

**Senate Bill No. 332**

(By Senators Prezioso, D. Facemire, McCabe, Plymale and Klempa)

\_\_\_\_\_  
[Introduced January 28, 2011; referred to the Committee on  
Finance.]  
\_\_\_\_\_

**FISCAL  
NOTE**

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

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

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

**ARTICLE 12. BUSINESS REGISTRATION TAX.**

1 **§11-12-3. Business registration certificate required; tax levied;**  
2 **exemption from registration; exemption from tax;**  
3 **penalty.**

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

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

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

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

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

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

24 (b) *Tax levied.* -- The business registration tax hereby levied  
25 shall be \$15 for each annual business registration certificate:

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

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

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

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

25 (4) A business registration certificate is required by

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

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

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

19 (2) Who does not claim exemption from payment of taxes imposed  
20 by articles fifteen and fifteen-a of this chapter, shall be exempt  
21 from both registration and payment of the tax imposed by this  
22 article, if such person had gross income from business activity of  
23 \$4,000 or less during that person's tax year for state income tax  
24 purposes immediately preceding the registration period for which a  
25 registration certificate is otherwise required by this article.

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

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

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

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

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

22           (5) A person engaged in the business of agriculture and  
23 farming: *Provided*, That no producer or grower selling products of  
24 the farm, garden or dairy and not included within the definition of  
25 business under subsection (a), section two of this article shall be

1 required to obtain a business registration certificate or pay the  
2 business registration tax.

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

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

19 **§11-12-5. Time for which registration certificate granted; power**  
20 **of Tax Commissioner to suspend, revoke or cancel**  
21 **certificate; certificate to be permanent until**  
22 **cessation of business for which certificates are**  
23 **granted or revocation, suspension or cancellation by**  
24 **the Tax Commissioner; penalty for involuntary loss of**

1           **license due to failure to pay required fees and taxes**  
2           **relating to business.**

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

1 registration certificate or to reinstatement of a business  
2 registration certificate or to reinstatement of a business  
3 certificate previously suspended by the Tax Commissioner. Subject  
4 to the exemptions, exceptions and requirements other than the  
5 \$4,000 or less gross income exemption, set forth in section three  
6 of this article, on or after July 1, 2010, the business  
7 registration certificate shall be issued upon payment of a tax of  
8 \$30 to the Tax Commissioner for new issuances of the business  
9 registration certificate or for issuances of the business  
10 registration certificate pursuant to expiration, cancellation or  
11 revocation of a prior business registration certificate or for  
12 reinstatement of a business registration certificate previously  
13 suspended by the Tax Commissioner, along with any applicable  
14 delinquent fees, interest, penalties and additions to tax. Subject  
15 to the exemptions, exceptions and requirements set forth in section  
16 three of this article, the \$30 tax shall be paid each and every  
17 time there is an issuance, reissuance or reinstatement of a  
18 business registration certificate, along with any applicable  
19 delinquent fees, interest, penalties and additions to tax:  
20 *Provided*, That the \$4,000 or less gross income exemption set forth  
21 in subdivision (1), subsection (d), section three of this article  
22 does not apply.

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

24 (1) The Tax Commissioner may cancel, revoke or suspend a  
25 business registration certificate at any time during a registration

1 period if:

2 (A) The registrant filed an application for a business  
3 registration certificate, or an application for renewal thereof,  
4 that was false or fraudulent.

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

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

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

17 (E) The registrant abused the privilege afforded to it by  
18 article fifteen or fifteen-a of this chapter to be exempt from  
19 payment of the taxes imposed by such articles on some or all of the  
20 registrant's purchases for use in business upon issuing to the  
21 vendor a properly executed exemption certificate, by failing to  
22 timely pay use tax on taxable purchase for use in business or by  
23 failing to either pay the tax or give a properly executed exemption  
24 certificate to the vendor.

25 (F) The registrant has failed to pay in full delinquent

1 personal property taxes owing for the calendar year.

2       (2) On or after July 1, 2010, a prospective registrant or a  
3 former registrant for which a business registration certificate has  
4 been suspended, canceled or revoked pursuant to the provisions of  
5 this article may apply for a new business registration certificate  
6 or for reinstatement of a suspended business registration  
7 certificate upon payment of all outstanding delinquent fees, taxes,  
8 interest, additions to tax and penalties, in addition to payment to  
9 the Tax Commissioner of a penalty in the amount of \$100. The Tax  
10 Commissioner may issue a new business registration certificate or  
11 reinstate a suspended business registration certificate if the  
12 prospective or former registrant has provided security acceptable  
13 to and authorized by the Tax Commissioner, payable to the Tax  
14 Commissioner, sufficient to secure all delinquent fees, taxes,  
15 interest, additions to tax and penalties owed by the prospective  
16 registrant. The Tax Commissioner may issue a new business  
17 registration certificate or reinstate a suspended business  
18 registration certificate if the prospective or former registrant  
19 has entered into a payment plan approved by the Tax Commissioner by  
20 which liability for all delinquent fees, taxes, interest, additions  
21 to tax and penalties will be paid in due course and without  
22 significant delay. Failure of any registrant to comply with a  
23 payment plan pursuant to this provision shall be grounds for  
24 immediate suspension or revocation of the registrant's business  
25 registration certificate.

1           (3) On and after July 1, 2010, a prospective registrant or a  
2 former registrant for which a business registration certificate has  
3 been suspended, canceled or revoked pursuant to the provisions of  
4 any article of this code other than this article may apply for a  
5 new business registration certificate or for reinstatement of a  
6 suspended business registration certificate, only if the  
7 prospective or former registrant has complied with all applicable  
8 statutory and regulatory requirements for renewal, issuance or  
9 reinstatement of the business registration certificate and upon  
10 payment to the Tax Commissioner of a penalty in the amount of \$100.

11           (4) Except pursuant to exceptions specified in this code,  
12 before canceling, revoking or suspending any business registration  
13 certificate, the Tax Commissioner shall give written notice of his  
14 or her intent to suspend, revoke or cancel the business  
15 registration certificate of the taxpayer, the reason for the  
16 suspension, revocation or cancellation and the effective date of  
17 the cancellation, revocation or suspension. ~~and the date, time and  
18 place where the taxpayer may appear and show cause why such  
19 business registration certificate should not be canceled, revoked  
20 or suspended. This written~~ Written notice shall be served on the  
21 taxpayer in accordance with section five-e, article ten of this  
22 chapter ~~in the same manner as a notice of assessment is served  
23 under article ten of this chapter,~~ not less than twenty days prior  
24 to the effective date of the cancellation, revocation or  
25 suspension. Acceptance of service of notice shall be deemed to

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

17 (5) On or before July 1, 2005, the Tax Commissioner shall  
18 propose for promulgation legislative rules establishing ancillary  
19 procedures for the Tax Commissioner's suspension of business  
20 registration certificates for failure to pay delinquent personal  
21 property taxes pursuant to paragraph (F), subdivision (1) of this  
22 section. The rules shall at a minimum establish any additional  
23 requirements for the provision of notice deemed necessary by the  
24 Tax Commissioner to meet requirements of law; establish protocols  
25 for the communication and verification of information exchanged

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

13 ~~(c) Refusal to renew. -- The Tax Commissioner may refuse to~~  
14 ~~issue or renew a business registration certificate if the~~  
15 ~~registrant is delinquent in the payment of any tax administered by~~  
16 ~~the Tax Commissioner under article ten of this chapter or the~~  
17 ~~corporate license tax imposed by article twelve-c of this chapter,~~  
18 ~~until the registrant pays in full all the delinquent taxes~~  
19 ~~including interest and applicable additions to tax and penalties.~~  
20 ~~In his or her discretion and upon terms as he or she specifies, the~~  
21 ~~Tax Commissioner may enter into an installment payment agreement~~  
22 ~~with the taxpayer in lieu of the complete payment. Failure of the~~  
23 ~~taxpayer to fully comply with the terms of the installment payment~~  
24 ~~agreement shall render the amount remaining due thereunder~~  
25 ~~immediately due and payable and the Tax Commissioner may suspend or~~

1 ~~cancel the business registration certificate in the manner provided~~  
 2 ~~in this section.~~

3 ~~(d) Refusal to renew~~ (c) Revocation, cancellation or  
 4 suspension due to delinquent personal property tax. -- The Tax  
 5 Commissioner ~~shall refuse to issue or renew~~ may revoke, cancel or  
 6 suspend a business registration certificate when informed in  
 7 writing, signed by the county sheriff, that personal property owned  
 8 by ~~the applicant~~ a registrant and used in conjunction with the  
 9 business activity of the ~~applicant~~ registrant is subject to  
 10 delinquent property taxes. The Tax Commissioner shall forthwith  
 11 notify the ~~applicant~~ registrant that the commissioner will ~~not act~~  
 12 ~~upon the application until~~ revoke, cancel or suspend the  
 13 registrant's business registration certificate unless information  
 14 is provided evidencing that the taxes due are either exonerated or  
 15 paid.

16 ~~(e)~~ (d) Refusal to issue, revocation, suspension and refusal  
 17 to renew business registration certificate of alter ego, nominee or  
 18 instrumentality of a business that has previously been the subject  
 19 of a lawful refusal to issue, revocation, suspension or refuse to  
 20 renew. --

21 (1) The Tax Commissioner may refuse to issue a business  
 22 registration certificate, or may revoke a business registration  
 23 certificate or may suspend a business registration certificate or  
 24 may refuse to renew a business registration certificate for any  
 25 business determined by the Tax Commissioner to be an alter ego,

1 nominee or instrumentality of a business that has previously been  
2 the subject of a lawful refusal to issue a business registration  
3 certificate or of a lawful revocation, suspension or refusal to  
4 renew a business registration certificate pursuant to this section,  
5 and for which the business registration certificate has not been  
6 lawfully reinstated or reissued.

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

10 (A) More than twenty percent of the real assets or more than  
11 twenty percent of the operating assets or more than twenty percent  
12 of the tangible personal property of one business are or have been  
13 transferred to the other business or businesses, or are or have  
14 been used in the operations of the other business or businesses, or  
15 more than twenty percent of the real assets or more than twenty  
16 percent of the operating assets or more than twenty percent of the  
17 tangible personal property of one business are or have been used to  
18 collateralize or secure debts or obligations of the other business  
19 or businesses;

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

24 (C) Substantive control of the businesses is held or retained  
25 by the same person, entity or individual, directly or indirectly,

1 or through attribution under paragraph (B) of this subdivision.

2 **§11-12-86. Sparkler and novelty registration fee.**

3       The Tax Commissioner shall establish ~~an annual~~ a "Sparkler and  
4 Novelty Registration Fee" which shall be charged all businesses  
5 licensed to do business in the State of West Virginia desiring to  
6 sell sparklers and novelties authorized for sale in section  
7 twenty-three, article three, chapter twenty-nine of this code.  
8 This fee shall run concurrent with the business registration  
9 certificate set forth in section five of this article. This fee  
10 shall not be prorated. Each business shall pay \$15 for each  
11 registration and shall be issued a sticker or card by the Tax  
12 Commissioner to be posted in a conspicuous position at the location  
13 of the business which has paid the registration fee. This fee  
14 shall be collected for each separate location where sparklers and  
15 novelties are sold. The Tax Commissioner may, in his or her  
16 discretion, require a separate certificate which shall be posted as  
17 set forth herein, or provide that the evidence of compliance with  
18 this section may be by a stamp or language added to the business  
19 registration certificate or by embossing or writing imprinted on  
20 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.