

SB 345

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REGULAR SESSION, 2010

ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 345

(BY SENATORS TOMBLIN (MR. PRESIDENT) AND CARUTH,
BY REQUEST OF THE EXECUTIVE)

[Passed March 9, 2010; in effect ninety days from passage.]

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AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §11-13B-19, relating to requiring a study of the telecommunications tax; authorizing the Tax Commissioner to order the disclosure of certain information; exempting certain information received by the Tax Commissioner from the West Virginia Freedom of Information Act; prohibiting the disclosure of certain information received by the Tax Commissioner; providing for criminal and civil penalties; defining terms; and authorizing the Tax Commissioner to promulgate rules and emergency rules.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §11-13B-19, to read as follows:

ARTICLE 13B. TELECOMMUNICATIONS TAX.

§11-13B-19. Tax Commissioner study of telecommunications tax.

1 (a) *Findings and purpose.* – The Legislature finds that
2 the tax imposed by this article fails to account for modern
3 business models, operational structures, technologies and
4 fundamental economics of the business of telecommunica-
5 tions. The Legislature further finds that the tax imposed
6 under this article should be amended to provide for a
7 reasonable, fair and efficient tax that inures to the benefit
8 and general welfare of West Virginia. Therefore, it is the
9 purpose of this section to require a study of telecommuni-
10 cations services relative to the imposition of a telecommu-
11 nications tax, to provide the Tax Commissioner with
12 plenary authority to order the disclosure of financial
13 information and other data necessary to undertake the
14 study and to provide for the confidentiality of financial
15 information and other data disclosed as part of the study.

16 (b) *Telecommunications tax study.* – The Tax Commis-
17 sioner shall study the business of telecommunications
18 service and related businesses and shall file a report with
19 the Governor and the Legislature on or before July 1, 2011.
20 The report shall recommend amendments to the tax
21 imposed under this article or any other tax pertaining to
22 telecommunications service and shall include recom-
23 mended legislation. The Tax Commissioner in his report
24 shall examine the feasibility and fiscal implications on
25 affected governmental entities or political subdivisions of
26 a single uniform statewide telecommunications service tax
27 or, alternatively, imposition of the sales and use tax on the
28 retail sale of telecommunications services as a replacement
29 for, or in addition to, other taxes and fees on telecommuni-
30 cations service. The Tax Commissioner may include this
31 study as part of the findings and recommendations of the
32 Governor’s Tax Modernization Project and may cooperate
33 with persons engaged in the Governor’s Tax Moderniza-
34 tion Project to further the purposes of this study. Any
35 consultant under contract with the Tax Commissioner who

36 assists in conducting this study is “an agent of this state”
37 for the purposes of section five-d, article ten of this
38 chapter and is subject to the requirements of that section
39 and subsection (e) of this section: *Provided*, That wit-
40 nesses, experts, government officials, consultants and
41 industry representatives who provide data, information or
42 statistics to the Tax Commissioner or others engaged in
43 the study mandated by this section shall not be treated as
44 being subject to the confidentiality restrictions of section
45 five-d, article ten of this chapter and shall not be treated
46 as subject to the confidentiality requirements of subsec-
47 tion (e) of this section, solely by reason of having provided
48 information to the study. For purposes of this study, the
49 Tax Commissioner may seek and examine the information,
50 data, records and testimony of: Experts in the fields of
51 law, economics and taxation; representatives of state,
52 county, local and municipal governmental subdivisions of
53 this state and other states of the United States; persons
54 and entities engaged in telecommunications services
55 businesses; persons knowledgeable about the telecommu-
56 nications industry, taxation of the telecommunications
57 industry and the economics of the telecommunications
58 industry; and any other person or entity that may have
59 information relevant to the study mandated by this
60 section.

61 (c) *Definitions.* – As used in this section:

62 (1) “Person” means any individual, firm, partnership,
63 limited partnership, company, copartnership, joint ven-
64 ture, association, corporation, organization or entity,
65 whether private or public.

66 (2) “Telecommunications service” when used in this
67 article shall have the same meaning as that term is defined
68 in the Streamlined Sales and Use Tax Administration Act
69 in article fifteen-b of this chapter.

70 (d) *Disclosure of financial information and other data.* –

71 (1) Notwithstanding any provision of this code to the
72 contrary, the Tax Commissioner may, for the purpose of
73 conducting the study required by this section, order the
74 disclosure of financial information and other data in the
75 possession of any person or entity that may have informa-
76 tion relevant to the study mandated by this section,
77 including, but not limited to, government entities and
78 persons or entities engaged in a telecommunications
79 service business in this state or a related business. The
80 disclosures shall be on forms prescribed by the Tax
81 Commissioner and shall be completed and filed pursuant
82 to instructions provided by the Tax Commissioner.

83 (2) Any person failing to comply with an order of
84 disclosure within ninety days of receipt of the initial
85 written order of disclosure, which order may be in the
86 form of a letter or other written order, or in the form of a
87 subpoena or subpoena duces tecum, shall be subject to a
88 penalty, collectible as provided in article ten of this
89 chapter. The amount of the penalties shall be an initial
90 penalty of \$25,000 which shall be imposed upon the
91 passage of the first ninety days subsequent to receipt of
92 such written order of disclosure during which the failure
93 to comply occurs and an additional penalty of \$1,000 per
94 day for each day after the first ninety days during which
95 the failure to comply continues. The count of days for
96 purposes of this penalty shall not cease by reason of the
97 completion of the study or by reason of the completion and
98 issuance of the study report, but shall continue in perpetu-
99 ity until such time as the information which was the
100 subject of the order is disclosed in full to the Tax Commis-
101 sioner or until the Tax Commissioner issues a written
102 order for cessation of the count of Days. The Tax Commis-
103 sioner may issue a written order for cessation of the count
104 of days, for purposes of this penalty, no earlier than the
105 date on which the study report mandated by this section
106 has been completed and issued by the Tax Commissioner.
107 In the case of information which has been the subject of a

108 subpoena or subpoena duces tecum, the \$25,000 initial
109 penalty and the \$1,000 per day penalty imposed by this
110 section shall be in addition to all applicable civil and
111 criminal penalties lawfully imposed for failure to comply
112 with a subpoena or subpoena duces tecum. The Tax
113 Commissioner may waive all or any part of such penalty
114 for good cause shown.

115 (3) The Tax Commissioner, or his or her designee, may
116 issue subpoenas and subpoenas duces tecum, in the
117 manner prescribed in and subject to the requirements of
118 section five-b, article ten of this chapter, to enforce the
119 disclosure requirements of this section. Failure to comply
120 with any such subpoena or subpoena duces tecum shall be
121 subject to all applicable civil and criminal penalties
122 lawfully imposed for failure to comply with a subpoena or
123 subpoena duces tecum.

124 (e) *Confidentiality.* –

125 (1) Financial information and other data disclosed to the
126 Tax Commissioner under the provisions of this section
127 shall be considered confidential and exempt from article
128 one, chapter twenty-nine-b of this code.

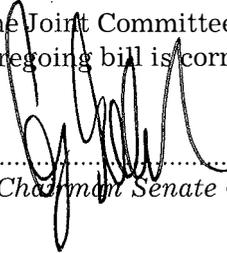
129 (2) Any information disclosed to the Tax Commissioner
130 pursuant to the requirements of this section shall have all
131 of the confidentiality protections given to a “return”
132 under section five-d of article ten of this Chapter and any
133 disclosure not authorized by that section, or this section,
134 shall be subject to all of the penalties provided for unlaw-
135 ful disclosure of a “return”. Notwithstanding any provi-
136 sion of this code to the contrary, the Tax Commissioner
137 may share financial information and other data disclosed
138 under this section with any consultant under contract with
139 the Tax Commissioner to assist in conducting the study.
140 It is unlawful for the Tax Commissioner or any person
141 conducting the study, including any consultant under
142 contract with the Tax Commissioner to assist in conduct-

143 ing the study, to disclose to any person not conducting the
144 study any financial information or other data disclosed
145 under this section. Such disclosure shall be a violation of
146 the tax information confidentiality provisions of section
147 five-d, article ten of this chapter.

148 (3) Nothing in this section may be construed as prohibit-
149 ing the publication or release of statistics so classified as
150 to prevent the identification of a particular person or
151 entity.

152 (f) *Rules authorized.* – The Tax Commissioner may
153 promulgate rules, including emergency rules, to implement
154 the provisions of this section. For the purposes of article
155 three, chapter twenty-nine-a of this code, a sufficient
156 emergency exists to justify the promulgation of the
157 emergency rules.

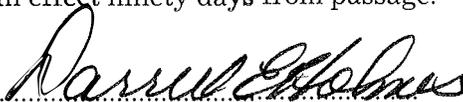
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.


.....
Chairman Senate Committee


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Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.


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Clerk of the Senate


.....
Clerk of the House of Delegates


.....
President of the Senate


.....
Speaker House of Delegates

The within... *is approved* ... this the... *7th* ...
Day of... *May* ... , 2010.


.....
Governor

PRESENTED TO THE
GOVERNOR

MAR 17 2010

Time *Gillean*