WEST VIRGINIA LEGISLATURE
SECOND REGULAR SESSION, 1998

ENROLLED

House Bill No. 4290
(By Delegates Michael and Jenkins)

Passed March 13, 1998

In Effect July 1, 1998
ENROLLED

H. B. 4290

(By Delegates Michael and Jenkins)

[Passed March 13, 1998; in effect July 1, 1998.]

AN ACT to amend and reenact sections three, five and twenty, article twelve, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to the business registration tax; changing the registration period from one to two years and the tax from fifteen to thirty dollars, beginning on the first day of July, one thousand nine hundred ninety-nine; permitting a phase-in transition for renewal registration.

Be it enacted by the Legislature of West Virginia:

That sections three, five and twenty, article twelve, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, all 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.

(a) Registration required. — No person shall, without a business registration certificate, engage in or prosecute, in the state of West Virginia, any business activity without first obtaining a business registration certificate from the tax commissioner of the state of West Virginia.
Additionally, before beginning business in this state, such person:

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

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

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

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

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

(b) Tax levied. — The business registration tax hereby levied shall be fifteen dollars for each annual business registration certificate: Provided, That for registration periods beginning on or after the first day of July, one thousand nine hundred ninety-nine, the business registration tax shall be thirty dollars, except as otherwise provided in this article.

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

(2) A separate business registration certificate is not required for each coin-operated machine. A separate certificate is required for each location from which making coin-operated machines available to the public is itself a business activity.
(3) A business that sells tangible personal property or services from or out of one or more vehicles needs a separate business registration certificate for each fixed location in this state from or out of which business is conducted. A copy of its business registration certificate shall be carried in each vehicle and publicly displayed while business is conducted from or out of the vehicle.

(4) A business registration certificate is required by subsection (a) of this section for every person engaging in purposeful revenue generating activity in this state. If that activity is one for which an employment agency license or a collection agency license or a license to sell drug paraphernalia is required and no other business activity is conducted by that person at each business location for which the employment agency license or collection agency license or license to sell drug paraphernalia is issued, then only that license is required for each such activity conducted by the licensee at each business location. However, if, in addition to the activity for which each license is issued, some other business activity is conducted by the licensee at such business location, a separate business registration certificate is required to conduct the nonlicensed activity.

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

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

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

(d) Exemptions from payment of tax. — Any person engaging in or prosecuting any business activity in this state who is required by law to collect or withhold any tax
administered under article ten of this chapter; or who
claims exemption from payment of the taxes imposed by
articles fifteen and fifteen-a of this chapter, shall be
required to obtain a business registration certificate, as
herein before provided, but shall be exempt from payment
of the tax levied by subsection (b) of this section, if such
person is:

   (1) A person who had gross income from business
activity of four thousand dollars or less during that
person's tax year for state income tax purposes
immediately preceding the registration period for which a
registration certificate is required under this article.

   (2) An organization which qualifies, or would qualify,
for exemption from federal income taxes under section

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

   (4) The United States, or an agency or instrumentality
thereof, which is exempt from taxation by the states.

   (5) A person engaged in the business of agriculture
and farming: Provided, That no producer or grower
selling products of the farm, garden or dairy and not
included within the definition of business under
subsection (a), section two of this article shall be required
to obtain a business registration certificate or pay the
business registration tax.

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

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

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

(a) Registration period. — All business registration certificates issued under the provisions of section four of this article shall be for the period of one year beginning the first day of July and ending the thirtieth day of the following June: Provided, That beginning on or after the first day of July, one thousand nine hundred ninety-nine, all business registration certificates issued under the provisions of section four of this article shall be issued for two fiscal years of this state, subject to the following transition rule. If the first year for which a business was issued a business registration certificate under this article began on the first day of July of an even-numbered calendar year, then the tax commissioner may issue a renewal certificate to that business for the period beginning the first day of July, one thousand nine hundred ninety-nine, and ending the thirtieth day of June, two thousand, upon receipt of fifteen dollars for each such one-year certificate. Thereafter, only certificates covering two fiscal years of this state shall be issued.

(b) Revocation or suspension of certificate. —

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

(A) The registrant filed an application for a business registration certificate, or an application for renewal thereof, for the registration period that was false or fraudulent.
(B) The registrant willfully refused or neglected to file a tax return or to report information required by the tax commissioner for any tax imposed by or pursuant to this chapter.

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

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

(E) The registrant abused the privilege afforded to it by article fifteen or fifteen-a of this chapter to be exempt from payment of the taxes imposed by such articles on some or all of the registrant's purchases for use in business upon issuing to the vendor a properly executed exemption certificate, by failing to timely pay use tax on taxable purchase for use in business, or by failing to either pay the tax or give a properly executed exemption certificate to the vendor.

(2) Before canceling or suspending any such certificate, the tax commissioner shall give written notice of his or her intent to suspend or cancel the business registration certificate of the taxpayer, the reason for the suspension or cancellation, the effective date of the cancellation or suspension, and the date, time and place where the taxpayer may appear and show cause why such business registration certificate should not be canceled or suspended. This written notice shall be served on the taxpayer in the same manner as a notice of assessment is served under article ten of this chapter, not less than twenty days prior to the date of such show cause informal hearing. The taxpayer may appeal cancellation or suspension of its business registration certificate in the same manner as a notice of assessment is appealed under article ten of this chapter: Provided, That the filing of a petition for appeal shall not stay the effective date of the
suspension or cancellation. A stay may be granted only after a hearing is held on a motion to stay filed by the registrant, upon finding that state revenues will not be jeopardized by the granting of the stay. The tax commissioner may, in his or her discretion and upon such terms as he or she may specify, agree to stay the effective date of the cancellation or suspension until another date certain.

(c) Refusal to renew. — The tax commissioner may refuse to issue or renew a business registration certificate if the registrant is delinquent in the payment of any tax administered by the tax commissioner under article ten of this chapter or the corporate license tax imposed by article twelve-c of this chapter, until the registrant pays in full all such delinquent taxes including interest and applicable additions to tax and penalties. In his or her discretion and upon such terms as he or she may specify, the tax commissioner may enter into an installment payment agreement with such taxpayer in lieu of the complete payment. Failure of the taxpayer to fully comply with the terms of the installment payment agreement shall render the amount remaining due thereunder immediately due and payable and the tax commissioner may suspend or cancel the business registration certificate in the manner hereinbefore provided.

§11-12-20. Registration of transient vendors.

(a) Prior to conducting business or otherwise commencing operations within this state, a transient vendor shall obtain a business registration certificate from the tax commissioner and pay the tax imposed by this article.

(b) Upon receipt of the application for business registration and the posting of the bond required by section twenty-one of this article, the tax commissioner shall issue to the transient vendor a business registration certificate, which shall be valid for the current registration period, if the application is complete and the transient vendor is not delinquent in the payment of any tax imposed by this chapter. Upon renewal of the registration, the tax commissioner shall issue a new certificate, valid for
the next ensuing registration period, provided he or she is satisfied that the transient vendor has complied with the provisions of this article and is not delinquent in the payment of any tax imposed by this article.

(c) The transient vendor shall keep the business registration certificate in his or her possession at all times when conducting business within this state. He or she shall publicly display the certificate whenever conducting business in this state and shall exhibit the certificate upon the request of an authorized employee of the tax commissioner or any law-enforcement officer.

(d) The business registration certificate issued by the tax commissioner shall constitute notice that the transient vendor named therein has registered with the tax commissioner, and shall provide notice to the transient vendor that:

1. Before entering this state to conduct business the transient vendor must notify the tax commissioner, in writing, of the location or locations in this state where he or she intends to conduct business, and the date or dates on which he or she intends to conduct such business.

2. Failure to notify, or the giving of false information to the tax commissioner is grounds for suspension or revocation of the transient vendor's business registration certificate.

3. Conducting business in this state without having a valid business registration certificate after such certificate has been suspended or revoked, may result in criminal prosecution or the imposition of fines, or other penalties, or both for violation of this article.

(e) Definitions. — For purposes of this section:

1. "Transient vendor" means any person who:

   (A) Brings into this state, by automobile, truck or other means of transportation, or purchases in this state, tangible personal property the sale or use of which is subject to one or more taxes administered by the tax commissioner under article ten of this chapter;
(B) Offers or intends to offer such tangible personal property for sale to consumers in this state; and

(C) Does not maintain an established office, distribution house, sales house, warehouse, service enterprise, residence from which business is conducted, or other place of business within this state.

(2) The term "transient vendor" shall not include any person who:

(A) Is a commercial traveler or selling agent who sells only to persons who purchase tangible personal property for purposes of resale to others;

(B) Only sells goods, wares or merchandise by sample catalog or brochure for future delivery;

(C) Only sells or offers for sale crafts or other handmade items that were made by the seller; or

(D) Only sells agricultural and farming products, except nursery products and foliage plants.
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 July 1, 1998.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within approved this the 6th day of April, 1998.

Governor