

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1945

ENROLLED

SENATE BILL No. 195

(By Mr. Vickers, Mr. President

PASSED March 7 1945

In Effect From Passage

JARRETT PRINTING COMPANY, CHARLESTON, W. VA.



195-3-10

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Senate Bill No. 195
(BY MR. VICKERS, MR. PRESIDENT)

[Passed March 7, 1945; in effect from passage.]

AN ACT to amend article twelve, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by amending and reenacting section eighty-six thereof, and by adding thereto a new section, to be designated section eighty-six-a, relating to suits by the state against delinquent corporations to enforce payment of corporation license taxes, and to the rights of purchasers of the assets of such corporations in suits heretofore or hereafter instituted.

Be it enacted by the Legislature of West Virginia:

That article twelve, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended,

be amended, by amending reenacted section eighty-six thereof, and by adding thereto a new section to be designated section eighty-six-a, to read as follows:

Section 86. *Suit to Enforce Payment of Corporation*

2 *License Tax.*—Within thirty days after such first day of
3 the fifth month of the license tax year the auditor shall
4 certify to the governor and the secretary of state a list
5 of all such delinquent corporations, domestic and foreign.
6 The secretary of state shall preserve the list in his office,
7 and a certificate from him that the name of any corpora-
8 tion mentioned in such certificate is delinquent in the
9 payment of the license tax imposed by this article shall
10 be prima facie evidence thereof. Within thirty days after
11 receiving such list from the auditor the governor shall
12 issue his proclamation, in which he shall declare the de-
13 linquency of every such corporation. A copy of such
14 proclamation shall be filed and recorded in the office of
15 the secretary of state, and be published in such news-
16 papers as the governor may designate, not exceeding one
17 in each congressional district; the costs of such publica-
18 tion shall be paid by the governor when allowed by the

19 board of public works. Sixty days after the date of the
20 publication of such proclamation, it shall be the duty of
21 the attorney general to institute on the chancery side of
22 the circuit court, in the county in which the seat of gov-
23 ernment is, a suit or proceedings, or suits or proceedings,
24 in the name of the state, in which such delinquent cor-
25 porations shall be made defendants; in the bill or petition
26 so filed it shall only be necessary to allege that the cor-
27 porations therein made defendants have failed to pay
28 such license tax, and that each of them justly owes to the
29 state|the amount of license tax, penalty and fines stated
30 therein, in connection with the name of the corporation,
31 which amount shall be computed up to the first day of
32 the month succeeding that in which such bill or petition
33 is filed. No such corporation shall interpose as a plea or
34 defense in such suit the fact that the auditor failed to
35 notify it as prescribed in this article, or that it failed to
36 receive such notice, or that its name was not included in
37 the list or proclamation hereinbefore mentioned. Upon
38 the hearing of such suit, if it shall appear to the court
39 that any such corporation has failed to pay any such

40 license tax and the penalties and fines assessed against
41 it, the court shall enter a decree or judgment against such
42 corporation for the amount due, including the costs of the
43 proceeding, or such portion of such costs as the court
44 shall apportion to be paid by such corporation, and, if the
45 same be not then and there paid, the court shall enter a
46 decree if it be a domestic corporation, forfeiting its char-
47 ter, rights and franchises; and if it be a foreign corpora-
48 tion, revoking its rights and privileges to hold property
49 and transact business in this state. The amount of the
50 judgment or decree, including costs, entered against any
51 corporation, and interest thereon until paid, may be
52 collected by the attorney general, or be collected by the
53 auditor in the same manner that other claims due the
54 state are collected. In any such suit or proceeding the
55 court may upon payment of the judgment hereinabove
56 mentioned together with interest and costs and the pay-
57 ment of any and all license taxes which may have ac-
58 crued since the institution of such suit, reinstate any
59 corporation to its former rights as if it had not been
60 delinquent and proceeded against under this section, and '

61 make such other orders and decrees as it shall deem
62 necessary and proper for a court of equity; and may ap-
63 point a receiver for any such corporation and order its
64 assets marshalled and distributed among its creditors;
65 and may, on motion of the attorney general, grant an
66 injunction against any such corporation restraining it
67 from the exercise of any franchise or the transaction of
68 any business within this state, until such tax and the
69 costs be paid. Any person or persons who shall exercise
70 or attempt to exercise any powers under the charter of
71 any such corporation, after the issuing of the governor's
72 proclamation, shall be guilty of a misdemeanor, and shall
73 be punished by imprisonment not exceeding one year,
74 or a fine not exceeding one thousand dollars, or both, in
75 the discretion of the court. The words "license tax" used in
76 this section include, in addition to the amount of license
77 tax proper, all penalties and fines accruing for failure
78 to pay such tax, the annual fee of the auditor as statutory
79 attorney-in-fact, and the cost of any suit or proceeding
80 to enforce the collection of the same. When two or more
81 corporations are included in one suit or proceeding the

82 court shall apportion the cost thereof among them as it
83 may deem just.

84 If in any such suit or proceeding the court shall decree
85 the sale of the property of any delinquent corporation
86 without ordering that its assets be marshalled and dis-
87 tributed among its creditors, the purchaser at the sale
88 shall acquire title to the property subject to any rights
89 which the creditors of the corporation would have had if
90 no suit had been brought by the state for collection of
91 delinquent license taxes. In any subsequent suit, how-
92 ever, brought by the creditors of the corporation to sub-
93 ject the property in the hands of the purchaser to the
94 payment of their claims against the corporation, the pur-
95 chaser shall be given a preference over any creditor for
96 the payment of the purchase price, including costs with
97 interest at six per cent per annum from the date of sale.

Sec. 86-a. *Limitation on Institution of Proceedings to*
2 *Set Aside Sales in Prior Suits.*—No suit or proceeding shall
3 be instituted in any court of this state on and after the
4 first day of July, one thousand nine hundred forty-six,
5 for the purpose of setting aside the sale of all or any of

6 the assets of any corporation heretofore sold by order of
7 the court in any former suit instituted under the preced-
8 ing section on the ground that process was served on the
9 auditor or that service thereof was accepted by him.

The Joint Committee on Enrolled Bills hereby certifies that
the foregoing bill is correctly enrolled.

Charles C. Morris
Chairman Senate Committee

John C. Smith
Chairman House Committee

Originated in the

Senate

Takes effect

From

passage

Thomas Hughes
Clerk of the Senate

Jackie
Clerk of the House of Delegates

Donald M. Vickers
President of the Senate

John E. Amos
Speaker House of Delegates

The within

Approved

this the

12th

day of

March

, 1945.

Charles C. Morris
Governor.

Filed in the office of the Secretary of State
of West Virginia **MAR 12 1945**

Wm. S. O'BRIEN,
Secretary of State