous place in the store for which such license is  
17 issued.

Sec. 8. *License not Assignable and not Transferable.*—

2 The license imposed by this article shall not be assignable  
3 and shall not be transferable.

Sec. 9. *Change of Location of Store.*—Licenses issued

2 under the provisions of this article may be altered so as  
3 to permit removal of the store to another location. In  
4 order to be effective at the new location, however, the  
5 certificate of license must show upon its face an endorse-  
6 ment of the change by the state tax commissioner.

Sec. 10. *Expiration and Renewal of License.*—All li-

2 censes shall be so issued as to expire on the thirtieth day  
3 of June of each year. On or before the first day of July  
4 of each year, every person having a license shall apply  
5 to the state tax commissioner for a renewal for the year



6 next ensuing, unless such person has ceased to operate  
7 such store or does not propose to continue operation of  
8 the store during the year next ensuing, in which event  
9 he shall notify the state tax commissioner that he has  
10 ceased operation of the store or that he proposes to cease  
11 operation of the store prior to the first day of July of the  
12 year next ensuing. All applications for renewal shall be  
13 made on the forms prescribed by the state tax commis-  
14 sioner. Each application for a renewal shall be accom-  
15 panied by a filing fee of fifty cents for each license re-  
16 quested and by the license tax as prescribed in section  
17 three.

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

Sec. 12. *Injunction Against Unlicensed Store.*—If any

2 person establishes, operates or maintains a store without  
3 obtaining a license therefor, or continues to operate or  
4 maintain such store after the termination of the effective  
5 period of any such license, the circuit court, or the judge  
6 thereof in vacation, of the county in which such violation  
7 occurred, shall, upon proper application in the name of  
8 the state, and after ten days written notice thereof to such  
9 person, grant an injunction prohibiting such person from  
10 continuing the operation of such store until he has fully  
11 complied with the provisions of this article.

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

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

Sec. 14. *Collection by Action or Suit.*—The state tax

2 commissioner may collect any license tax and penalty

3 unpaid under the provisions of this article by action in  
4 debt, motion for judgment or other appropriate proceed-  
5 ing, including suit in the court of any justice, in the county  
6 in which the store or any one of the stores is located.

Sec. 15. *Injunction Against Collection of License Tax;*  
2 *Payment Under Protest.*—No injunction shall issue from  
3 any court in this state enjoining the collection of any  
4 license tax provided herein, but the party claiming that  
5 any license tax is not due, for any reason, shall pay the  
6 same under protest and petition for refund in accordance  
7 with the provisions of section two-a, article one of this  
8 chapter.

Sec. 16. *Criminal Liability for Violations of this Article.*  
2 —Any person who violates any of the provisions of this  
3 article shall be guilty of a misdemeanor and upon convic-  
4 tion thereof shall be fined not less than twenty-five dollars  
5 nor more than one hundred dollars and each and every  
6 day that such violation shall continue shall constitute a  
7 separate and distinct offense.

Sec. 17. *Cost of Administration; Disposition of Money*  
2 *Collected.*—Any and all expenses incurred by the state

3 tax commissioner in the administration of this article  
4 shall be paid out of the funds accruing from the taxes and  
5 fees imposed by and collected under the provisions of  
6 this article. All money collected under the provisions of  
7 this article shall be paid into the state treasury, monthly,  
8 by the state tax commissioner, and shall be added to and  
9 shall constitute a part of the general fund for the ele-  
10 mentary schools.

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

2 This article shall become effective on the first day of July,  
3 one thousand nine hundred fifty-seven. The state tax  
4 commissioner shall refund to each licensee one-half of  
5 the tax and filing fee which the licensee has paid for the  
6 calendar year one thousand nine hundred fifty-seven by  
7 the issuance of his requisition in accordance with the  
8 refund procedure provided in section two-a, article one of  
9 this chapter. Return of the old license to the state tax  
10 commissioner together with application, tax and filing fee  
11 for the new license, shall constitute a sufficient petition  
12 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

Witchellton  
Chairman House Committee

Originated in the House of Delegates

Takes effect July 1, 1957 passage.

Wm. H. Meyer  
Clerk of the Senate

C. Blankenship  
Clerk of the House of Delegates

Ralph J. Bean  
President of the Senate

W. E. Fleming  
Speaker, House of Delegates

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

Leif H. Hudson  
Governor



Filed in the Office of the Secretary of State  
MAR 15 1957  
of West Virginia

D. PITT O'BRIEN  
SECRETARY OF STATE