WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1943

ENROLLED

Senate Committee Substitute
SENATE BILL No. 68

(By Mr. )

Passed March 13, 1943

In Effect Twenty-Day 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, 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-
cluding money, notes, bonds, bills and accounts receivable, stocks and any other intangible personal property, such person, firm or corporation, in addition to all other penalties provided by law, shall forfeit two per cent cent of the value of the property not yet returned and not otherwise taxed in this state. A forfeiture as to all property aforesaid may be enforced for any such default occurring in any year not exceeding five years immediately prior to the time the same is discovered, but no liability to penalty or forfeiture as to moneys, notes, bonds, bills and accounts receivable, stocks and other intangible personal property arising prior to the first day of January, nineteen hundred thirty-three, shall be enforceable on behalf of the state or of any of its subdivisions. Each failure to make a true return as herein required shall constitute a separate offense, and a forfeiture shall apply to each of them, but all such forfeitures, to which the same person, firm or corporation is liable, shall be enforced in one proceeding against such person, firm or corporation, or against the estate of any deceased person, and shall not exceed ten per cent of the value of the property not returned. The
state tax commissioner shall collect such forfeitures without suit, but if unable so to do, shall instruct the prosecuting attorney of the county in which the defaulting taxpayer resides or has its principal office, or in which such property should have been returned for taxation, to enforce collection. It shall thereupon be the duty of such prosecuting attorney to institute and prosecute proceedings in the name of the State of West Virginia against the defaulting taxpayer, or, in case of a decedent, against his personal representative, in the circuit court upon motion, whereof the defendant shall have at least twenty days' notice. Either party shall have the right to have the issue tried by jury, and the state, as well as the defendant, shall have the right to an appeal. Ten per cent of the amount collected and an attorney's fee of ten dollars to be taxed as a part of the cost shall be collected and paid over by the prosecuting attorney to the sheriff of the county and by him credited to the general county fund. No special counsel shall be employed to institute or conduct such suits. Any prosecuting attorney failing or refusing to perform the duties required of him by this
section shall forfeit the sum of one hundred dollars to be
recovered against him by the state tax commissioner in
the name of the State of West Virginia upon twenty days'
notice by motion in any court having jurisdiction. The
amount collected in any such suit after deducting ten per
cent as aforesaid or the entire sum if collected by the tax
commissioner without suit, shall be paid over to the
sheriff of the proper county and his receipt taken therefor.
The sheriff shall apportion such fund among the state,
county, district, school district, and municipalities which
would have been entitled to the taxes upon such prop-
erty if it had been assessed in proportion to the rates
of taxation for each such levying unit for the year in
which the judgment was obtained bears to the sum of
the rates for all. When the list of property returned by
the appraisers of the estate of any deceased person shows
an amount greater than the last assessment list of such
deceased person next preceding the appraisal of his
estate, it shall be prima facie evidence that such deceased
person returned an imperfect list of his property: *Pro-
vided, however, That any person liable for the tax of his
personal representative, may always be permitted to prove by competent evidence that the discrepancy between such assessment list and the appraisal of the estate is caused by a difference of valuation returned by the assessor and that made by the appraisers of the same property or by property acquired after assessment, or that any property enumerated in the appraisers' list had been otherwise listed for taxation, or that it was not liable for taxation. Any judgment recovered under this section shall be a lien, from the time of the service of the notice, upon all real estate and personal property of such defaulting taxpayer, owned at the time or subsequently acquired, in preference to any other lien.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

[Signatures]

Chairman Senate Committee

Chairman House Committee

Originated in the Senate

Takes effect thirty days from passage

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

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

Governor.

Filed in the office of the Secretary of State of West Virginia MAR 19, 1943

Wm. S. O'Brien, Secretary of State