WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1963

ENROLLED
COM. SUB. FOR
SENATE BILL NO. 125

(By Mr. .................................................................)

PASSED ................................................... 1963

In Effect 90 days from Passage

Filed in Office of the Secretary of State
of West Virginia 3-16-63
JOE F. BURDETT
SECRETARY OF STATE
ENROLLED
COMMITTEE SUBSTITUTE
FOR
Senate Bill No. 125

[Passed March 9, 1963; in effect ninety days from passage.]

AN ACT to repeal sections seventeen and eighteen, article eight, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, and to amend article ten of said chapter by adding thereto five new sections, designated sections twenty-five, twenty-six, twenty-seven, twenty-eight and twenty-nine, making it unlawful for any person to engage in work, labor or business on Sunday or to employ any person to engage in work, labor or business on Sunday, with certain exceptions and limitations; declaring that the exemption for works of necessity or charity shall not be deemed to include selling at retail or wholesale or by auction, or offering or
attempting to sell on Sunday any of certain specifically named items of merchandise and personal property; declaring that no contract shall be deemed void because it is made on Sunday; providing penalties for violations; declaring that each Sunday a person is engaged in work, labor or business or employs others to be so engaged, in violation of section twenty-five of said article, shall constitute a separate offense; giving justices of the peace concurrent jurisdiction with circuit and criminal courts of any such offense or offenses; providing for a local option election; and providing a separability clause.

Be it enacted by the Legislature of West Virginia:

That sections seventeen and eighteen, article eight, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that article ten of said chapter be amended by adding thereto five new sections, designated sections twenty-five, twenty-six, twenty-seven, twenty-eight and twenty-nine, to read as follows:

Article 10. Crimes Against Public Policy.

Section 25. Unlawful to Engage in Work, Labor or Busi-
ness on Sunday.—On the first day of the week, commonly
known and designated as Sunday, it shall be unlawful for any person to engage in work, labor or business, or to employ any person to engage in work, labor or business, except in household or other work of necessity or charity. The exemption for works of necessity or charity contained in the preceding sentence shall not be deemed to include selling at retail or wholesale or by auction, or offering or attempting to sell on Sunday any of the following: Jewelry; precious and semiprecious stones; silverware; watches; clocks; luggage; musical instruments; recordings; toys; clothing and wearing apparel; clothing accessories; footwear; textile yard goods; housewares; china; kitchenware; home, business, office or outdoor furniture, furnishings and appliances; sporting goods (excluding sales or rental of bathing, boating and fishing paraphernalia and equipment, and sales or rental on the premises where sports, athletic games and events or recreational facilities are located or conducted of equipment essential to the normal use or operation of such premises for the purposes specified); pets, pet equipment or supplies; photographic supplies (excluding cameras, film and
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24 flash bulbs); hardware; tools; paints; building and lumber
25 supplies and materials; motor vehicles; and farm imple-
26 ments. No inference shall arise from the foregoing
27 enumeration of classes of personal property that sales or
28 offers or attempts to sell other classes of personal property
29 not mentioned are included within the above exemptions
30 for works of necessity or charity.

Sec. 26. Limitation of Preceding Section; Contract Made
on Sunday Valid.—No conviction shall be had under the
preceding section of this article of any person for engag-
ing in the following activities on Sunday:

2 (1) Transportation of the mail or any other activity in
3 connection with the mail.

4 (2) Transportation of persons or property by any pres-
5 ent or future mode of public or private conveyance or
6 other activity in connection with any such mode of public
7 or private conveyance.

8 (3) The operation of car washing establishments,
9 garages and gasoline service stations, including the sale
10 of commodities and services customarily furnished at
11 such garages and service stations.
(4) The operation of manufacturing establishments, construction work, or where there is an obligation to fulfill a provision in a contract wherein time is of the essence, and the production and processing of natural resources.

(5) Operation of grocery stores, restaurants, taverns or other similar establishments engaged primarily in the sale of beverages or food products for human consumption.

(6) An isolated transaction in which any tangible personal property is sold by the owner thereof, such sale not being made in the ordinary course of repeated and successive transactions of like character by such owner.

(7) Professional and amateur sports, athletic contests and events, and concessions incidentally connected therewith.

(8) Operation of recreational, amusement, scenic, historic and educational facilities and activities in connection therewith.

(9) Advertising the sale of property or services.

(10) Unattended vending machines, vending personal property or services.
(11) The operation of antique shops and novelty and souvenir shops.
(12) The showing of real estate or mobile homes.
(13) The operation of a retail outlet for its products by any industry located in West Virginia.
(14) The sale of farm produce.
(15) The sale of flowers or floral wreaths and arrangements.

No contract shall be deemed void because it is made on Sunday.

Sec. 27. Punishment for Violation.—Any person violating the provisions of section twenty-five of this article shall, for the first offense, be guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than one hundred nor more than two hundred dollars. Any person violating the provisions of section twenty-five of this article shall, for the second offense occurring within one year of the first offense, be guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than two hundred and fifty dollars nor more than five hundred dollars and, in the discretion of the court, may be con-
Any person violating the provisions of section twenty-five of this article shall, for the third or any subsequent offense occurring within two years of the previous offense, be guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than five hundred nor more than one thousand dollars and, in the discretion of the court, may be confined in jail for a period not exceeding six months.

Each Sunday a person is engaged in work, labor or business or employs others to be so engaged, in violation of section twenty-five of this article, shall constitute a separate offense.

Justices of the peace shall have concurrent jurisdiction, with circuit and criminal courts, of any such offense or offenses.

The penalties imposed by this section shall not be incurred by any person who conscientiously believes that Saturday ought to be observed as a Sabbath, and actually refrains from all secular business and labor on that day, provided he does not compel an apprentice or servant or
Sec. 28. Local Option Election; Form of Petition Therefor; Election Procedure; Form of Ballot; Effect of Such Election.—The county court of any county is hereby authorized to call a local option election for the purpose of determining the will of the voters as to whether the provisions of section twenty-five of this article shall continue in effect in said county.

A petition for such local option election shall be in the form hereinafter specified and shall be signed by qualified voters residing within said county equal to at least ten per cent of the persons qualified to vote within said county at the last general election. Said petition may be in any number of counterparts and shall be sufficient if substantially in the following form:

PETITION ON LOCAL OPTION ELECTION

RESPECTING WORK, LABOR OR BUSINESS

ON SUNDAY IN ___________ COUNTY, WEST VIRGINIA

Each of the undersigned certifies that he or she is a person residing in ___________ County, West Virginia, and
is duly qualified to vote in said county under the laws of
the state, and that his or her name, address and the date
of signing this petition are correctly set forth below.

The undersigned petition said county court to call and
hold a local option election upon the following question:

Shall the provisions of Section 25, Article 10, Chapter 61,
of the Code of West Virginia, one thousand nine hundred
thirty-one, as amended, continue in effect in _______________
County, West Virginia?

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(Each person signing must specify either his postoffice
address or his street number.)

Upon the filing of a petition for a local option election
in accordance with the provisions of this section, the
county court shall enter an order calling a local option
election and providing that the same shall be held at the
same time and as a part of the next primary or general
election to be held in said county. Said county court shall
give notice of such local option election by publication in
two newspapers of opposite politics and of general circulation within said county. Said notice shall be given at least once each week for two successive weeks prior to the date of said election. If there is only one newspaper published in said county publication of said notice therein shall be sufficient.

Each person qualified to vote in said county at said primary or general election shall likewise be qualified to vote at the local option election. The election officers appointed and qualified to serve as such at said primary or general election shall conduct said local option election in connection with and as a part of said primary or general election. The ballots in said local option election shall be counted and returns made by the election officers and the results certified by the commissioners of election to said county court which shall canvass the ballots, all in accordance with the laws of the state of West Virginia relating to primary and general elections insofar as the same are applicable. The county court shall, without delay, canvass the ballots cast at said local option election and certify the results thereof.
The ballot to be used in said local option election shall have printed thereon substantially the following:

"Shall the provisions of Section 25, Article 10, Chapter 61 of the Code of West Virginia, 1931, as amended, continue in effect in County of West Virginia?"

☐ Yes  ☐ No

(Place a cross mark in the square opposite your choice.)

If a majority of the voters voting at any such local option election vote no on the foregoing question, the provisions of section twenty-five, article ten, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, shall no longer continue in effect in said county.

Sec. 29. Separability of Provisions of Article.—If any part of this article is declared unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining provisions of this article, or the article in its entirety.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

O. Ray Parker
Chairman Senate Committee

Ethel L. Barfield
Chairman House Committee

Originated in the Senate.

Takes effect 90 days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within approved this the 16th day of March, 1963.

Governor