WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1947

ENROLLED

HOUSE BILL No. 105

(Originating in the Committee on Finance)
(By Mr.)

PASSED March 7, 1947

In Effect Ninety Days from Passage
ENROLLED
COMMITTEE SUBSTITUTE FOR

House Bill No. 105

[Passed March 7, 1947; in effect ninety days from passage.]

AN ACT to amend chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by enacting and adding thereto two new articles to be designated articles seventeen and eighteen, relative to cigarette tax, to raise revenues by levying and imposing taxes upon the sale of cigarettes, to provide for the payment and collection of such tax, to provide for administration, and prescribing penalties for violation thereof.

Be it enacted by the Legislature of West Virginia:

That chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto two new articles designated as article seventeen and article eighteen, to read as follows:

Article 17.

Section 1. Definitions.—As used in this article:
"Person" includes firms and corporations;

"Wholesale dealer" includes only those persons who sell cigarettes to licensed retail dealers for the purpose of resale only;

"Retail dealer" includes every person other than a wholesale dealer engaged in the business of selling cigarettes in this state, irrespective of quantity or amount or number of sales thereof;

"Sale" includes exchange, barter, gift, offer for sale and distribution, and excludes transactions in interstate or foreign commerce;

"Cigarette" includes any roll for smoking made wholly or in any part of tobacco irrespective of size or shape and whether or not such tobacco is flavored, adulterated or mixed with any other ingredient, the wrapper or cover of which is made of paper or any other material excepting tobacco;

"Package" means the individual package, box or other container in or from which retail sales of cigarettes are normally made or intended to be made;
“Stamp” shall mean any cigarette stamps required under this article, or any meter or ink impression authorized by the tax commissioner to serve as such stamp;

“Commissioner” means the state tax commissioner and where the meaning of the context requires, all deputies, and employees duly authorized by him.

Sec. 2. Purpose of Tax; Ratio.—For the purpose of providing revenues for the general revenue fund of the state an excise tax is hereby levied and imposed on sales of cigarettes on and after midnight of the thirtieth day of June, one thousand nine hundred forty-seven, at the rate of one-half cent on each ten cigarettes or fractional part thereof. Only one sale of the same article shall be used in computing the amount of tax due hereunder.

Sec. 3. Money Received Paid into General Revenue Fund.—All moneys received by the state tax commissioner from the excise tax on sales of cigarettes under this article, less deductions therefrom allowed for the cost of administration and operation, and refunds provided in section ten hereunder, shall be paid into the
Sec. 4. How Tax Paid; Stamps; How Affixed and Cancelled; Violations. — The tax hereby imposed shall be paid by the purchase of stamps as provided in this article. No stamp shall be of a denomination of less than one-half cent. A stamp or stamps shall be affixed to or printed on each package of an aggregate denomination not less than the amount of the tax upon the contents thereof. The stamp or stamps, so affixed, shall be prima facie evidence of payment of the tax imposed by this article. Except as may be otherwise provided in the rules and regulations prescribed by the commissioner under authority of this article, and unless such stamps have been previously affixed, they shall be so affixed by each wholesale dealer in this state, and cancelled, by writing across the face thereof the name of such wholesale dealer and the date of cancellation, prior to the delivery of any cigarettes to any retail dealer in this state. Each retail dealer in this state shall immediately upon
the receipt of any cigarettes at his place of business, so
affix such stamps to each package, unless such stamps
shall have been previously affixed thereto, and shall can-
cel the same by writing or stamping his name and the
date of cancellation across the face thereof, or shall im-
mediately mark in ink on each unopened box, carton, or
other container of such cigarettes the word “Received”
and the month, day and hour of such receipt and shall
affix his signature thereto. He shall in any event open
such box, carton or other container and immediately so
affix such stamps to each package therein, and cancel the
same in the manner herein designated, within twenty-
four hours after such receipt and prior to the sale of such
cigarettes.

Whenever any cigarettes are found in the place of busi-
ness of such retail dealer without the stamps so affixed
and cancelled or not so marked as having been received
within the preceding twenty-four hours, the prima facie
presumption shall arise that such cigarettes are kept
therein in violation of the provisions of this article.

Sec. 5. Dealer’s Records.—From and after the first day
of July, one thousand nine hundred forty-seven, and at
the time of delivering cigarettes to any person each whole-
sale dealer in this state shall make a true duplicate in-
voice showing the date of delivery, the amount and value
of each shipment of cigarettes delivered and the name
of the purchaser to whom delivery is made, and retain
the same for a period of two years, subject to the use
and inspection of the tax commissioner.

Each wholesale and retail dealer in this state shall
procure and retain invoices showing the amount and
value of each shipment of cigarettes received by him after
the first day of July, one thousand nine hundred forty-
seven, the date thereof and the name of the shipper and
shall retain the same for a period of two years subject to
the use and inspection of the commissioner.

In each case in which cigarettes are shipped into the
state of West Virginia by public carrier, the railroad com-
pany, express company or other public carrier transport-
ing any shipment thereof shall file with the commissioner
a copy of the freight bill within ten days after the de-
Sec. 6. Tobacco License Requirements.—No person shall engage in the business of trafficking in cigarettes within this state without having first secured the license provided in section six of article twelve of section eleven of this code or having taken an assignment of such license in the manner permitted by law. Companies operating club and dining cars or other cars upon which cigarettes are sold shall comply with the requirements of this article with respect to the imposition of cigarette tax and affixing stamps to packages in which the same are sold in the state of West Virginia.

Sec. 7. List of Licenses.—The county clerk of each county shall prepare and certify to the tax commissioner a list of the names of all persons to whom he has issued tobacco licenses under section six, article twelve, chapter eleven of this code, quarterly or oftener as required by the tax commissioner, together with the business or residential address of such licensee as furnished to him. The tax commissioner is authorized to allow and pay to
9 each county clerk such reasonable expense as the com-
10 missioner may allow for preparing such list and charge
11 the same as a part of the costs of the administration of
12 this article, and payments so made to the clerk are to be
13 paid by him into the general fund of his county. The tax
14 commissioner shall prepare and keep alphabetical indices
15 with respect to such licensees for use in connection with
16 the administration of this article.

Sec. 8. Wholesale and Retail Dealers; Separate Places
of Business.—No person in this state shall sell any cigar-
ettes both as a retail dealer and as a wholesale dealer at
the same place of business. No wholesale dealer shall
sell cigarettes to any person in this state other than to
a licensed retail dealer, and no person in this state other
than a licensed wholesale dealer shall sell cigarettes to
a licensed retail dealer.

Sec. 9. Power of Tax Commissioner; Rules and Regu-
lations; Records of Wholesalers and Retailers; Metering
in Lieu of Stamping; Agents for Metering; Levy to Col-
lect Tax.—The tax commissioner shall have power and
authority to enforce and administer the provisions of
this article and article eighteen of this chapter. The tax
commissioner shall have authority to promulgate in ac-
cordance with the provisions of this article such rules
and regulations as he may deem necessary to carry out
its provisions, and may adopt different detailed regula-
tions applicable to diverse methods and conditions of
sale of cigarettes in this state, prescribing, in each class
of cases, upon whom, as between the wholesale dealer
and the retail dealer, the primary duty of affixing stamps
shall rest and the manner in which stamps shall be af-
fixed. Each licensed dealer shall be furnished a copy of
such regulations upon request. Any such rule or regula-
tion so furnished, excusing a wholesale dealer from af-
fixing stamps under the circumstances of the particular
case, shall be a defense in the prosecution of such dealer
for violation of section sixteen of this article.

All books, papers, invoices and records of any whole-
sale or retail dealer in this state, whether or not required
under the provisions of this article to be kept by him,
showing his sales, receipts and purchases of cigarettes,
shall at all times, during the usual business hours of the
day, be open for the inspection of the tax commissioner for such purposes; and the tax commissioner or a deputy shall have power to investigate and examine the stock of cigarettes in and upon any premises where the same are placed, stored or sold, for the purpose of determining whether or not the provisions of this act are being obeyed.

The tax commissioner, if he shall determine that it is practicable to stamp packages of cigarettes by impression by means of a metering device, shall provide that such metering device and its impression may be used in lieu of the stamps otherwise required by law. The tax commissioner shall authorize any wholesale or retail dealer to use any metering device approved by the tax commissioner, such device to be sealed by the tax commissioner or a deputy, or agent authorized by the commissioner, before being used, and which device shall be used only in accordance with the regulations prescribed by the tax commissioner.

Any wholesale or retail dealer authorized by the tax commissioner to affix stamps to packages of cigarettes by means of a metering device shall file with the tax commissioner a bond in such amount as the tax commissioner
may designate, conditioned upon the payment of the tax
upon the cigarettes so stamped.

Wholesale and retail dealers licensed to use said device
shall make a monthly return to the tax commissioner and
remit monthly the amounts of tax due the state: *Provided, however, That a wholesale or retail dealer may
elect to pay the tax in advance where a metering device
is used, in which event such dealer shall deliver the
metering device to the tax commissioner, or his agent
authorized for the purpose, who shall seal the meter in
accordance with the prepayment so made. The commis-
sioner may designate and authorize any bank or trust
company with banking offices in any county of this state,
to act as his deputy or agent for the purpose of perform-
ing his duties with respect to sealing of metering de-
vices in such county, and may require bond, and the
action of any such deputy by its duly authorized officer
or employees shall be as valid as though performed by
the commissioner.

The tax commissioner shall have power to make an
assessment against any retail or wholesale dealer who
fails to return or makes a false or erroneous return. The tax commissioner may collect such assessment by levy, action at law, distraint or any other method of enforcing taxes which may be provided by law and shall have the right to file liens therefor in any county.

Sec. 10. Form of Stamps; Custody; Discounts, Security for Payments.—The tax commissioner shall design, and procure stamps to be used as herein provided for, affixed and attached to containers, packages or receptacle of whatever kind that may be used for containing cigarettes. In the preparing of said stamp or stamps the same shall have printed or impressed thereon the words “State of West Virginia-Cigarette Tax Stamp” and such other words and figures as he may deem proper to show the value and denomination of the stamp or stamps. He shall also prescribe the form of impression to be placed upon any package or container of cigarettes by any metering device. The state tax commissioner shall collect the taxes provided for by this article.

Such stamps shall be kept in the custody of the state tax commissioner or such deputies as he may designate
to sell the same. Such stamps shall be sold and ac-
counted for at the face value thereof except that the
tax commissioner may authorize sale thereof, or sell to
wholesale or retail dealers in this state, or to wholesalers
outside of this state such stamps at a discount of ten
per cent of the face value of such stamps, the same
to be allowed as a commission for affixing and cancel-
ing such stamps; and excepting further that the tax com-
missioner may, by like regulation so certified, authorize
the delivery of stamps to wholesale or retail dealers in
this state or to wholesale dealers outside of this state on
credit, allowing the same discount as when sold for cash,
if and when the purchaser shall file with the tax com-
missioner a bond not exceeding fifteen thousand dol-
ars, payable to the state of West Virginia, in such form
and amount as the tax commissioner shall prescribe, and
with surety or sureties to the satisfaction of the tax com-
misioner, conditioned as he may require, to guarantee
payment within thirty days for stamps so delivered with-
in such period of time and by making of such reports and
settlements as the tax commissioner may require. In the
event a wholesale dealer in this state has aggregate purchases during thirty-day credit periods in excess of fifteen thousand dollars, such dealer may file with the tax commissioner a statement of excess credit requirement, together with a financial statement duly verified by a certified public accountant or public accountant. Should the tax commissioner determine that the maximum bond together with such dealer's known assets are sufficient to insure payment to the state for stamps purchased, the tax commissioner shall authorize the delivery of stamps to such dealer on credit. The tax commissioner may, by further regulations, provide for cancelling, renewing or increasing such bond or for the substitution of the surety thereon. The tax commissioner shall redeem and pay for any unused or spoiled stamps on written verified requests made by the purchaser, his administrators, executors, successors or assigns. Such payments shall for purposes hereof be deemed to be refunds of taxes improperly collected and shall be allowed and paid as part of the costs of administration of this article as in this article provided.
Sec. 11. Sales by Deputies; Fees; Reports of Deputies.—

2 The tax commissioner may appoint any sheriff, or any
3 bank or trust company authorized to do business in, and
4 doing business in this state, as his deputy for the purpose
5 of selling such stamps, excepting that no such deputy
6 shall be thereby authorized to sell the same at a dis-
7 count or on credit, and excepting, further, that provisions
8 hereof relating to sale of stamps shall not prevent any
9 bank or trust company from acting as the commission-
10 er's deputy for purposes of checking and sealing meters
11 under other provisions of this article. The tax commis-
12 sioner is hereby authorized to allow to any such deputy,
13 authorized to sell stamps hereunder, a fee of one-half of
14 one per cent of the face value of all stamps sold by
15 such deputy, and pay the same from the proceeds of sales
16 of stamps sold by such deputy and charge the same as a
17 part of the costs of administration of this article. It shall
18 be the duty of any such deputy to act as such deputy and
19 all the powers and duties thereby imposed upon any
20 such sheriff shall be deemed and considered to be within
21 the scope of his office as county treasurer for all purposes.
The state tax commissioner shall be responsible for the delivery of stamps to any county sheriff or other deputy so appointed, and may prescribe such regulations and forms of receipts and reports as he may deem necessary and advisable for the transaction of the business of selling such stamps. Each such deputy shall remit monthly or oftener as requested, to the tax commissioner all moneys arising from the sale of such stamps by him, together with a report showing the names of the purchasers and the number of each denomination and the aggregate face value sold by each such deputy. Commissions or allowances retained or paid to sheriffs shall be paid by such sheriffs into the general fund of his county. The tax commissioner may sell stamps at his office.

Sec. 12. Possession of Unstamped Cigarettes; Failure to Produce Invoices; Penalties.—Whoever, being a retail dealer in this state, has in his possession packages of cigarettes not bearing the stamps herein required to be affixed thereto after the first day of July, one thousand nine hundred forty-seven, unless such packages shall be in unbroken containers marked, pursuant to section four
of this article, as received within the preceding twenty-
four hours; or fails to produce, on demand by the com-
missioner, invoices of all cigarettes purchased or received
by him within two years prior to such demand, or on
hand or received and purchased after the first day of
July, one thousand nine hundred forty-seven, as the case
may be, unless upon satisfactory proof it is shown that
such non-production is due to providential or other causes
beyond his control, shall be fined not less than twenty-
five dollars nor more than five hundred dollars.

Sec. 13. False Records; Penalties.—Whoever makes
any false entry upon an invoice, package or container
of cigarettes required to be made under the provisions
of this article, or with intent to evade the tax imposed
by this article, presents any such false entry for the in-
spection of the commissioner, shall be fined not less than
twenty-five dollars nor more than five hundred dollars.

Sec. 14. Preventing Inspections; Penalties.—Whoever
prevents or hinders the commissioner or his deputy from
making a full inspection of any place where cigarettes
subject to the tax imposed by this state are sold or
stored, or prevents or hinders the full inspection of invoices, books, records or papers required to be kept under the provisions of this act, shall be fined not less than twenty-five dollars nor more than five hundred dollars.

Sec. 15. *Sales Without Affixing Stamps; Penalties.*—

Whoever sells cigarettes in this state without there having been first affixed to each individual package thereof the stamp or stamps required to be affixed thereto by this article shall be fined not more than five hundred dollars, or imprisoned in the county jail not more than ninety days, or both, in the discretion of the court.

Sec. 16. *Altering or Counterfeiting Stamps; Altering Same; Penalties.*—Whoever falsely or fraudulently makes, forges, alters, or counterfeits any stamp prescribed by the commissioner under the provisions of this article, or causes or procures to be falsely or fraudulently made, forged, altered or counterfeited any such stamps, or knowingly or wilfully utters, publishes, passes or tenders as true, any such false, altered, forged or counterfeited stamps, or uses more than once any stamp provided for and required by this article for the purpose of
evading the tax hereby imposed shall be imprisoned in
the penitentiary for a term of not less than one year nor
more than five years.

Sec. 17. Penalties.—Whoever violates any of the pro-
visions of this article or any lawful rule or regulation
promulgated by the commissioner under authority of this
article for the violation of which no penalty is provided
by law, shall be fined not less than twenty-five dollars
nor more than one hundred dollars.

Sec. 18. Seizure and Sale of Cigarettes by Commiss-
ioner; Forfeiture; Collection of Tax.—Whenever the
commissioner or any of his deputies or employees author-
ized by him for such purpose shall discover any cigar-
ettes, subject to tax as provided by this article and upon
which the tax has not been paid as herein required, the
commissioner, or such deputy or employee is hereby au-
thorized and empowered forthwith to seize and take pos-
session of such cigarettes, which shall thereupon be
deemed to be forfeited to the state and the commissioner
may within a reasonable time thereafter by a notice post-
ed upon the premises where such seizure was made, or
Enr. Com. Sub. for H. B. No. 105 | 20

by publication in some newspaper having circulation in
the county wherein such seizure is made, at least five
days before the day of sale, sell such forfeited cigarettes
and from the proceeds of such sale shall collect the tax
due thereon together with a penalty of fifty per centum
thereof and the cost incurred in such proceedings and
pay the balance, if any, to the person in whose posses-
sion such forfeited cigarettes were found: Provided, how-
ever, That such seizure and sale shall not be deemed to
relieve any person from fine or imprisonment provided
herein for violation of any provision of this article. Such
sale shall be made in the county where most convenient
and economical. All moneys collected under the provi-
sions of this section shall be paid into the state treas-
ury and treated as other taxes collected under this article.

Sec. 19. Issuance of Warrant to Sheriff by Attorney-
General or Commissioner; Priority of Tax.—In addition
to all other remedies for the collection of any taxes or
fees due under the provisions of law, the attorney-gen-
eral or the tax commissioner may issue a warrant di-
rected to the sheriff of any county of the state command-
ing said sheriff to levy upon and sell the goods and chattels of such dealer, without exemption, found within his jurisdiction, for the payment of the amount of such delinquency with the added penalties and interest and the cost of executing the warrant and to return such warrant to the tax commissioner or attorney-general and to pay him the money collected by virtue thereof within the time to be therein specified which shall not be less than twenty nor more than sixty days from the date of the warrant. The sheriff to whom any such warrant shall be directed shall proceed upon the same in all respects and with like effect and in the same manner as prescribed by law in respect to executions issued against goods and chattels upon judgments by a court of record, and shall be entitled to the same fees for his services in executing the warrant to be collected in the same manner.

The claim arising by reason of delinquent cigarette taxes shall be a preferred claim against all of the assets of the dealer, real and personal, with priority over all taxes except claims of the United States, real property
Enr. Com. Sub. for H. B. No. 105 | 22

27 taxes and other recorded state tax claims docketed according to law.

Sec. 20. Revocation of License.—The state tax commissioner shall have the right to revoke any tobacco license issued under article twelve, of chapter eleven of this code, for violation by licensee thereunder of the provisions of this article, and article eighteen of this chapter. Persons whose licenses are revoked hereunder shall have the same rights of appeal provided in sections forty-seven and forty-eight of article twelve of this chapter.

Sec. 21. Amounts Allowed for Administration.—The state tax commissioner, in the administration and enforcement of this article shall be allowed to expend out of the taxes collected thereunder, or proceeds of sales of stamps a sum of not to exceed one and one-half per centum of the tax collected or stamps sold, and in addition to said one and one-half per centum all refunds allowed by this article and discounts allowed and commissions paid to deputies for the sales of stamps shall be charged as a part of the expense of administration.

The tax commissioner is authorized to draw his warrants
for any costs of administration authorized by this article
upon the proper officer of the state in the manner pro-
vided by law.

Sec. 22. No Cigarette Tax by Municipalities or Other
Governmental Subdivisions.—No municipality or govern-
mental subdivision shall levy any excise or other tax
requiring cigarettes to be stamped, or requiring licenses
for sale thereof other than licenses which may be im-
posed as a result of licenses provided for in article twelve
of this chapter.

Article 18.

Section 1. Definitions.—As used in this article:

“Person” includes individuals, firms, partnerships, as-
associations, joint stock companies and corporations, and
combinations or individuals of whatsoever form and
character.

“Commissioner” means the tax commissioner of West
Virginia.

“Storage” means and includes any keeping or reten-
tion of cigarettes for use or consumption in this state.
“Use” means and includes the exercise of any right or power incidental to the ownership of cigarettes. “Consumer” means any person who shall have title to or possession of cigarettes in storage, for use or other consumption in this state.

Sec. 2. Levy of Tax on Cigarettes.—For the purpose of providing revenue for the general fund of this state an excise tax is hereby levied on the use, consumption or storage for consumption of cigarettes by consumers in this state at the rate of one-half cent on each ten or fractional part thereof: Provided, however, That the tax shall not apply if the tax levied in article seventeen of this chapter has been paid.

Sec. 3. Returns; Remittance—Every person who has acquired cigarettes for use, storage or other consumption subject to the tax herein levied shall, on or before the fifteenth day of the month following receipt of such cigarettes, make and file with the commissioner a return showing the amount of cigarettes acquired, together with remittance of the tax thereon.

Sec. 4. Assessment by Commissioner.—In case any per-
son required to pay the taxes levied by this article, fails
to make remittance as herein required, the commissioner
shall have the power to issue an assessment against such
person, based on any information in his possession or
which may come to his possession or knowledge.

All of the provisions of section nine and nineteen of
article seventeen of this chapter, and other provisions of
law, relating to assessments, distrains, levies, findings or
appeals from assessments or findings, and the effect of
assessments or findings before or after hearing, and be-
fore or after filing same in the office of the clerk of the
county court, and all provisions of such sections relat-
ing to the procedure, authority, duties, liabilities, powers
and privileges of the person assessed, the commissioner,
the clerk of the county court and all other public offici-
cials shall be applicable to assessments made pursuant
to the provisions of this article.

Sec. 5. Penalties for Failure to Make and File Return.—
If any person required by this act to make and file a re-
turn with the commissioner, neglects or refuses to make
such return, or neglects or refuses to pay the tax levied
by this article, or neglects or refuses to pay any lawful
assessment issued by the commissioner he shall be guilty
of a misdemeanor and upon conviction thereof shall be
fined not less than twenty-five dollars nor more than one
hundred dollars.

Sec. 6. **Disposition of Taxes Collected.**—The moneys
received as taxes under the provisions of this article,
shall be credited and held for the same purposes as taxes
collected under article seventeen of this chapter.

Sec. 7. **Separability of Provisions of Act.**—The vari-
ous provisions of the several sections of article seventeen
and article eighteen, contained in this act, shall be deemed
to be separable insofar as they or their meaning is not
inseparably connected, and if any provisions of this act
shall be held unconstitutional, such holding shall not ef-
flect any of the other provisions of this act, and said arti-
cles seventeen and eighteen, not inseparably connected
in meaning and effect with such part so held unconsti-
tutional.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

[Signature]
Chairman Senate Committee

[Signature]
Chairman House Committee

Originated in the House of Delegates

Takes effect ninety days from passage.

[Signature]
Clerk of the Senate

[Signature]
Clerk of the House of Delegates

[Signature]
President of the Senate

[Signature]
Speaker House of Delegates

The within approved this the 13th day of Mar., 1947.

[Signature]
Governor.

Filed in the Office of the Secretary of State of West Virginia.

WAR 13 1947

WM. S. O'SHEA,
SECRETARY OF STATE