

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1937



ENROLLED

SENATE BILL No. 128

(By Mr. Paul)



PASSED March 12<sup>th</sup> 1937

In Effect 90 days from Passage

**ENROLLED**

**Senate Bill No. 128**

(BY MR. PAULL) (by request)

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[Passed March 12, 1937; in effect ninety days from passage.]

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AN ACT to amend and reenact section ten, article three, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended by section ten, chapter thirty-seven, acts of the Legislature, regular session, one thousand nine thirty-three, relating to listing of property of public utilities for the purpose of taxation.

*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, as amended by section ten, chapter thirty-seven, acts of the Legislature, regular

session, one thousand nine hundred thirty-three, be amended and reenacted to read as follows:

Section 10. If any person, firm or corporation, including  
2 public service corporations whose duty it is by law to list  
3 any real estate or personal property for taxation, shall  
4 refuse to furnish a proper list thereof or refuse to  
5 furnish a list within the time required by law, or  
5-a to make such oath as required by this chapter; or if  
6 any person, firm or corporation, including public service  
7 corporations, shall refuse to answer or shall answer falsely  
8 any question asked by the assessor or by the tax commis-  
9 sioner, or shall fail or refuse to deliver any statement  
10 required by law, he or it shall forfeit not less than twenty-  
11 five nor more than one hundred dollars, and shall be denied  
12 all remedy provided by law for the correction of any assess-  
13 ment made by the assessor or by the board of public works.  
14 If any person, firm or corporation, including public service  
15 corporations, required by law to make return of property  
16 for taxation, whether such return is to be made to the  
17 assessor, the board of public works, or any other assessing  
18 officer or body, fails to return a true list of all property

19 which should be assessed in this state, including money,  
20 notes, bonds, bills and accounts receivable, stocks and any  
21 other intangible personal property, such person, firm or  
22 corporation, in addition to all other penalties provided by  
23 law, shall forfeit five per cent of the value of the property  
24 not returned and not otherwise taxed in this state. A  
25 forfeiture as to all property aforesaid may be enforced for  
26 any such default occurring in any year not exceeding  
27 five prior to the time the same is discovered, but no liability  
28 to penalty or forfeiture as to moneys, notes, bonds, bills  
29 and accounts receivable, stocks and other intangible personal  
30 property arising prior to the first day of January, nineteen  
31 hundred thirty-three, shall be enforceable on behalf of the  
32 state or of any of its subdivisions. Each failure to make  
33 a true return as herein required shall constitute a separate  
34 offense, and a forfeiture shall apply to each of them, but  
35 all such forfeitures, to which the same person, firm or  
36 corporation is liable, shall be enforced in one proceeding  
37 against such person, firm or corporation, or against the  
38 estate of any deceased person, and shall not exceed twenty-  
39 five per cent of the value of the property not returned.

40 The state tax commissioner shall collect such forfeitures  
41 without suit, but if unable so to do, shall instruct the prose-  
42 cuting attorney of the county in which the defaulting tax-  
43 payer resides or has its principal office, or in which such  
44 property should have been returned for taxation, to enforce  
45 collection. It shall thereupon be the duty of such prosecut-  
46 ing attorney to institute and prosecute proceedings in the  
47 name of the state of West Virginia against the defaulting  
48 taxpayer, or, in case of a decedent, against his personal  
49 representative, in the circuit court upon motion, whereof  
50 the defendant shall have at least twenty days' notice.  
51 Either party shall have the right to have the issue tried  
52 by jury, and the state, as well as the defendant, shall have  
53 the right to an appeal. Ten per cent of the amount collected  
54 and an attorney's fee of ten dollars to be taxed as a part  
55 of the cost shall be collected and paid over by the prosecut-  
56 ing attorney to the sheriff of the county and by him credited  
57 to the general county fund. No special counsel shall be  
58 employed to institute or conduct such suits. Any prosecut-  
59 ing attorney failing or refusing to perform the duties re-  
60 quired of him by this section shall forfeit the sum of one

61 hundred dollars to be recovered against him by the state  
62 tax commissioner in the name of the state of West Vir-  
63 ginia upon twenty days' notice by motion in any court  
64 having jurisdiction. The amount collected in any such suit  
65 after deducting ten per cent as aforesaid, or the entire sum  
66 if collected by the tax commissioner without suit, shall be  
67 paid over to the sheriff of the proper county and his receipt  
68 taken therefor. The sheriff shall apportion such fund among  
69 the state, county, district, school district, and municipalities  
70 which would have been entitled to the taxes upon such prop-  
71 erty if it had been assessed, in proportion to the rates of  
72 taxation for each such levying unit for the year in which  
73 the judgment was obtained bears to the sum of the rates  
74 for all. When the list of property returned by the appraisers  
75 of the estate of any deceased person shows an amount greater  
76 than the last assessment list of such deceased person next  
77 preceding the appraisal of his estate, it shall be prima facie  
78 evidence that such deceased person returned an imperfect  
79 list of his property: *Provided, however,* That any person  
80 liable for the tax of his personal representative, may always  
81 be permitted to prove by competent evidence that the dis-

82 discrepancy between such assessment list and the appraisal  
83 of the estate is caused by a difference of valuation returned  
84 by the assessor and that made by the appraisers of the  
85 same property or by property acquired after assessment,  
86 or that any property enumerated in the appraisers' list had  
87 been otherwise listed for taxation, or that it was not liable  
88 for taxation. Any judgment recovered under this section  
89 shall be a lien, from the time of the service of the notice,  
90 upon all real estate and personal property of such default-  
91 ing taxpayer, owned at the time or subsequently acquired,  
92 in preference to any other lien.

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

*W. B. Beall*  
.....  
Chairman Senate Committee

*W. G. Walker*  
.....  
Chairman House Committee

Originated in the.....

Takes effect..... passage.

*Shannon*  
.....  
Clerk of the Senate

*W. H. Hall*  
.....  
Clerk of the House of Delegates

*Chas. E. Hoyle*  
.....  
President of the Senate

*J. K. Thomas*  
.....  
Speaker House of Delegates

The within *Approved* this the *19<sup>th</sup>*.....

day of *March*....., 1937.

*Sam A. Holt*  
.....  
Governor

JARRETT PRINTING COMPANY, CHARLESTON, W. VA.



Filed in the office of the Secretary of State of West Virginia **MAR 19 1937**

Wm. S. O'BRIEN,  
Secretary of State