

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1964



ENROLLED

HOUSE BILL No. 23

(By Mr. Gratherton of Mr. Lebeck)



PASSED January 30, 1964

In Effect 90 days Passage



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

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**ENROLLED**

# House Bill No. 3

(By MR. BROTHERTON and MR. SEIBERT)

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[Passed January 30, 1964; 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, 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article eight, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that article ten of said chapter be amended by adding thereto five new sections, designated sections twenty-five, twenty-six, twenty-seven, twenty-eight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  
2 Business on Sunday.**—On the first day of the week, com-

3 monly known and designated as Sunday, it shall be un-  
4 lawful for any person to engage in work, labor or busi-  
5 ness, or to employ any person to engage in work, labor  
6 or business, except in household or other work of neces-  
7 sity or charity. Except as hereinafter provided the ex-  
8 emption for works of necessity or charity contained in  
9 the preceding sentence shall not be deemed to include  
10 selling at retail or wholesale or by auction, or offering or  
11 attempting to sell on Sunday any of the following: Jew-  
12 elry; precious and semiprecious stones; silverware;  
13 watches; clocks; luggage; musical instruments; record-  
14 ings; toys; clothing and wearing apparel; clothing acces-  
15 sories; footwear; textile yard goods; housewares; china;  
16 kitchenware; home, business, office or outdoor furniture,  
17 furnishings and appliances; sporting goods (excluding  
18 sales or rental of bathing, boating and fishing parapher-  
19 nalia and equipment, and sales or rental on the premises  
20 where sports, athletic games and events or recreational  
21 facilities are located or conducted of equipment essential  
22 to the normal use or operation of such premises for the  
23 purposes specified); pets, pet equipment or supplies;

24 photographic supplies (excluding cameras, film and flash  
25 bulbs); hardware (excluding light bulbs, batteries and  
26 electrical fuses); tools; paints; building and lumber sup-  
27 plies and materials; motor vehicles; and farm imple-  
28 ments. Also, said exemption shall not be deemed to in-  
29 clude the redemption of trading stamps. No inference  
30 shall arise from the foregoing enumeration of classes of  
31 personal property that sales or offers or attempts to sell  
32 other classes of personal property not mentioned are in-  
33 cluded within the above exemptions for works of neces-  
34 sity or charity.

**Sec. 26. Limitation of Preceding Section; Contract**

2 **Made on Sunday Valid.**—It shall not be a violation of the  
3 preceding section of this article for any person to engage  
4 in any of the following activities on Sunday:

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

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

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

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

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

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

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

31 (8) Operation of recreational, amusement, scenic, his-

32 toric and educational facilities and activities in connec-  
33 tion therewith.

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

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

37 (11) The operation of antique shops and novelty and  
38 souvenir shops.

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

40 (13) The operation of a retail outlet for the exclusive  
41 sale of its products by an industry located in West Vir-  
42 ginia.

43 (14) The sale of farm produce; the repair and oper-  
44 ation of farm and orchard implements and equipment,  
45 and the spraying and dusting of farm crops by airplane.

46 (15) The sale of flowers or floral wreaths and ar-  
47 rangements.

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

51 (17) The sale of magazines, books, periodicals and  
52 newspapers.

53 (18) An isolated sale made to meet what the seller  
54 believes in good faith to be an unexpected emergency in  
55 which the health or property of some person is in jeop-  
56 ardy.

57 No contract shall be deemed void because it is made  
58 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  
5 twenty-five nor more than one hundred dollars. Any per-  
6 son 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  
14 of this article shall, for the third or any subsequent  
15 offense occurring within two years of the previous offense,

16 be 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  
22 business or employs others to be so engaged, in violation  
23 of section twenty-five of this article, shall constitute a  
24 separate offense.

25 Justices of the peace shall have concurrent jurisdic-  
26 tion, with circuit and criminal courts, of any such offense  
27 or 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**

**2 Therefor; Election Procedure; Form of Ballot; Effect of**

3 **Such Election.**—The county court of any county is hereby  
 4 authorized to call a local option election for the purpose of  
 5 determining the will of the voters as to whether the pro-  
 6 visions of section twenty-five of this article shall continue  
 7 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 quali-  
 10 fied voters residing within said county equal to at least  
 11 ten per cent of the persons qualified to vote within said  
 12 county at the last general election. Said petition may  
 13 be in any number of counterparts and shall be sufficient  
 14 if 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,  
 20 and is duly qualified to vote in said county under the laws  
 21 of the state, and that his or her name, address and the  
 22 date 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  
49 to 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 de-  
60 lay, canvass the ballots cast at said local option election  
61 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 Sunday Closing Law continue in effect in  
65 \_\_\_\_\_ County of West Virginia?

66  Yes  No

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

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

**Sec. 29. Separability of Provisions of Article.**—If sec-  
2 tion twenty-five, twenty-six, twenty-seven or twenty-  
3 eight of this article or any part of any one or more of said  
4 sections is declared unconstitutional by a court of compe-  
5 tent jurisdiction, such decision shall not affect the valid-  
6 ity of the remaining provisions of this article or the  
7 article in its entirety.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

*O. Roy Parker*  
Chairman Senate Committee

*Robert L. Randall*  
Chairman House Committee

Originated in the House.

Takes effect 90 days passage.

*Thomas Myers*  
Clerk of the Senate

*A. A. Blankenship*  
Clerk of the House of Delegates

*Thomas S. B. ...*  
President of the Senate

*Julius W. Singletary*  
Speaker House of Delegates

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

*W. W. Bason*  
Governor

