

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1951

ENROLLED

SENATE BILL NO. 181

(By Mr. Dean)

PASSED March 10, 1951

In Effect July 1, 1951 **Passage**



181

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Senate Bill No. 181

(By MR. BEAN)

[Passed March 10, 1951; in effect July 1, 1951.]

AN ACT to amend and reenact sections one, four, six, nine, ten, eleven, nineteen and twenty, article seventeen, and the whole of article eighteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as enacted by chapter one hundred fifty-six, acts of the legislature, regular session, one thousand nine hundred forty-seven, relative to a tax on cigarettes, levying and imposing a tax upon the sale of cigarettes to raise revenues, providing for the payment and collection of such tax and the administration thereof, levying a tax on the use, consumption or storage of cigarettes and prescribing penalties for the violation thereof.

Be it enacted by the Legislature of West Virginia:

That sections one, four, six, nine, ten, eleven, nineteen and

twenty, article seventeen, and the whole of article eighteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as enacted by chapter one hundred fifty-six, acts of the legislature, regular session, one thousand nine hundred forty-seven, be amended and reenacted, all to read as follows:

Article 17. Excise Tax on Sale of Cigarettes.

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

2 “Person” includes firms and corporations;

3 “Wholesale dealer” shall mean and include any person,
4 distributor or commissary servicing, supplying or selling
5 to affiliated or non-affiliated stores, who acquire cigarettes
6 for purposes of sale to retailers, or to other persons for
7 purposes of resale.

8 “Retail dealer” includes every person in this state,
9 other than a wholesale dealer, engaged in the business of
10 selling cigarettes irrespective of quantity or amount or
11 number of sales thereof;

12 “Sale” includes exchange, barter, gift, offer for sale
13 and distribution;

14 “Cigarette” includes any roll for smoking made wholly

15 or in any part of tobacco irrespective of size or shape
16 and whether or not such tobacco is flavored, adulterated
17 or mixed with any other ingredient, the wrapper or cover
18 of which is made of paper or any other material excepting
19 tobacco;

20 "Package" means the individual package, box or other
21 container in or from which retail sales of cigarettes are
22 normally made or intended to be made;

23 "Stamp" shall mean any cigarette stamps required un-
24 der this article, or any meter or ink impression author-
25 ized by the tax commissioner to serve as such stamp;

26 "Commissioner" means the state tax commissioner and
27 where the meaning of the context requires, all deputies,
28 and employees duly authorized by him.

Sec. 4. *How Tax Paid; Stamps; How Affixed and Can-*

2 *celed; Violations.*—The tax hereby imposed shall be paid
3 by the purchase of stamps as provided in this article. No
4 stamp shall be in a denomination of less than one-half
5 cent. A stamp or stamps shall be affixed to or printed on
6 each package of an aggregate denomination of not less
7 than the amount of the tax upon the contents thereof.

8 The stamp or stamps, so affixed, shall be prima facie
9 evidence of payment of the tax imposed by this article.
10 Except as may be otherwise provided in the rules and
11 regulations prescribed by the commissioner under au-
12 thority of this article, and unless such stamps have been
13 previously affixed, they shall be so affixed by each whole-
14 sale dealer in this state, and canceled, by writing across
15 the face thereof the name of such wholesale dealer and
16 the date of cancelation, prior to the delivery of any cig-
17 arettes to any retail dealer in this state.

18 Each retail dealer, authorized to deal in unstamped
19 cigarettes, who receives, brings or causes to be brought
20 into this state unstamped cigarettes, shall immediately
21 upon receipt of such unstamped cigarettes at his place
22 of business, so affix such stamp to each package and shall
23 cancel the same by writing or stamping his name and the
24 date of cancelation across the face thereof, or as other-
25 wise directed by regulation of the commissioner, or shall
26 immediately mark in ink on each unopened box, carton
27 or other container of such cigarettes the word "Received"
28 and the month, day and hour of such receipt and shall

29 affix his signature thereto, or as otherwise directed by
30 regulation of the commissioner. He shall in any event
31 open such box, carton or other container and immediate-
32 ly so affix such stamps to each package therein, and
33 cancel the same in the manner herein designated, within
34 twenty-four hours after such receipt and prior to the sale
35 of such cigarettes.

36 Whenever any cigarettes are found in the place of
37 business of such retail dealer without the stamps so af-
38 fixed and canceled or not so marked as having been
39 received within the preceding twenty-four hours, the
40 prima facie presumption shall arise that such cigarettes
41 are kept therein in violation of the provisions of this
42 article.

Sec. 6. *Tobacco License Required.*—No person shall
2 engage in the business of selling cigarettes at retail
3 within this state without having first secured the license
4 provided in section six, article twelve, chapter eleven of
5 this code or having taken an assignment of such license
6 in the manner permitted by law. Companies operating
7 club or dining cars or other cars upon which cigarettes

8 are sold shall comply with the requirements of this article
9 with respect to the imposition of cigarette tax and af-
10 fixing stamps to packages in which the same are sold
11 in the State of West Virginia.

Sec. 9. *Power of Tax Commissioner; Rules and Regu-*
2 *lations; Records of Wholesalers and Retailers; Metering*
3 *in Lieu of Stamping; Agents for Metering; Levy to Collect*
4 *Tax.*—The tax commissioner shall have power and au-
5 thority to enforce and administer the provisions of this
6 article and article eighteen of this chapter. The tax
7 commissioner shall have authority to promulgate in ac-
8 cordance with the provisions of this article such rules
9 and regulations as he may deem necessary to carry out
10 its provisions, and may adopt different detailed regu-
11 lations applicable to diverse methods and conditions of
12 sale of cigarettes in this state, prescribing, in each class
13 of cases upon whom, as between the wholesale dealer
14 and the retail dealer, the primary duty of affixing stamps
15 shall rest and the manner in which stamps shall be af-
16 fixed. Each licensed dealer shall be furnished a copy of
17 such regulations upon request. Any such rule or regu-

18 lation so furnished, excusing a wholesale dealer from
19 affixing stamps under the circumstances of the particular
20 case, shall be a defense in the prosecution of such dealer
21 for violation of section sixteen of this article.

22 All books, papers, invoices and records of any whole-
23 sale or retail dealer in this state, whether or not re-
24 quired under the provisions of this article to be kept
25 by him, showing his sales, receipts and purchases of
26 cigarettes, shall at all times, during the usual business
27 hours of the day, be open for the inspection of the tax
28 commissioner, or his authorized agent, for such pur-
29 poses; and the tax commissioner or a deputy shall have
30 power to investigate and examine the stock of cigarettes
31 in and upon any premises where the same are placed,
32 stored or sold, for the purpose of determining whether
33 or not the provisions of this act are being obeyed.

34 The tax commissioner, if he shall determine that it is
35 practicable to stamp packages of cigarettes by impression
36 by means of a metering device, shall provide that such
37 metering device and its impression may be used in lieu
38 of the stamps otherwise required by law. The tax com-

39 missioner shall authorize any wholesale, or retail dealer,
40 purchasing unstamped cigarettes and holding the license
41 herein required, to use any metering device approved
42 by the commissioner, such device to be sealed by the
43 commissioner or a deputy, or agent authorized by the
44 commissioner, before being used, and which device shall
45 be used only in accordance with the regulations pre-
46 scribed by the commissioner.

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

53 Wholesale and retail dealers licensed to use said de-
54 vice shall make a monthly return to the commissioner
55 and remit monthly the amounts of tax due the state:
56 *Provided, however,* That a wholesale or retail dealer
57 may elect to pay the tax in advance where a metering
58 device is used, in which event such dealer shall deliver
59 the metering device to the commissioner, or his agent

60 authorized for the purpose, who shall seal the meter in
61 accordance with the prepayment so made. The com-
62 missioner may designate and authorize any bank or
63 trust company with banking offices in any county of
64 this state, to act as his deputy or agent for the purpose
65 of performing his duties with respect to sealing of meter-
66 ing devices in such county, and may require bond, and
67 the action of any such deputy by its duly authorized of-
68 ficer or employees shall be as valid as though performed
69 by the commissioner.

70 The commissioner shall have power to make an assess-
71 ment, against any retail or wholesale dealer who fails
72 to return or make a false or erroneous return. The com-
73 missioner may collect such assessment by levy, action by
74 law, distraint or any other method of enforcing taxes
75 which may be provided by law and shall have the right
76 to file liens therefor in any county.

Sec. 10. *Form of Stamps; Custody; Discounts; Security*
2 *for Payments.*—The commissioner shall design, and pro-
3 cure stamps to be used as herein provided for, affixed
4 and attached to containers, packages or receptacle of

5 whatever kind that may be used for containing ciga-
6 rettes. In the preparing of said stamp or stamps the
7 same shall have printed or impressed thereon the words
8 "State of West Virginia--Cigarette Tax Stamp" and such
9 other words and figures as he may deem proper to show
10 the value and denomination of the stamp or stamps. He
11 shall also prescribe the form of impression to be placed
12 upon any package or container of cigarettes by any meter-
13 ing device. The state tax commissioner shall collect the
14 taxes provided for by this article.

15 Such stamps shall be kept in the custody of the state
16 tax commissioner or such deputies as he may designate to
17 sell the same. Such stamps shall be sold and accounted
18 for at the face value thereof except that the tax com-
19 missioner may authorize sale thereof, or sell to whole-
20 sale or retail dealers in this state, or to wholesalers out-
21 side of this state such stamps at a discount of four per
22 cent of the face value of such stamps, the same to be
23 allowed as a commission for affixing and canceling such
24 stamps; and excepting further that the tax commissioner
25 may, by like regulation so certified, authorize the de-

26 livery of stamps to wholesale or retail dealers in this
27 state, or to wholesale dealers outside of this state on
28 credit, allowing the same discount as when sold for
29 cash, if when the purchaser shall file with the tax com-
30 missioner a bond not exceeding forty thousand dollars,
31 payable to the state of West Virginia, in such form and
32 amount as the commissioner shall prescribe, and with
33 surety or sureties to the satisfaction of the commissioner,
34 conditioned as he may require, to guarantee payment
35 within thirty days for stamps so delivered within such
36 period of time and by making of such reports and settle-
37 ment as the commissioner may require. In the event a
38 wholesale dealer in this state has aggregate purchases
39 during thirty-day credit periods in excess of forty thou-
40 sand dollars, such dealer may file with the commissioner
41 a statement of excess credit requirement, together with a
42 financial statement duly verified by a certified public
43 accountant or public accountant. Should the commis-
44 sioner determine that the maximum bond together with
45 such dealer's known assets are sufficient to insure pay-
46 ment to the state for stamps purchased, the commissioner

47 shall authorize the delivery of stamps to such dealer on
48 credit. The commissioner may, by further regulations,
49 provide for canceling, renewing or increasing such bond
50 or for the substitution of the surety thereon. The com-
51 missioner shall redeem any unused or mutilated, but
52 identifiable stamps, that any licensed wholesale dealer
53 or retail dealer may present for redemption, on written
54 verified requests made by the purchaser, his adminis-
55 trators, executors, successors, or assigns, and refund
56 therefor, ninety-five per cent of the face value of said
57 stamps, less any discounts allowed on the purchase of
58 said stamps. The commissioner shall pay on a like basis
59 for stamps destroyed by fire upon presentation of proof
60 of such loss satisfactory to him. Such payments shall for
61 purposes hereof be deemed to be refunds of taxes im-
62 properly collected and shall be allowed and paid as part
63 of the cost of administration of this article as in this article
64 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 discount
7 or on credit, and excepting, further, that provisions hereof
8 relating to sale of stamps shall not prevent any bank or
9 trust company from acting as the commissioner's deputy
10 for purposes of checking and sealing meters under other
11 provisions of this article. The tax commissioner is hereby
12 authorized to allow such deputy, authorized to sell stamps
13 hereunder, a fee of one-eighth of one per cent of the face
14 value of all stamps sold by such deputy and charge the
15 same as a part of the costs of administration of this article.
16 It shall be the duty of any such deputy to act as such dep-
17 uty and all the powers and duties thereby imposed upon
18 any such sheriff shall be deemed and considered to be
19 within the scope of his office as county treasurer for all
20 purposes. The state tax commissioner shall be responsible
21 for the delivery of stamps to any county sheriff or other
22 deputy so appointed, and may prescribe such regulations
23 and forms of receipts and reports as he may deem neces-
24 sary and advisable for the transaction of the business of

25 selling such stamps. Each such deputy shall remit
26 monthly or oftener as requested, to the tax commissioner
27 all moneys arising from the sale of such stamps by him,
28 together with a report showing the names of the pur-
29 chasers and the number of each denomination and the
30 aggregate face value sold by each such deputy. Commis-
31 sions or allowances retained or paid to sheriffs shall be
32 paid by such sheriffs into the general fund of his county.
33 The tax commissioner may sell stamps at his office.

Sec. 19. *Issuance of Warrant to Sheriff by Attorney*

2 *General or Commissioner; Priority of Tax.*—In addition
3 to all other remedies for the collection of any taxes or fees
4 due under the provisions of law, the attorney general or
5 the tax commissioner may issue a warrant directed to the
6 sheriff of any county of the state commanding said sher-
7 iff to levy upon and sell the goods and chattels of such
8 dealer, without exemption, found within his jurisdiction,
9 for the payment of the amount of such delinquency with
10 the added penalties and interest and the cost of executing
11 the warrant and to return such warrant to the tax com-
12 missioner or attorney general and to pay him the money

13 collected by virtue thereof within the time to be therein
14 specified which shall not be less than twenty nor more
15 than sixty days from the date of the warrant. The sheriff
16 to whom any such warrant shall be directed shall proceed
17 upon the same in all respects and with like effect and in
18 the same manner as prescribed by law in respect to exe-
19 cutions issued against goods and chattels upon judgments
20 by a court of record, and shall be entitled to the same fees
21 for his services in executing the warrant to be collected
22 in the same manner.

23 The claim arising by reason of delinquent cigarette
24 taxes shall be a preferred claim against all of the assets
25 of the dealer, real and personal, with priority over all
26 taxes except real property taxes and other recorded state
27 tax claims docketed according to law.

Sec. 20. *Revocation of Licenses.*—The commissioner
2 shall have the right to revoke any license issued under
3 the provisions of this article and any tobacco license
4 issued under article twelve, chapter eleven of this code,
5 for violation by licensee thereunder of the provisions of
6 this article, article eighteen of this chapter, and the pro-

7 visions of any other statute regulating the business of
8 wholesale and retail dealers of cigarettes. Persons whose
9 licenses are revoked hereunder shall have the same rights
10 of appeal provided in sections forty-seven and forty-eight
11 of article twelve of this chapter.

**Article 18. Excise Tax on Use, Consumption or Storage of
Cigarettes.**

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

2 “Person” includes individuals, firms, partnerships, as-
3 sociation, joint stock companies and corporations, and
4 combinations or individuals of whatsoever form and
5 character.

6 “Commissioner” means the tax commissioner of West
7 Virginia.

8 “Storage” means and includes any keeping or retention
9 of cigarettes for any period of time in this state.

10 “Use” means and includes the exercise of any right or
11 power incidental to the ownership of cigarettes.

12 “Consumer” means any person who shall have title to or
13 possession of cigarettes in storage, for use or consumption
14 in this state.

15 Other terms defined in section one, article seventeen
16 of this chapter shall have the same meaning when used
17 in this article insofar as the same are applicable hereto.

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

Sec. 3. *Returns; Remittance.*—Every person who has
2 acquired cigarettes for use, storage or consumption sub-
3 ject to the tax herein levied shall, on or before the fif-
4 teenth day of the month following receipt of such cigar-
5 ettes, make and file with the commissioner a return
6 showing the amount of cigarettes acquired, together with
7 remittance of the tax thereon.

Sec. 4. *Assessment by Commissioner.*—In case any
2 person required to pay the taxes levied by this article,
3 fails to make remittance as herein required, the commis-
4 sioner shall have the power to issue an assessment against

5 such person, based on any information in his possession
6 or which may come to his possession or knowledge.

7 All of the provisions of section nine and nineteen of
8 article seventeen of this chapter, and other provisions of
9 law, relating to assessment, distraints, levies, findings or
10 appeals from assessment or findings, and the effect of
11 assessments or findings before or after hearing, and before
12 or after filing same in the office of the clerk of the county
13 court, and all provisions of such sections relating to the
14 procedure, authority, duties, liabilities, powers and privi-
15 leges of the person assessed, the commissioner, the clerk
16 of the county court and all other public officials shall be
17 applicable to assessments made pursuant to the provisions
18 of this article.

Sec. 5. *Penalties for Failure to Make and File Return.*

2 —If any person required by this act to make and file a re-
3 turn with the commissioner, neglects or refuses to make
4 such return, or neglects or refuses to pay the tax levied
5 by this article, or neglects or refuses to pay any lawful
6 assessment issued by the commissioner he shall be guilty
7 of a misdemeanor and upon conviction thereof shall be

8 fined not less than twenty-five dollars nor more than one
9 hundred dollars.

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

Sec. 7. *Separability of Provision of Act.*—The various
2 provisions of the several sections of article seventeen and
3 article eighteen, contained in this act, shall be deemed
4 to be separable insofar as they or their meaning is not
5 inseparably connected, and if any provisions of this act
6 shall be held unconstitutional, such holding shall not
7 affect any of the other provisions of this act, and said
8 articles seventeen and eighteen, not inseparably con-
9 nected in meaning and effect with such part so held un-
10 constitutional.

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

Robert C. Boyd

Chairman Senate Committee

James M. Loop
Chairman House Committee

Originated in the Senate.

Takes effect *July 1, 1951* passage.

Howard Meyer
Clerk of the Senate

J. R. Taliff
Clerk of the House of Delegates

H. Laughlin
President of the Senate

W. E. Dean
Speaker House of Delegates

The within *approved* this the *16th*
day of *March*, 1951.

Okey L. Pattison
Governor.



Filed in the office of the Secretary of State
of West Virginia **MAR 16 1951**
D. PITT O'BRIEN,
SECRETARY OF STATE