

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1935



ENROLLED

HOUSE BILL No. 264

(By Mr. Reed)



PASSED March 5 1935

In Effect from Passage

264

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House Bill No. 264

(By MR. REED)

[Passed March 8, 1935; in effect from passage.]

AN ACT to amend chapters eleven and thirty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as heretofore amended, by amending and reenacting section nine, article four, chapter forty, acts of the Legislature of West Virginia, regular session, one thousand nine hundred thirty-three, relating to assessments of land, estates in land and undivided interests therein authorizing the separate assessment of undivided interests therein to the respective owners or groups of same on request to the county assessor, and validating former assessments of such interests, advertisements, delinquencies, sales, forfeitures, redemptions and tax deeds thereunder, so far as the state is concerned, in each such undivided interest; protecting the owner of an undivided interest therein

who has or shall pay his portion of the taxes thereon, and rendering liable separately such undivided interest not in any way appearing on the land books for any year or years on which the taxes have not been or shall from time to time not be paid as if such an undivided interest were separately assessed as a separate tract, and facilitating the collection of taxes on an undivided interest where the tax on such undivided interest has not already been paid.

Be it enacted by the Legislature of West Virginia:

That section nine, article four, chapter forty, acts of the Legislature of West Virginia, regular session, one thousand nine hundred thirty-three, be amended and reenacted to read as follows:

Section 9. Whenever in chapter eleven or chapter thirty-
2 seven, the words land or lands or tract or tracts of lands, or
3 lot or lots, or real estate, or part or parcel of a tract or lot,
4 or estate or estates in land or aliquot part of land, are used,
5 they shall be read to include an undivided interest in land and
6 an undivided interest in any estate in land, and such interests
7 may be by the assessor charged to such owner on the land books
8 separately to each owner according to his interest therein and
9 shall be subject to all the provisions of chapters eleven and

10 thirty-seven in relation to assessments, advertisements, delin-
11 quencies, sales, forfeitures, redemptions and tax deeds as now
12 apply to entire tracts, so far as the state is concerned. Each
13 such undivided interest so separately assessed shall be con-
14 sidered as if such undivided interest were a separate tract.
15 And any such assessment of an undivided interest heretofore
16 made upon which the taxes shall have been duly paid, and any
17 return of delinquency or sale for taxes based on such an assess-
18 ment, shall, so far as the state is concerned, be treated and
19 held as valid and sufficient; and in such case any and all title
20 which has become vested in the state because of any forfeiture
21 or sale of any such interest when so assessed shall be vested in
22 the party who would have had the title and been entitled to said
23 interest if this section had been valid and in force when such
24 assessment was made, but such validation shall not extend to
25 the deprivation of title of such a third party as shall have
26 meanwhile acquired valid title thereto by virtue of other pro-
27 visions of law. Upon proper showing to the assessor, such an
28 undivided interest shall be entered on the land books at the
29 instance of the owner or the state and be back-taxed as if
30 it were a separate tract; but any person whose land or un-

31 divided interest therein is delinquent or as to which there is
32 a purported assessment on which the taxes are unpaid for any
33 of the years one thousand nine hundred twenty-six to one
34 thousand nine hundred thirty-four, inclusive, shall be estopped
35 from pleading at law or in equity any defect in the assessment,
36 advertisement, delinquency, sale, forfeiture, redemption or tax
37 deed so long as the taxes or any part of same on such land or
38 undivided interest therein are unpaid. When any person be-
39 comes the owner of the surface, and another or others become
40 the owner of the coal, oil, gas, ore, limestone, fireclay, or other
41 minerals or mineral substances in and under the same, or of the
42 timber thereon, the assessor shall assess such respective estates,
43 or any undivided interest therein, to the respective owners
44 thereof, or to groups of same requesting such group assessment,
45 at their true and actual value, according to the rule prescribed
46 in this chapter. When any person or persons are, or become,
47 the owner or owners of any undivided interest or interests in
48 land, or in the surface, coal, oil, gas, ore, limestone, fireclay,
49 timber or other estate or estates therein, the owner or owners
50 of such undivided interest or interests shall have their land,
51 or estate or interest or undivided interest in such land, or in

52 such estate in land, entered on the land books of the county
53 in which it or a part of it is situated, and cause himself to be
54 charged with taxes legally levied on such interest or undivided
55 interest, but may on request of such owner to the assessor, and
56 without consent or acquiescence of the other joint owner or
57 owners of the other undivided interest or interests have such
58 undivided interest or interests assessed to him or them sepa-
59 rately and independently of the other undivided interest or
60 interests therein; and all such assessments of undivided in-
61 terests heretofore entered on the assessment books are hereby
62 validated in so far as the same are now in, or liable to vest in
63 the state. The words "owner or owners" as used in this section
64 shall include any claimant or claimants who now appear as
65 such on the assessment books or are entitled to have the land
66 or interest in land or interest in an estate in land claimed by
67 him or them to be entered and assessed for taxation. All acts
68 and parts of acts relating to the taxation, delinquency, sale,
69 procuring of tax deeds by individual purchasers, advertise-
70 ment, forfeiture and redemption of lands or real estate shall
71 also apply with the same force to said estates in land, and any
72 cotenant, coparcener or joint tenant, in the absence of satis-

73 factory proof of a fiduciary relationship, shall be entitled to
74 acquire by tax purchase for his own account the interest of
75 any, or all of his co-workers in any tract, lot, estate or parcel
76 of land, without being required to hold the same under any
77 constructive trust; and the burden of proof shall rest on any
78 person alleging such a constructive trust, and such a construc-
79 tive trust shall prima facie be non-existent.

80 In any tax sale by a sheriff, school commissioner or commis-
81 sioner of forfeited lands, only the tract, lot, estate, interest
82 or undivided interest proceeded against in that particular
83 instance shall pass to the purchaser, so far as the state is
84 concerned, so that any other estate, interest or undivided
85 interest in the same tract not embraced in such sale shall not
86 be affected by such sale, nor shall the title, or rights of the
87 owners or claimants of such other estate, interest, or undivided
88 interest in land be affected thereby.

89 When for any year or years after one thousand nine hun-
90 dred twenty-five, the undivided interest of any person shall not
91 have been entered and taxed on the lands books, or where such
92 interest may have been assessed, and taxes thereon for any one
93 or more, or all, of said years shall not have been paid to the

94 state, such person, or his successor in title, or a co-owner of
95 same, shall be entitled to redeem his and/or any or all of his co-
96 owners' interest from the state, so far as the state has title or
97 claim thereto by reason of such non-entry or nonpayment of
98 taxes, and the same has not been vested in third persons under
99 the laws of West Virginia, upon application to the auditor in
100 writing, and payment of such amount as the auditor shall find
101 to be due the state on account of taxes that should have been
102 paid; and in such cases the auditor shall issue certificates of
103 redemption in manner and form provided by law for redemp-
104 tion of land, and such redemption shall thereafter estop the
105 state from asserting any claim to such interest on account of
106 such non-entry or nonpayment of taxes: *Provided, however,*
107 That redemption under this section shall be made prior to the
108 time the state shall sell the same, in any proceeding for the
109 purpose, or before January first, one thousand nine hundred
110 thirty-nine, whichever first occurs; but the failure of any per-
111 son, owning, claiming, or having the right to redeem any other
112 undivided interest in the land, or estate in land, to redeem as
113 aforesaid, shall in nowise affect, impair the right of, or preclude
114 any co-owner from redeeming his interest under this section.

115 The owner may be permitted by the auditor, upon application
116 in writing, to redeem said land or estate in land or his undi-
117 vided interest therein, to the extent that the title thereto has
118 not passed to strangers, by payment of such an amount as the
119 taxes on same respectively would have been with interest and
120 penalties. If one co-owner redeems the undivided interest of
121 one or more of his co-owners by paying the taxes on same as
122 above, such co-owner so redeeming shall be subrogated to the
123 lien of the state for so much of such taxes as should have been
124 paid by such other co-owners against the interest of such other
125 co-owner in such property. He shall lose his right to such lien,
126 however, unless within one year after such redemption by him
127 he shall file with the clerk of the county court his claim in
128 writing against such other co-owner, accompanied by the tax
129 receipt or a duplicate thereof. The clerk shall docket such
130 claim on the judgment lien docket in his office and properly
131 index the same. Such lien may be enforced as other liens are
132 enforced.

133 Nothing in this act shall affect the right of any party to
134 any action or suit heretofore finally adjudicated, or that may
135 be now pending or that may be instituted on or before the

136 first day of July, one thousand nine hundred thirty-five.

137 If any part of this act is, for any reason, declared unconsti-
138 tutional, the decision of the court shall not affect the validity
139 of any of the remaining portions.

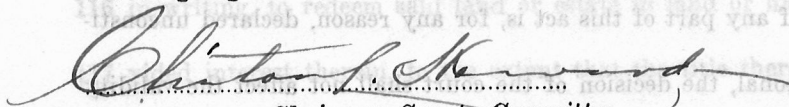
140 All acts or parts of acts inconsistent herewith are hereby
141 repealed.

I certify that the foregoing act, having been presented to the Governor for his approval, and not having been returned by him to the House of the Legislature in which it originated within the time prescribed by the constitution of the state, has become a law without his approval.

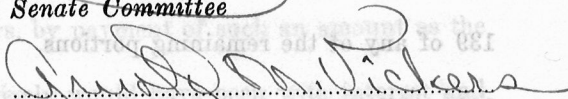
This the 15th day of March,
19 35.


SECRETARY OF STATE

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



Chairman Senate Committee



Chairman House Committee

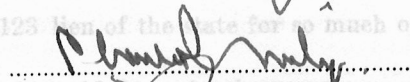
Originated in the

House of Delegates

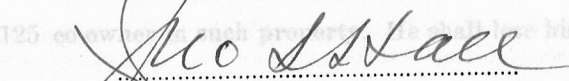
Takes effect

from

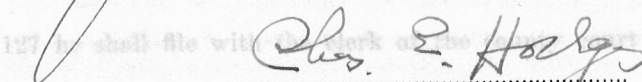
passage.



Clerk of the Senate



Clerk of the House of Delegates



President of the Senate



Speaker House of Delegates.

The within

this the

day of

, 1935.


Governor.

Filed in the office of the Secretary of State
of West Virginia. **MAR 15 1935**

Wm. S. O'BRIEN,
Secretary of State