

1 **H. B. 2918**

2  
3 (By Delegates White and T. Campbell)

4 (By Request of the Tax Division)

5 [Introduced January 28, 2011; referred to the  
6 Committee on the Judiciary then Finance.]

7 **FISCAL**  
8 **NOTE**

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

1 effective date of the cancellation, revocation or suspension until  
2 another date certain.

3       (5) On or before July 1, 2005, the Tax Commissioner shall  
4 propose for promulgation legislative rules establishing ancillary  
5 procedures for the Tax Commissioner's suspension of business  
6 registration certificates for failure to pay delinquent personal  
7 property taxes pursuant to paragraph (F), subdivision (1) of this  
8 section. The rules shall at a minimum establish any additional  
9 requirements for the provision of notice deemed necessary by the  
10 Tax Commissioner to meet requirements of law; establish protocols  
11 for the communication and verification of information exchanged  
12 between the Tax Commissioner, sheriffs and others; and establish  
13 fees to be assessed against delinquent taxpayers that shall be  
14 deposited into a special fund which is hereby created and expended  
15 for general tax administration by the Tax Division of the  
16 Department of Revenue and for operation of the Tax Division. Upon  
17 authorization of the Legislature, the rules shall have the same  
18 force and effect as if set forth herein. No provision of this  
19 subdivision may be construed to restrict in any manner the  
20 authority of the Tax Commissioner to suspend such certificates for  
21 failure to pay delinquent personal property taxes under paragraph  
22 (C) or (F), subdivision (1) of this section or under any other  
23 provision of this code prior to the authorization of the rules.

24       ~~(e) Refusal to renew. — The Tax Commissioner may refuse to~~

1 ~~issue or renew a business registration certificate if the~~  
2 ~~registrant is delinquent in the payment of any tax administered by~~  
3 ~~the Tax Commissioner under article ten of this chapter or the~~  
4 ~~corporate license tax imposed by article twelve-c of this chapter,~~  
5 ~~until the registrant pays in full all the delinquent taxes~~  
6 ~~including interest and applicable additions to tax and penalties.~~  
7 ~~In his or her discretion and upon terms as he or she specifies, the~~  
8 ~~Tax Commissioner may enter into an installment payment agreement~~  
9 ~~with the taxpayer in lieu of the complete payment. Failure of the~~  
10 ~~taxpayer to fully comply with the terms of the installment payment~~  
11 ~~agreement shall render the amount remaining due thereunder~~  
12 ~~immediately due and payable and the Tax Commissioner may suspend or~~  
13 ~~cancel the business registration certificate in the manner provided~~  
14 ~~in this section.~~

15 ~~(d) Refusal to renew~~ (c) Revocation, cancellation or  
16 suspension ~~due to delinquent personal property tax. -- The Tax~~  
17 ~~Commissioner shall refuse to issue or renew~~ may revoke, cancel or  
18 suspend a business registration certificate when informed in  
19 writing, signed by the county sheriff, that personal property owned  
20 by ~~the applicant~~ a registrant and used in conjunction with the  
21 business activity of the ~~applicant~~ registrant is subject to  
22 delinquent property taxes. The Tax Commissioner shall forthwith  
23 notify the ~~applicant~~ registrant that the commissioner will ~~not act~~  
24 ~~upon the application until~~ revoke, cancel or suspend the

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

4 ~~(e)~~ (d) *Refusal to issue, revocation, suspension and refusal*  
5 *to 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 ~~an annual~~ a "Sparkler and  
18 Novelty Registration Fee" which shall be charged all businesses  
19 licensed to do business in the State of West Virginia desiring to  
20 sell 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.

NOTE: The purpose of this bill is to change the procedure for suspending, revoking or canceling a business registration certificate. The bill permits a registrant to appeal an order to suspend, revoke or cancel a business registration certificate. The bill permits a business registration certificate to be revoked, canceled or suspended for nonpayment of property taxes. The bill also changes the sparkler and novelty registration fee from annual one to an initial one. The bill updates permanent registration language.

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