

Rec., June 3

115

# ENROLLED BILL

(EXTRAORDINARY SESSION, 1933)

House Bill No. 115

(By Mr. Speaker Mr. Hiner)

Passed June 3, 1933

In Effect from Passage

Originated in the.....*House*.....Takes effect.....*from*.....Passage

*Geo Steel*  
Clerk House of Delegates.

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*James L. Smith*  
Chairman Senate Committee.

*James L. Smith*  
Chairman House Committee.

## ENROLLED BILL

(H. B. No. 115)

[Passed June 3, 1933: in effect from passage.]

AN ACT to amend and reenact sections one, two, three, four, five, eleven, thirteen and twenty, article eleven, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, relating to inheritance, transfer and estate taxes, and to add thereto new sections to be designated sections fourteen-(a) and twenty-eight.

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

That sections one, two, three, four, five, eleven, thirteen and twenty, article eleven, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, are hereby amended and reenacted and sections fourteen-(a) and twenty-eight, are hereby added thereto, to read as follows:

Section 1. A tax, payable into the treasury of the state, shall  
2 be imposed upon the transfer, in trust, or otherwise, of any

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3 property, or interest therein, real, personal, or mixed, if such  
4 transfer be; (a) By will or by laws of this state regulating  
5 descent and distribution from any person who is a resident of  
6 the state at the time of his death and who shall die seized or  
7 possessed of property; (b) By will or by laws regulating descent  
8 and distribution of property within the state, or within its  
9 taxing jurisdiction, and the decedent was a nonresident of the  
10 state at the time of his death; (d) By a resident, or be of  
11 property within the state, or within its jurisdiction, by a non-  
12 resident, by deed, grant, bargain, sale or gift, made in contem-  
13 plation of the death of the grantor, bargainor or donor, or  
14 intended to take effect in possession or enjoyment at or after  
15 such death. Every transfer by deed, grant, bargain, sale or  
16 gift, made within three years prior to the death of the grantor,  
17 bargainor, vendor, or donor, of value of five hundred dollars, or  
18 in excess thereof, at the time of such transfer in the nature of  
19 final disposition, or distribution of an estate, and without ade-  
20 quate valuable consideration, shall be construed to have been  
21 made in contemplation of death within the meaning of this  
22 article; (e) If any person shall transfer any property which he  
23 owns, or shall cause any property, to which he is absolutely

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24 entitled, to be transferred to, or vested in himself and any other  
25 person jointly so that the title therein, or in some part thereof,  
26 vest no survivorship in such other person, a transfer shall be  
27 deemed to occur and to be taxable under the provisions of this  
28 article upon the vesting of such title; (f) Whenever any person  
29 shall exercise a power of appointment derived from any dispo-  
30 sition of property made, such appointment when made shall be  
31 deemed a transfer taxable under the provisions of this article,  
32 in the same manner as though the property to which such ap-  
33 pointment relates belonged absolutely to the donee of such  
34 power and had been bequeathed or devised by such donee by  
35 will; and whenever any person possessing such a power of ap-  
36 pointment so derived shall omit or fail to exercise the same  
37 within the time provided therefor, in whole or in part, a transfer  
38 taxable under the provisions of this article shall be deemed to  
39 take place to the extent of such omission or failure, in the same  
40 manner as though the person thereby becoming entitled to the  
41 possession or enjoyment of the property to which such power  
42 related had succeeded thereto by a will of the donee of the  
43 power failing to exercise such power, and shall take effect at  
44 the time of such omission or failure.

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Sec. 2. When the property or any beneficial interest therein  
2 passes by any such transfer where the amount of the property  
3 considered as a unit shall exceed in value the exemption herein-  
4 after specified, and shall not exceed in value fifty thousand  
5 dollars, the tax hereby imposed shall be; (a) Where the person  
6 or persons entitled to any beneficial interest in such property  
7 shall be the wife, husband, child, stepchild, or the descendants  
8 of a living or deceased child per stirpes, or father or mother of  
9 the decedent, at the rate of three per cent of the market value  
10 of such interest in such property; (b) Where the person or  
11 persons entitled to any beneficial interest in such property  
12 shall be the brother or sister of the decedent, and the term  
13 brother or sister shall include a brother or sister of the  
14 half blood, at the rate of four per cent of the market value of  
15 such interest in such property; (c) Where the person or per-  
16 sons entitled to any beneficial interest in such property shall  
17 be further removed in relationship from the decedent than  
18 brother or sister, the rate of seven per cent of the market  
19 value of such interest in such property; (d) Where the person  
20 or persons entitled to any beneficial interest in such property  
21 shall be of no blood relation or strangers to the decedent, or

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22 institutions, corporate or otherwise, the rate of ten per cent of  
23 the market value of such interest in such property.

Sec. 3. When the market value of any such property con-  
2 sidered as a unit exceeds fifty thousand dollars, the rate of tax  
3 upon such excess shall be as follows: (a) Upon all in excess  
4 of fifty thousand dollars, up to and not exceeding one hundred  
5 fifty thousand dollars, the rate shall be as follows: Transfers  
6 to those persons in subdivision (a) of section two, five per  
7 cent; transfers to those persons in subdivision (b) of section  
8 two, six per cent; transfers to those persons in subdivision  
9 (c) of section two, nine per cent; transfers to those persons in  
10 subdivision (d) of section two, twelve per cent; (b) Upon all  
11 in excess of one hundred fifty thousand dollars, up to and not  
12 exceeding three hundred thousand dollars, the rate shall be  
13 as follows: Transfers to those persons in subdivision (a) of  
14 section two, seven per cent; transfers to those persons in sub-  
15 division (b) of section two, eight per cent; transfers to those  
16 persons in subdivision (c) of section two, eleven per cent; trans-  
17 fers to those persons in subdivision (d) of section two, fourteen  
18 per cent; (c) Upon all in excess of three hundred thousand  
19 dollars, up to and not exceeding five hundred thousand dollars,

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20 the rate shall be as follows: Transfers to those persons in sub-  
21 division (a) of section two, nine per cent; transfers to those  
22 persons in subdivision (b) of section two, ten per cent; trans-  
23 fers to those persons in subdivision (c) of section two, fifteen  
24 per cent; transfers to those persons in subdivision (d) of sec-  
25 tion two, eighteen per cent; (d) Upon all in excess of five hun-  
26 dred thousand dollars, up to and not exceeding one million  
27 dollars, the rate shall be as follows: Transfers to those persons  
28 in subdivision (a) of section two, eleven per cent; transfers  
29 to those persons in subdivision (b) of section two, fourteen per  
30 cent; transfers to those persons in subdivision (c) of section  
31 two, twenty per cent; transfers to those persons in subdivision  
32 (d) of section two, twenty-four per cent; (e) Upon all in  
33 excess of one million dollars the rates shall be as follows:  
34 Transfers to those persons in subdivision (a) of section two,  
35 thirteen per cent; transfers to those persons in subdivision (b)  
36 of section two, eighteen per cent; transfers to those persons in  
37 subdivision (c) of section two, twenty-five per cent; transfers  
38 to those persons in subdivision (d) of section two, thirty per  
39 cent.

Sec. 4. (a) All property transferred to the state or to any

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2 county, school district, or municipal corporation thereof for  
3 public purposes shall be exempt from taxation under this article.

4 (b) No transfer of less than one hundred dollars shall be  
5 taxable under this article. For this purpose all transfers from  
6 a decedent to the same transferee shall be treated as a unit.

7 (c) Property transferred to a widow of a deceased person  
8 shall be allowed exemptions from taxes under this article as  
9 follows: (1) Transfers not in excess of fifteen thousand dol-  
10 lars shall be entirely exempt; (2) Transfers in excess of fifteen  
11 thousand dollars up to and not exceeding twenty-five thousand  
12 dollars shall have an exemption determined by subtracting from  
13 fifteen thousand dollars, the difference between fifteen thousand  
14 dollars and the amount of the transfer; (3) There shall be no  
15 exemption in the case of a transfer in excess of twenty-five  
16 thousand dollars.

17 (d) Property transferred to any person within the classes  
18 described in subdivision (a) of section two other than a wife  
19 shall be allowed exemption from taxes under this article as  
20 follows: (1) Transfers not in excess of five thousand dollars  
21 shall be entirely exempt; (2) Transfers in excess of five thou-  
22 sand dollars up to and not exceeding ten thousand dollars shall



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23 have an exemption determined by subtracting from five thou-  
24 sand dollars, the difference between five thousand dollars and  
25 the amount of the transfer; (3) Transfers in excess of ten  
26 thousand dollars shall be allowed no exemption.

27 The descendants of any child referred to in subdivision (a)  
28 of section two shall be allowed the exemption of the person they  
29 represent per stirpes and not per capita.

Sec. 5. The market value of property is its actual market  
2 value after deducting debts and encumbrances for which the  
3 same is liable, and to the payment of which it shall actually  
4 be subjected. In fixing such market value, allowances shall not  
5 be made for debts incurred by the decedent, or encumbrances  
6 made by him, unless such debts or encumbrances were incurred  
7 or created in good faith for an adequate consideration, nor for  
8 any debt in respect whereof there is a right to reimbursement  
9 from any other estate or person, unless such reimbursement  
10 from any other estate or person cannot be obtained.

11 For the purpose of the tax there shall be deducted from the  
12 market value of the property transferred the value at which  
13 it was assessed for any inheritance or transfer tax paid to the  
14 state of West Virginia upon a transfer to the decedent at any

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15 time within three years prior to the death of the decedent. This  
16 paragraph shall apply only to transferees designated in sub-  
17 divisions (a) and (b) of section two of this article.

Sec. 11. All taxes imposed by this article shall be due and  
2 payable at the death of the transferor and if paid within six  
3 months after the death of the transferor a discount of three  
4 per cent shall be allowed and deducted. If not paid within  
5 twelve months after the death of the transferor taxes due under  
6 this article shall bear interest at the rate of ten per centum  
7 per annum, to be computed from the expiration of twelve  
8 months from the date of the death of the transferor until paid,  
9 and a penalty of five per cent shall be added. The tax commis-  
10 sioner may suspend payment of such taxes, penalties and inter-  
11 est if there be necessary litigation pending at the time such  
12 taxes are due and payable, which involves the estate, or for  
13 other good and sufficient cause. Suits and actions brought for  
14 the purpose of defeating the payment of any such taxes, pen-  
15 alties and interest, shall not be deemed necessary litigation  
16 within the meaning of this section.

Sec. 13. The county courts of all counties of the state, or the  
2 clerks thereof, shall make reports in all decedent estates and in

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3 all cases where a transfer otherwise occurs when required by  
4 the tax commissioner. Such clerks may ascertain when a trans-  
5 fer has occurred by reference to the filing of a will, the ap-  
6 pointment of a fiduciary, or the admission to record of a deed  
7 or other writing intended to take effect in possession or enjoy-  
8 ment, at or after the death of the maker thereof, or appearing  
9 to be in contemplation of his death, or be based on any infor-  
10 mation otherwise derived, and shall report the same to the tax  
11 commissioner. Such a report shall be made quarterly as soon  
12 as possible after the first day of January, April, July and  
13 October in each year, and shall relate to all such matters as  
14 were not covered by any previous report. A special report may  
15 be made by the clerk at any time. If there be no reason to  
16 believe that any such transfer has been made since the date of  
17 the last preceding report, that fact shall be stated in such  
18 quarterly report, but if there be reason to believe that such a  
19 transfer has been made, such quarterly or special report shall  
20 show the nature thereof; the name of the decedent, deviser,  
21 grantor, vendor, bargainor or donor the name or other descrip-  
22 tion, and the address, of the person or corporation to or for  
23 whose use or benefit any property may be transferred, and the

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24 relationship, if any, between such person and the person from  
25 whom the property is transferred, as far as the court or clerk  
26 may have any information respecting such matters; the nature  
27 of the property transferred, with such general description and  
28 approximate valuation as the court or clerk may be able to  
29 give. Any other person, whether interested in such property  
30 or not, may make a like report to the tax commissioner. Every  
31 such report, whether by the clerk or by any other person, shall  
32 be filed by the tax commissioner, and retained in his office until  
33 the tax be paid on the transfers therein mentioned, or until it  
34 shall be ascertained that they are not subject to tax, and shall  
35 then be destroyed; and at all times such report shall be ~~con-~~<sup>con-</sup>  
36 fidential and privileged, and its contents shall not be inspected  
37 or made known by any one, except by the tax commissioner as  
38 to any report made by a clerk, when there shall be a question  
39 whether such clerk has complied with the provisions of this  
40 article.

41 The tax commissioner shall have full authority of enforce-  
42 ment and collection of all taxes due under this act and shall  
43 make such rules and regulations, from time to time, as may be

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44 necessary for the interpretation and enforcement thereof, the  
45 the forms to be used and the reports to be filed hereunder.

Sec. 14-a. No corporation incorporated under the law of  
2 this state, and no registration or transfer agent thereof, shall  
3 register or transfer any bonds or stock of the corporation stand-  
4 ing in the name of a decedent or joint names of a decedent and  
5 one or more persons or in trust for a decedent until ten days  
6 notice to the tax commissioner of the time of the transfer and  
7 until the tax commissioner shall consent thereto in writing. A  
8 corporation or agent registering bonds or making a transfer  
9 without the consent of the tax commissioner under this section  
10 shall be liable for any tax thereafter assessed on account of  
11 the transfer of such securities together with accrued interest  
12 and a penalty of one thousand dollars. This liability may be  
13 enforced in the manner provided in section twenty of this  
14 article.

15 If a corporation not incorporated in this state and owning  
16 property in the state, or the registration or transfer agent there-  
17 of, shall register or transfer on its books bonds or stock of the  
18 corporation standing in the name of a resident decedent before  
19 taxes accruing under this article with respect to the transfer

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20 of such bonds or stock on the death of the decedent have been  
21 paid, such corporation or agent shall become liable for the pay-  
22 ment of such taxes. Property held by such a corporation or  
23 agent in this state shall be subject to execution to satisfy any  
24 liability of the corporation or agent under this section. A  
25 receipt or certificate of authority signed by the tax commis-  
26 sioner shall be full protection to either a domestic or a foreign  
27 corporation or agent thereof in the transfer of any such bonds  
28 or stock.

29 The tax commissioner shall have authority to require that  
30 any reports necessary to a proper enforcement of this article  
31 be made by any corporation subject to the provisions of this  
32 section.

Sec. 20. If any such taxes, hereinbefore provided for, shall  
2 not be paid within sixty days from the time they become pay-  
3 able, or if there be an appeal with respect to the same or pay-  
4 ment thereof be prevented by litigation or other unavoidable  
5 cause, within sixty days after the decision of such appeal or  
6 the end of such litigation or other cause of delay, the tax  
7 commissioner shall, on behalf of the state, and with the assist-  
8 ance of the prosecuting attorney of the county, proceed in the

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9 circuit court, by bill in chancery to enforce the lien of such  
10 taxes upon any real property subject to such lien, and to ob-  
11 tain the sale thereof, or of so much thereof as may be necessary  
12 to satisfy such lien, and by other appropriate proceedings to  
13 enforce the lien of such taxes upon any other property subject  
14 to such lien, and relief shall be given by such circuit court  
15 accordingly. In addition to any other remedy for the collec-  
16 tion of any tax upon such transfer, the same may be recovered  
17 in an action of assumpsit on behalf of the state of West Vir-  
18 ginia against any person liable for such tax, and the tax com-  
19 missioner is authorized to bring such action in any circuit court  
20 or before any justice having jurisdiction, and the prosecuting  
21 attorney shall conduct the prosecution thereof. The prosecuting  
22 attorney shall receive no compensation for this service in addi-  
23 tion to his regular salary. There shall be assessed a statutory  
24 fee of not less than fifteen or more than fifty dollars in every  
25 law suit instituted for the collection of such taxes, and of not  
26 less than twenty-five nor more than one hundred dollars in  
27 each chancery suit instituted for this purpose, such fees in  
28 each case to be fixed by the circuit court, which said amounts  
29 shall be collected and paid into the treasury of the state in like

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30 manner as such inheritance tax. The tax commissioner may  
31 compromise and settle the amounts of any such tax when there  
32 is a controversy as to the relationship between the former owner  
33 of the property and the person to whom it is transferred.

Sec. 28. It is the purpose of this section to impose an estate  
2 tax and to take full advantage of the credit allowed by laws of  
3 the United States because of transfer or death taxes actually  
4 paid to this state. There is, therefore, imposed hereby a tax in  
5 addition to any inheritance tax under the laws of this state  
6 upon the net estate of every decedent, whether resident or non-  
7 resident, dying after the enactment of this act. In the case  
8 of non-residents, the tax shall be on only so much of the net  
9 estates as represents property or funds having a taxable situs  
10 in this state.

11 The amount of the tax shall be computed by determining the  
12 full amount of the federal tax due upon a transfer in accordance  
13 with laws of congress in force at the time of the death of the  
14 decedent, and by calculating that percentage of the federal tax  
15 allowed as credit because of the payment of this tax to the state.  
16 The rules and regulations for determining the amount of the  
17 net estate upon the transfer of which the tax is imposed, shall



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18 be the same as the rules and regulations adopted by the com-  
19 missioner of internal revenue for determining the net estate  
20 under laws of congress.

21 The administrative provisions of this article relating to the  
22 collection of the state inheritance tax shall apply, so far as  
23 applicable, to the collection of the tax imposed by this section.

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*Wm. M. Hiner*  
Speaker of the House of Delegates.

*Geo. L. Hall*  
Clerk of the House of Delegates.

*Wm. M. Hiner*  
President of the Senate.

*Samuel A. Smith*  
Clerk of the Senate.

The within is... *approved* ...

this... *9<sup>th</sup>* ... day of... *June* ... 1933.

*Wm. M. Hiner*  
Governor.

Filed in the office of the Secretary of State  
of West Virginia *JUN 12 1933*  
Wm. S. O'Brien,  
Secretary of State