

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1943

ENROLLED

*Senate Committee Substitute*

SENATE BILL No. 68

*Originating* (By Mr. *in Committee on the Judiciary*)

PASSED March 13 1943

In Effect Henry Chapman Passage



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ENROLLED  
SENATE COMMITTEE SUBSTITUTE  
FOR

Senate Bill No. 68

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[Originating in the Committee on the Judiciary.]

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[Passed March 13, 1943; 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, relating to penalties and forfeitures for failure to return property for 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, be amended and reenacted to read as follows:

Section 10. *Failure to List Property, Etc.; Collection of Penalties and Forfeitures.* If any person, firm or corporation, including public service corporations whose duty it is by law to list any real estate or personal property for taxation, shall refuse to furnish a proper list thereof or refuse to furnish a list within the time required by law, or to make such oath as required by this chapter; or if any person, firm or corporation, including public service corporations, shall refuse to answer or shall answer falsely any question asked by the assessor or by the tax commissioner, or shall fail or refuse to deliver any statement required by law, he or it shall forfeit not less than twenty-five nor more than one hundred dollars, and shall be denied all remedy provided by law for the correction of any assessment made by the assessor or by the board of public works. If any person, firm or corporation, including public service corporations, required by law to make return of property for taxation, whether such return is to be made to the assessor, the board of public works, or any other assessing officer or body, fails to return a true list of all property which should be assessed in this state, in-

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

43 state tax commissioner shall collect such forfeitures with-  
44 out suit, but if unable so to do, shall instruct the prose-  
45 cuting attorney of the county in which the defaulting  
46 taxpayer resides or has its principal office, or in which  
47 such property should have been returned for taxation, to  
48 enforce collection. It shall thereupon be the duty of such  
49 prosecuting attorney to institute and prosecute proceed-  
50 ings in the name of the State of West Virginia against  
51 the defaulting taxpayer, or, in case of a decedent, against  
52 his personal representative, in the circuit court upon  
53 motion, whereof the defendant shall have at least twenty  
54 days' notice. Either party shall have the right to have  
55 the issue tried by jury, and the state, as well as the de-  
56 fendant, shall have the right to an appeal. Ten per cent  
57 of the amount collected and an attorney's fee of ten dol-  
58 lars to be taxed as a part of the cost shall be collected  
59 and paid over by the prosecuting attorney to the sheriff  
60 of the county and by him credited to the general county  
61 fund. No special counsel shall be employed to institute  
62 or conduct such suits. Any prosecuting attorney failing  
63 or refusing to perform the duties required of him by this

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

85 personal representative, may always be permitted to  
86 prove by competent evidence that the discrepancy be-  
87 tween such assessment list and the appraisal of the estate  
88 is caused by a difference of valuation returned by the  
89 assessor and that made by the appraisers of the same  
90 property or by property acquired after assessment, or  
91 that any property enumerated in the appraisers' list  
92 had been otherwise listed for taxation, or that it was not  
93 liable for taxation. Any judgment recovered under this  
94 section shall be a lien, from the time of the service of the  
95 notice, upon all real estate and personal property of  
96 such defaulting taxpayer, owned at the time or subse-  
97 quently acquired, in preference to any other lien.

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

Ray F. Timmons  
Chairman Senate Committee

Leed F. Petroff  
Chairman House Committee

Originated in the Senate

Takes effect Monday afternoon passage

Fred B. Madkins  
Clerk of the Senate

J. R. Shipps  
Clerk of the House of Delegates

James Paull  
President of the Senate

John C. Lewis  
Speaker House of Delegates

The within approved this the 19th  
day of March, 1943.

Matthew M. Neely  
Governor.



Filed in the office of the Secretary of State  
of West Virginia MAR 19 1943  
Wm. S. O'BRIEN,  
Secretary of State