ENROLLED

Senate Bill No. 244
(By Mr. McCourt)

[Passed March 2, 1963; in effect July 1, 1963.]

AN ACT to repeal section three, article twelve, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, and to enact in lieu thereof a new section, designated section three, relating to coin-operated service, merchandise, amusement devices and vending machines.

Be it enacted by the Legislature of West Virginia:

That section three, article twelve, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed and a new section, designated section three, be enacted in lieu thereof to read as follows:

Article 12. License Taxes.

Section 3. Installing, Maintaining or Operating Coin-Operated Merchandise, Service and Amusement Devices,
and Vending Machines.—Persons installing, maintaining or operating coin-operated service merchandise and amusement devices or vending machines will be hereinafter referred to as vending machine operators.

The liability for the license to operate any type of coin-operated service merchandise, amusement devices or vending machines shall be upon the owner of the machine. The ownership shall be established by either a bill of sale, paid invoice or a conditional sales contract which has been recorded in the applicable county clerks office. The leasing of such a machine shall not be considered as a transfer of ownership of the machine and where a lessor-lessee relationship exists, the lessor shall be liable for the applicable license and fees.

The annual license fee to keep or maintain a coin-operated baggage or parcel checking machine or device which is used for the storage of baggage or parcels of any character, shall be fifty cents for each section of any such device which is operated on the coin-in-the-slot principle; the annual license fee to keep or maintain any coin-operated toilet locker or device shall be fifty cents for every such locker or device.
The annual license fee to keep or maintain any coin-operated penny machine or device, which is not a gambling device under any law of this state, shall be based upon the total number of machines maintained in this state by each operator with the tax to be assessed on a graduated scale according to such number of the machines so maintained.

The license fee for machines operated by pennies will be as follows: (1) For one machine, or more, but not exceeding four machines, two dollars per machine; (2) For five machines, or more, but not exceeding fifty machines, twenty-five dollars per operator; (3) For fifty-one machines, or more, but not exceeding one hundred fifty machines, seventy-five dollars per operator; (4) one hundred fifty-one machines, or more, but not exceeding three hundred machines, two hundred dollars per operator; (5) For machines in excess of three hundred, six hundred dollars per operator.

The annual license fee to keep or maintain any vending device operated by other than pennies, which is not a gambling device under any law of this state, shall be based
upon the total number of machines maintained in this state
by each operator with the tax to be assessed on a gradu-
ated scale according to such number of the machines so
maintained.

The license fees for machines operated by other than pen-
nies will be as follows: (1) For one machine, or more, but
not exceeding nine machines, five dollars and fifty cents
per machine; (2) For ten machines, or more, but not ex-
ceeding forty-nine machines, one hundred seventy-five
dollars per operator; (3) For fifty machines, or more, but
not exceeding one hundred machines, four hundred fifty
dollars per operator; (4) For one hundred one machines,
or more, but not exceeding two hundred machines, eight
hundred dollars per operator; (5) For two hundred one
machines, or more, but not exceeding three hundred ma-
chines, one thousand two hundred dollars per operator;
(6) For three hundred one machines, or more, but not
exceeding four hundred fifty machines, one thousand five
hundred dollars per operator; (7) For in excess of four
hundred fifty machines, one thousand eight hundred dol-
lars per operator. Where an operator is operating both
penny and other than penny machines, he shall secure licenses for both types of machines in the appropriate brackets.

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

Application for the license required herein shall contain the number of machines that are to be kept or maintained on location by the licensee within this state during the ensuing license year. Each vending machine operator shall make application to the tax commissioner on forms provided by him, and the applicant shall furnish such information as may be required by the tax commissioner including the total number of vending machines on location in this state and the applicant shall be subject to the penalties of false swearing for any untrue statements contained in his application.

The annual license as determined by the application and the above listed brackets, shall be paid prior to the first day of July of each year: Provided, That each op-
erator will submit to the tax commissioner, not later than
the thirty-first day of May and not later than the thirtieth
day of November of each year, a certified statement as to
the total number of machines he has on location in this
state: Provided, however, That these semiannual re-
ports shall be used to determine the license fee due for
the immediate succeeding six-month period from the first
day of July through the thirty-first day of December or
from the first day of January through the thirtieth day
of June. In the event the certified statement should show
that the operator has increased the number of his ma-
chines on location to such an extent that he would then
be required to secure a license for the next higher bracket,
then the licensee shall remit the difference between the
two brackets; and likewise, if the certified statement
should show that the licensee has reduced the number of
machines on location to the extent that he would be li-
censed in the next lower bracket, then a refund for the
difference between the two brackets would be issued to
the licensee.

In addition to the semiannual certified statements from
each operator, it is required that all manufacturers, job-
bers, distributors or other sources of obtaining vending
machines will be required to file monthly with the tax
commissioner copies of all invoices or other evidence in
writing, covering all shipments and deliveries of vending
machines into this state and showing the name of con-
signee and his address, date, number of machines shipped
delivered to any operator in this state.

One license certificate shall be issued to each person
keeping or maintaining such machines or devices as afore-
said, but the tax commissioner shall issue to any such
licensee a decalcomania stamp for each such machine or
device, which decalcomania stamp shall be securely at-
tached to each such machine or device properly protected
and plainly visible. Every such machine or device shall
also bear so as to be plainly visible the name and address
of the person keeping or maintaining such machine or
device. Each license certificate when issued by the state
tax commissioner shall be accompanied by a decalcomania
as described above to the exact number the licensee has
applied for and each licensee shall pay to the state tax
commissioner in addition to his proper licensing fee the sum of five dollars ($5.00) which sum shall be his full payment for the decalcomania issued the licensee. These decalcomania shall be attached to each machine on location but may be transferrable from machine to machine by the licensee. The state tax commissioner shall have clearly visible on each decalcomania the tax period for which said decalcomania are issued.

If any licensee shall need additional decalcomania during any one tax period he shall be issued such decalcomania by the state tax commissioner with no additional cost unless the number requested shall put such licensee in a new licensing class and then said licensee shall pay an additional five dollars ($5.00) for the additional decalcomania.

The proprietor or owner of the business conducted in the place where any such machine is kept or maintained is charged with the responsibility of satisfying himself that such decalcomania stamp or other evidence of ownership and license is so attached before permitting its installation in his place of business and in the event any
machine is found on location without such decalcomania stamp then the machine will be considered to be un-
licensed and the tax commissioner, or his agents, may take such machine or device into possession and deliver the same to the sheriff of the county in which such ma-
chine or device is found, or the sheriff of such county on his own initiative or upon order or direction of the tax commissioner, or his agents, may take such machine or device into possession, and in either event, said machine or device shall be impounded until such license fee is paid; in the event the license fee and penalties are not paid to the sheriff within ten days after the date of such impound-
ing, then the sheriff shall sell such machine or device in the manner provided by law for the sale of personal property for taxes, within the time specified by the tax commissioner which shall not be less than twenty days nor more than sixty days from the date of the order or direction of the tax commissioner; and from the proceeds thereof shall discharge and pay the license fee due on such machine or device and his costs, including costs of impounding, storage, penalties and other fees due the
state and the sheriff; and the balance, if any there be, shall be forfeited to the state.

No license fee shall be required of businesses keeping or maintaining such machines or devices owned by them in their own licensed store: Provided, however, That where the principal business is the operation of the machines or devices, then licenses shall be obtained on the graduated scale as outlined above: And provided further, That any person exempt from such license shall obtain from the tax commissioner a license receipt, decalcomania stamp, or other evidence of exemption, at a cost not to exceed fifty cents each, showing that he is so exempt, which shall be effective for the period as provided for annual licenses in this article; but to obtain such license receipt or other evidence of exemption, he shall make an affidavit and produce such other evidence as to the fact entitled him to such exemption as the tax commissioner, in his discretion, may require, which shall be on a form to be prescribed by the tax commissioner.

Every person subject to the provisions of this article shall make such reports and keep such records as may be
required by the rules and regulations of the commissioner and shall permit him to inspect such records and the stocks and supplies on hand at any time. Every such person shall be required to make his records available for inspection by the tax commissioner or his authorized representative.

The commissioner is hereby authorized to make and promulgate such reasonable rules and regulations as may be necessary to administer the provisions of this article and to insure the collection of the tax imposed hereby.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

Takes effect July 1, 1963 passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within approved this the 11th day of March, 1963.

Governor