

WEST VIRGINIA LEGISLATURE

2025 REGULAR SESSION

Introduced

Senate Bill 933

**FISCAL
NOTE**

By Senator Queen

[Introduced March 24, 2025; referred
to the Committee on Finance]

1 A BILL to amend and reenact §11-12-3, §8-13-4, and §8-13-5 of the Code of West Virginia, 1931,
2 as amended; and to amend the code by adding a new article, designated §8-40-1 and §8-
3 40-2, relating to small businesses; increasing the amount of income and revenue before a
4 business has to obtain a business license; exempting independent contractors and sole
5 proprietors from business licenses under certain requirements; increasing the amount of
6 annual revenue for businesses to be exempt from B&O taxes; creating the Small Business
7 Protection Act; providing intent and legislative findings; and providing a short title.

Be it enacted by the Legislature of West Virginia:

CHAPTER 11. TAXATION.

ARTICLE 12. BUSINESS REGISTRATION TAX.

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

1 (a) *Registration required.* -- No person shall, without a business registration certificate,
2 engage in or prosecute, in the State of West Virginia, any business activity without first obtaining a
3 business registration certificate from the Tax Commissioner of the State of West Virginia.
4 Additionally, before beginning business in this state, such person:

5 (1) If a transient vendor, shall comply with the provisions of sections ~~twenty~~ 20 through
6 ~~twenty-five~~ 25 of this article.

7 (2) If a collection agency, shall comply with the provisions of ~~article sixteen, chapter forty-~~
8 ~~seven~~ §47-16-1 et seq. of this code.

9 (3) If an employment agency, shall comply with the provisions of ~~article two, chapter~~
10 ~~twenty-one~~ §21-2-1 et seq. of this code.

11 (4) If selling drug paraphernalia, as defined in ~~section three, article nineteen, chapter forty-~~
12 ~~seven~~ §47-19-3 of this code, shall comply with the provisions of ~~article nineteen, chapter forty-~~
13 ~~seven~~ §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:

(1) A person who had ~~gross income from business activity of \$4,000~~ net income of \$10,000 or less during that person's tax year for state income tax purposes immediately preceding the registration period for which a registration certificate is required under this article.

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

(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 fifteen-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 \$15 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~~ 15 days after such person receives written notice from the Tax Commissioner that such person is required to obtain a business registration certificate.

CHAPTER 8. MUNICIPAL CORPORATIONS.

ARTICLE 13. TAXATION AND FINANCE.

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

(a) Whenever anything, for which a state license is required, is to be done within the corporate limits of any municipality, the governing body shall have plenary power and authority, unless prohibited by general law, to require a municipal license and for the use of the municipality to impose a reasonable tax which may not exceed the amount of the state license tax. Upon

proper application for a municipal license and payment of the prescribed reasonable tax by any 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 ~~twenty~~ 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 does not maintain a permanent physical location within the municipalities city limits, which includes any business with under \$25,000 in revenue.

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

40 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 60
49 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 the
59 activity is subject to taxation under the provisions of §511 of the Internal Revenue Code of 1986, as
60 amended.

61 (2) A municipality shall not impose its business and occupation or privilege tax on any
62 business with a revenue below \$25,000 annually.

63 ~~(2)~~(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 a
73 combination thereof. An automobile shall include a light-duty truck with an enclosed cabin and an
74 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 of
78 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, the
91 governing body may offer tax credits from the tax as incentives for new and expanding businesses

located within the corporate limits of the municipality.

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

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

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

ARTICLE 40. SMALL BUSINESS PROTECTION ACT.

§8-40-1. Short title.

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

§8-40-2. Intent and legislative findings.

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

(b) The legislature finds that:

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

(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
34 of small businesses, to examine the impact of proposed and existing rules on such businesses,

35 and to review the continued need for existing rules;

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

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

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

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

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

NOTE: The purpose of this bill is to increase the amount of income and revenue before a business must obtain a business license; exempt independent contractors and sole proprietors from business licenses under certain requirements; increase the amount of annual revenue for businesses to be exempt from B&O taxes; and create the small business protection act.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.