

RECEIVED

1992 MAR 31 PM 4: 45

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

SECOND REGULAR SESSION, 1992



ENROLLED

Com. Sub. For
HOUSE BILL No. 4055

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

Passed March 7, 1992

In Effect Ninety Days from Passage

ENROLLED

COMMITTEE SUBSTITUTE

FOR

H. B. 4055

(By MR. SPEAKER, MR. CHAMBERS, AND DELEGATE BURK)

[By Request of the Executive]

[Passed March 7, 1992; in effect ninety days from passage.]

AN ACT to repeal sections seventy-six, seventy-seven, seventy-eight, seventy-nine, eighty, eighty-one, eighty-two, eighty-three, eighty-four, eighty-six, eighty-seven, eighty-eight, eighty-nine, ninety and ninety-one, article twelve, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to repeal section fifty-six-a, article one, chapter thirty-one of said code; to amend and reenact section eighty-five, article twelve of said chapter eleven; to further amend said chapter eleven by adding thereto a new article, designated article twelve-c; and to amend and reenact article one, chapter thirty-one of said code by adding thereto a new section, designated section seventy-six-a, all relating to the corporate license tax; eliminating previous provision regarding assessment, card collections of the tax; eliminating the annual report required of corporations qualified to hold property or do business in the state; eliminating the preliminary annual report required for foreign corporations; providing definitions; providing imposition and rate of tax; providing exemptions from tax; providing for the payment and collection of tax; providing for assessment and collection of annual attorney-in-fact fee; providing for notice to taxpayers;

providing for reports by the secretary of state; providing for the application of the West Virginia Tax Procedure and Administration Act and the West Virginia Tax Crimes and Penalties Act; providing effective date and preservation of prior law; providing a severability clause; requiring judicial notification of court actions affecting corporation's status; imposing a fine for failure to file annual corporate license tax return; making it a misdemeanor to conduct business without corporate license.

Be it enacted by the Legislature of West Virginia:

That sections seventy-six, seventy-seven, seventy-eight, seventy-nine, eighty, eighty-one, eighty-two, eighty-three, eighty-four, eighty-six, eighty-seven, eighty-eight, eighty-nine, ninety and ninety-one, article twelve, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that section fifty-six-a, article one, chapter thirty-one of said code be repealed; that section eighty-five, article twelve of said chapter eleven be amended and reenacted; that said chapter eleven be further amended by adding thereto a new article, designated article twelve-c; and that article one, chapter thirty-one, be amended by adding thereto a new section, designated section seventy-six-a, all to read as follows:

CHAPTER 11. TAXATION.

ARTICLE 12. BUSINESS REGISTRATION TAX.

§11-12-85. Investigation of corporations' delinquencies.

1 The tax commissioner, with the approval of the
2 governor, may appoint agents to investigate all viola-
3 tions of the provisions of this article concerning
4 landholding taxes on corporations, and also for the
5 purpose of collecting such taxes from all corporations
6 which have not paid the same, whether due from
7 domestic or foreign corporations. The compensation of
8 all such agents shall be fixed by the tax commissioner.

ARTICLE 12C. CORPORATE LICENSE TAX.

§11-12C-1. Definitions.

1 As used in this article:

2 (1) "Business activity" means all activities engaged in
3 or caused to be engaged in with the object of gain or
4 economic benefit, direct or indirect, but does not mean
5 any of the activities of foreign corporations enumerated
6 in subsections (b), (c) and (d), section forty-nine, article
7 one, chapter thirty-one of this code.

8 (2) "Corporate license tax" or "license tax" or "tax"
9 means, in addition to the amount of corporate license tax
10 levied pursuant to this article, all interest, additions to
11 tax, fines and penalties, unless the intention to give the
12 term a more limited meaning is clear from the context
13 in which it is used.

14 (3) "Delegate" in the phrase "or his delegate," when
15 used in reference to the tax commissioner, means any
16 officer or employee of the state tax department duly
17 authorized by the tax commissioner directly, or indi-
18 rectly by one or more redelegations of authority, to
19 perform the functions mentioned or described in this
20 article or rules promulgated thereunder.

21 (4) "Domestic corporation" means a corporation
22 incorporated under the laws of this state and corpora-
23 tions organized under the laws of the state of Virginia
24 before the twentieth day of June, one thousand eight
25 hundred and sixty-three, which have its principal place
26 of business and chief works (if it has chief works) in this
27 state. Every other corporation is a foreign corporation.

28 (5) "Foreign corporation" means a corporation which
29 is not a domestic corporation.

30 (6) "Nonprofit corporation" means a nonprofit corpora-
31 tion as defined by section six, article one, chapter
32 thirty-one of this code.

33 (7) "Tax commissioner" means the tax commissioner
34 of the state of West Virginia or his or her delegate.

**§11-12C-2. Corporate license required; tax levied; exemp-
tion from tax; effective date.**

1 (a) *Corporate license required.* — No corporation,
2 domestic or foreign, may engage in any business activity
3 in this state without paying the corporate license tax to

4 the tax commissioner of the state of West Virginia,
5 except as provided in subsection (c) of this section.

6 (b) *Tax levied.* — Every corporation shall pay an
7 annual corporate license tax for the license year which
8 begins on the first day of July of each year and ends
9 the thirtieth day of the following June. This tax shall
10 be in addition to the annual fee, if any, payable to the
11 secretary of state as attorney-in-fact. The amount of this
12 tax shall be as follows:

13 (1) *Amount of license tax on domestic corporations.* —
14 Every domestic corporation shall pay an annual license
15 tax on its charter for the fiscal year beginning on the
16 first day of July of each year, based on its authorized
17 capital stock as follows: If the authorized capital stock
18 be five thousand dollars, or less, twenty dollars; if more
19 than five thousand dollars and not more than ten
20 thousand dollars, thirty dollars; if more than ten
21 thousand dollars and not more than twenty-five thou-
22 sand dollars, forty dollars; if more than twenty-five
23 thousand dollars and not more than fifty thousand
24 dollars, fifty dollars; if more than fifty thousand dollars
25 and not more than seventy-five thousand dollars, eighty
26 dollars; if more than seventy-five thousand dollars and
27 not more than one hundred thousand dollars, one
28 hundred dollars; if more than one hundred thousand
29 dollars and not more than one hundred and twenty-five
30 thousand dollars, one hundred and ten dollars; if more
31 than one hundred and twenty-five thousand dollars and
32 not more than one hundred and fifty thousand dollars,
33 one hundred and twenty dollars; if more than one
34 hundred and fifty thousand dollars and not more than
35 one hundred and seventy-five thousand dollars, one
36 hundred and forty dollars; if more than one hundred and
37 seventy-five thousand dollars and not more than two
38 hundred thousand dollars, one hundred and fifty dollars;
39 if more than two hundred thousand dollars and not more
40 than one million dollars, one hundred and eighty dollars,
41 and an additional twenty cents on each one thousand
42 dollars, or fraction thereof, in excess of two hundred
43 thousand dollars; if more than one million dollars and
44 not more than fifteen million dollars, three hundred and

45 forty dollars, and an additional fifteen cents on each one
46 thousand dollars, or fraction thereof, in excess of one
47 million dollars; if more than fifteen million dollars,
48 twenty-five hundred dollars. The license tax collected
49 hereunder shall be in addition to the annual fee, if any,
50 payable to the secretary of state as statutory attorney-
51 in-fact. For the purpose of the assessment of the license
52 tax provided by this section, and for no other purpose,
53 shares of stock having no par value shall be presumed
54 to be of the par value of twenty-five dollars each:
55 *Provided*, That if such stock was originally issued for a
56 consideration greater than twenty-five dollars per share,
57 such license taxes as are required to be paid to the tax
58 commissioner shall be computed upon the basis of the
59 consideration for which such stock was issued.

60 (2) *Amount of license tax on foreign corporations.* —
61 It shall be the duty of the tax commissioner to assess
62 and fix the license tax of each foreign corporation
63 engaging in business activity in this state according to
64 the proportion of its issued and outstanding capital stock
65 which is represented by its property owned and used in
66 this state, which license tax shall be at the rate
67 prescribed in subdivision (1) of this subsection (b), plus
68 seventy-five percent of such tax. In no event shall any
69 such foreign corporation pay an annual license tax of
70 less than two hundred fifty dollars, which shall be in
71 addition to the fee of the secretary of state as statutory
72 attorney-in-fact. The tax commissioner may in any case
73 require such additional information as he or she may
74 deem necessary to enable him or her to assess and fix
75 the just amount of license tax of such corporation; it
76 shall be his or her duty to notify every such corporation
77 of the amount so assessed; and it shall be the duty of
78 the corporation to pay the same to the tax commissioner
79 within thirty days thereafter, and if it fail to do so it
80 shall be liable to the penalties prescribed in, or pursuant
81 to, this article.

82 (c) *Exemptions.* — Nonprofit corporations are exempt
83 from payment of the corporate license tax but must file
84 with the tax commissioner the return required by
85 section three of this article, and pay the annual fee of

86 the secretary of state as attorney-in-fact under section
87 five of this article if applicable.

§11-12C-3. Payment and collection of tax; deposit of money; return required.

1 (a) *Payment and collection of tax.* — When application
2 is made to the secretary of state for a certificate of
3 incorporation or authority to do business in this state,
4 it shall be the duty of the applicant to pay all taxes and
5 fees due under this article; and it shall be the duty of
6 the secretary of state to collect the corporate license tax
7 for the first year before issuing such certificate.
8 Thereafter, on or before the first day of the license tax
9 year next following the date of the certificate, and on
10 or before the first day of each succeeding license tax
11 year, such corporation shall pay and the tax commis-
12 sioner shall collect such tax for a full license tax year
13 together with the statutory attorney fee: *Provided*, That
14 if the application is made on or after the first day of
15 the second month preceding the beginning of the next
16 license tax year, and before the first day of such license
17 tax year, the secretary of state shall collect the tax for
18 the full year beginning on such first day of the next
19 license tax year in addition to the initial tax, together
20 with the statutory attorney fee.

21 (b) *Deposit of money.* — The money so received by the
22 secretary of state and the tax commissioner shall be paid
23 by them into the state treasury.

24 (c) *Returns.* — Payment of the tax and statutory
25 attorney fee required under the provisions of this section
26 shall be accompanied by a return on forms provided by
27 the tax commissioner for that purpose. The tax commis-
28 sioner shall upon completion of processing such return,
29 forward it to the secretary of state, together with a list
30 of all corporations which have paid such tax. Such
31 return shall contain (1) the address of its principal
32 office; (2) the names and mailing addresses of its officers
33 and directors; (3) the name and mailing address of the
34 person on whom notice of process may be served and
35 such other information as the tax commissioner deems
36 appropriate.

§11-12C-4. Due date of return; payment of tax.

1 It shall be the duty of every corporation required to
2 pay the tax to file a properly completed return together
3 with payment of tax owed to the tax commissioner by
4 the first day of July of the license year; and if it fails
5 to do so it shall be liable for payment of interest,
6 additions to tax and penalties prescribed in article ten
7 of this chapter and subject to the penalties prescribed
8 in section eight of this article.

§11-12C-5. Annual fee of secretary of state as attorney-in-fact.

1 Every foreign corporation, every foreign limited
2 partnership, every domestic corporation whose principal
3 place of business or chief works is located outside the
4 state, and every domestic limited partnership whose
5 principal place of business is located outside the state,
6 shall pay an annual fee of ten dollars for the services
7 of the secretary of state as attorney-in-fact for such
8 corporation or limited partnership, which fee shall be
9 due and payable at the same time and with the same
10 return, collected by the same officers, and accounted for
11 in the same way, as the annual license tax imposed on
12 corporations under this article. The tax commissioner
13 shall pay over to the secretary of state all attorney-in-
14 fact fees collected under this section, and such fees shall
15 be used to offset the costs of the secretary of state for
16 his or her services as attorney-in-fact.

§11-12C-6. Notice to corporations taxable; tax as lien.

1 (a) It shall be the duty of the tax commissioner,
2 between April fifteenth and May fifteenth each year, to
3 notify every domestic corporation and every foreign
4 corporation currently registered to do business in this
5 state which is or may be liable for payment of the tax
6 imposed by this article of the time of payment of such
7 tax and the amount thereof, together with the statutory
8 attorney fee, if any. Such notices may be sent through
9 the mails, addressed to the corporation at its last known
10 post office address as shown by the records in the office
11 of the secretary of state.

12 (b) The amount of such tax shall be deemed a debt
13 due the state, and shall be a lien as to an innocent
14 purchaser for value, on the property and assets of the
15 corporation prior to all other liens, except the lien for
16 ad valorem property taxes levied on its property, from
17 the time a notice of such lien, specifying the year and
18 the amount for which the lien is claimed, is filed in the
19 office of the clerk of the county commission of the county
20 in which the property subject to such liens is situated.
21 Such clerk shall, upon the filing in his or her office of
22 any such notice, record such notice in the docket where
23 general state tax liens are filed and index the same in
24 the name of the corporation against whom the lien is
25 claimed. Upon payment of such lien debt there shall be
26 executed by the tax commissioner and delivered to the
27 clerk of the county commission in whose office notice of
28 such lien is filed a release thereof, which release shall
29 be filed and recorded by such clerk in like manner as
30 releases of judgment or tax liens are filed and recorded.
31 Such tax shall be a preferred debt in case of insolvency.

**§11-12C-7. Monthly report by secretary of state to tax
commissioner as to corporations.**

1 The secretary of state shall within twenty days after
2 the close of each month make a report to the tax
3 commissioner for the preceding month, in which he or
4 she shall set out the name of every corporation to which
5 he or she issued a certificate of incorporation during the
6 month, as well as the name of each corporation to which
7 he or she issued a certificate of authority, with the
8 amount of license tax paid to him or her by each; also
9 he or she shall set out in such report the names of all
10 corporations to which he or she issued certificates of
11 change of name or of change of location of principal
12 office, dissolution, withdrawal or merger; and a state-
13 ment of all moneys received during such preceding
14 month from all sources which are due to the state, and
15 pay the same into the treasury; if he or she fails to do
16 so it shall be the duty of the tax commissioner to report
17 such failure to the governor.

§11-12C-8. Administrative and criminal penalties.

1 The following penalties shall be in addition to the
2 penalties and remedies available under articles nine and
3 ten of this chapter of the code:

4 (a) *Administrative penalty.* — The commissioner shall
5 impose upon each delinquent corporation a fine in the
6 amount of one hundred dollars per year for each license
7 tax year or portion thereof in which the license tax
8 return which is due is not filed or the license tax which
9 is owed is not paid. This penalty shall be assessed and
10 collected in the same manner as the license tax.

11 (b) *Criminal penalty.* — It shall be a misdemeanor for
12 a corporation to conduct business for more than thirty
13 consecutive calendar days without paying in full the
14 amount of corporate license tax which is due. The
15 penalty for any officer, agent or employee convicted of
16 such offense shall be a fine equal to a sum of two and
17 one half times the annual corporate license tax assessed
18 for said corporation, not to exceed one thousand dollars
19 per conviction.

20 (c) *Revocation of certificate of incorporation or*
21 *certificate of authority.* — Upon the establishment of a
22 finalized liability for corporate license taxes, not subject
23 to further administrative or judicial review under
24 article ten of this chapter, the certificate of incorpora-
25 tion in the case of a domestic corporation, or the
26 certificate of authority in the case of a foreign corpora-
27 tion, shall be revoked. Any corporation whose certificate
28 of incorporation or certificate of authority has been
29 revoked due to nonpayment of its corporate license taxes
30 shall be reinstated to its corporate license taxes shall be
31 ~~reinstated to its~~ former rights as if it had not been
32 delinquent upon payment to the tax commissioner of all
33 delinquent license taxes, plus any interest, additions or
34 penalties accruing thereon.

del
5/11/15

§11-12C-9. Disposition of corporate license tax collected.

1 All taxes collected under the provisions of this article
2 shall be paid into the general revenue fund of the state
3 treasury in the manner provided by law.

§11-12C-10. Applicability of tax procedure and adminis-

tration act and tax crimes and penalties act.

1 Except when a specific provision of this article
2 directly conflicts with a provision of the “West Virginia
3 Tax Procedure and Administration Act” set forth in
4 article ten of this chapter of the code, the provisions of
5 that act are fully applicable to the corporate license tax
6 imposed by this article. In the event of any conflict, the
7 provisions of this article shall have paramount effect,
8 but the two articles shall be construed as complemen-
9 tary and harmonious unless so clearly in conflict that
10 they cannot reasonably be reconciled. However, notwith-
11 standing any provision of that act, the tax commissioner
12 may lawfully release the names and addresses of the
13 directors and officers of a corporation to anyone upon
14 written request: *Provided*, That such request provides
15 the correct name of the corporation as reported to the
16 tax commissioner. The tax commissioner may charge a
17 reasonable fee to cover the costs of processing such
18 requests.

19 Each and every provision of the “West Virginia Tax
20 Crimes and Penalties Act” set forth in article nine of
21 this chapter shall apply to the tax imposed by this
22 article with like effect as if said act were applicable only
23 to the tax imposed by this article and were set forth in
24 extension in this article.

§11-12C-11. Effective date.

1 (a) The provisions of this article shall take effect on
2 the first day of July, one thousand nine hundred ninety-
3 three, and apply to license tax years beginning the first
4 day of July, one thousand nine hundred ninety-three and
5 thereafter.

6 (b) Tax liabilities, if any, arising for taxable years
7 ending prior to the first day of July, one thousand nine
8 hundred ninety-three, shall be determined, adminis-
9 tered, assessed and collected as if sections seventy-six
10 through eighty-four and eighty-six through ninety-one,
11 article twelve of this chapter had not been repealed; and
12 the rights and duties of the taxpayer and the state of
13 West Virginia thereunder shall be fully and completely

14 preserved.

§11-12C-12. Severability.

1 If any provision of this article or the application
2 thereof to any person or circumstance is for any reason
3 adjudged by any court of competent jurisdiction to be
4 unconstitutional or otherwise invalid, such judgment
5 shall not affect, impair or invalidate the remainder of
6 said article, but shall be confined in its operation to the
7 provision thereof directly involved in the controversy in
8 which such judgment shall have been rendered, and the
9 applicability of other provisions shall not be affected
10 thereby.

CHAPTER 31. CORPORATIONS.

ARTICLE 1. BUSINESS AND NONPROFIT CORPORATIONS.

§31-1-76a. Notification of court action affecting corporate status.

1 It shall be the duty of the clerk of every court of this
2 state in which any proceedings are had which result in
3 the forfeiture of the charter or certificate of incorpora-
4 tion of any corporation issued under the laws of this
5 state, or result in the dissolution or extinction of any
6 such corporation, or in the revocation of the rights and
7 privileges of any foreign corporation to do business in
8 this state, to notify the secretary of state of any such
9 forfeiture, dissolution, extinction or revocation, in which
10 report he shall state the name of the court, the name
11 of the corporation, the nature of the actions and the date
12 of the order or judgment, and such other pertinent
13 matter as may be required by the secretary of state; and
14 the secretary of state shall file and record such report
15 in his or her office, and shall note the same in the
16 indexes of corporations kept in his or her office.

Enr. Com. Sub. for H. B. 4055] 12

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



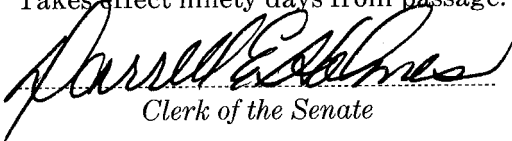
Chairman Senate Committee



Chairman House Committee

Originating in the House.

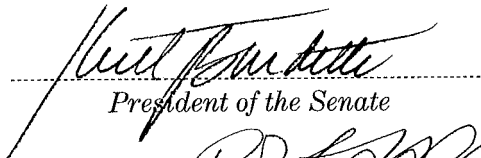
Takes effect ninety days from passage.



Clerk of the Senate



Clerk of the House of Delegates

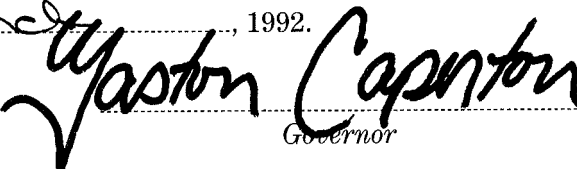


President of the Senate



Speaker of the House of Delegates

The within is approved..... this the 31st
day of March....., 1992.



Governor

PRESENTED TO THE

GOVERNOR

Date 3/27/92

Time 3:45pm