

WEST VIRGINIA LEGISLATURE

2025 REGULAR SESSION

ENROLLED

Committee Substitute

for

House Bill 2451

BY DELEGATES HORNBY, HORST, CHIARELLI, WILLIS,

KYLE, GREEN, BROOKS, CROUSE, AND MAYNOR

[Passed April 12, 2025; in effect 90 days from passage

(July 11, 2025)]

1 AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new
2 article, designated §8-40-1, §8-40-2, §8-40-3, §8-40-4, and §8-40-5; to further
3 amend the code, by adding thereto a new article designated §8-41-1 and §8-41-
4 2 and to amend and reenact §8-13-4, §8-13-5, and §11-12-3 relating to small
5 businesses; exempting independent contractors and sole proprietors from
6 business licenses under certain requirements; establishing an amount of annual
7 gross revenue for businesses to be exempt from business and occupation taxes
8 and privilege taxes; facilitating the creation of home based businesses; providing
9 for definitions; providing for permitted use; providing for reasonable regulations;
10 providing for limited conditions; providing for review; providing for the amount of
11 income before a business has to obtain a business license; creating the Small
12 Business Protection Act; providing intent and legislative findings; and providing a
13 short title.

Be it enacted by the Legislature of West Virginia:

CHAPTER 8. MUNICIPAL CORPORATIONS.

ARTICLE 13. TAXATION AND FINANCE.

§8-13-4. Municipal license and tax thereon when state license required.

1 (a) Whenever anything, for which a state license is required, is to be done within the
2 corporate limits of any municipality, the governing body shall have plenary power and authority,
3 unless prohibited by general law, to require a municipal license and for the use of the municipality
4 to impose a reasonable tax which may not exceed the amount of the state license tax. Upon
5 proper application for a municipal license and payment of the prescribed reasonable tax by any
6 person who has a valid and subsisting state license, the municipal license shall be issued.

(b) Except where a business license tax or fee has been established by the West Virginia Code, the governing body of a municipality may, in lieu of the provisions of subsection (a), enact an ordinance creating an annual general municipal business license for anything which requires a state license that is done within the corporate limits of a municipality, the tax for which may not exceed 20 dollars.

(c) Notwithstanding any other provision of law to the contrary, no municipal license shall be required for an independent contractor or sole proprietor who earns less than \$2,500 in annual gross revenue and who does not maintain a permanent physical location within the municipality's city limits.

§8-13-5. Business and occupation or privilege tax; limitation on rates; effective date of tax; exemptions; activity in two or more municipalities; administrative provisions.

(a) *Authorization to impose tax.* — (1) Whenever any business activity or occupation, for which the state imposed its annual business and occupation or privilege tax under §11-13-1 *et seq.* of this code, prior to July 1, 1987, is engaged in or carried on within the corporate limits of any municipality, the governing body thereof shall have plenary power and authority, unless prohibited by general law, to impose a similar business and occupation tax thereon for the use of the municipality.

(2) Municipalities may impose a business and occupation or privilege tax upon every person engaging or continuing within the municipality in the business of aircraft repair, remodeling, maintenance, modification, and refurbishing services to any aircraft, or to an engine or other component part of any aircraft as a separate business activity.

(b) *Maximum tax rates.* — In no case shall the rate of the municipal business and occupation or privilege tax on a particular activity exceed the maximum rate imposed by the state, exclusive of surtaxes, upon any business activities or privileges taxed under §11-13-2a, §11-13-2b, §11-13-2c, §11-13-2d, §11-13-2e, §11-13-2g, §11-13-2h, §11-13-2i, and §11-13-2j of this code, as those rates were in effect under §11-13-1 *et seq.* of this code, on January 1, 1959, or in

16 excess of one percent of gross income under §11-13-2k of this code, or in excess of three-tenths
17 of one percent of gross value or gross proceeds of sale under §11-13-2m of this code. The rate
18 of municipal business and occupation or privilege tax on the activity described in subdivision (2),
19 subsection (a) of this section shall be ten one-hundredths of one percent. The rate of municipal
20 business and occupation or privilege tax on the activity of a health maintenance organization
21 holding a certificate of authority under the provisions of §33-25A-1 *et seq.* of this code, shall not
22 exceed one-half of one percent to be applied solely to that portion of gross income received from
23 the Medicaid program pursuant to Title XIX of the Social Security Act, the state employee
24 programs administered by the Public Employees Insurance Agency pursuant to §5-16-1 *et seq.*
25 of this code, and other federal programs, for health care items or services provided directly or
26 indirectly by the health maintenance organization, that is expended for administrative expenses;
27 and shall not exceed one half of one percent to be applied to the gross income received from
28 enrollees, or from employers on behalf of enrollees, from sources other than Medicaid, state
29 employee programs administered by the Public Employees Insurance Agency, and other federal
30 programs for health care items or services provided directly or indirectly by the health
31 maintenance organization: *Provided*, That this tax rate limitation shall not extend to that part of
32 the gross income of health maintenance organizations which is received from the use of real
33 property other than property in which any company maintains its office or offices in this state,
34 whether the income is in the form of rentals or royalties. This provision concerning the maximum
35 municipal business and occupation tax rate on the activities of health maintenance organizations
36 is effective beginning after December 31, 1996. Any payments of business and occupation tax
37 made by a health maintenance organization to a municipality for calendar year 1997 is not subject
38 to recovery by the health maintenance organization. Administrative expenses shall include all
39 expenditures made by a health maintenance organization other than expenses paid for claims
40 incurred or payments made to providers for the benefits received by enrollees.

41 (c) *Effective date of local tax.* — Any taxes levied pursuant to the authority of this section
42 may be made operative as of the first day of the then current fiscal year or any date thereafter:
43 *Provided, That* any new imposition of tax or any increase in the rate of tax upon any business,
44 occupation or privilege taxed under §11-13-2e of this code, applies only to gross income derived
45 from contracts entered into after the effective date of the imposition of tax or rate increase, and
46 which effective date shall not be retroactive in any respect: *Provided, however, That* no tax
47 imposed or revised under this section upon public utility services may be effective unless and until
48 the municipality provides written notice of the same by certified mail to said public utility at least
49 60 days prior to the effective date of said tax or revision thereof.

50 (d) *Exemptions.* —

51 (1) A municipality shall not impose its business and occupation or privilege tax on any
52 activity that was exempt from the state's business and occupation tax under the provisions of §11-
53 13-3 of this code, prior to July 1, 1987, and determined without regard to any annual or monthly
54 monetary exemption also specified therein: *Provided, That* on and after July 1, 2007, a
55 municipality may impose its business and occupation or privilege tax on any activity of a
56 corporation, association, or society organized and operated exclusively for religious or charitable
57 purposes that was exempt from the state's business and occupation tax under the provisions of
58 §11-13-3 of this code, prior to July 1, 1987, but only to the extent that the income generated by
59 the activity is subject to taxation under the provisions of §511 of the Internal Revenue Code of
60 1986, as amended.

61 (2) A municipality shall not impose its business and occupation or privilege tax on any
62 business with a gross revenue below \$2,500 annually.

63 (3) Effective July 1, 2023, the municipal business and occupation or privilege tax on the
64 sale of new automobiles that have never been registered in the name of an individual shall be
65 reduced by 50 percent of the total amount of the tax: *Provided, That*, effective July 1, 2024, the
66 remaining municipal business and occupation or privilege tax on the sale of new automobiles that

67 have never been registered in the name of an individual shall be reduced by an additional 50
68 percent of the total amount of the tax: *Provided, however,* That July 1, 2025, the municipal
69 business and occupation or privilege tax on the sale of new automobiles that have never been
70 registered in the name of an individual shall be completely eliminated. For the purposes of this
71 section, an automobile is a self-propelled vehicle used on the roads and highways by the use of
72 motor vehicle fuel or propelled by one or more electric motors using energy stored in batteries or
73 a combination thereof. An automobile shall include a light-duty truck with an enclosed cabin and
74 an open loading area at the rear and a sport utility vehicle. An automobile does not include a
75 motorcycle.

76 (e) *Activity in two or more municipalities.* — Whenever the business activity or occupation
77 of the taxpayer is engaged in or carried on in two or more municipalities of this state, the amount
78 of gross income, or gross proceeds of sales, taxable by each municipality shall be determined in
79 accordance with legislative rules as prescribed by the Tax Commissioner. It is the intent of the
80 Legislature that multiple taxation of the same gross income, or gross proceeds of sale, under the
81 same classification by two or more municipalities shall not be allowed, and that gross income, or
82 gross proceeds of sales, derived from activity engaged in or carried on within this state, that is
83 presently subject to state tax under §11-13-2c or §11-13-2h of this code, which is not taxed or
84 taxable by any other municipality of this state, may be included in the measure of tax for any
85 municipality in this state, from which the activity was directed, or in the absence thereof, the
86 municipality in this state in which the principal office of the taxpayer is located. Nothing in this
87 subsection shall be construed as permitting any municipality to tax gross income or gross
88 proceeds of sales in violation of the Constitution and laws of this state or the United States, or as
89 permitting a municipality to tax any activity that has a definite situs outside its taxing jurisdiction.

90 (f) Where the governing body of a municipality imposes a tax authorized by this section,
91 the governing body may offer tax credits from the tax as incentives for new and expanding
92 businesses located within the corporate limits of the municipality.

93 (g) *Administrative provisions.* — The ordinance of a municipality imposing a business and
94 occupation or privilege tax shall provide procedures for the assessment and collection of the tax,
95 which shall be similar to those procedures in §11-13-1 *et seq.* of this code, as in existence on
96 June 30, 1978, or to those procedures in §11-10-1 *et seq.* of this code, and shall conform with
97 such provisions as they relate to waiver of penalties and additions to tax.

98 (h) *Timely payment.* — Payments for taxes due under this section that are postmarked
99 after the due date by which they are owed shall be considered late and may be subject to late
100 fees or penalties: *Provided*, That payments that are received by the municipality after the due
101 date, but that were postmarked on or before the due date shall be considered to be on time and
102 shall not be assessed any late fees or penalties.

103 (i) Any third-party vendors who contract with a city or municipality to collect business and
104 occupation taxes authorized by this section on behalf of a municipality may not charge for their
105 services more than 20% of the amount of taxes collected.

ARTICLE 40. HOME BASED BUSINESSES.

§8-40-1. Definitions.

1 (a) "Goods" means any merchandise, equipment, products, supplies, or materials.

2 (b) "Home-based business" means any business for the manufacture, provision, or sale
3 of goods or services that is owned and operated by the owner or tenant of a residential dwelling
4 where the commercial activity takes place inside a residential dwelling and the commercial
5 activities:

6 (1) Are limited to the sale of lawful goods and services;

7 (2) Do not generate on-street parking or a substantial increase in traffic through the
8 residential area; and

9 (3) Do not have signage visible from the street.

§8-40-2. Permitted use.

(a) The use of a residential dwelling for a home-based business is a permitted use, except that this permission does not supersede or abrogate any of the following:

(1) Any deed restriction, covenant, or agreement restricting the use of land; or

(2) Any deed, by-law, or other document applicable to a common interest ownership community.

§8-40-3. Reasonable regulations.

(a) A municipality may establish reasonable regulations on a home-based business where the regulation is rationally related to a legitimate government interest including, but not limited to, any of the following purposes:

(1) The protection of the public health and safety, as defined in this code, including rules and regulations related to fire and building codes, health and sanitation, transportation, or traffic control, solid or hazardous waste, pollution, and noise control.

(2) Ensuring that the business activity is:

(A) Compatible with residential use of the property and surrounding residential use;

(B) Secondary to the use as a residential dwelling; or

(C) Complying with state and federal law and paying applicable taxes.

(3) Limiting or prohibiting the use of a home-based business that engages in any of the following activities:

(A) Selling illegal drugs or products containing alcohol or tobacco;

(B) Operating a sober living home;

(C) Selling pornography or otherwise obscene material;

(D) Operating a vape shop; or

(E) Operating a commercial establishment where nude or topless dancing occurs.

§8-40-4. Limited conditions.

1 (a) A municipality shall not require a person as a condition of operating a home-based
2 business to:

3 (1) Rezone the property for commercial use;

4 (2) Install or equip fire sprinklers in a single-family detached residential dwelling or any
5 residential dwelling with not more than two dwelling units; or

6 (3) Obtain a license or permit that is not otherwise required for a similarly situated
7 business.

§8-40-5. Review.

1 In any proceeding alleging that a municipal regulation violates §8-40-3 or §8-40-4 of this
2 code, the municipality that enacted the regulation shall be required to establish that the regulation
3 complies with the provisions of this article.

ARTICLE 41. SMALL BUSINESS PROTECTION ACT.

§8-41-1. Short title.

1 This article may be cited as the Small Business Protection Act.

§8-41-2. Intent and legislative findings.

1 (a) It is the legislative intent and purpose of the Small Business Protection Act to improve
2 state rulemaking by creating procedures to analyze the availability of more flexible regulatory
3 approaches for small businesses.

4 (b) The legislature finds that:

5 (1) A vibrant and growing small business sector is critical to creating jobs in a dynamic
6 economy. Increased hiring in West Virginia's small businesses creates higher wages and better
7 outcomes for West Virginia's citizens and families;

8 (2) Small businesses bear a disproportionate share of regulatory costs and burdens.
9 Increased regulatory costs decrease the amount of capital that small businesses have to create
10 new jobs;

11 (3) Fundamental changes that are needed in the regulatory and enforcement culture of
12 state agencies to make them more responsive to small business can be made without
13 compromising the statutory missions of the agencies;

14 (4) When adopting rules to protect the health, safety, and economic welfare of West
15 Virginia, state agencies should seek to achieve statutory goals as effectively and efficiently as
16 possible without imposing unnecessary burdens on small employers;

17 (5) Uniform regulatory and reporting requirements can impose unnecessary and
18 disproportionately burdensome demands, including legal, accounting, and consulting costs upon
19 small businesses with limited resources;

20 (6) The failure to recognize differences in the scale and resources of regulated businesses
21 can adversely affect competition in the marketplace, discourage innovation, and restrict
22 improvements in productivity;

23 (7) Unnecessary regulations create entry barriers in many industries and discourage
24 potential entrepreneurs from introducing beneficial products and processes;

25 (8) The practice of treating all regulated businesses as equivalent may lead to inefficient
26 use of regulatory agency resources, enforcement problems, and, in some cases, to actions
27 inconsistent with the legislative intent of health, safety, environmental, and economic welfare
28 legislation;

29 (9) Alternative regulatory approaches which do not conflict with the stated objective of
30 applicable statutes may be available to minimize the significant economic impact of rules on small
31 businesses;

32 (10) Prior to the adoption of regulations, the process by which state regulations are
33 developed and adopted should be reformed to require agencies to solicit the ideas and comments

of small businesses, to examine the impact of proposed and existing rules on such businesses, and to review the continued need for existing rules;

(11) Regulations affect small businesses differently than their larger counterparts. According to the United States Small Business Administration, evidence indicates that regulatory requirements at the federal and state level tend to create disproportionately heavier burdens for small businesses, putting them at a disadvantage relative to their larger competitors. Reasons that small businesses are at a disadvantage include the following:

(A) The cost of regulations is higher relative to available resources. The cost of regulations per employee is higher for businesses with fewer employees; and

(B) The cost per employee for the smallest businesses is typically one or more times greater than the equivalent cost for the largest businesses.

(12) Making small businesses aware of proposed state regulations prior to implementation is key to creating an effective partnership between state agencies and small businesses.

(c) Nothing in the Small Business Protection Act shall be interpreted or construed to limit the ability of an agency to propose rules.

CHAPTER 11. TAXATION.

ARTICLE 12. BUSINESS REGISTRATION TAX.

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

(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 20 through 25 of this article.

(2) If a collection agency, shall comply with the provisions of §47-16-1 *et seq.* of this code.

(3) If an employment agency, shall comply with the provisions of §21-2-1 *et seq.* of this code.

(4) If selling drug paraphernalia, as defined in §47-19-3 of this code, shall comply with the provisions of §47-19-1 *et seq.* 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 \$15 for each annual business registration certificate: *Provided*, That for registration periods beginning on or after July 1, 1999, the business registration tax shall be \$30, except as otherwise provided in this article: *Provided, however*, That after June 30, 2010, the business registration tax shall be \$30.00 for each business registration certificate, including business registration certificates granted upon application after cessation of a business, or after suspension, revocation, cancellation or lapse of a prior business registration certificate.

(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 \$4,000 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:

58 (1) A person who had gross income of \$10,000 or less during that person's tax year for
59 state income tax purposes immediately preceding the registration period for which a registration
60 certificate is required under this article.

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

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

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

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

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

75 (e) *Money penalty.* — Any person required to obtain a business registration certificate
76 under this section, who is exempt from payment of the tax, as provided in subsection (d) of this
77 section, who does not obtain a registration certificate shall, in lieu of paying the penalty imposed
78 by section nine of this article, pay a penalty of \$15 for each business location for which a certificate
79 is needed: *Provided*, That application for business registration is made and the applicable money
80 penalty tendered to the Tax Commissioner within 15 days after such person receives written
81 notice from the Tax Commissioner that such person is required to obtain a business registration
82 certificate.

The Clerk of the House of Delegates and the Clerk of the Senate hereby certify that the foregoing bill is correctly enrolled.

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Clerk of the House of Delegates

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Clerk of the Senate

Originated in the House of Delegates.

In effect 90 days from passage.

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Speaker of the House of Delegates

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President of the Senate

The within is this the.....
Day of, 2025.

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Governor