WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1963

ENROLLED

HOUSE BILL No. 5457

(By Mr. [Signature])

PASSED March 8, 1963

In Effect July 1, 1963

Filed in Office of the Secretary of State of West Virginia 3-16-63

JOE F. BURDETT
SECRETARY OF STATE
ENROLLED

House Bill No. 547
(By Mr. NUZUM)

[Passed March 8, 1963; in effect July 1, 1963.]

AN ACT to amend and reenact sections one, three, four, five, six, seven, eight, nine, ten, eleven, twelve, thirteen, fourteen, fifteen, sixteen, seventeen, eighteen, nineteen, twenty, twenty-one and twenty-two, article seventeen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to repeal section four-a of said article seventeen; and to further amend said article seventeen by adding thereto five new sections, designated sections twenty-three, twenty-four, twenty-five, twenty-six and twenty-seven, all relating to an excise tax on the sale of cigarettes.
Be it enacted by the Legislature of West Virginia:

That sections one, three, four, five, six, seven, eight, nine, ten, eleven, twelve, thirteen, fourteen, fifteen, sixteen, seventeen, eighteen, nineteen, twenty, twenty-one and twenty-two, article seventeen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that section four-a of said article seventeen be repealed; and that said article seventeen be further amended by adding thereto five new sections, designated sections twenty-three, twenty-four, twenty-five, twenty-six and twenty-seven, all to read as follows:

Article 17. Excise Tax on Sale of Cigarettes.

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

2 (a) “Person” shall mean and include any individual,

3 firm, association, company, partnership, corporation, joint

4 stock company, club, agency, syndicate, municipal cor-

5 poration or other political subdivision of this state, trust,

6 receiver, trustee, fiduciary or conservator.

7 (b) “Wholesaler” shall include any person who: (1)

8 Purchases cigarettes directly from the manufacturer; or

9 (2) purchases cigarettes from any other person who
purchases from the manufacturer and who acquires such

(cigarettes solely for the purpose of bona fide resale to

retail dealers or to other persons for the purposes of re-
sale only; or (3) services retail outlets by the mainte-
nance of an established place of business for the pur-
chase of cigarettes, including but not limited to, the
maintenance of warehousing facilities for the storage and
distribution of cigarettes. Nothing contained herein
shall prevent a person from qualifying in different
capacities as both a “wholesaler” and “retailer” under the
applicable provisions of this article.

(c) “Retail dealer” includes every person in this state,
other than a wholesale dealer, engaged in the business
of selling cigarettes irrespective of quantity or amount or
number of sales thereof.

(d) “Vending machine operator” is any person oper-
ating one or more cigarette vending machines.

(e) “Sale” includes exchange, barter, gift, offer for
sale or distribution.

(f) “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.

(g) "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.

(h) "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.

(i) "Commissioner" means the state tax commissioner and where the meaning of the context requires, all deputies, and employees duly authorized by him.

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 eleven hereunder, shall be paid into the general revenue fund of the state and expended therefrom in satisfaction of appropriations.
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. A stamp or stamps shall be affixed to or printed on each package of an aggregate denomination of 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, or cancelled by methods prescribed by the tax commissioner, prior to the delivery of any cigarettes to any retail dealer in this state.

Each retail dealer, authorized to deal in unstamped cigarettes, who receives, brings or causes to be brought into this state unstamped cigarettes, shall immediately upon receipt of such unstamped cigarettes at his place of busi-
ness, so affix such stamp to each package and shall cancel
the same by writing or stamping his name and the date
of cancellation across the face thereof, or as otherwise di-
rected by regulation of the commissioner, or shall immedi-
ately 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 af-
fix his signature thereto or as otherwise directed by reg-
ulation of the commissioner. He shall in any event open
such box, carton or other container and 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
to any other person.

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. Ultimate Liability for Tax.—Any person who
advances or pays the tax imposed by this article through
the purchase of such stamps shall add the amount of the
tax so advanced or paid to the price of the cigarettes when
sold by such person, it being intended that the ultimate
incidence of and the liability for the tax shall be upon the
ultimate consumer or user.

Sec. 6. Dealer’s Records.—From and after the effective
date hereof and at the time of delivering cigarettes to any
person, each wholesale dealer in this state shall make a
true duplicate invoice showing the date of delivery, the
amount and value of each shipment of cigarettes deliv-
ered and the name of purchaser to whom delivery is made,
and retain the same for a period of two years from the
date of such delivery, subject to the use and inspection of
the tax commissioner.

Each wholesale and retail dealer in this state shall pro-
cure and retain as a part of his records, invoices showing
the amount and value of each shipment of cigarettes re-
ceived by him, the date thereof and the name of the ship-
per and shall retain the same for a period of two years.
subject to the use and inspection of the commissioner. The commissioner, in his discretion, may require reports from all dealers pertaining to the sale of cigarettes.

In each case in which cigarettes are shipped into the state of West Virginia by common carrier, such common carrier transporting any shipment thereof shall file with the commissioner a copy of the freight bill within ten days after delivery in this state of each shipment when requested so to do by the tax commissioner.

Sec. 7. Tobacco License Required.—No person shall engage in the business of selling cigarettes at retail within this state without having first secured an annual cigarette retail dealers license, which shall be issued by the state tax commissioner without charge. Cigarette retail dealers license will be subject to suspension or revocation for violation of any laws or rules and regulations pertaining to the sale, possession, use or storage of cigarettes. Common carriers maintaining or operating equipment or facilities 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. 8. Cigarette Vending Machine Operators.—A cigarette vending machine operator is any person operating one or more cigarette vending machines. For the purposes of this article, a vending machine operator will be considered as a retail dealer. Cigarette vending machines are licensed under the general license law.

Sec. 9. Wholesale Dealers.—No wholesale dealer shall sell cigarettes to any person in this state other than to a licensed wholesaler or retail dealer, and no person in this state other than a licensed wholesale dealer shall sell cigarettes to a licensed retail dealer.

Sec. 10. Power of Tax Commissioner; Rules and Regulations; Records by Wholesalers and Retailers; Metering in Lieu of Stamping; Agents for Metering; Levy to Collect Tax.—The tax commissioner shall have power and authority to enforce and administer the provisions of this article. The tax commissioner shall have authority to promulgate in accordance 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 regulations 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 the stamps are to 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 affix-
ing stamps under the circumstances of the particular case,
shall be a defense in the prosecution of such dealer for
violation of section seventeen of this article.

All books, papers, invoices and records of any wholesale
or retail dealer in this state, whether or not required un-
der the provisions of this article to be kept by him, show-
ing 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, or his
authorized agent, for such purposes; and the tax commis-
sioner or a deputy shall have power to investigate and
examine the stock of cigarettes in and upon the premises
where the same are placed, stored, or sold, for the purpose
of determining whether or not the provisions of this ar-
ticle 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 may authorize any wholesale or retail dealer purchasing unstamped cigarettes and holding the licenses herein required, to use any metering device approved by the commissioner, such device to be sealed by the 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 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 commissioner and re-
mit 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 commissioner, or his agent authorized for the purpose, who shall seal the meter in accordance with the prepayment so made. The commissioner 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 performing his duties with respect to sealing of metering devices or the selling of stamps 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 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 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. 11. Form of Stamps; Custody; Discounts; Security

for Payments.—The commissioner shall design and pro-
cure 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 col-
lect 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 accounted
for at the face value thereof except that the tax com-
missioner 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 four per cent
of the face value of such stamps, the same to be allowed
as a commission for affixing and cancelling such stamps;
and excepting further that the tax commissioner 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 when the
purchaser shall file with the tax commissioner a bond
made payable to the state of West Virginia, in such
form and amount as the commissioner shall prescribe,
and with surety or sureties to the satisfaction of the commissioner, conditioned as he may require, to guarantee payment within thirty days for stamps so delivered within such period of time and by making of such reports and settlement as the commissioner may require. The commissioner may, by further regulations,
provide for cancelling, renewing or increasing such bond
or for the substitution of the surety thereon. The com-
missioner shall redeem any unused or mutilated, but
identifiable stamps, that any licensed wholesale dealer
or retail dealer may present for redemption, on written
verified requests made by the purchaser, his administra-
tors, executors, successors, or assigns, and refund there-
for, ninety-five per cent of the face value of said stamps,
less any discounts allowed on the purcase of said stamps.
The commissioner shall pay on a like basis for stamps
destroyed by fire or flood upon presentation of proof of
such loss satisfactory to him. Such payments shall for
the purposes hereof be deemed to be refunds of taxes
improperly collected and shall be allowed and paid as
part of the cost of administration of this article as in
this article provided.

Sec. 12. Sales by Deputies; Fees; Reports of Deputies.
2 —The tax commissioner may appoint, subject to such
conditions as he shall deem to the best interests of the
state, any bank or trust company authorized to do busi-
ness, in and doing business in this state, as his deputy
for the purpose of selling such stamps, excepting that no
such deputy shall be thereby authorized to sell the same
at a discount or on credit, without prior written author-
ity by the tax commissioner and excepting, further, that
provisions hereof relating to sale of stamps shall not
prevent any bank or trust company from acting as the
commisioner's deputy for purposes of checking and seal-
ing meters under other provisions of this article. The
tax commissioner is hereby authorized to allow such
deputy, authorized to sell stamps hereunder, a fee of
one-eighth of one percent of the face value of all stamps
sold by such deputy and charge the same as a part of
the costs of administration of this article. The state tax
commissioner shall be responsible for the delivery of
stamps to any 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.
The tax commissioner may sell stamps at his office.
Sec. 13. Possession of Unstamped Cigarettes; Failure to Produce Invoices; Penalty.—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, 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, whoever fails to produce on demand by the commissioner invoices of all cigarettes purchased or received by him within two years prior to such demand, unless upon satisfactory proof it is shown that such nonproduction is due to providential or other causes beyond his control, shall be guilty of a misdemeanor and upon conviction thereof shall be fined not less than twenty-five dollars nor 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. 14. 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 inspection of the commissioner, shall be guilty of a misdemeanor and upon conviction thereof shall be fined not less than twenty-five dollars nor 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. 15. 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 article, shall be guilty of a misdemeanor and upon conviction thereof shall be fined not less than twenty-five dollars nor 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. Sales or Possession 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 guilty of a misdemeanor and upon conviction thereof shall be fined not less than twenty-five dollars nor more than five hundred dollars, or imprisoned in the county jail not more than ninety days, or both in the discretion of the court.

If a person, firm or corporation, who is not a regularly licensed dealer in tobacco products, as provided by this article, shall have in his possession within the state more than ten packages of cigarettes not bearing cigarette tax paid indicia of this state, such possession shall be presumed to be for the purpose of evading the payment of the taxes due thereon and shall be subject to the penalties as outlined in this section.

Sec. 17. Altering or Counterfeiting Stamps; 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 guilty of a felony and upon conviction thereof shall be imprisoned in the penitentiary for a term of not less than one year nor more than five years.

Sec. 18. Penalties.—Whoever violates any of the provisions 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 guilty of a misdemeanor and upon conviction thereof shall be fined not less than twenty-five dollars nor more than one hundred dollars, or imprisoned in the county jail not more than ninety days, or both in the discretion of the court.

Sec. 19. Jurisdiction of the Justices of the Peace.—Justices of the peace shall have concurrent jurisdiction with any other courts having jurisdiction for the trial of all misdemeanors arising under this article.

Sec. 20. Seizure and Sale of Cigarettes by Commissioner; Forfeiture; Collection of Tax.—Whenever the com-
missioner or any of his deputies or employees authorized
by him for the purpose shall discover any cigarettes,
subject to tax as provided by this article and upon which
the tax has not been paid as herein required, the commis-
sioner, or such deputy or employee is hereby authorized
and empowered forthwith to seize and take possession
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 posted upon the
premises where such seizure was made, or 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
all expenses and costs incurred in such proceedings, and
deduct and pay any other sums due the tax commissioner
by the person in possession of said forfeited cigarettes,
and pay the balance, if any to such possessor: Provided,
however, 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 may be made in any county the tax commissioner deems most convenient and economical. All taxes and penalties collected under the provisions of this section shall be paid into the state treasury and treated as other taxes collected under this article.

Sec. 21. Issuance of Warrant to Sheriff by 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 tax commissioner may issue a warrant directed to the sheriff of any county of the state commanding 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 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 preferred claim against all of the assets of
the dealer, real and personal, with priority over all taxes
except real property taxes and other recorded state tax
claims docketed according to law.

Sec. 22. Revocation or Suspension of License.—The
commissioner shall have the right to revoke or suspend
any license issued under the provisions of this article and
any tobacco license issued under article twelve of this
chapter for violation by the licensee of the provisions of
this article, or of the provisions of article eighteen of this
chapter, or of the provisions of any other statute regu-
lating the business of a wholesale dealer in cigarettes or
of a retail dealer in cigarettes.

Sec. 23. Notice of Revocation or Suspension of License;
Hearing; Appeal.—No such revocation or suspension shall
be made by the commissioner unless and until a hearing
shall have been held after ten days' notice to the licensee
of the time and place of such hearing, which notice shall
contain a statement or specification of the charges,
grounds or reason for such proposed action, and which
shall be served upon the licensee as other notices or by
registered mail to the licensee at his last known address;
at the time and place designated in the notice the licensee
shall have the right to appear and produce evidence in
his behalf and to be represented by counsel. The com-
missioner shall have authority to subpoena witnesses,
whose fees shall be the same as those in similar hearings
in the courts and which shall be treated as part of the
expenses of administration and enforcement.
The hearing shall be conducted by the commissioner or
by an examiner designated by him, and shall be held in
the commissioner's office or at such other place upon
which the parties may agree. The commissioner's de-
cision shall be rendered within thirty days after the
hearing.
If at the request of the licensee, or on his motion, the hearing shall be continued and shall not take place on the day fixed by the commissioner, then such licensee's license shall be suspended until the decision of the commissioner.

In the event of revocation or suspension of such license, the licensee shall not be permitted to exercise such license pending an appeal as provided in this article.

The action of the commissioner in revoking or suspending a license shall be subject to review upon certiorari by the circuit court of Kanawha county or by the circuit court of the county in which the licensee resides, when such licensee shall be aggrieved by such revocation or suspension. Petition for review upon certiorari shall be filed with such court within thirty days from the date of revocation or suspension by the commissioner, and the granting of certiorari shall be within the sound discretion of the court. The licensee shall pay the costs and fees incident to transcribing, certifying and transmitting the records to the circuit court.

If aggrieved by the final order of the circuit court,
either the commissioner or the licensee may file a petition
in the supreme court of appeals of West Virginia for a
writ of error, but such petition shall be filed within thirty
days from the date of such final order of the circuit court.

Sec. 24. Amounts Allowed for Administration.—The
state tax commissioner, in the administration and enforce-
ment 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 com-
missioner 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 provided by
law.

Sec. 25. No Cigarette Tax by Municipalities or Other
Governmental Subdivisions.—No municipality or govern-
mental subdivision shall levy any excise or other tax re-
quiring cigarettes to be stamped, or requiring licenses for sale thereof other than licenses which may be imposed as a result of licenses provided for in article twelve of this chapter.

Sec. 26. Expiration and Renewal of License.—The license required to be issued pursuant to this article shall expire on the thirtieth day of June of each year. On or before the first day of July of each year, every person having a license shall apply to the state tax commissioner for a renewal for the year next ensuing, unless such person has ceased to operate or does not propose to continue operation during the year next ensuing, in which event he shall notify the state tax commissioner that he has ceased operation or that he proposes to cease operation prior to the first day of July of the year next ensuing. All applications for renewal shall be made on the forms prescribed by the state tax commissioner.

Sec. 27. Transportation of Unstamped Cigarettes; Unstamped Cigarettes in Vending Machine; Forfeitures and Sales of Cigarettes and Equipment.—Every person who shall transport cigarettes not stamped as required by this
article upon the public highways, waterways, roads or streets of this state shall have in his actual possession invoices or delivery tickets for such cigarettes which shall show the true name and complete and exact address of the consignor or seller, the true name and complete and exact address of the consignee, or purchaser, the quantity and brands of the cigarettes transported and the true name and complete and exact address of the person who has or shall assume payment of the West Virginia state tax, or the tax, if any, of the state or foreign country at the point of ultimate destination: Provided, That any common carrier which has issued a bill of lading for a shipment of cigarettes and is without notice to itself or to any of its agents or employees that said cigarettes are not stamped as required by this act shall be deemed to have complied with this act and the vehicle or vessel in which said cigarettes are being transported shall not be subject to confiscation hereunder. In the absence of such invoices, delivery tickets or bills of lading, as the case may be, the cigarettes so transported, the vehicle or vessel in which the cigarettes are being transported and any paraphernalia or
26 devices used in connection with the unstamped cigarettes,
27 are declared to be contraband goods and may be seized by
28 the commissioner, his agents or employees or by any peace
29 officer of the state when directed by the commissioner,
30 his agents or employees so to do without a warrant.
31 The commissioner shall immediately thereafter insti-
32 tute a proceeding for the confiscation thereof in the
33 circuit court of the county in which the seizure is
34 made. The court may proceed in a summary man-
35 ner and may direct confiscation to the commissioner:
36 Provided, however, That anything to the contrary not-
37 withstanding that any person claiming to be the holder
38 of a mortgage, conditional sales contract or other security
39 interest in any vehicle or vessel, the disposition of which
40 is provided for above, may present his petition so alleging
41 and be heard, and in the event it appears to the court
42 that the property was unlawfully used by a person other
43 than such claimant, and if the said claimant acquired his
44 security interest in good faith and without knowledge
45 that the vehicle or vessel was going to be so used; the
46 court shall either waive forfeiture in favor of such
claimant and order the vehicle or vessel returned or de-
levered to such claimant or if it is found that the value
thereof exceeds the amount of the claim, the court shall
order payment of the amount of the claim out of the
proceeds of the sale.
If unstamped cigarettes be found in any vending
machine, both the cigarettes and the vending machine
shall be contraband goods and may be seized by the com-
missioner, his agents or employees or by any peace
officer of the state at the direction of the commissioner,
his agents or employees, without a warrant.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the House.

Takes effect July 1, 1963.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within approved this the 16th day of March, 1963.

Governor