

WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1959

ENROLLED

SENATE BILL NO. 329

(By Mr. Dean Mr. President)

PASSED March 14 1959

In Effect July 1, 1959 Passage



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JOE F. BURDETT
SECRETARY OF STATE

329

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Senate Bill No. 329

(By MR. BEAN, MR. PRESIDENT)

[Passed March 14, 1959; in effect July 1, 1959.]

AN ACT to amend chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article designated article twenty-one, relating to the imposition, collection and disposition of a state excise tax upon the privilege of transferring real property and providing penalties for violations hereof.

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 a new article designated article twenty-one, to read as follows:

Section 1. *Definitions.*—The following words when used
2 in this chapter shall have meanings ascribed to them in
3 this section, except in those instances where the context
4 clearly indicates a different meaning.

5 “Association” means a partnership, limited partnership,
6 or any other form of unincorporated enterprise, owned or
7 conducted by two or more persons.

8 “Corporation” means a corporation or joint-stock asso-
9 ciation, organized under the laws of this state, the
10 United States or any other state, territory, or foreign
11 country, or dependency, including, but not limited to,
12 banking institutions.

13 “Commissioner” means the state tax commissioner.

14 “Document” means any deed, or instrument or writing
15 whereby any real property within this state or any in-
16 terest therein shall be granted, conveyed or otherwise
17 transferred to the grantee, purchaser, or any other person;
18 but does not include wills, testamentary transfer of real
19 property where the value of the property transferred or
20 the face amount secured thereby is one hundred dollars
21 or less, trusts, deeds of partition, deeds made pursuant to

22 mergers of corporations, leases, transfers between hus-
23 band and wife, or between parent and child without con-
24 sideration, transfers without consideration between a
25 principal and straw party for any purpose, quitclaim
26 or corrective deeds without consideration, transfers
27 to the United States, the state of West Virginia, or to
28 any of their instrumentalities, agencies or political sub-
29 divisions, by gift, dedication, deed or condemnation pro-
30 ceedings.

31 “Person” means every natural person, association, or
32 corporation. Whenever used in any clause prescribing and
33 imposing a fine or imprisonment, or both, the term “per-
34 son” as applied to associations, shall mean the partners
35 or members thereof, and, as applied to corporations, the
36 officers thereof.

37 “Transaction” means the delivering, accepting, or pre-
38 senting for recording of a document.

39 “Value” means in the case of any document, not a gift
40 and not given to secure a debt, the amount of the full
41 actual consideration therefor, paid or to be paid, including
42 the amount of any lien or liens assumed. In the case of a

43 gift, or any other document without consideration, the
44 actual monetary value of the property conveyed or trans-
45 ferred. In the event any document includes real property
46 or any interest therein lying outside the state of West
47 Virginia or includes personal property, value shall be the
48 proportion of the consideration paid in case of the transfer
49 for consideration, the proportion of the true and actual
50 value in case of a gift, which the actual value of the real
51 property located in West Virginia bears to the total actual
52 value of all the property, real or personal, transferred by
53 the document. The value as herein defined shall be stated
54 in the declaration of consideration of value provided for
55 in section six hereof.

Sec. 2. *Rate of Tax; When Payable.*—Every person who
2 delivers, accepts or presents for recording any document,
3 or in whose behalf any document is delivered, accepted or
4 presented for recording, shall be subject to pay for and
5 in respect to the transaction or any part thereof, a state
6 excise tax upon the privilege of transferring title to real
7 estate at the rate of one dollar and ten cents for each five
8 hundred dollars value or fraction thereof as represented

9 by such document as defined in section one hereof, which
10 state tax shall be payable at the time of delivery, accept-
11 ance or presenting for recording of such document: *Pro-*
12 *vided, however,* That only one such state tax shall be paid
13 on any one document; and the same shall be paid by
14 the grantor therein unless the grantee accepts the same
15 without such tax having been paid, in which event such
16 tax shall be paid by the grantee: *Provided further,* That
17 on any transfer of real property from a trustee, a deputy
18 commissioner of delinquent and forfeited lands or a
19 county clerk transferring real estate sold for taxes, such
20 tax shall be paid by the grantee.

Sec. 3. *Payment from Proceeds of Judicial Sale.*—The
2 tax herein imposed shall be fully paid, and have priority
3 out of the proceeds of any judicial sale of real estate be-
4 fore any other obligation, claim, lien, judgment, estate
5 or costs of the sale and of the writ upon which the sale is
6 made, and the sheriff, commissioner, or other officer, con-
7 ducting said sale, shall pay the tax herein imposed out of
8 the first moneys paid to him in connection therewith.

Sec. 4. *Documentary Stamps; Affixing; Cancellation;*

2 *Declaration of Value.*—The payment of the tax imposed
3 by this act shall be evidenced by the affixing of a docu-
4 mentary stamp or stamps to every document by the per-
5 son executing, delivering or presenting for recording such
6 document. Each stamp shall be affixed in such manner that
7 its removal will require the continued application of
8 steam or water, and the person using or affixing such
9 stamps shall write or stamp or cause to be written or
10 stamped thereon the initials of his name and the date upon
11 which such stamps are affixed or used so that such stamps
12 may not again be used: *Provided*, That the commissioner
13 may prescribe such other method of cancellation as he
14 may deem expedient.

Sec. 5. *Commissioner to Provide for Sale of Stamps;*

2 *Rules and Regulations.*—The commissioner shall pre-
3 scribe, prepare and furnish adhesive stamps of such de-
4 nominations and quantities as may be necessary, for the
5 payment of the tax imposed and assessed by this act, to
6 the clerks of the various county courts whose duty it
7 shall be to offer said stamps for sale.

8 The commissioner is hereby authorized and empowered
9 to prescribe, adopt, promulgate and enforce rules and
10 regulations relating to:

11 (a) The method and means to be used in affixing or
12 cancelling of stamps in substitution for or in addition to
13 the method and means provided in this act.

14 (b) The denominations and sale of stamps.

15 (c) Any other matter or thing pertaining to the admin-
16 istration and enforcement of the provisions of this act.

Sec. 6. *Duties of Clerk; Declaration of Consideration or*
2 *Value; Remittance and Use of Proceeds.*—When any in-
3 strument on which the tax as herein provided is imposed
4 is offered for recordation, the clerk of the county court
5 shall ascertain and compute the amount of the tax due
6 thereon and shall ascertain if stamps in the proper amount
7 are attached thereto as prerequisite to acceptance of the
8 instrument for recordation.

9 When offered for recording on or after the first day of
10 July, one thousand nine hundred fifty-nine, each instru-
11 ment subject to the tax as herein provided shall have ap-
12 pended on the face or at the end thereof, a statement or

13 declaration signed by the grantor, grantee or other re-
14 sponsible party familiar with the transaction therein in-
15 volved declaring the consideration paid for or the value
16 of the property thereby conveyed. Such declaration shall
17 be under penalties of fine and imprisonment as provided
18 by law and may be in the following language:

19 "DECLARATION OF CONSIDERATION OF VALUE

20 Under penalties of fine and imprisonment as provided
21 by law, I hereby declare:

22 (a) The total consideration paid for the property con-
23 veyed by the document to which this declaration is ap-
24 pended is \$.....; or,

25 (b) The true and actual value of the property trans-
26 ferred by the document to which this declaration is ap-
27 pended is, to the best of my knowledge and belief
28 \$.....; or,

29 (c) The face amount, if stated therein, or the true
30 amount if the face amount is not stated therein, secured
31 by the mortgage or deed of trust to which this declara-
32 tion is appended, is \$.....

33 The proportion of all the property included in the docu-

34 ment to which this declaration is appended which is real
 35 property located in West Virginia is%; the
 36 value or amount secured by all the property \$.....;
 37 the value, or amounts secured by real estate in West Vir-
 38 ginia, is \$......

39 Given under my hand this day of,
 40 19.....

41 Signature

42

43 (Indicate whether grantor,
 44 grantee, or other interest
 45 in conveyance).

46

47 Address

48 Such declaration shall be considered by the clerk in
 49 ascertaining the correct number of stamps required.

50 The clerk shall, at the end of the month, pay all of the
 51 proceeds collected from the sale of stamps into the county
 52 treasury and all such moneys so received shall be trans-
 53 mitted by the sheriff to the state treasurer in the manner

54 provided by law which shall be credited to the state gen-
55 eral revenue fund.

Sec. 7. *Failure to Affix Stamps.*—No document upon
2 which a tax is imposed by this act shall be made the basis
3 of any action or other legal proceeding, nor shall proof
4 thereof be offered or received in evidence in any court of
5 this state, nor shall the same be recorded in the office of
6 any clerk of any county court of this state, unless or until
7 a documentary stamp or stamps as provided in this act
8 have been affixed thereto, but if recorded without stamps
9 or without the proper amount of stamps, said document
10 shall nevertheless be duly of record except that no copy
11 thereof may be admitted in evidence until the proper
12 amount of stamps has been placed on the original or such
13 copy.

Sec. 8. *Penalty For Recording Without Documentary*
2 *Stamp.*—Any clerk who shall record any document upon
3 which a tax is imposed by this act without the proper doc-
4 umentary stamp or stamps affixed thereto as required by
5 this act as is indicated in such document or accompanying

6 declaration shall, upon conviction in a court of competent
7 jurisdiction, be fined fifty dollars.

8 Failure of the clerk to require the attachment of the
9 proper number of stamps shall not affect the recordability
10 of the instrument, if otherwise recordable and regularly
11 recorded. The failure to pay this tax and to attach the re-
12 quired stamps shall not be or constitute a lien or claim
13 against the property conveyed by the recorded instrument.

Sec. 9. *Unlawful Acts; Penalty.*—It shall be unlawful
2 for any person to:

3 (1) Knowingly make a false statement in the declara-
4 tion provided for in section six of this article; or,

5 (2) Fraudulently affix to any document upon which tax
6 is imposed by this act any previously used documentary
7 stamp which has been cut, torn or removed from any other
8 document upon which tax is imposed by this act, or any
9 forged or counterfeited stamp, or any impression of any
10 forged or counterfeited stamp, die, plate or other article;
11 or,

12 (3) Wilfully remove or alter the cancellation marks of
13 any documentary stamp, or restore any such documentary

14 stamp, with intent to use or cause the same to be used
15 after it has already been used, or knowingly buy, sell, of-
16 fer for sale, or give away any such altered or restored
17 stamp to any person for use, or knowingly use the same;
18 or,

19 (4) Knowingly have in his possession any altered or re-
20 stored documentary stamp which has been removed from
21 any document upon which tax is imposed by this act:
22 *Provided*, That the possession of such stamps shall be
23 *prima facie* evidence of an intent to violate the provisions
24 of this clause; or,

25 (5) Knowingly or wilfully prepare, keep, sell, offer for
26 sale, or have in his possession, any forged or counterfeited
27 documentary stamps.

28 Any person violating any of the provisions of this sec-
29 tion shall be guilty of a misdemeanor, and, upon convic-
30 tion thereof, shall be sentenced to pay a fine of not less
31 than one hundred dollars nor more than one thousand dol-
32 lars or be imprisoned for not more than five years, or both,
33 in the discretion of the court.

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

W. N. Jasper, Jr.
Chairman Senate Committee

Eudora Andrews
Chairman House Committee

Originated in the Senate.

Takes effect *July 1, 1959* passage.

J. Howard Meyer
Clerk of the Senate

C. A. Blankenship
Clerk of the House of Delegates

Ralph J. Bean
President of the Senate

H. R. Pauley
Speaker House of Delegates

The within *approved* this the *20th*
day of *March*, 1959.

W. J. Henderson
Governor

