

# WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1963

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## ENROLLED

COM. SUB. FOR  
SENATE BILL NO. 125

(By Mr. ....)

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PASSED March 9, ..... 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**

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

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article eight, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that article ten of said chapter be amended by adding thereto five new sections, designated sections twenty-five, twenty-six, twenty-seven, twenty-eight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

**2 ness on Sunday.**—On the first day of the week, commonly

3 known and designated as Sunday, it shall be unlawful  
4 for any person to engage in work, labor or business, or  
5 to employ any person to engage in work, labor or busi-  
6 ness, except in household or other work of necessity or  
7 charity. The exemption for works of necessity or charity  
8 contained in the preceding sentence shall not be deemed  
9 to include selling at retail or wholesale or by auction, or  
10 offering or attempting to sell on Sunday any of the  
11 following: Jewelry; precious and semiprecious stones;  
12 silverware; watches; clocks; luggage; musical instru-  
13 ments; recordings; toys; clothing and wearing apparel;  
14 clothing accessories; footwear; textile yard goods; house-  
15 wares; china; kitchenware; home, business, office or out-  
16 door furniture, furnishings and appliances; sporting goods  
17 (excluding sales or rental of bathing, boating and fishing  
18 paraphernalia and equipment, and sales or rental on the  
19 premises where sports, athletic games and events or rec-  
20 reational facilities are located or conducted of equipment  
21 essential to the normal use or operation of such premises  
22 for the purposes specified); pets, pet equipment or sup-  
23 plies; photographic supplies (excluding cameras, film and

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**

2 **on Sunday Valid.**—No conviction shall be had under the  
3 preceding section of this article of any person for engag-  
4 ing in the following activities on Sunday:

5 (1) Transportation of the mail or any other activity in  
6 connection with the mail.

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

11 (3) The operation of car washing establishments,  
12 garages and gasoline service stations, including the sale  
13 of commodities and services customarily furnished at  
14 such garages and service stations.

15 (4) The operation of manufacturing establishments,  
16 construction work, or where there is an obligation to ful-  
17 fill a provision in a contract wherein time is of the essence,  
18 and the production and processing of natural resources.

19 (5) Operation of grocery stores, restaurants, taverns  
20 or other similar establishments engaged primarily in the  
21 sale of beverages or food products for human consump-  
22 tion.

23 (6) An isolated transaction in which any tangible per-  
24 sonal property is sold by the owner thereof, such sale not  
25 being made in the ordinary course of repeated and suc-  
26 cessive transactions of like character by such owner.

27 (7) Professional and amateur sports, athletic contests  
28 and events, and concessions incidentally connected there-  
29 with.

30 (8) Operation of recreational, amusement, scenic, his-  
31 toric and educational facilities and activities in connec-  
32 tion therewith.

33 (9) Advertising the sale of property or services.

34 (10) Unattended vending machines, vending personal  
35 property or services.

36 (11) The operation of antique shops and novelty and

37 souvenir shops.

38 (12) The showing of real estate or mobile homes.

39 (13) The operation of a retail outlet for its products by

40 any industry located in West Virginia.

41 (14) The sale of farm produce.

42 (15) The sale of flowers or floral wreaths and arrange-

43 ments.

44 No contract shall be deemed void because it is made

45 on Sunday.

**Sec. 27. Punishment for Violation.**—Any person vio-  
2 lating the provisions of section twenty-five of this article  
3 shall, for the first offense, be guilty of a misdemeanor and,  
4 upon conviction thereof, shall be fined not less than one  
5 hundred nor more than two hundred dollars. Any person  
6 violating the provisions of section twenty-five of this  
7 article shall, for the second offense occurring within one  
8 year of the first offense, be guilty of a misdemeanor and,  
9 upon conviction thereof, shall be fined not less than two  
10 hundred and fifty dollars nor more than five hundred  
11 dollars and, in the discretion of the court, may be con-

12 fined in jail for a period not exceeding thirty days. Any  
13 person violating the provisions of section twenty-five of  
14 this article shall, for the third or any subsequent offense  
15 occurring within two years of the previous offense, be  
16 guilty of a misdemeanor and, upon conviction thereof,  
17 shall be fined not less than five hundred nor more than  
18 one thousand dollars and, in the discretion of the court,  
19 may be confined in jail for a period not exceeding six  
20 months.

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

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

28 The penalties imposed by this section shall not be in-  
29 curred by any person who conscientiously believes that  
30 Saturday ought to be observed as a Sabbath, and actually  
31 refrains from all secular business and labor on that day,  
32 provided he does not compel an apprentice or servant or



33 employee, not of his belief, to do secular work or business  
34 on a Sunday.

**Sec. 28. Local Option Election; Form of Petition There-**  
**2 for; Election Procedure; Form of Ballot; Effect of Such**  
**3 Election.**—The county court of any county is hereby au-  
4 thorized to call a local option election for the purpose of  
5 determining the will of the voters as to whether the  
6 provisions of section twenty-five of this article shall con-  
7 tinue in effect in said county.

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

15 PETITION ON LOCAL OPTION ELECTION  
16 RESPECTING WORK, LABOR OR BUSINESS  
17 ON SUNDAY IN \_\_\_\_\_ COUNTY, WEST VIRGINIA

18 Each of the undersigned certifies that he or she is a  
19 person residing in \_\_\_\_\_ County, West Virginia, and

20 is duly qualified to vote in said county under the laws of  
21 the state, and that his or her name, address and the date  
22 of signing this petition are correctly set forth below.

23 The undersigned petition said county court to call and  
24 hold a local option election upon the following question:  
25 Shall the provisions of Section 25, Article 10, Chapter 61,  
26 of the Code of West Virginia, one thousand nine hundred  
27 thirty-one, as amended, continue in effect in -----  
28 County, West Virginia?

29	Name	Address	Date
30	-----	-----	-----
31	-----	-----	-----

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

34 Upon the filing of a petition for a local option election  
35 in accordance with the provisions of this section, the  
36 county court shall enter an order calling a local option  
37 election and providing that the same shall be held at the  
38 same time and as a part of the next primary or general  
39 election to be held in said county. Said county court shall  
40 give notice of such local option election by publication in

41 two newspapers of opposite politics and of general circu-  
42 lation within said county. Said notice shall be given at  
43 least once each week for two successive weeks prior to  
44 the date of said election. If there is only one newspaper  
45 published in said county publication of said notice therein  
46 shall be sufficient.

47 Each person qualified to vote in said county at said  
48 primary or general election shall likewise be qualified to  
49 vote at the local option election. The election officers  
50 appointed and qualified to serve as such at said primary  
51 or general election shall conduct said local option election  
52 in connection with and as a part of said primary or gen-  
53 eral election. The ballots in said local option election  
54 shall be counted and returns made by the election officers  
55 and the results certified by the commissioners of election  
56 to said county court which shall canvass the ballots, all  
57 in accordance with the laws of the state of West Virginia  
58 relating to primary and general elections insofar as the  
59 same are applicable. The county court shall, without  
60 delay, canvass the ballots cast at said local option elec-  
61 tion and certify the results thereof.

62 The ballot to be used in said local option election shall  
63 have printed thereon substantially the following:

64 "Shall the provisions of Section 25, Article 10, Chapter  
65 61 of the Code of West Virginia, 1931, as amended, con-  
66 tinue in effect in \_\_\_\_\_ County of West  
67 Virginia?"

68 ☐ Yes ☐ No

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

70 If a majority of the voters voting at any such local op-  
71 tion election vote no on the foregoing question, the pro-  
72 visions of section twenty-five, article ten, chapter sixty-  
73 one of the code of West Virginia, one thousand nine hun-  
74 dred thirty-one, as amended, shall no longer continue in  
75 effect in said county.

**Sec. 29. Separability of Provisions of Article.**—If any  
2 part of this article is declared unconstitutional by a court  
3 of competent jurisdiction, such decision shall not affect  
4 the validity of the remaining provisions of this article, or  
5 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. Randall*  
Chairman House Committee

Chairman House Committee

Originated in the Senate.

Takes effect 90 days from passage.

Wm. Meyer

*Clerk of the Senate*

CA Blankenship

Clerk of the House of Delegates

Harvard W. Carson

President of the Senate

President of the Senate  
Julius W. Burdette

Speaker House of Delegates

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

*Myrtles Baron*

Governor

