

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1951

ENROLLED

HOUSE BILL No. 268

(By Mr. Speaker, Mr. Flannery)

PASSED March 9 1951

In Effect July 1, 1951 Passage



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House Bill No. 268
(By MR. SPEAKER, MR. FLANNERY)

[Passed March 9, 1951; in effect July 1, 1951.]

AN ACT to amend chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, to be designated article nineteen, relating to the imposition and collection of an excise tax upon the sale, use, handling or distribution of bottled soft drinks and soft drink syrups, and prescribing penalties for the violation thereof.

Be it enacted by the Legislature of West Virginia:

That chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, to be designated article nineteen, to read as follows:

Article 19. Soft Drinks Tax

Section 1. *Definitions.*—As used in this article:

- 2 (1) "Bottled soft drinks" shall include any and all
3 nonalcoholic beverages, whether carbonated or not, such

4 as soda water, ginger ale, coca cola, lime cola, pepsi cola,
5 doctor pepper, root beer, carbonated water, orangeade,
6 lemonade, fruit juice when any plain or carbonated water,
7 flavoring or syrup is added, or any and all preparations
8 commonly referred to as "soft drinks" of whatever kind,
9 which are closed and sealed in glass, paper, or any other
10 type of container or bottle, whether manufactured with
11 or without the use of any syrup. The term "bottled soft
12 drinks" shall not include fluid milk to which no flavor-
13 ing has been added, or natural undiluted fruit juice or
14 vegetable juice.

15 (2) "Soft drink syrups" shall include the compound
16 mixture or the basic ingredients, whether dry or liquid,
17 practically and commercially usable in making, mixing
18 or compounding soft drinks at soda fountains by the
19 mixing thereof with carbonated or plain water, ice, fruit,
20 milk or any other product suitable to make a soft drink,
21 among such syrups being such products as coca cola
22 syrup, chero cola syrup, pepsi cola syrup, doctor pepper
23 syrup, root beer syrup, nu-grape syrup, lemon syrup,
24 vanilla syrup, chocolate syrup, cherry smash syrup, rock

25 candy syrup, simple syrup, among such syrups being all
26 these or any other prepared syrups sold or used for the
27 purpose of mixing soft drinks at soda fountains.

28 (3) "Person" shall mean and include an individual,
29 firm, partnership, association or corporation.

30 (4) "Wholesale dealer" includes only those persons
31 who sell any bottled soft drink or soft drink syrup to
32 retail dealers for the purpose of resale.

33 (5) "Retail dealer" includes every person other than
34 a wholesale dealer selling, serving or delivering or other-
35 wise dispensing any bottled soft drink or any drink made
36 from soft drink syrup.

37 (6) "Distributor" shall mean any person who manu-
38 factures, bottles, produces or purchases for sale to retail
39 dealers any bottled soft drink or soft drink syrup.

40 (7) "Commissioner" means the state tax commissioner,
41 and where the meaning of the context requires, all depu-
42 ties and employees duly authorized by him.

Sec. 2. Excise Tax on Bottled Soft Drinks and Syrups;

2 *Disposition Thereof.*—For the purpose of providing rev-
3 enue for the construction, maintenance and operation of

4 a four-year school of medicine, dentistry and nursing of
5 West Virginia university, an excise tax is hereby levied
6 and imposed on and after midnight of the last day of
7 June, one thousand nine hundred fifty-one, upon the sale,
8 use, handling or distribution of all bottled soft drinks and
9 all soft drink syrups, whether manufactured within or
10 without this state, as follows:

11 (1) On each bottled soft drink, a tax of one cent on
12 each sixteen fluid ounces, or fraction thereof, contained
13 therein.

14 (2) On each gallon of soft drink syrup, a tax of eighty
15 cents, and in like ratio on each part gallon thereof, and
16 on each ounce of dry mixture used for making soft drinks,
17 a tax proportionate to that levied on soft drink syrup, in
18 a ratio to be determined by the commissioner.

19 The person manufacturing or producing within this
20 state any bottled soft drink or soft drink syrup for sale
21 within this state shall pay the excise tax hereby imposed,
22 and the distributor, wholesale dealer or retail dealer or
23 any other person who is the original consignee of any
24 bottled soft drink or soft drink syrup manufactured
25 or produced outside this state, or who brings such drinks

26 or syrups into this state, shall pay such excise tax. The
27 excise tax hereby imposed shall not be collected more
28 than once in respect to any bottled soft drink or soft
29 drink syrup manufactured, sold, used or distributed in
30 this state.

31 All revenue collected by the commissioner under the
32 provisions of this article, less such costs of administration
33 as are hereinafter provided for, shall be paid by him into
34 a special medical school fund, which is hereby created
35 in the state treasury, to be used solely for the construc-
36 tion, maintenance and operation of a four-year school of
37 medicine, dentistry and nursing, as otherwise provided by
38 law.

Sec. 3. *Soft Drink Permits Required.*—On and after the
2 first day of July, one thousand nine hundred fifty-one, it
3 shall be unlawful for any person to manufacture, bottle,
4 import, distribute or sell in this state any bottled soft
5 drink or any soft drink syrup without having first ob-
6 tained from the commissioner a soft drink permit as pro-
7 vided in this section. Each wholesale dealer and each dis-
8 tributor shall each year obtain from the commissioner a

9 soft drink permit for each place of business owned or
10 operated by him within the state and shall pay for each
11 permit an annual fee of ten dollars. Each wholesale dealer
12 and each distributor who sells or distributes any such
13 drink or syrup within the state, but who does not own
14 or operate any place of business within the state, shall
15 likewise obtain each year from the commissioner a soft
16 drink permit and shall pay therefor a fee of ten dollars.
17 Each retail dealer shall each year obtain from the com-
18 missioner a soft drink permit for each place of business
19 owned or operated by him within the state and shall pay
20 for each permit an annual fee of one dollar. The com-
21 missioner may suspend or, after a hearing, revoke any
22 soft drink permit whenever the holder thereof has failed
23 to comply with any of the provisions of this article or any
24 rules or regulations made and promulgated by him as
25 provided herein.

Sec. 4. *Affixing of Tax Stamps or Tax Crowns.*—The
2 payment of the taxes herein provided shall be evidenced
3 by the affixing of soft drink tax stamps or tax crowns to
4 the original containers or bottles in which any bottled

5 soft drink or syrup is placed, received, stored or handled.
6 Such stamps or crowns, of the appropriate denomination,
7 shall be affixed to each container of syrup and to each
8 bottled soft drink by the person who under the provisions
9 of this article is first required to pay the tax thereon,
10 within twenty-four hours after such person has such
11 bottled soft drink or syrup in his possession for the first
12 time. The provisions of this paragraph shall not apply to
13 syrup used by bottlers in the manufacture of bottled soft
14 drinks, or to bottled soft drinks or syrups which are trans-
15 ported through this state and which are not sold, de-
16 livered, used or stored herein, if transported in accord-
17 ance with such rules and regulations as may be promul-
18 gated by the commissioner, or to any bottled drink or
19 syrup which is manufactured in this state and sold to a
20 purchaser outside this state.

21 Except as otherwise provided in this section, it shall
22 be unlawful for any person to sell, use, handle or dis-
23 tribute any bottled soft drink or soft drink syrup to which
24 the tax stamps or tax crowns required by this section are
25 not affixed, and any person who shall violate this pro-

26 vision shall be guilty of a misdemeanor and, upon con-
27 viction thereof, shall be punished by a fine of not less
28 than one hundred dollars nor more than five hundred
29 dollars, or by imprisonment for not more than six months,
30 or by both such fine and imprisonment.

Sec. 5. *Purchase of Tax Stamps or Tax Crowns; Dis-*
2 *counts and Commissions; Provisions for Credit.*—The
3 commissioner is hereby authorized to promulgate rules
4 and regulations governing the design, purchase, sale and
5 distribution of tax stamps and tax crowns required by
6 this article. Manufacturers or distributors of crowns may
7 be required to furnish bond to insure faithful compliance
8 with such regulations. Any person desiring to purchase
9 such crowns shall obtain from the commissioner an auth-
10 orization to do so, which shall specify the number of
11 crowns to be purchased, and upon shipment thereof the
12 manufacturer shall transmit to the commissioner a copy
13 of the invoice of such shipment. The commissioner shall
14 not authorize the purchase of crowns by any person who
15 is in default in the payment of any tax required by this
16 article.

17 The commissioner shall sell the stamps required by this
18 article, or may authorize any sheriff, or any bank or
19 trust company in this state, to sell such stamps as his
20 deputy, and may allow as a commission a fee of one-
21 half of one per cent of the face value of all stamps sold
22 by such deputy. In the sale of such stamps the commis-
23 sioner shall allow the following discounts: on a sale of
24 less than twenty-five dollars, no discount; on a sale of
25 twenty-five dollars or over and less than fifty dollars,
26 a discount of five per cent; and on a sale of fifty dollars
27 or more, a discount of ten per cent.

28 In the case of stamps, the tax imposed by this article
29 shall be paid in advance at the time the stamps are pur-
30 chased. In the case of tax crowns, the tax shall be paid in
31 advance at the time the tax commissioner authorizes the
32 purchase of such tax crowns, unless the purchaser applies
33 for and obtains credit as provided in the following para-
34 graph.

35 Whenever any person applies for an authorization to
36 purchase tax crowns he may apply for an extension of
37 credit on the tax due with respect to such crowns, and if

38 he files a bond in the form prescribed by the commis-
39 sioner, with satisfactory corporate surety, in an amount
40 not less than twenty-five per cent more than the tax due
41 with respect to the tax crowns to be purchased, the com-
42 missioner shall issue the necessary authorization. Any
43 person who obtains such credit shall, on or before the
44 tenth day of each month, file with the commissioner on
45 forms prescribed by him a return stating the number of
46 tax crowns used by such person during the preceding
47 month, and he shall at the same time pay to the com-
48 missioner the tax due on the crowns so used.

49 The commissioner shall allow to each purchaser of
50 tax crowns, whether for cash or credit, a discount of
51 twelve and one-half per cent of the tax value of such
52 tax crowns. Such discount, and the discount allowed
53 on the sale of tax stamps, shall be in lieu of the allow-
54 ance of any claim for refund by reason of the breakage
55 or destruction of containers stamped or crowned as pro-
56 vided in this article, or the loss or destruction of tax
57 stamps or tax crowns.

Sec. 6. *Rules and Regulations.*—The commissioner is

2 hereby authorized to make and promulgate such reason-
3 able rules and regulations as may be necessary to admin-
4 ister the provisions of this article and to insure the col-
5 lection of the taxes imposed hereby. Every person sub-
6 ject to the provisions of this article shall make such
7 reports and keep such records as may be required by
8 the rules and regulations of the commissioner, and shall
9 permit him to inspect such records and the stock and
10 supplies on hand at any time.

Sec. 7. *Lien for Delinquent Taxes.*—The claims of the
2 state for any delinquent taxes due under the provisions
3 of this article shall be a preferred claim against all the
4 property, real and personal, belonging to the delinquent
5 taxpayer, with priority over all taxes except real prop-
6 erty taxes, and other recorded state tax claims docketed
7 according to law.

Sec. 8. *Amount Allowed for Administration.*—The com-
2 missioner, in the administration and enforcement of this
3 article, shall be allowed to expend out of the revenue
4 collected hereunder, a sum not to exceed two and one-
5 half per cent of the total revenue collected.

Sec. 9. *Altering, Counterfeiting or Re-using Tax Stamps*

2 or *Tax Crowns; Penalty*.—Any person who falsely or
3 fraudently makes, forges, alters, or counterfeits any tax
4 stamp or tax crown prescribed by the commissioner
5 under the provisions of this article, or who knowingly
6 or willfully utters, passes or tenders as true any such
7 false, altered, forged or counterfeited stamp or crown,
8 or who uses more than once any stamp or crown for the
9 purpose of evading the tax imposed by this article, shall
10 be guilty of a felony and, upon conviction thereof, shall
11 be punished by imprisonment in the penitentiary for
12 not less than one year nor more than five years.

Sec. 10. *Penalties*.—Any person who violates any of the

2 provisions of this article or any lawful rule or regulation
3 promulgated by the commissioner under authority of
4 this article, for the violation of which no other penalty is
5 provided by law, shall be guilty of a misdemeanor and,
6 upon conviction thereof, shall be punished by a fine of not
7 less than twenty-five dollars nor more than one hundred
8 dollars.

Sec. 11. *Separability*.—The provisions of the several

2 sections of this article shall be deemed to be separable
3 insofar as they or their meaning is not inseparably con-
4 nected, and if any provisions of this article shall be held
5 unconstitutional, such holding shall not affect any of the
6 other provisions thereof.

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

Robert C. Byrd
Chairman Senate Committee

James W. Loop
Chairman House Committee

Originated in the House of Delegates

Takes effect *July 1, 1951* passage.

Thomas Meyer
Clerk of the Senate

J. R. Gliff
Clerk of the House of Delegates

A. Broughton Hunter
President of the Senate

W. E. Hanne
Speaker House of Delegates

The within *approved* this the *15th*
day of *MARCH*, 1951.

Chas. L. Patton
Governor



FILED IN THE OFFICE OF THE SECRETARY OF STATE
of West Virginia
MAR 15 1951
D. PITT O'BRIEN,
SECRETARY OF STATE