

# WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1959

## ENROLLED

*Committee Substitute for*  
SENATE BILL NO. 251

(By Mr. *Common Finance* ..)

PASSED March 13 1959

In Effect July 1, 1959 Passage



Filed in Office of the Secretary of State  
of West Virginia: **MAR 28 1959** MAR 21 1959  
JOE F. BURDETT  
SECRETARY OF STATE

**ENROLLED**

COMMITTEE SUBSTITUTE

FOR

**Senate Bill No. 251**

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(Originating in the Committee on Finance)

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AN ACT to amend chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by amending and reenacting sections one and six, article fourteen, and by adding thereto a new article, designated article fourteen-a, providing additional revenues to be used for the construction, maintenance and support of state roads and highways by imposing a tax upon certain motor carriers operating on said roads and highways based upon the amount of gasoline used by such motor carriers in this

state; providing for the collection, adjustment and administration of such tax and appeals in connection therewith; conferring powers and imposing duties upon certain state officials and other persons in relation to such tax, and providing penalties.

*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 amending and reenacting sections one and six, article fourteen, and by adding thereto a new article, to be designated article fourteen-a, to read as follows:

**Article 14. Gasoline Tax.**

Section 1. *Definitions; Gasoline, Person, Company, Distributor, Retail Dealer, Importer, Sale, Purchase and Motor Vehicles.*—When used in this article: The term “gasoline” means and includes casing head or natural gasoline, benzol, benzine, naphtha and any other liquid prepared, advertised, offered for sale, sold for use as, or used for the generation of power for the propulsion of motor vehicles, and Diesel oil, oil or other liquids used in Diesel engines or in internal combustion engines for the

10 propulsion of motor vehicles, including any product ob-  
 11 tained by blending together any one or more products of  
 12 petroleum, with or without other products, if the resultant  
 13 product is capable of such use.

14 The term "person" or the term "company" shall include  
 15 any individual, firm, copartnership, joint adventure, asso-  
 16 ciation, corporation, trust and any other group or combina-  
 17 tion acting as a unit, and the plural as well as the singular  
 18 number, unless the intention to give a more limited mean-  
 19 ing is disclosed by the context, and when used in connec-  
 20 tion with the penalties imposed by this article, shall mean  
 21 and include the officers, directors, trustees, or members  
 22 of any firm, copartnership, joint adventure, association,  
 23 corporation, trust or any other group acting as a unit.

24 The term "distributor" shall mean and include every  
 25 person who refines, produces, manufactures, compounds,  
 26 or blends gasoline in this state for use or for sale to  
 27 jobbers or consumers, and every person who is now  
 28 engaged, or who may hereafter engage, in his own name  
 29 or in the name of his representative or agent in this state,  
 30 in the selling of gasoline for the purpose or resale or dis-

31 tribution; and persons operating tank wagons into this  
32 state from places of business located outside this state and  
33 selling gasoline in quantities as desired by purchasers in  
34 this state without definite orders having been placed prior  
35 to the delivery of the product, shall be deemed distribu-  
36 tors in this state.

37 The term "retail dealer" shall mean and include any  
38 person not a distributor who sells gasoline in this state to  
39 consumers only.

40 The term "importer" shall mean any person who pur-  
41 chases or obtains gasoline in the amount of twenty-five  
42 gallons or more outside this state and uses the same with-  
43 in the state.

44 The term "sale" shall include any exchange, gift, or  
45 other disposition, and "purchase" shall include any ac-  
46 quisition of ownership.

47 The term "motor vehicle" shall mean automobiles,  
48 motor trucks and motorcycles, and shall include all other  
49 vehicles, engines or machines which are operated or pro-  
50 pelled by combustion of gasoline.

Sec. 6. *Importer's Monthly Statement; Payment of Tax.*

2 —Every importer shall, within thirty days after the close  
3 of each month, transmit to the tax commissioner a state-  
4 ment, on such forms as the tax commissioner shall pre-  
5 scribe, of all gallonage received by such importer during  
6 the month to be covered, which statement shall show the  
7 name and address of the person from whom each purchase  
8 was made; the point from which shipped or delivered;  
9 the point at which received; the date of each shipment or  
10 purchase; and the quantity of each shipment or purchase;  
11 and he shall at the same time pay to the tax commissioner  
12 the amount of tax due for such month.

**Article 14-A, Motor Carrier Road Tax.**

Section 1. *Short Title.*—This article shall be known, and  
2 may be cited, as the “Motor Carrier Road Tax”.

Sec. 2. *Definitions.*—The following words, terms and  
2 phrases, when used in this article, shall have the meaning  
3 ascribed to them by this section, except where the context  
4 clearly indicates a different meaning:

5 “Motor carrier” means every person, firm or corporation  
6 who operates or causes to be operated on any highway

7 in this state any passenger vehicle that has seats for more  
8 than nine passengers in addition to the driver, or any road  
9 tractor, or any tractor truck, or any truck having more  
10 than two axles.

11 "Operations" means operations of all such vehicles,  
12 whether loaded or empty, whether for compensation or  
13 not for compensation, and whether owned by or leased to  
14 the motor carrier who operates them or causes them to be  
15 operated.

16 "Gasoline" means and includes casing head or natural  
17 gasoline, benzol, benzine, naphtha and any other liquid  
18 prepared, advertised, offered for sale, sold for use as, or  
19 used for the generation of power for the propulsion of  
20 motor vehicles, and Diesel oil, oil or other liquids used in  
21 Diesel engines or in internal combustion engines for the  
22 propulsion of motor vehicles, including any product ob-  
23 tained by blending together any one or more products of  
24 petroleum, with or without other products, if the resultant  
25 product is capable of such use.

26 "Commissioner" means the state tax commissioner of  
27 West Virginia.

Sec. 3. *Imposition of Tax; Amount.* — Every motor  
 2 carrier shall pay a road tax equivalent to the amount of  
 3 tax per gallon of gasoline assessed by article fourteen of  
 4 this chapter calculated on each gallon of gasoline used in  
 5 its operations in this state.

Sec. 4. *Credit for Payment of Gasoline Tax; Refunds;*  
 2 *Hearing upon Commissioner's Refusal to Make Refund.*—  
 3 Every motor carrier subject to the tax herein imposed  
 4 shall be entitled to a credit on such tax equivalent to the  
 5 amount of tax per gallon of gasoline assessed by article  
 6 fourteen of this chapter on all gasoline purchased by such  
 7 carrier within this state for use in operations either within  
 8 or without this state and upon which gasoline the tax  
 9 imposed by the laws of this state has been paid: *Provided,*  
 10 *however,* That such credit shall not be allowed for any  
 11 gasoline taxes for which any motor carrier has applied for,  
 12 or received, a refund of the taxes imposed by said article  
 13 fourteen, and no person applying for such credit or refund  
 14 under this section shall be entitled to the refund under  
 15 article fourteen of this chapter. Evidence of the payment  
 16 of such tax in such form as may be required by the com-



17 missioner shall be furnished by each motor carrier claim-  
18 ing the credit herein allowed. When the amount of the  
19 credit herein provided exceeds the amount of the tax for  
20 which the carrier is liable for the same quarter, such ex-  
21 cess shall, under regulations of the commissioner, be al-  
22 lowed as a credit on the tax for which the carrier would  
23 be otherwise liable for any of the four succeeding quar-  
24 ters. The commissioner is, under regulations to be estab-  
25 lished by him, hereby authorized to refund from the funds  
26 collected under the provisions of this article the amount  
27 of the credit, if the motor carrier by duly filed petition  
28 requests the commissioner to do so and the commissioner  
29 is satisfied that said motor carrier is entitled to said refund  
30 and that said motor carrier has not applied for a refund  
31 of the tax imposed by article fourteen of this chapter.  
32 *Provided, however,* That such refund shall not be made  
33 until after audit of the applicant's records by the commis-  
34 sioner or upon the posting of a surety company bond by  
35 the applicant in an amount fixed by the commissioner con-  
36 ditioned to pay all road taxes due hereunder: *Provided*  
37 *further,* That said credit or refund shall in no case be

38 allowed to reduce the amount of tax to be paid by a motor  
39 carrier below the amount due as tax on gasoline used in  
40 this state as provided by article fourteen of this chapter.  
41 If the commissioner shall refuse to allow a refund or  
42 credit in the amount claimed by the applicant, the appli-  
43 cant may request a hearing on said application. Such hear-  
44 ing shall be held within a reasonable time after such re-  
45 quest is made and after notice to the applicant of not less  
46 than ten days.

47 The hearing shall be informal and may be conducted by  
48 an examiner designated by the tax commissioner. At such  
49 hearing evidence may be offered in support of the claim  
50 of credit or refund or to prove that such claim is incorrect.  
51 After such hearing the tax commissioner shall, within a  
52 reasonable time, give notice in writing of the decision.  
53 Unless an appeal is taken within thirty days from the  
54 service of this notice, the tax commissioner's decision  
55 shall be final.

56 An appeal may be taken by the taxpayer to the circuit  
57 court of Kanawha county, within thirty days after he

58 shall have received notice from the tax commissioner of  
59 his determination as provided in this section.

60 The court shall hear the appeal in equity, and deter-  
61 mine anew all questions submitted to it on appeal from  
62 the determination of the tax commissioner. The court  
63 shall render its decree thereon and a certified copy of said  
64 decree shall be filed by the clerk of said court with the tax  
65 commissioner who shall then correct his decision accord-  
66 ingly and allow the credit or refund as decreed by said  
67 court.

68 An appeal may be taken by the taxpayer or the tax com-  
69 missioner to the supreme court of appeals of this state in  
70 the same manner that appeals are taken in equity.

Sec. 5. *Refunds to Carriers Who Give Bond.*—A motor  
2 carrier may give a surety company bond in the amount  
3 of ten thousand dollars payable to the state of West Vir-  
4 ginia and conditioned that the carrier will pay all taxes  
5 due and to become due under this article from the date of  
6 the bond to the date when either the carrier or the bond-  
7 ing company notifies the commissioner that the bond has  
8 been cancelled. The surety shall be a corporation author-

9 ized to write surety bonds in West Virginia. So long as  
10 the bond remains in force the commissioner may order  
11 refunds to the motor carrier in the amounts appearing to  
12 be due on applications duly filed by the carrier under sec-  
13 tion four of this article without first auditing the records  
14 of the carrier. The surety shall be liable for all omitted  
15 taxes assessed against the carrier including the penalties  
16 and interest provided hereinafter, even though the assess-  
17 ment is made after cancellation of the bond, but only for  
18 taxes due and payable while the bond was in force, and  
19 penalties and interest on said taxes.

Sec. 6. *Penalty for False Statements.*—Any person who  
2 wilfully and knowingly makes a false statement orally,  
3 or in writing, or in the form of a receipt for the sale of  
4 gasoline, for the purpose of obtaining or attempting to  
5 obtain or to assist any other person, partnership or cor-  
6 poration to obtain or attempt to obtain a credit or refund  
7 or reduction of liability for taxes under this article shall  
8 be guilty of a misdemeanor punishable by a fine of not  
9 less than fifty dollars nor more than one thousand dollars

10 or imprisonment for not more than six months, or both  
11 such fine and imprisonment.

Sec. 7. *Report of Carriers.*—Every motor carrier subject  
2 to the tax imposed by this article shall on or before the  
3 thirtieth day of April, July, October and January of every  
4 year make to the commissioner such reports of its opera-  
5 tions during the quarter ending the last day of the preced-  
6 ing month as the commissioner may require and such  
7 other reports from time to time as the commissioner may  
8 deem necessary. The commissioner may, if he deems  
9 proper, in lieu of said quarterly report, require only an  
10 annual report from a motor carrier domiciled in this state  
11 and whose entire operations are within this state, provided  
12 all gasoline used by said motor carrier is purchased within  
13 this state. For good cause shown, the commissioner may  
14 extend the time for filing said reports for a period not  
15 exceeding thirty days.

Sec. 8. *Joint Reports by Carriers.*—Two or more motor  
2 carriers regularly engaged in the transportation of passen-  
3 gers on through busses on through tickets in pool service  
4 may, at their option, make joint reports of their entire

5 operations in this state. The taxes imposed shall be calcu-  
6 lated on the basis of such joint reports as though such  
7 carriers were a single carrier; and the carriers making  
8 such reports shall be jointly and severally liable for the  
9 taxes. Such joint reports shall show the total number of  
10 over-the-road miles traveled in this state and the total  
11 number of gallons of gasoline purchased in this state by  
12 the reporting carriers. Credits to which the carriers mak-  
13 ing a joint return are entitled shall not be allowed as  
14 credits to any other carrier; but carriers filing joint re-  
15 ports shall permit all carriers engaged in this state in  
16 pool operations with them to join in filing joint reports.  
17 The vehicles of carriers filing joint reports shall be deemed  
18 to have consumed on the average one gallon of gasoline  
19 for each six miles traveled unless persuasive evidence  
20 discloses that a different amount was consumed.

Sec. 9. *Payment of Tax.*—The tax hereby imposed shall  
2 be paid by each motor carrier quarterly to the commis-  
3 sioner on or before the thirtieth day of April, July, Oc-  
4 tober and January of each year and calculated upon the  
5 amount of gasoline used in its operations within this state

6 by each such carrier during the quarter ending with the  
7 last day of the preceding month.

Sec. 10. *Disposition and Use of Taxes.*—All taxes col-  
2 lected under the provisions of this article shall be paid  
3 into the state treasury and shall be credited to the state  
4 road fund.

Sec. 11. *How Amount of Gasoline Used in State to be*  
2 *Ascertained.*—The amount of gasoline used in the opera-  
3 tion of any motor carrier within this state shall be such  
4 proportion of the total amount of such gasoline used in  
5 its entire operations within and without this state as the  
6 total number of miles traveled within this state bears to  
7 the total number of miles traveled within and without  
8 this state.

Sec. 12. *Identification Required of Motor Carriers; Fees;*  
2 *Emergencies; Penalties.*—No motor carrier shall operate  
3 or cause to be operated in this state any vehicle subject to  
4 this article without first securing from the tax commis-  
5 sioner a registration card and an identification marker for  
6 such vehicle. The registration card shall be of such form  
7 and design as the commissioner shall prescribe. The regis-

8 tration card shall be carried in the vehicle for which it  
9 was issued at all times when the vehicle is within this  
10 state. Each identification marker for a particular vehicle  
11 shall bear a number, which number shall be the same as  
12 that appearing on the registration card for the same  
13 vehicle. The identification marker shall be displayed on  
14 the vehicle as required by the commissioner. The regis-  
15 tration cards and markers herein provided for shall be  
16 valid for a period of one year. A fee of one dollar shall  
17 be paid to the commissioner for issuing each registration  
18 card and identification marker. Upon satisfactory proof  
19 being offered by a motor carrier, the commissioner may  
20 replace lost or damaged registration cards or identifica-  
21 tion markers. *Provided, however,* That all taxes due un-  
22 der this article shall be paid before the issuance of a new  
23 or replacement card or marker.

24 In an emergency, the commissioner, by letter or tele-  
25 gram, may authorize a vehicle to be operated without a  
26 registration card or identification marker for not more  
27 than ten days.

28 Upon conviction for failure to obtain, carry and display



29 the registration card and identification marker provided  
30 herein, a motor carrier shall be fined not less than twenty  
31 nor more than one hundred dollars; and each day of such  
32 failure shall constitute a separate offense.

Sec. 13. *Assessment of Tax When Insufficiently Re-*  
2 *turned; Inspection and Audit of Books and Records.*—If  
3 the tax commissioner believes that the tax imposed by  
4 this article is insufficiently returned by a taxpayer, either  
5 because the taxpayer has failed to properly remit the tax  
6 or has failed to make a return, or has made a return which  
7 is incomplete, deficient or otherwise erroneous, he may  
8 proceed to investigate and determine or estimate the tax  
9 liability of the taxpayer and make an assessment therefor.  
10 The commissioner and his authorized agents and repre-  
11 sentatives shall have the right, at any reasonable time, to  
12 inspect and audit the books and records of any motor  
13 carrier subject to this article.

Sec. 14. *Department of Public Safety; Enforcement.*—  
2 The state department of public safety is hereby authorized  
3 and directed to assist in the enforcement of the provisions  
4 as directed by the tax commissioner.

Sec. 15. *Exemptions.*—Nothing in this article shall apply to any vehicle operated by or on behalf of any department, board, bureau, commission, or other agency of the federal government or of the state of West Virginia or any political subdivision thereof, nor shall the provisions of this article apply to any school bus operated by, for or on behalf of the state of West Virginia, any political subdivision thereof, or any private or privately operated school or schools.

Sec. 16. *Tax in Addition to All Other Taxes.*—The taxes imposed on motor carriers by this article are in addition to any taxes of whatever character imposed on such carriers by any other provisions of law.

Sec. 17. *Penalties.*—The commissioner may, after a hearing had upon notice, duly served not less than ten days prior to the date set for such hearing, impose a penalty, which shall be in addition to any other penalty imposed by this article, not less than fifty dollars and not more than five hundred dollars, upon any motor carrier which fails to file any report within the time prescribed which may be required by this article or by the commissioner

9 pursuant to this article, or which violates any other pro-  
10 vision of this article, or which fails to comply with any  
11 regulation of the commissioner promulgated pursuant to  
12 this article, each such failure or violation constituting a  
13 separate offense. The penalty shall be collectible by the  
14 process of the commissioner as provided by law. In addi-  
15 tion to imposing such penalty, or without imposing any  
16 penalty, the commissioner may suspend or revoke any  
17 certificate, permit or other evidence or right issued by the  
18 commissioner which the motor carrier so found in de-  
19 fault holds.

Sec. 18. *Appeal*.—Any motor carrier penalized under  
2 section seventeen of this article shall have the right to ap-  
3 peal to the circuit court of Kanawha county in the same  
4 maner as provided by section four of this article.

Sec. 19. *Severability*.—If any of the provisions of this  
2 article are held invalid, such invalidation shall not affect  
3 other provisions which can be given effect without the  
4 invalid provision, and to this end the provisions of this  
5 article are declared to be severable.

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

*W. M. Jasper*  
Chairman Senate Committee

*Eudora Andrews*  
Chairman House Committee

Originated in the Senate.

Takes effect *July 1, 1959* passage.

*Howard Kasper*  
Clerk of the Senate

*C. Blankenship*  
Clerk of the House of Delegates

*Ralph J. Bean*  
President of the Senate

*F. R. Pauley*  
Speaker House of Delegates

The within \_\_\_\_\_ this the \_\_\_\_\_

day of \_\_\_\_\_, 1959.

\_\_\_\_\_  
Governor

