

RECEIVED

98 APR -7 AM 9:20

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

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

RECEIVED
98 APR -7 AM 9 20
OFFICE OF THE CLERK
SENATE OF WEST VIRGINIA

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.

- 1 (a) *Registration required.* — No person shall, without
- 2 a business registration certificate, engage in or prosecute,
- 3 in the state of West Virginia, any business activity without
- 4 first obtaining a business registration certificate from the
- 5 tax commissioner of the state of West Virginia.

6 Additionally, before beginning business in this state, such
7 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 annual business
27 registration certificate: *Provided*, That for registration
28 periods beginning on or after the first day of July, one
29 thousand nine hundred ninety-nine, the business
30 registration tax shall be thirty dollars, except as otherwise
31 provided in this article.

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

38 (2) A separate business registration certificate is not
39 required for each coin-operated machine. A separate
40 certificate is required for each location from which
41 making coin-operated machines available to the public is
42 itself a business activity.

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

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

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

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

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

79 (d) *Exemptions from payment of tax.* — Any person
80 engaging in or prosecuting any business activity in this
81 state who is required by law to collect or withhold any tax

82 administered under article ten of this chapter; or who
83 claims exemption from payment of the taxes imposed by
84 articles fifteen and fifteen-a of this chapter, shall be
85 required to obtain a business registration certificate, as
86 herein before provided, but shall be exempt from payment
87 of the tax levied by subsection (b) of this section, if such
88 person is:

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

94 (2) An organization which qualifies, or would qualify,
95 for exemption from federal income taxes under section
96 501 of the Internal Revenue Code of 1986, as amended.

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

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

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

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

115 (e) *Money penalty.* — Any person required to obtain a
116 business registration certificate under this section, who is
117 exempt from payment of the tax, as provided in
118 subsection (d) of this section, who does not obtain a
119 registration certificate shall, in lieu of paying the penalty

120 imposed by section nine of this article, pay a penalty of
121 fifteen dollars for each business location for which a
122 certificate is needed: *Provided*, That application for
123 business registration is made and the applicable money
124 penalty tendered to the tax commissioner within fifteen
125 days after such person receives written notice from the tax
126 commissioner that such person is required to obtain a
127 business registration certificate.

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

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

20 (b) *Revocation or suspension of certificate.* —

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

24 (A) The registrant filed an application for a business
25 registration certificate, or an application for renewal
26 thereof, for the registration period that was false or
27 fraudulent.

28 (B) The registrant willfully refused or neglected to file
29 a tax return or to report information required by the tax
30 commissioner for any tax imposed by or pursuant to this
31 chapter.

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

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

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

51 (2) Before canceling or suspending any such
52 certificate, the tax commissioner shall give written notice
53 of his or her intent to suspend or cancel the business
54 registration certificate of the taxpayer, the reason for the
55 suspension or cancellation, the effective date of the
56 cancellation or suspension, and the date, time and place
57 where the taxpayer may appear and show cause why such
58 business registration certificate should not be canceled or
59 suspended. This written notice shall be served on the
60 taxpayer in the same manner as a notice of assessment is
61 served under article ten of this chapter, not less than
62 twenty days prior to the date of such show cause informal
63 hearing. The taxpayer may appeal cancellation or
64 suspension of its business registration certificate in the
65 same manner as a notice of assessment is appealed under
66 article ten of this chapter: *Provided*, That the filing of a
67 petition for appeal shall not stay the effective date of the

68 suspension or cancellation. A stay may be granted only
69 after a hearing is held on a motion to stay filed by the
70 registrant, upon finding that state revenues will not be
71 jeopardized by the granting of the stay. The tax
72 commissioner may, in his or her discretion and upon such
73 terms as he or she may specify, agree to stay the effective
74 date of the cancellation or suspension until another date
75 certain.

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

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

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

6 (b) Upon receipt of the application for business
7 registration and the posting of the bond required by
8 section twenty-one of this article, the tax commissioner
9 shall issue to the transient vendor a business registration
10 certificate, which shall be valid for the current registration
11 period, if the application is complete and the transient
12 vendor is not delinquent in the payment of any tax
13 imposed by this chapter. Upon renewal of the registration,
14 the tax commissioner shall issue a new certificate, valid for

15 the next ensuing registration period, provided he or she is
16 satisfied that the transient vendor has complied with the
17 provisions of this article and is not delinquent in the
18 payment of any tax imposed by this article.

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

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

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

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

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

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

46 (1) "Transient vendor" means any person who:

47 (A) Brings into this state, by automobile, truck or
48 other means of transportation, or purchases in this state,
49 tangible personal property the sale or use of which is
50 subject to one or more taxes administered by the tax
51 commissioner under article ten of this chapter;

52 (B) Offers or intends to offer such tangible personal
53 property for sale to consumers in this state; and

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

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

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

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

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

67 (D) Only sells agricultural and farming products,
68 except nursery products and foliage plants.

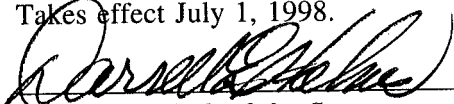
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

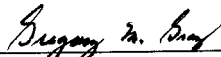

Chairman Senate Committee

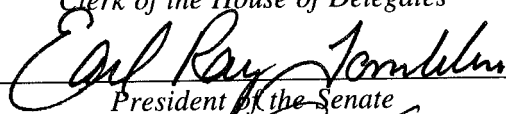

Chairman House Committee

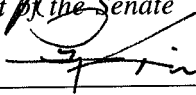
Originating in the House.

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

PRESENTED TO THE

GOVERNOR

Date

3/26/98

Time

10:41 am