

Rec., Feb. 27, 1934

ENROLLED BILL
(SECOND EXTRAORDINARY SESSION, 1933)

House Bill No. 191

(By Mr. Carr)

Passed February 22 1934

In Effect 90 days from Passage

Originated in the House of Delegates Takes effect 90 days from Passage
Pro. House Clerk of House of Delegates

CORRECTLY ENROLLED

James L. Smith Chairman House Committee
H. B. Abel acting Chairman Senate Committee

ENROLLED BILL

(H. B. No. 191)

[Passed February 22, 1934; in effect ninety days from passage.]

AN ACT to amend article four, chapter fifty-six of the code of West Virginia, one thousand nine hundred thirty-one, by adding thereto a new section to be numbered seventy-one, relating to allegations of pleadings or proofs in any action, suit or proceeding in a court of record in this state for collection of any bonds, notes or other evidence of debt subject to assessment for taxation; to provide that any judgment or decree rendered contrary to the provisions hereof be void; to provide that as a part of any judgment or decree rendered in said action, suit or proceeding the court may order that the taxes, interest and penalties due and owing shall be paid out of first collection on said judgment or decree; and to provide that the title to real estate sold by virtue of a deed of trust, mortgage, or vendor's

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James D. Hays

Chairman Senate Committee.

James L. Smith

Chairman House Committee.

lien, shall not be drawn in question by failure of the owner of the debt secured thereby to list the same for taxation.

Be it enacted by the Legislature of West Virginia:

That article four, chapter fifty-six of the code of West Virginia, one thousand nine hundred thirty-one, be amended by adding there- to a new section to be numbered seventy-one, to read as follows:

Section 71. In every action at law, proceeding or suit in equity, instituted on and after July second, one thousand nine hundred thirty-four, in a court of record in this state, for the collection of any bonds, notes, or other evidences of debt, the plaintiff or claimant shall be required to allege in his pleadings, or to prove by affidavit or otherwise at any time before final judgment or decree is entered:

(1) That such bonds, notes or other evidence of debt have been assessed for taxation for each and every tax year on the first day of which he was the owner of same, not exceeding five years prior to that in which the action, suit or proceeding was instituted and not in any event, for any period beginning earlier than the first day of January, one thousand nine hundred thirty-three, or

(2) That such bonds, notes, or other evidence of debt con-

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James A. Hays

James L. Smith

Chairman Senate Committee.

Chairman House Committee.

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14 stituted a part of the capital employed in the business of such
15 plaintiff or claimant and were assessed or taxed as such, or
16 otherwise assessed or taxed as prescribed by law, or

17 (3) That the plaintiff or claimant has not paid, or is unable
18 to pay, the taxes and interest and penalties, if any, on such
19 bonds, notes or other evidences of debt, but is willing for the
20 same to be paid out of his first recovery thereon, or

21 (4) That such bonds, notes or other evidence of debt sued upon
22 are not taxable under the law in the hands of the plaintiff or
23 claimant, or are otherwise exempt from taxation; and no judg-
24 ment or decree of a court of record rendered in an action, suit
25 or proceeding instituted on and after the date aforesaid, shall
26 be valid unless the allegation herein required was made, or
27 unless the proof herein required was adduced before final judg-
28 ment or decree was entered.

29 When in any such action at law, suit in equity or proceeding,
30 it is ascertained that there are unpaid taxes, including interest
31 and penalties, if any, on the evidence or evidences of debt sought
32 to be enforced, and the plaintiff or claimant makes it appear
33 to the court that he has not paid, or is unable to pay, said taxes,
34 including interest and penalties, if any, but is willing for the

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Anna A. Higgins

Chairman Senate Committee.

James L. Smith

Chairman House Committee.

35 same to be paid out of his first recovery thereon, the court may
36 order, as a part of any judgment or decree in said action, suit
37 or proceeding, that the taxes, including interest and penalties,
38 if any, that are due and owing, shall be paid to the proper offi-
39 cer out of the first collection on said judgment or decree.

40 But the title to real estate heretofore or hereafter sold by
41 virtue of a deed of trust, mortgage or vendor's lien, shall not be
42 drawn in question upon the ground that the holder of the notes
43 or bonds or evidences of debt secured by such deed of trust,
44 mortgage or vendor's lien, did not list the same for taxation; and
45 this act shall not affect in any manner any action, suit or pro-
46 ceeding pending or instituted in any court of this state prior
47 to July second, one thousand nine hundred thirty-four.

48 If any paragraph, sentence, clause or phrase of this act shall
49 for any reason be held invalid, the validity of the remaining
50 phrases, clauses, sentences and paragraphs of this act shall not
51 be affected thereby.

52 All acts or parts of acts inconsistent with the provisions of
53 this act are hereby repealed as of the day this act becomes
54 effective.

CORRECTLY ENROLLED

A. B. Alldredge
Chairman Senate Committee.
acting
James P. Smith
Chairman House Committee.

B. M. Hiser
.....
Speaker of the House of Delegates.

Geo. S. Hall
.....
Clerk of the House of Delegates.

H. S. Mainwaring
.....
President of the Senate.

John D. Smith
.....
Clerk of the Senate.

The within is..... *approved*

this... *28th* ... day of... *February*, 1934.

H. S. Kemp
.....
Governor

Filed in the office of the Secretary of State
of West Virginia. MAR 1 1934
Wm. S. O'BRIEN,
Secretary of State