WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1959

ENROLLED
SENATE BILL NO. 329

(By Mr. President)

PASSED March 14, 1959

In Effect July 1, 1959

Filed in Office of the Secretary of State of West Virginia
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JOE F. BURDETT
SECRETARY OF STATE
ENROLLED

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 in this chapter shall have meanings ascribed to them in this section, except in those instances where the context clearly indicates a different meaning.

"Association" means a partnership, limited partnership, or any other form of unincorporated enterprise, owned or conducted by two or more persons.

"Corporation" means a corporation or joint-stock association, organized under the laws of this state, the United States or any other state, territory, or foreign country, or dependency, including, but not limited to, banking institutions.

"Commissioner" means the state tax commissioner.

"Document" means any deed, or instrument or writing whereby any real property within this state or any interest therein shall be granted, conveyed or otherwise transferred to the grantee, purchaser, or any other person; but does not include wills, testamentary transfer of real property where the value of the property transferred or the face amount secured thereby is one hundred dollars or less, trusts, deeds of partition, deeds made pursuant to
mergers of corporations, leases, transfers between husband and wife, or between parent and child without consideration, transfers without consideration between a principal and straw party for any purpose, quitclaim or corrective deeds without consideration, transfers to the United States, the state of West Virginia, or to any of their instrumentalities, agencies or political subdivisions, by gift, dedication, deed or condemnation proceedings.

"Person" means every natural person, association, or corporation. Whenever used in any clause prescribing and imposing a fine or imprisonment, or both, the term "person" as applied to associations, shall mean the partners or members thereof, and, as applied to corporations, the officers thereof.

"Transaction" means the delivering, accepting, or presenting for recording of a document.

"Value" means in the case of any document, not a gift and not given to secure a debt, the amount of the full actual consideration therefor, paid or to be paid, including the amount of any lien or liens assumed. In the case of a
gift, or any other document without consideration, the
actual monetary value of the property conveyed or trans-
ferred. In the event any document includes real property
or any interest therein lying outside the state of West
Virginia or includes personal property, value shall be the
proportion of the consideration paid in case of the transfer
for consideration, the proportion of the true and actual
value in case of a gift, which the actual value of the real
property located in West Virginia bears to the total actual
value of all the property, real or personal, transferred by
the document. The value as herein defined shall be stated
in the declaration of consideration of value provided for
in section six hereof.

Sec. 2. Rate of Tax; When Payable.—Every person who
delivers, accepts or presents for recording any document,
or in whose behalf any document is delivered, accepted or
presented for recording, shall be subject to pay for and
in respect to the transaction or any part thereof, a state
excise tax upon the privilege of transferring title to real
estate at the rate of one dollar and ten cents for each five
hundred dollars value or fraction thereof as represented
by such document as defined in section one hereof, which state tax shall be payable at the time of delivery, acceptance or presenting for recording of such document: Provided, however, That only one such state tax shall be paid on any one document; and the same shall be paid by the grantor therein unless the grantee accepts the same without such tax having been paid, in which event such tax shall be paid by the grantee: Provided further, That on any transfer of real property from a trustee, a deputy commissioner of delinquent and forfeited lands or a county clerk transferring real estate sold for taxes, such tax shall be paid by the grantee.

Sec. 3. Payment from Proceeds of Judicial Sale.—The tax herein imposed shall be fully paid, and have priority out of the proceeds of any judicial sale of real estate before any other obligation, claim, lien, judgment, estate or costs of the sale and of the writ upon which the sale is made, and the sheriff, commissioner, or other officer, conducting said sale, shall pay the tax herein imposed out of the first moneys paid to him in connection therewith.
Sec. 4. Documentary Stamps; Affixing; Cancellation;

Declaration of Value.—The payment of the tax imposed by this act shall be evidenced by the affixing of a documentary stamp or stamps to every document by the person executing, delivering or presenting for recording such document. Each stamp shall be affixed in such manner that its removal will require the continued application of steam or water, and the person using or affixing such stamps shall write or stamp or cause to be written or stamped thereon the initials of his name and the date upon which such stamps are affixed or used so that such stamps may not again be used: Provided, That the commissioner may prescribe such other method of cancellation as he may deem expedient.

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

Rules and Regulations.—The commissioner shall prescribe, prepare and furnish adhesive stamps of such denominations and quantities as may be necessary, for the payment of the tax imposed and assessed by this act, to the clerks of the various county courts whose duty it shall be to offer said stamps for sale.
The commissioner is hereby authorized and empowered to prescribe, adopt, promulgate and enforce rules and regulations relating to:

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

(b) The denominations and sale of stamps.

(c) Any other matter or thing pertaining to the administration and enforcement of the provisions of this act.

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

When offered for recording on or after the first day of July, one thousand nine hundred fifty-nine, each instrument subject to the tax as herein provided shall have appended on the face or at the end thereof, a statement or
declaration signed by the grantor, grantee or other re-
ponsible party familiar with the transaction therein in-
volved declaring the consideration paid for or the value
of the property thereby conveyed. Such declaration shall
be under penalties of fine and imprisonment as provided
by law and may be in the following language:

"DECLARATION OF CONSIDERATION OF VALUE

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

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

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

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

The proportion of all the property included in the docu-
ment to which this declaration is appended which is real
property located in West Virginia is ___________; the
value or amount secured by all the property $__________;
the value, or amounts secured by real estate in West Vir-
ginia, is $___________________.

Given under my hand this __________ day of ___________,
19_______.

Signature ____________________

(Indicate whether grantor, grante, or other interest in conveyance).

Address ____________________

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

The clerk shall, at the end of the month, pay all of the
proceeds collected from the sale of stamps into the county
treasury and all such moneys so received shall be trans-
mitted by the sheriff to the state treasurer in the manner
provided by law which shall be credited to the state general revenue fund.

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

Sec. 8. Penalty For Recording Without Documentary Stamp.—Any clerk who shall record any document upon which a tax is imposed by this act without the proper documentary stamp or stamps affixed thereto as required by this act as is indicated in such document or accompanying
declaration shall, upon conviction in a court of competent
jurisdiction, be fined fifty dollars.

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

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

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

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

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

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

Takes effect July 1, 1959

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

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

Governor