

1 **ENROLLED**

2 **H. B. 2918**

3
4 (By Delegates White and T. Campbell)

5 (By Request of the Tax Division)

6
7 [Passed March 11, 2011; in effect ninety days from passage.]

**FISCAL
NOTE**

8
9
10 AN ACT to amend and reenact §11-12-3, §11-12-5 and §11-12-86 of the
11 Code of West Virginia, 1931, as amended, all relating to
12 permanent business registrations; changing the procedure for
13 suspending, revoking or canceling a business registration
14 certificate; permitting a registrant to appeal an order to
15 suspend, revoke or cancel a business registration certificate;
16 permitting a business registration certificate to be revoked,
17 canceled or suspended for nonpayment of property taxes;
18 changing the sparkler and novelty registration fee from annual
19 one to an initial one; and updating permanent registration
20 language.

21 *Be it enacted by the Legislature of West Virginia:*

22 That §11-12-3, §11-12-5 and §11-12-86 of the Code of West
23 Virginia, 1931, as amended, be amended and reenacted, all to read
24 as follows:

1 **ARTICLE 12. BUSINESS REGISTRATION TAX.**

2 **§11-12-3. Business registration certificate required; tax levied;**
3 **exemption from registration; exemption from tax;**
4 **penalty.**

5 (a) *Registration required.* -- No person shall, without a
6 business registration certificate, engage in or prosecute, in the
7 State of West Virginia, any business activity without first
8 obtaining a business registration certificate from the Tax
9 Commissioner of the State of West Virginia. Additionally, before
10 beginning business in this state, such person:

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

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

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

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

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

1 (b) *Tax levied.* -- The business registration tax hereby levied
2 shall be \$15 for each annual business registration certificate:
3 *Provided,* That for registration periods beginning on or after July
4 1, 1999, the business registration tax shall be \$30, except as
5 otherwise provided in this article: *Provided, however,* That after
6 June 30, 2010, the business registration tax shall be \$30.00 for
7 each business registration certificate, including business
8 registration certificates granted upon application after cessation
9 of a business, or after suspension, revocation, cancellation or
10 lapse of a prior business registration certificate.

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

16 (2) A separate business registration certificate is not
17 required for each coin-operated machine. A separate certificate is
18 required for each location from which making coin-operated machines
19 available to the public is itself a business activity.

20 (3) A business that sells tangible personal property or
21 services from or out of one or more vehicles needs a separate
22 business registration certificate for each fixed location in this
23 state from or out of which business is conducted. A copy of its
24 business registration certificate shall be carried in each vehicle

1 and publicly displayed while business is conducted from or out of
2 the vehicle.

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

18 (c) *Exemption from registration.* -- Any person engaging in or
19 prosecuting business activity in this state:

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

22 (2) Who does not claim exemption from payment of taxes imposed
23 by articles fifteen and fifteen-a of this chapter, shall be exempt
24 from both registration and payment of the tax imposed by this

1 article, if such person had gross income from business activity of
2 \$4,000 or less during that person's tax year for state income tax
3 purposes immediately preceding the registration period for which a
4 registration certificate is otherwise required by this article.

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

13 (1) A person who had gross income from business activity of
14 \$4,000 or less during that person's tax year for state income tax
15 purposes immediately preceding the registration period for which a
16 registration certificate is required under this article.

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

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

24 (4) The United States, or an agency or instrumentality

1 thereof, which is exempt from taxation by the states.

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

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

13 (e) *Money penalty*. -- Any person required to obtain a business
14 registration certificate under this section, who is exempt from
15 payment of the tax, as provided in subsection (d) of this section,
16 who does not obtain a registration certificate shall, in lieu of
17 paying the penalty imposed by section nine of this article, pay a
18 penalty of \$15 for each business location for which a certificate
19 is needed: *Provided*, That application for business registration is
20 made and the applicable money penalty tendered to the Tax
21 Commissioner within fifteen days after such person receives written
22 notice from the Tax Commissioner that such person is required to
23 obtain a business registration certificate.

24 **§11-12-5. Time for which registration certificate granted; power**

1 **of Tax Commissioner to suspend, revoke or cancel**
2 **certificate; certificate to be permanent until**
3 **cessation of business for which certificates are**
4 **granted or revocation, suspension or cancellation by**
5 **the Tax Commissioner; penalty for involuntary loss of**
6 **license due to failure to pay required fees and taxes**
7 **relating to business.**

8 (a) *Registration period.* -- All business registration
9 certificates issued under the provisions of section four of this
10 article are for the period of one year beginning July 1 and ending
11 June 30 of the following year: *Provided,* That beginning on or
12 after July 1, 1999, all business registration certificates issued
13 under the provisions of section four of this article shall be
14 issued for two fiscal years of this state, subject to the following
15 transition rule. If the first year for which a business was issued
16 a business registration certificate under this article began on
17 July 1 of an even-numbered calendar year, then the Tax Commissioner
18 may issue a renewal certificate to that business for the period
19 beginning July 1, 1999, and ending June 30, 2000, upon receipt of
20 \$15 for each such one-year certificate. Notwithstanding any other
21 provisions of this code to the contrary, any certificate of
22 registration granted on or after July 1, 2010, shall not be subject
23 to the foregoing requirement that it be renewed, but shall be
24 permanent until cessation of the business for which the certificate

1 of registration was granted or until it is suspended, revoked or
2 canceled by the Tax Commissioner. Notwithstanding any provision of
3 this code to the contrary, on or after July 1, 2010, reference to
4 renewal of the business registration certificate shall refer to the
5 issuance of a new business registration certificate pursuant to
6 expiration, cancellation or revocation of a prior business
7 registration certificate or to reinstatement of a business
8 registration certificate or to reinstatement of a business
9 certificate previously suspended by the Tax Commissioner. Subject
10 to the exemptions, exceptions and requirements other than the
11 \$4,000 or less gross income exemption, set forth in section three
12 of this article, on or after July 1, 2010, the business
13 registration certificate shall be issued upon payment of a tax of
14 \$30 to the Tax Commissioner for new issuances of the business
15 registration certificate or for issuances of the business
16 registration certificate pursuant to expiration, cancellation or
17 revocation of a prior business registration certificate or for
18 reinstatement of a business registration certificate previously
19 suspended by the Tax Commissioner, along with any applicable
20 delinquent fees, interest, penalties and additions to tax. Subject
21 to the exemptions, exceptions and requirements set forth in section
22 three of this article, the \$30 tax shall be paid each and every
23 time there is an issuance, reissuance or reinstatement of a
24 business registration certificate, along with any applicable

1 delinquent fees, interest, penalties and additions to tax:
2 *Provided*, That the \$4,000 or less gross income exemption set forth
3 in subdivision (1), subsection (d), section three of this article
4 does not apply.

5 (b) *Revocation, cancellation or suspension of certificate.* --

6 (1) The Tax Commissioner may cancel, revoke or suspend a
7 business registration certificate at any time during a registration
8 period if:

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

12 (B) The registrant willfully refused or neglected to file a
13 tax return or to report information required by the Tax
14 Commissioner for any tax imposed by or pursuant to this chapter.

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

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

24 (E) The registrant abused the privilege afforded to it by

1 article fifteen or fifteen-a of this chapter to be exempt from
2 payment of the taxes imposed by such articles on some or all of the
3 registrant's purchases for use in business upon issuing to the
4 vendor a properly executed exemption certificate, by failing to
5 timely pay use tax on taxable purchase for use in business or by
6 failing to either pay the tax or give a properly executed exemption
7 certificate to the vendor.

8 (F) The registrant has failed to pay in full delinquent
9 personal property taxes owing for the calendar year.

10 (2) On or after July 1, 2010, a prospective registrant or a
11 former registrant for which a business registration certificate has
12 been suspended, canceled or revoked pursuant to the provisions of
13 this article may apply for a new business registration certificate
14 or for reinstatement of a suspended business registration
15 certificate upon payment of all outstanding delinquent fees, taxes,
16 interest, additions to tax and penalties, in addition to payment to
17 the Tax Commissioner of a penalty in the amount of \$100. The Tax
18 Commissioner may issue a new business registration certificate or
19 reinstate a suspended business registration certificate if the
20 prospective or former registrant has provided security acceptable
21 to and authorized by the Tax Commissioner, payable to the Tax
22 Commissioner, sufficient to secure all delinquent fees, taxes,
23 interest, additions to tax and penalties owed by the prospective
24 registrant. The Tax Commissioner may issue a new business

1 registration certificate or reinstate a suspended business
2 registration certificate if the prospective or former registrant
3 has entered into a payment plan approved by the Tax Commissioner by
4 which liability for all delinquent fees, taxes, interest, additions
5 to tax and penalties will be paid in due course and without
6 significant delay. Failure of any registrant to comply with a
7 payment plan pursuant to this provision shall be grounds for
8 immediate suspension or revocation of the registrant's business
9 registration certificate.

10 (3) On and after July 1, 2010, a prospective registrant or a
11 former registrant for which a business registration certificate has
12 been suspended, canceled or revoked pursuant to the provisions of
13 any article of this code other than this article may apply for a
14 new business registration certificate or for reinstatement of a
15 suspended business registration certificate, only if the
16 prospective or former registrant has complied with all applicable
17 statutory and regulatory requirements for renewal, issuance or
18 reinstatement of the business registration certificate and upon
19 payment to the Tax Commissioner of a penalty in the amount of \$100.

20 (4) Except pursuant to exceptions specified in this code,
21 before canceling, revoking or suspending any business registration
22 certificate, the Tax Commissioner shall give written notice of his
23 or her intent to suspend, revoke or cancel the business
24 registration certificate of the taxpayer, the reason for the

1 suspension, revocation or cancellation and the effective date of
2 the cancellation, revocation or suspension. Written notice shall be
3 served on the taxpayer in accordance with section five-e, article
4 ten of this chapter not less than twenty days prior to the
5 effective date of the cancellation, revocation or suspension.
6 Acceptance of service of notice shall be deemed to have occurred if
7 completed as set forth in section five-e, article ten of this
8 chapter. The taxpayer may appeal cancellation, revocation or
9 suspension of its business registration certificate by filing a
10 petition for appeal with the Office of Tax Appeals within twenty
11 days immediately succeeding receipt of the service of notice to
12 suspend, revoke or cancel the business registration certificate.
13 The filing of a petition for appeal does not stay the effective
14 date of the suspension, revocation or cancellation. A stay may be
15 granted only after a hearing is held on a motion to stay filed by
16 the registrant upon finding that state revenues will not be
17 jeopardized by the granting of the stay. The Tax Commissioner may,
18 in his or her discretion and upon such terms as he or she may
19 specify, agree to stay the effective date of the cancellation,
20 revocation or suspension until another date certain.

21 (5) On or before July 1, 2005, the Tax Commissioner shall
22 propose for promulgation legislative rules establishing ancillary
23 procedures for the Tax Commissioner's suspension of business
24 registration certificates for failure to pay delinquent personal

1 property taxes pursuant to paragraph (F), subdivision (1) of this
2 section. The rules shall at a minimum establish any additional
3 requirements for the provision of notice deemed necessary by the
4 Tax Commissioner to meet requirements of law; establish protocols
5 for the communication and verification of information exchanged
6 between the Tax Commissioner, sheriffs and others; and establish
7 fees to be assessed against delinquent taxpayers that shall be
8 deposited into a special fund which is hereby created and expended
9 for general tax administration by the Tax Division of the
10 Department of Revenue and for operation of the Tax Division. Upon
11 authorization of the Legislature, the rules shall have the same
12 force and effect as if set forth herein. No provision of this
13 subdivision may be construed to restrict in any manner the
14 authority of the Tax Commissioner to suspend such certificates for
15 failure to pay delinquent personal property taxes under paragraph
16 (C) or (F), subdivision (1) of this section or under any other
17 provision of this code prior to the authorization of the rules.

18 (c) *Revocation, cancellation or suspension due to delinquent*
19 *personal property tax.* -- The Tax Commissioner may revoke, cancel
20 or suspend a business registration certificate when informed in
21 writing, signed by the county sheriff, that personal property owned
22 by a registrant and used in conjunction with the business activity
23 of the a registrant is subject to delinquent property taxes. The
24 Tax Commissioner shall forthwith notify the registrant that the

1 commissioner will revoke, cancel or suspend the registrant's
2 business registration certificate unless information is provided
3 evidencing that the taxes due are either exonerated or paid.

4 (d) *Refusal to issue, revocation, suspension and refusal to*
5 *renew business registration certificate of alter ego, nominee or*
6 *instrumentality of a business that has previously been the subject*
7 *of a lawful refusal to issue, revocation, suspension or refuse to*
8 *renew. --*

9 (1) The Tax Commissioner may refuse to issue a business
10 registration certificate, or may revoke a business registration
11 certificate or may suspend a business registration certificate or
12 may refuse to renew a business registration certificate for any
13 business determined by the Tax Commissioner to be an alter ego,
14 nominee or instrumentality of a business that has previously been
15 the subject of a lawful refusal to issue a business registration
16 certificate or of a lawful revocation, suspension or refusal to
17 renew a business registration certificate pursuant to this section,
18 and for which the business registration certificate has not been
19 lawfully reinstated or reissued.

20 (2) For purposes of this section, a business is presumed to be
21 an alter ego, nominee or instrumentality of another business or
22 other businesses if:

23 (A) More than twenty percent of the real assets or more than
24 twenty percent of the operating assets or more than twenty percent

1 of the tangible personal property of one business are or have been
2 transferred to the other business or businesses, or are or have
3 been used in the operations of the other business or businesses, or
4 more than twenty percent of the real assets or more than twenty
5 percent of the operating assets or more than twenty percent of the
6 tangible personal property of one business are or have been used to
7 collateralize or secure debts or obligations of the other business
8 or businesses;

9 (B) Ownership of the businesses is so configured that the
10 attribution rules of either Internal Revenue Code section 267 or
11 Internal Revenue Code section 318 would apply to cause ownership of
12 the businesses to be attributed to the same person or entity; or

13 (C) Substantive control of the businesses is held or retained
14 by the same person, entity or individual, directly or indirectly,
15 or through attribution under paragraph (B) of this subdivision.

16 **§11-12-86. Sparkler and novelty registration fee.**

17 The Tax Commissioner shall establish a "Sparkler and Novelty
18 Registration Fee" which shall be charged all businesses licensed to
19 do business in the State of West Virginia desiring to sell
20 sparklers and novelties authorized for sale in section
21 twenty-three, article three, chapter twenty-nine of this code.
22 This fee shall run concurrent with the business registration
23 certificate set forth in section five of this article. This fee
24 shall not be prorated. Each business shall pay \$15 for each

1 registration and shall be issued a sticker or card by the Tax
2 Commissioner to be posted in a conspicuous position at the location
3 of the business which has paid the registration fee. This fee
4 shall be collected for each separate location where sparklers and
5 novelties are sold. The Tax Commissioner may, in his or her
6 discretion, require a separate certificate which shall be posted as
7 set forth herein, or provide that the evidence of compliance with
8 this section may be by a stamp or language added to the business
9 registration certificate or by embossing or writing imprinted on
10 the business registration certificate.