

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

House Bill 3264

By Delegate Young

[Introduced February 03, 2023; Referred to the
Committee on Economic Development and Tourism
then Finance]

1 A BILL to amend and reenact §11-12-4 of the Code of West Virginia, 1931, as amended; and to
 2 amend and reenact §11-12C-2 of this code, all relating to a onetime fee and tax free day for
 3 a new for profit business or domestic corporation to obtain a license in this state.

Be it enacted by the Legislature of West Virginia:

ARTICLE 12. BUSINESS REGISTRATION TAX.

**§11-12-4. Application for business registration certificate; issuance of business certificate;
 effect of business registration certificate; municipal license taxes.**

1 (a) General rule. -- Except as otherwise provided in this article, a person shall register with
 2 the Tax Commissioner prior to engaging in or prosecuting any business activity in this state. The
 3 application for business registration shall be in such form and contain such information as the Tax
 4 Commissioner may require; and the applicant shall set forth truthfully and accurately the
 5 information required by the Tax Commissioner. Upon receipt of a complete and properly executed
 6 application form, accompanied by payment of (or claim of exemption from) the tax levied by
 7 section three for each business registration certificate, the Tax Commissioner shall, if he or she
 8 determines to his or her satisfaction that all of the conditions precedent to the granting of such
 9 certificate have been fulfilled by the applicant, issue such business registration certificate or
 10 certificates.

11 (b) Certificate not to validate illegal activity. -- Nothing in this article, including, but not
 12 limited to, any payment of the tax imposed or issuance of any certificate of registration under the
 13 provisions hereof, shall be deemed to legalize any act, business activity or transaction which
 14 otherwise may be illegal or conducted in violation of law; or to exempt any person from any civil or
 15 criminal penalty prescribed for such illegal act or violation.

16 (c) Certificate not to be construed as consent to general tax jurisdiction of this state. -- The
 17 filing of an application for business registration certificate (or for renewal thereof) and payment of
 18 the tax imposed by §11-12-3 of this code shall may not be construed by the Tax Commissioner or
 19 the courts of this state as consent, submission or admission by the registrant to the general taxing

20 jurisdiction of this state, and liability for such other taxes imposed by this state shall depend upon
21 the relevant facts in each case and the applicable law.

22 (d) Power of municipalities to impose license taxes preserved. -- Notwithstanding the
23 repeal, as of July 1, 1970, of certain license taxes then imposed by this article and §11-13A-1 et
24 seq. of this code, the power of a municipality to impose similar license taxes, by ordinance adopted
25 pursuant to the authority of its charter or this code, was and is preserved: *Provided*, That the
26 municipal license taxes imposed on any business, activity, trade or employment that was
27 previously subject to a state license tax under this article or §11-13A-1 *et seq.* of this code, cannot
28 exceed the state license tax in effect on such business, activity, trade or employment of January 1,
29 1970; and municipalities ~~shall have the power to~~ may impose similar penalties as those then
30 provided in this article and §11-13A-1 *et seq.* of this code for noncompliance with such state
31 license taxes.

32 (e) Notwithstanding any provision of this code to the contrary, and for the purpose to
33 encourage new businesses in the state, the Tax Commissioner, in cooperation of the Secretary of
34 State, shall designate up to three days a year for a new, for profit business activity, provided that
35 they reside in West Virginia, to register to engage in or prosecute any business activity in this state
36 without having to pay the tax levied by §11-12-3 of this code for each business registration
37 certificate for the first year, only.

ARTICLE 12C. CORPORATE LICENSE TAX.

§11-12C-2. Corporate license required; tax levied; exemption from tax; effective date.

1 (a) *Corporate license required.* -- No corporation, domestic or foreign, may engage in any
2 business activity in this state without paying the corporate license tax to the Tax Commissioner of
3 the State of West Virginia, except as provided in subsection (c) of this section.

4 (b) *Tax levied.* -- Every corporation shall pay an annual corporate license tax for the license
5 year which begins on July 1, of each year and ends the 30th day of the following June. This tax
6 shall be in addition to the annual fee, if any, payable to the Secretary of State as attorney-in-fact.

7 The amount of this tax shall be as follows:

8 (1) *Amount of license tax on domestic corporations.* -- Every domestic corporation shall
9 pay an annual license tax on its charter for the fiscal year beginning on July 1, of each year, based
10 on its authorized capital stock as follows: If the authorized capital stock be \$5,000, or less, \$20; if
11 more than \$5,000 and not more than \$10,000, \$30; if more than \$10,000 and not more than
12 \$25,000, \$40; if more than \$25,000 and not more than \$50,000, \$50; if more than \$50,000 and not
13 more than \$75,000, \$80; if more than \$75,000 and not more than \$100,000, \$100; if more than
14 \$100,000 and not more than \$125,000, \$110; if more than \$125,000 and not more than \$150,000,
15 \$120; if more than \$150,000 and not more than \$175,000, \$140; if more than \$175,000 and not
16 more than \$200,000, \$150; if more than \$200,000 and not more than \$1 million, \$180, and an
17 additional 20¢ on each \$1,000, or fraction thereof, in excess of \$200,000; if more than \$1,000,000
18 and not more than \$15,000,000, \$345, and an additional 15¢ on each \$1,000, or fraction thereof,
19 in excess of \$1,000,000; if more than \$15,000,000, \$2,500. The license tax collected hereunder
20 shall be in addition to the annual fee, if any, payable to the Secretary of State as statutory attorney-
21 in-fact. For the purpose of the assessment of the license tax provided by this section, and for no
22 other purpose, shares of stock having no par value shall be presumed to be of the par value of \$25
23 each: *Provided*, That if such stock was originally issued for a consideration greater than \$25 per
24 share, such license taxes as are required to be paid to the Tax Commissioner shall be computed
25 upon the basis of the consideration for which such stock was issued.

26 (2) *Amount of license tax on foreign corporations.* -- ~~It shall be the duty of the~~ The Tax
27 Commissioner ~~to~~ shall assess and fix the license tax of each foreign corporation engaging in
28 business activity in this state according to the proportion of its issued and outstanding capital stock
29 which is represented by its property owned and used in this state, which license tax shall be at the
30 rate prescribed in subdivision (1) of this subsection (b), plus 75 percent of such tax. In no event
31 ~~shall~~ may any such foreign corporation pay an annual license tax of less than \$250, which shall be
32 in addition to the fee of the Secretary of State as statutory attorney-in-fact. The Tax Commissioner

33 may in any case require such additional information as he or she may ~~deem~~ consider necessary to
34 enable him or her to assess and fix the just amount of license tax of such corporation; it shall be his
35 or her duty to notify every such corporation of the amount so assessed; and it ~~shall be~~ is the duty of
36 the corporation to pay the same to the Tax Commissioner within 30~~y~~ days thereafter, and if it fail to
37 do so it shall be liable to the penalties prescribed in, or pursuant to, this article.

38 (c) *Exemptions.* -- Nonprofit corporations are exempt from payment of the corporate
39 license tax but ~~must~~ shall file with the Tax Commissioner the return required by §11-12C-2 of this
40 code, and pay the annual fee of the Secretary of State as attorney-in-fact under §11-12C-5 of this
41 code if applicable.

42 (d) Notwithstanding any provision of this code to the contrary, and for the purpose to
43 encourage new businesses in the state, the Tax Commissioner, in cooperation of the Secretary of
44 State, shall designate up to three days per year for a new, for profit domestic corporation, provided
45 that they reside in West Virginia, to register to engage in or prosecute any business activity in this
46 state without having to pay the license tax levied by subsection (b)(1) of this section for the first
47 year _____ only.

NOTE: The purpose of this bill is to provide a onetime fee and tax free day for a new for profit business or domestic corporation to obtain a license in this state.

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