WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1964

ENROLLED

HOUSE BILL No. 3

PASSED January 30, 1964

In Effect 90 Days Passage

FILED IN THE OFFICE OF
JOE F. DURBETT
SECRETARY OF STATE
THIS DATE 2-1-64
ENROLLED

House Bill No. 3
(By MR. BROTHERTON and MR. SEIBERT)

[Passed January 30, 1964; 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, and shall not be deemed to include the redemption of trading stamps; 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article eight, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that article ten of said chapter be amended by adding thereto five new sections, designated sections twenty-five, twenty-six, twenty-seven, twenty-eight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:

Section 25. Unlawful to Engage in Work, Labor or Business on Sunday.—On the first day of the week, com-
monly known and designated as Sunday, it shall be un-
lawful for any person to engage in work, labor or busi-
ness, or to employ any person to engage in work, labor
or business, except in household or other work of neces-
sity or charity. Except as hereinafter provided the ex-
emption 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: Jew-
elry; precious and semiprecious stones; silverware;
watches; clocks; luggage; musical instruments; record-
ings; toys; clothing and wearing apparel; clothing acces-
sories; 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 parapher-
nalia 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 flash bulbs); hardware (excluding light bulbs, batteries and electrical fuses); tools; paints; building and lumber supplies and materials; motor vehicles; and farm implements. Also, said exemption shall not be deemed to include the redemption of trading stamps. No inference shall arise from the foregoing enumeration of classes of personal property that sales or offers or attempts to sell other classes of personal property not mentioned are included within the above exemptions for works of necessity or charity.

Sec. 26. Limitation of Preceding Section; Contract Made on Sunday Valid.—It shall not be a violation of the preceding section of this article for any person to engage in any of the following activities on Sunday:

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

(2) Transportation of persons or property by any present or future mode of public or private conveyance or other activity in connection with any such mode of public or private conveyance.
(3) The operation of car washing establishments, garages and gasoline service stations, including the sale of commodities and services customarily furnished at such garages and service stations.

(4) The operation of public utilities, manufacturing establishments, construction work, the production and processing of natural resources, or where there is an obligation to fulfill a provision in a contract wherein time is of the essence.

(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, his-
toric 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 the exclusive sale of its products by an industry located in West Virginia.

(14) The sale of farm produce; the repair and operation of farm and orchard implements and equipment, and the spraying and dusting of farm crops by airplane.

(15) The sale of flowers or floral wreaths and arrangements.

(16) The sale at retail of hunting and fishing licenses and the sale of ammunition to persons possessing a valid hunting license.

(17) The sale of magazines, books, periodicals and newspapers.
(18) An isolated sale made to meet what the seller believes in good faith to be an unexpected emergency in which the health or property of some person is in jeopardy.

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 twenty-five nor more than one 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 confined in jail for a period not exceeding thirty days. 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 employee, not of his belief, to do secular work or business on a Sunday.

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?

Name          Address          Date

(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 gen-
eral 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 de-
lay, 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 Sunday Closing Law 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 section twenty-five, twenty-six, twenty-seven or twenty-eight of this article or any part of any one or more of said sections 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. Roy Clarke
Chairman Senate Committee

J. H. Caddle
Chairman House Committee

Originated in the House.

Takes effect
90 days

passage.

J. H. Tayloe
Clerk of the Senate

O. A. Blankenship
Clerk of the House of Delegates

President of the Senate

J. W. Singleton
Speaker House of Delegates

The within approved this the 1st
day of February, 1964.

Governor