

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1987

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ENROLLED

HOUSE BILL No. 2275

(By ~~Delegate~~ *Mr. Speaker, Mr. Chambers
+ Delegate Swann*
[By Request of the Executive])

— ● —

Passed *MARCH 14,* 1987

In Effect *JULY 1, 1987* ~~Passage~~

ENROLLED
H. B. 2275

(By MR. SPEAKER, MR. CHAMBERS and DELEGATE SWANN)
[By request of the Executive]

[Passed March 14, 1987; in effect July 1, 1987.]

AN ACT to amend and reenact sections three and five, article twelve, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating generally to registration of businesses under the business registration tax; providing civil penalties for noncompliance; providing an effective date; time for which registration certificate granted; power of tax commissioner to suspend or cancel certificate; refusal to renew; and farmers not required to register or pay tax.

Be it enacted by the Legislature of West Virginia:

That sections three and five, article twelve, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 12. BUSINESS REGISTRATION TAX.

§11-12-3. Business registration certificate required; tax levied; exemption from registration; exemption from tax; effective date.

1 (a) *Registration required.* — No person shall, without
2 a business registration certificate, engage in or prose-
3 cute, in the state of West Virginia, any business activity
4 without first obtaining a business registration certifi-
5 cate from the tax commissioner of the state of West
6 Virginia. Additionally, before beginning business in this

7 state, such person:

8 (1) If a transient vendor, shall comply with the
9 provisions of sections twenty through twenty-five of this
10 article.

11 (2) If a collection agency, shall comply with the
12 provisions of article sixteen, chapter forty-seven of this
13 code.

14 (3) If an employment agency, shall comply with the
15 provisions of article two, chapter twenty-one of this code.

16 (4) If selling drug paraphernalia, as defined in section
17 three, article nineteen, chapter forty-seven of this code,
18 shall comply with the provisions of article nineteen,
19 chapter forty-seven of this code.

20 Persons engaging in or prosecuting other business
21 activities in this state may also be subject to other
22 provisions of this code which they must satisfy before
23 commencing or while engaging in a business activity in
24 this state.

25 (b) *Tax levied.* — The business registration tax hereby
26 levied shall be fifteen dollars for each business registra-
27 tion certificate.

28 (1) A separate business registration certificate is
29 required for each fixed business location from which
30 property or services are offered for sale or lease to the
31 public as a class, or to a limited portion of the public;
32 or at which customer accounts may be opened, closed or
33 serviced.

34 (2) A separate business registration certificate is not
35 required for each coin-operated machine. A separate
36 certificate is required for each location from which
37 making coin-operated machines available to the public
38 is itself a business activity.

39 (3) A business that sells tangible personal property or
40 services from or out of one or more vehicles needs a
41 separate business registration certificate for each fixed
42 location in this state from or out of which business is
43 conducted. A copy of its business registration certificate
44 shall be carried in each vehicle and publicly displayed

45 while business is conducted from or out of the vehicle.

46 (4) A business registration certificate is required by
47 subsection (a) for every person engaging in purposeful
48 revenue generating activity in this state. If that activity
49 is one for which an employment agency license or a
50 collection agency license or a license to sell drug
51 paraphernalia is required and no other business activity
52 is conducted by that person at each business location for
53 which the employment agency license or collection
54 agency license or license to sell drug paraphernalia is
55 issued, then only that license is required for each such
56 activity conducted by the licensee at each business
57 location. However, if, in addition to the activity for
58 which each license is issued, some other business activity
59 is conducted by the licensee at such business location,
60 a separate business registration certificate is required
61 to conduct the nonlicensed activity.

62 (c) Exemption from registration. — Any person
63 engaging in or prosecuting business activity in this
64 state:

65 (1) Who is not required by law to collect or withhold
66 a tax administered under article ten of this chapter; and

67 (2) Who does not claim exemption from payment of
68 taxes imposed by articles fifteen and fifteen-a of this
69 chapter, shall be exempt from both registration and
70 payment of the tax imposed by this article, if such
71 person had gross income from business activity of four
72 thousand dollars or less during that person's tax year
73 for state income tax purposes immediately preceding
74 the registration year for which a registration certificate
75 is otherwise required by this article.

76 (d) *Exemptions from payment of tax.* — Any person
77 engaging in or prosecuting any business activity in this
78 state who is required by law to collect or withhold any
79 tax administered under article ten of this chapter; or
80 who claims exemption from payment of the taxes
81 imposed by article fifteen and fifteen-a of this chapter,
82 shall be required to obtain a business registration
83 certificate, as herein before provided, but shall be
84 exempt from payment of the tax levied by subsection (b),

85 if such person is:

86 (1) A person who had gross income from business
87 activity of four thousand dollars or less during that
88 person's tax year for state income tax purposes imme-
89 diately preceding the registration year for which a
90 registration certificate is required under this article.

91 (2) An organization which qualifies, or would qualify,
92 for exemption from federal income taxes under section
93 501 of the Internal Revenue Code of 1986, as amended.

94 (3) This state, or a political subdivision thereof, selling
95 tangible personal property, admissions or services, when
96 those activities compete with or may compete with the
97 activities of another person.

98 (4) The United States, or an agency or instrumental-
99 ity thereof, which is exempt from taxation by the states.

100 (5) A person engaged in the business of agriculture
101 and farming: *Provided*, That no producer or grower
102 selling products of the farm, garden or dairy and not
103 included within the definition of business under subsec-
104 tion (a), of section two of this article shall be required
105 to obtain a business registration certificate or pay the
106 business registration tax.

107 (6) A foreign retailer who is not a "retailer engaging
108 in business in this state" as defined in section one, article
109 fifteen-a of this chapter, who enters into an agreement
110 with the tax commissioner to voluntarily collect and
111 remit use tax on sales to West Virginia customers.

112 (e) *Money penalty.* — Any person required to obtain
113 a business registration certificate under this section,
114 who is exempt from payment of the tax, as provided in
115 subsection (d), who does not obtain a registration
116 certificate shall, in lieu of paying the penalty imposed
117 by section nine, pay a penalty of fifteen dollars for each
118 business location for which a certificate is needed:
119 *Provided*, That application for business registration is
120 made and the applicable money penalty tendered to the
121 tax commissioner within fifteen days after such person
122 receives written notice from the tax commissioner that
123 such person is required to obtain a business registration

124 certificate.

125 (f) *Effective date.* — The provisions of this section, as
126 amended, shall apply to all businesses beginning the
127 first day of July, one thousand nine hundred eighty-
128 seven.

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

1 (a) *Registration year.* — All business registration
2 certificates issued under the provisions of section four
3 of this article shall be for the period of one year
4 beginning the first day of July and ending the thirtieth
5 day of the following June.

6 (b) *Revocation or suspension of certificate.*

7 (1) The tax commissioner may cancel or suspend a
8 business registration certificate at any time during a
9 registration year if:

10 (A) The registrant filed an application for a business
11 registration certificate, or an application for renewal
12 thereof, for the registration year that was false or
13 fraudulent.

14 (B) The registrant willfully refused or neglected to
15 file a tax return or to report information required by
16 the tax commissioner for any tax imposed by or
17 pursuant to this chapter.

18 (C) The registrant willfully refused or neglected to
19 pay any tax, additions to tax, penalties or interest, or
20 any part thereof, when they became due and payable
21 under this chapter, determined with regard to any
22 authorized extension of time for payment.

23 (D) The registrant neglected to pay over to the tax
24 commissioner on or before its due date, determined with
25 regard to any authorized extension of time for payment,
26 any tax imposed by this chapter which the registrant
27 collects from any person and holds in trust for this state.

28 (E) The registrant abused the privilege afforded to it
29 by article fifteen or fifteen-a of this chapter to be

30 exempt from payment of the taxes imposed by such
31 articles on some or all of the registrant's purchases for
32 use in business upon issuing to the vendor a properly
33 executed exemption certificate, by failing to timely pay
34 use tax on taxable purchase for use in business, or by
35 failing to either pay the tax or give a properly executed
36 exemption certificate to the vendor.

37 (2) Before cancelling or suspending any such certifi-
38 cate, the tax commissioner shall give written notice of
39 his intent to suspend or cancel the business registration
40 certificate of the taxpayer, the reason for the suspension
41 or cancellation, the effective date of the cancellation or
42 suspension, and the date, time and place where the
43 taxpayer may appear and show cause why such business
44 registration certificate should not be cancelled or
45 suspended. This written notice shall be served on the
46 taxpayer in the same manner as a notice of assessment
47 is served under article ten of this chapter, not less than
48 twenty days prior to the date of such show cause
49 informal hearing. The taxpayer may appeal cancellation
50 or suspension of its business registration certificate in
51 the same manner as a notice of assessment is appealed
52 under article ten of this chapter: *Provided*, That the
53 filing of a petition for appeal shall not stay the effective
54 date of the suspension or cancellation. A stay may be
55 granted only after a hearing is held on a motion to stay
56 filed by the registrant, upon finding that state revenues
57 will not be jeopardized by the granting of the stay. The
58 tax commissioner may, in his discretion and upon such
59 terms as he may specify, agree to stay the effective date
60 of the cancellation or suspension until another date
61 certain.

62 (c) *Refusal to renew.* — The tax commissioner may
63 refuse to issue or renew a business registration certifi-
64 cate if the registrant is delinquent in the payment of
65 any tax administered by the tax commissioner under
66 article ten of this chapter or the corporate license tax
67 imposed by this article, until the registrant pays in full
68 all such delinquent taxes including interest and appli-
69 cable additions to tax and penalties. In his discretion
70 and upon such terms as he may specify, the tax

71 commissioner may enter into an installment payment
72 agreement with such taxpayer in lieu of the complete
73 payment. Failure of the taxpayer to fully comply with
74 the terms of the installment payment agreement shall
75 render the amount remaining due thereunder imme-
76 diately due and payable and the tax commissioner may
77 suspend or cancel the business registration certificate in
78 the manner hereinbefore provided.

[Handwritten signatures and scribbles]

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

Bruce O. Williams

Chairman Senate Committee

Lyle Sutto

Chairman House Committee
member

Originating in the House.

Takes effect July 1, 1987.

Todd C. Nich

Clerk of the Senate

Donald L. Kopp

Clerk of the House of Delegates

Ann Terhune

President of the Senate

Wolf C. Cal

Speaker of the House of Delegates

The within *approved* this the *30th*
March
day of _____, 1987.

Arthur A. Brann Jr.

Governor

PRESENTED TO THE
GOVERNOR

Date 3/25/87

Time 4:37 p.m.

RECEIVED

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THE UNIVERSITY OF CHICAGO