

Rec., Mar. 11, 1933

119

ENROLLED BILL

(REGULAR SESSION, 1933)

Committee Substitute for
House Bill No. 119

(By ~~Mr.~~ *Committee on Judiciary*)

Passed March 11, 1933

In Effect From Passage

Originated in the *House* Takes effect *January* passage
Proctor Clerk of the House of Delegates.
CORRECTLY ENROLLED

James I. Smith Chairman House Committee.
DeLoach Chairman Senate Committee.

ENROLLED BILL

(Com. Sub. for H. B. No. 119)

[Passed March 11, 1933; in effect from passage.]

AN ACT to amend and reenact section ten, article three, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, relating to the assessment of taxes, the failure to list property for taxation, the failure to make oath or answer and proceedings on default.

Be it enacted by the Legislature of West Virginia:

That section ten, article three, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, be amended and reenacted to read as follows:

Section 10. If any person whose duty it is by law to list any
2 real estate or personal property for taxation, shall refuse to
3 furnish a proper list thereof, or refuse to furnish a list within
4 the time required by law, or to make such oath as required by
5 this chapter; or if any person refuse to answer or answer un-

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James L. Smith
Chairman House Committee
James D. Higgins
Chairman Senate Committee

Chairman Senate Committee.

Chairman House Committee.

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6 truly any question asked him by the assessor, or fail or refuse
7 to deliver any statement required by law, he shall forfeit not less
8 than twenty-five nor more than one hundred dollars, and shall
9 be denied all remedy provided by law for the correction of any
10 assessment made by the assessor. If any person, firm or corpo-
11 ration, including public service corporations, required by law
12 to make return of property for taxation, whether such return
13 is to be made to the assessor, the board of public works, or any
14 other assessing officer or body, fails to return a true list of all
15 property which should be assessed in this state, including
16 money, notes, bonds, bills and accounts receivable, stocks and
17 any other intangible personal property, such person, firm or
18 corporation, in addition to all other penalties provided by law,
19 shall forfeit five per cent of the value of the property not re-
20 turned and not otherwise taxed in this state. A forfeiture as to
21 all property aforesaid may be enforced for any such default
22 occurring in any year not exceeding five prior to the time the
23 same is discovered but no liability to penalty or forfeiture as to
24 moneys, notes, bonds, bills, and accounts receivable, stocks and
25 other intangible personal property arising prior to the first day
26 of January nineteen hundred thirty-three shall be enforceable

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James A. Hays

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27 on behalf of the state or of any of its subdivisions. Each failure
28 to make a true return as herein required shall constitute a sepa-
29 rate offense, and a forfeiture shall apply to each of them, but
30 all such forfeitures, to which the same person, firm or corpora-
31 tion is liable, shall be enforced in one proceeding against such

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32 person, firm or corporation, or against the estate of any deceased
33 person, and shall not exceed twenty-five per cent of the value
34 of the property not returned. The state tax commissioner shall
35 collect such forfeitures without suit, but if unable so to do, shall
36 instruct the prosecuting attorney of the county in which the
37 defaulting taxpayer resides or has its principal office, or in
38 which such property should have been returned for taxation to
39 enforce collection. It shall thereupon be the duty of the prose-
40 cuting attorney to institute and prosecute proceedings in the
41 name of the State of West Virginia against the defaulting tax-
42 payer, or, in case of a decedent, his personal representative,
43 in the circuit court upon motion, whereof the defendant shall
44 have at least twenty days' notice. Either party shall have the
45 right to have the issue tried by jury, and the state, as well as the
46 defendant, shall have the right to an appeal. Ten per cent of
47 the amount collected and an attorney's fee of ten dollars to be

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James L. Smith
James D. Byrnes

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48 taxed as a part of the cost shall be collected and paid over by
49 the prosecuting attorney to the sheriff of the county and by him
50 credited to the general county fund. No special counsel shall
51 be employed to institute or conduct such suits. Any prosecuting
52 attorney failing or refusing to perform the duties required of
53 him by this section shall forfeit the sum of one hundred dol-
54 lars, to be recovered against him by the state tax commissioner
55 in the name of the State of West Virginia upon twenty days'
56 notice by motion in any court having jurisdiction. The amount
57 collected in any such suit after deducting ten per cent as afore-
58 said, or the entire sum if collected by the tax commissioner
59 without suit, shall be paid over to the sheriff of the proper
60 county and his receipt taken therefor. The sheriff shall appor-
61 tion such fund among the state, county, district, school district,
62 and municipalities which would have been entitled to the taxes
63 upon such property if it had been assessed, in proportion to the
64 rates of taxation for each such levying unit for the year in
65 which the judgment was obtained bears to the sum of the rates
66 for all. When the list of property returned by the appraisers
67 of the estate of any deceased person shows an amount greater
68 than the last assessment list of such deceased person next pre-

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69 ceding the appraisal of his estate, it shall be prima facie evi-
70 dence that such deceased person returned an imperfect list of
71 his property: *Provided, however,* That any person liable for
72 the tax of his personal representative, may always be permitted
73 to prove by competent evidence that the discrepancy between
74 such assessment list and the appraisal of the estate is caused by
75 a difference of valuation returned by the assessor and that made
76 by the appraisers of the same property or by property acquired
77 after assessment, or that any property enumerated in the ap-
78 praiser's list had been otherwise listed for taxation, or that it
79 was not liable for taxation. Any judgment recovered under
80 this section shall be a lien, from the time of the service of the
81 notice, upon all real estate and personal property of such de-
82 faulting taxpayer, owned at the time or subsequently acquired,
83 in preference to any other lien.
84 If any sentence, clause or phrase of this act shall for any
85 reason be held unconstitutional, the validity of the remaining
86 phrases, clauses and sentences of this act shall not be affected
87 thereby.

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James A. Smith
Chairman Senate Committee.

Wm. M. Hunter
Speaker of the House of Delegates.

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

P. G. M. Atkins
President of the Senate.

Samuel M. ...
Clerk of the Senate.

James A. Smith
Chairman House Committee.

The within is.....

this.....day of....., 1933.

.....
Governor.

Filed in the office of the Secretary of State
of West Virginia. **MAR 18 1933**
Wm. S. O'BRIEN,
Secretary of State