

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 Twenty days from Passage



69

ENROLLED
SENATE COMMITTEE SUBSTITUTE
FOR

Senate Bill No. 68

[Originating in the Committee on the Judiciary.]

[Passed March 13, 1943; in effect ninety days 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*

2 *Penalties and Forfeitures.* If any person, firm or corpora-
3 tion, including public service corporations whose duty it is
4 by law to list any real estate or personal property for
5 taxation, shall refuse to furnish a proper list thereof or
6 refuse to furnish a list within the time required by law,
7 or to make such oath as required by this chapter; or if any
8 person, firm or corporation, including public service cor-
9 porations, shall refuse to answer or shall answer falsely
10 any question asked by the assessor or by the tax com-
11 missioner, or shall fail or refuse to deliver any statement
12 required by law, he or it shall forfeit not less than twenty-
13 five nor more than one hundred dollars, and shall be
14 denied all remedy provided by law for the correction of
15 any assessment made by the assessor or by the board of
16 public works. If any person, firm or corporation, including
17 public service corporations, required by law to make re-
18 turn of property for taxation, whether such return is to
19 be made to the assessor, the board of public works, or any
20 other assessing officer or body, fails to return a true list
21 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.

Roy F. Grimmon
Chairman Senate Committee

Leed S. Petroff
Chairman House Committee

Originated in the

Senate

Takes effect

Twenty days

passage

Fred B. Watkins
Clerk of the Senate

St. Hipp
Clerk of the House of Delegates

James Paule
President of the Senate

John C. Unnos
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