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STATE OF WEST VIRGINIA

WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1970



ENROLLED

HOUSE BILL No. 566

(By Mr. Seibert)



PASSED February 12, 1970

In Effect July 1, 1970 Passage



566

FILED IN THE OFFICE
JOHN D. ROCKEFELLER, IV
SECRETARY OF STATE

THIS DATE 2-18-70

ENROLLED
House Bill No. 566
(By MR. SELBERT)

[Passed February 12, 1970; in effect July 1, 1970.]

AN ACT to repeal sections eighteen through thirty-one, inclusive, article twelve; and to repeal article thirteen-a, all of chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact sections one through seventeen, inclusive, article twelve of said chapter eleven, all relating to license for operation of stores, license taxes, and business franchise registration certificate tax.

Be it enacted by the Legislature of West Virginia:

That sections eighteen through thirty-one, inclusive, article twelve, and article thirteen-a, all of chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that sections one through sev-

enteen, inclusive, article twelve of said chapter eleven, be amended and reenacted, all to read as follows:

ARTICLE 12. BUSINESS FRANCHISE REGISTRATION CERTIFICATE TAX.

§11-12-1. Short title.

1 This article shall be cited as the "Business Franchise
2 Registration Tax."

§11-12-2. Definitions.

1 For the purposes of this article:

2 (a) "Business" shall mean any business, whether a
3 person engaged expressly or impliedly holds himself out
4 as engaged in business or supplying his products or a
5 commodity or service to the public as a class or a limited
6 portion of the public or sells any goods, wares, merchan-
7 dise of any kind or provides a service of any kind: *Pro-*
8 *vided, however,* That "business" shall not include sales
9 of products of the farm, garden, or dairy by the pro-
10 ducer or grower thereof; occasional sales by societies
11 acting for charitable, religious or benevolent purposes;
12 judicial sales directed by law or court order; or any
13 business the gross income of which is less than one thou-
14 sand dollars per license year. "Gross income" shall mean

15 the gross receipts of the business received as compen-
16 sation for personal services and from trade, commerce,
17 or sales and the value accruing from the sale of tangible
18 property (real or personal), or service, or both, without
19 any deduction on account of the cost of property sold,
20 materials used, labor costs, taxes or any other expense
21 whatsoever.

22 (b) "Business franchise registration certificate" shall
23 mean a franchise or certificate authorizing a person to
24 conduct business within the State of West Virginia and
25 when referred to in this article as certificate or regis-
26 tration shall mean business franchise registration cer-
27 tificate.

28 (c) "Person" or "company" shall mean and include any
29 individual, firm, copartnership, joint venture, associa-
30 tion, corporation, trust and any other group or combi-
31 nation acting as a unit in the plural as well as the singu-
32 lar and when used in connection with the penalties
33 imposed by section nine of this article, shall mean and
34 include the officers, directors, trustees, or members of
35 any firm, copartnership, joint venture, association, cor-

36 poration, trust or any other groups acting as a unit.

37 (d) "Tax commissioner" shall mean the tax commis-

38 sioner or his agent.

§11-12-3. Business franchise registration tax levied.

1 No person shall, without a business franchise registra-

2 tion certificate, engage in or prosecute, in the State of

3 West Virginia, any business activity without first obtain-

4 ing a business certificate from the State of West Vir-

5 ginia.

6 The business franchise registration tax levied shall be

7 fifteen dollars, for each location a person holds

8 himself out to engage in or transact business therefrom.

**§11-12-4. Application for business registration certificate;
issuance of business certificate; effect of business
registration certificate.**

1 Any person making and filing the proper application

2 for a business registration certificate on forms to be

3 prescribed and furnished by the tax commissioner on

4 tendering the business registration certificate tax for each

5 business certificate requested shall be provided a cer-

6 tificate if the tax commissioner determines to his satis-

7 faction that all of the conditions precedent to the grant-

8 ing of such certificate have been fulfilled by the applicant
9 before issuing the certificate of registration.

10 Nothing in this article, in any payment or issuance
11 of any certificate under the provisions hereof, shall be
12 deemed to legalize any act which otherwise may be in
13 violation of law, or to exempt any person from any pen-
14 alty prescribed from such violation.

15 When any municipality is authorized by its charter
16 or by any law of this state to impose a license tax or
17 related penalty for engaging in or prosecuting any busi-
18 ness, activity, trade or employment within the limits
19 of said municipality, pursuant to the ordinances of such
20 municipality, no state business registration certificate
21 issued under this article shall exonerate the registrant
22 from any such municipal license tax or penalty, unless
23 otherwise expressly provided. Notwithstanding the pro-
24 visions of this act, any municipality may impose a license
25 tax or penalty pursuant to the provisions of section four,
26 article thirteen, chapter eight of this code up to but not
27 in excess of the amount of the state license tax in effect
28 on such business, activity, trade or employment on Jan-

29 uary one, one thousand nine hundred seventy, with like
30 effect as if this act had not been enacted.

**§11-12-5. Time for which registration certificate granted;
power of tax commissioner to cancel certificate.**

1 All annual certificates issued under the provisions of
2 section four of this article shall be for a period of one
3 year beginning the first day of July and ending the thir-
4 tieth day of the following June.

5 If a registrant shall at any time knowingly or wil-
6 fully file false data or information required by section
7 four of this article, or shall wilfully refuse or neglect
8 to file any tax report or to pay the tax or penalty, or
9 any part thereof, required by chapter eleven of the code
10 of West Virginia, one thousand nine hundred thirty-one,
11 as amended, the tax commissioner may cancel his cer-
12 tificate. Before canceling any such certificate, the tax
13 commissioner shall set a hearing as prescribed in this
14 article, notify the person by certified mail not less than
15 twenty days prior to the hearing date to appear and show
16 cause why such registration certificate should not be
17 canceled.

§11-12-6. Business certificate a personal privilege not assignable.

1 Every business certificate issued under the provisions
2 of section four of this article shall confer a personal
3 privilege only to transact the business, activity or trade,
4 which may be the subject of the business certificate and
5 shall not be exercised except by the persons holding the
6 same and shall not be assignable to any other person.

7 Changes in the name of the person or change of loca-
8 tion, or address, or changes in ownership of the business
9 or changes in real parties of interest shall be considered
10 a cessation of the business and a new certificate shall be
11 required. Changes of partners or members of firms or
12 officers of a corporation shall not require a new certifi-
13 cate to be issued.

§11-12-7. Display of registration certificate; injunctions; public information.

1 Any person to whom a certificate of registration shall
2 be issued under the provisions of section four of this
3 article, shall keep such certificate posted in a conspicuous
4 position in the place where the privilege of such business
5 is exercised. Such certificate of registration shall be

6 produced for inspection whenever required by the tax
7 commissioner or by any law-enforcement officers of this
8 state, county or municipality wherein the privileges to
9 conduct business is exercised.

10 No injunction shall issue from any court in the state
11 enjoining the collection of any business registration cer-
12 tificate tax required herein; and any person claiming
13 that any business certificate is not due, for any reason,
14 shall pay the same under protest and petition the tax
15 commissioner, for a refund in accordance with the pro-
16 visions of section two-a of article one of this chapter.

17 If any person engaging in or prosecuting any business,
18 or trade, contrary to any other provisions of this article,
19 whether without obtaining a business certificate therefor
20 before commencing the same, or by continuing the same
21 after the termination of the effective period of any such
22 business certificate, the circuit court or the judge thereof in
23 vacation, of the county in which such violation occurred,
24 shall, upon proper application in the name of the state,
25 and after ten days written notice thereof to such person,
26 grant an injunction prohibiting such person from con-

27 taining such business, activity or trade until he has
28 fully complied with the provisions of this article. The
29 remedy provided in this section shall be in addition to
30 all other penalties and remedies provided by law.

31 The tax commissioner shall make available, when re-
32 quested, information as to whether a person is registered
33 to do business in the state of West Virginia.

§11-12-8. Collection by distraint.

1 The tax commissioner, or his agent, may distraint upon
2 any personal or real property, including intangibles, of
3 any person delinquent in the payment of taxes and
4 penalties accrued and unpaid under the provisions of
5 section three of this article, and may require the assist-
6 ance of the sheriff of any county in levying such distress
7 in the county in which such sheriff is an officer. The
8 sheriff so collecting taxes due hereunder shall be en-
9 titled to compensation in the amount of all penalties
10 collected over and above the principal amount of tax
11 due but in no case shall such compensation exceed twenty-
12 five dollars. All taxes and penalties so collected, less the
13 compensation above, shall be remitted within ten days

14 after the collection to the tax commissioner. The tax
15 commissioner shall prescribe by general regulation the
16 manner of remittance of such funds and of allowing the
17 collecting officer the compensation due him under this
18 section. The sheriff shall be authorized to distrain im-
19 mediately upon request, as aforesaid, for the amount
20 which any person may have been assessed under the
21 provisions of this article, and to sell upon ten days notice
22 so much of said person's property, subject to such distress,
23 as may be necessary to pay the tax so assessed, including
24 penalties.

§11-12-9. Penalties.

1 Any person engaging in or prosecuting any business
2 contrary to the provisions of this article, whether with-
3 out obtaining a business registration certificate therefor
4 before commencing the same, or by continuing the same
5 after the termination of the effective period of any such
6 certificate may, in addition to paying the business regis-
7 tration tax, be liable for a penalty of fifty dollars for
8 each month or fraction thereof during which he has been
9 in default of the business registration tax. It shall be the

10 duty of the tax commissioner to collect the full amount
11 of the business registration tax and penalty imposed.

**§11-12-10. Collection of back taxes; notice of discontinuance
of business.**

1 Any person engaging in or prosecuting any business
2 contrary to provisions of this article, whether without
3 obtaining a certificate therefor before commencing the
4 same, or by continuing the same after the termination
5 of the effective period of such certificate, shall, in addition
6 to all other penalties provided in this article, be liable
7 for the payment of all back taxes and penalties for a
8 period not exceeding five years.

9 Whenever any person ceases to engage in business
10 within this state by reason of the discontinuance, sale or
11 transfer or by any other means of disposition of the busi-
12 ness, it shall be his duty to notify the tax commissioner
13 in writing of the discontinuance, sale or transfer or other
14 disposition of the business, the date thereof and the name
15 and address of the seller or transferor and purchaser or
16 transferee thereof.

17 Unless the notice shall have been given to the tax com-

18 commissioner as above provided, such seller or transferor
19 and purchaser or transferee shall be jointly liable to the
20 state of West Virginia for the amount of all taxes and
21 penalties under the provisions of sections three and nine
22 of this article.

§11-12-11. Collection by civil action; venue.

1 The tax commissioner may collect any business regis-
2 tration certificate tax and penalties unpaid under the
3 provisions of sections three and nine of this article by
4 civil action or other appropriate legal or equitable proce-
5 dure; venue shall be in any court of limited or general
6 jurisdiction in the county in which the person engaging
7 in business resides or any county in which the business
8 subject to this article was doing business.

**§11-12-12. Criminal liability for violation of article;
jurisdiction.**

1 Except as may herein be expressly provided, any person
2 violating any provisions under this article shall be guilty
3 of a misdemeanor, and, upon conviction thereof, shall be
4 fined not less than fifty dollars nor more than two hun-
5 dred dollars, or imprisoned in the county jail not more
6 than three months, or both fined and imprisoned and

7 each day or part thereof that any violation shall con-
8 tinue shall be deemed to constitute a distinct and separate
9 offense and be punishable accordingly. Justices of the
10 peace shall have concurrent jurisdiction with any other
11 court having jurisdiction for the trial of all misde-
12 meanors arising under this section.

§11-12-13. Assessment; jeopardy assessment.

1 Whenever the tax commissioner shall determine that
2 any tax due under section three of this article has not
3 been paid in full, the tax commissioner shall make an
4 assessment, from any available information, against the
5 taxpayer of such deficiency in tax, addition to tax, in-
6 terest or penalties as he may find to be due, and shall
7 serve the taxpayer with written notice of such assessment,
8 either in person or by certified mail. For purposes of
9 this article such written notice is termed as "notice of
10 assessment".

11 If the tax commissioner believes that the assessment
12 or collection of a deficiency, or the collection of any tax
13 due under section three of this article, will be jeopar-
14 dized by delay, he shall immediately make an assess-

15 ment of such deficiency for such tax due (together with
16 all additional amounts, interest or penalties provided for
17 by section nine of this article), noting that fact upon
18 the assessment. The amount so assessed shall be im-
19 mediately due and payable, and a notice of assessment
20 and demand for the payment thereof shall be served
21 upon the taxpayer. If the taxpayer against whom a
22 jeopardy assessment is made desires to immediately make
23 a petition for reassessment his petition shall be accom-
24 panied by such security as the tax commissioner may
25 deem necessary to insure compliance with this article.
26 If such petition for reassessment is filed, accompanied
27 by the necessary security, the provisions for hearing,
28 determination and appeal set forth in this article shall
29 then be applicable.

30 The tax commissioner may abate in whole or in part
31 any assessment which he shall determine to be erroneous.

§11-12-14. Hearing; appeal.

1 Any person against whom an order or decision of
2 the tax commissioner, or his representative, has been ad-
3 versely affected relating to the granting or the canceling

4 of the certificate, or any other matter wherein the find-
5 ings are in the discretion of the tax commissioner, may
6 appeal from such determination by requesting a hearing
7 before the tax commissioner, or his examiner, if such
8 request is made within thirty days from receipt of such
9 order or decision.

10 The tax commissioner shall issue a ruling within a
11 reasonable time from date of the hearing.

12 An appeal may be taken by the taxpayer to the circuit
13 court of the county of his residence, or in the circuit
14 court of Kanawha county, within thirty days after he
15 shall have received notice from the tax commissioner of
16 his determination as provided hereinbefore, in this sec-
17 tion.

§11-12-15. Forms and regulations; enforcement.

1 The tax commissioner is hereby invested with full
2 power and authority and it is hereby made his duty to
3 prescribe forms for applications, for business registration
4 certificate, and certificates and assessments and to make,
5 issue and put in force all necessary and needful rules and
6 regulations for ascertaining, assessing and collecting the

7 taxes imposed by section three of this article and the
8 enforcement under the provisions thereof.

9 Any employee of the state tax department so desig-
10 nated by the tax commissioner, shall have all the lawful
11 powers delegated to members of the department of public
12 safety to enforce the provisions of this article in any
13 county or city of this state, and such employee shall,
14 before entering upon the discharge of his duties, execute
15 a bond with security in the sum of thirty-five hundred
16 dollars, payable to the state of West Virginia, conditioned
17 for the faithful performance of his duties as such, and
18 such bond shall be approved as to form by the attorney
19 general, and as to sufficiency by the board of public
20 works, and the same shall be filed with the secretary
21 of state and preserved in his office.

§11-12-16. Disposition of money collected.

1 All money collected under the provisions of sections
2 three and nine of this article shall be paid into the state
3 treasury, monthly, by the state tax commissioner, and
4 shall be added to and shall constitute a part of the general
5 fund for the elementary schools.

§11-12-17. Severability of provisions.

1 The provisions of this article are severable and if any
2 shall be held unconstitutional, the decision of the court
3 shall not affect or impair any of the remaining provisions
4 thereof. It is hereby declared as legislative intent that
5 this article would have been adopted if such unconstitu-
6 tional provision had not been included therein.

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

William Tompa
Chairman Senate Committee

Clayton C. Davidson
Chairman House Committee

Originated in the House.

Takes effect July 1, 1970.

Howard Myers
Clerk of the Senate

C. Blankenship
Clerk of the House of Delegates

Langston Jackson
President of the Senate

Sam F. Bevisky
Speaker House of Delegates

The within approved this the 16th
day of February, 1970.

Arch A. Moore, Jr.
Governor



PRESENTED TO THE
GOVERNOR

Date 2/16/70

Time 2:40 p.m.