

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1963

ENROLLED

HOUSE BILL No. 547

(By Mr. Nuzum)

PASSED March 8 1963

In Effect July 1, 1963 Passage



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JOE F. BURDETT
SECRETARY OF STATE

547

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(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nine hundred thirty-one, as amended, be amended and reenacted; and that section four-a of said article seventeen be repealed; and that said article seventeen be further amended by adding thereto five new sections, designated sections twenty-three, twenty-four, twenty-five, twenty-six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

10 purchases from the manufacturer and who acquires such
11 cigarettes solely for the purpose of bona fide resale to
12 retail dealers or to other persons for the purposes of re-
13 sale only; or (3) services retail outlets by the mainte-
14 nance of an established place of business for the pur-
15 chase of cigarettes, including but not limited to, the
16 maintenance of warehousing facilities for the storage and
17 distribution of cigarettes. Nothing contained herein
18 shall prevent a person from qualifying in different
19 capacities as both a "wholesaler" and "retailer" under the
20 applicable provisions of this article.

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

25 (d) "Vending machine operator" is any person oper-
26 ating one or more cigarette vending machines.

27 (e) "Sale" includes exchange, barter, gift, offer for
28 sale or distribution.

29 (f) "Cigarette" includes any roll for smoking made
30 wholly or in any part of tobacco irrespective of size or

31 shape and whether or not such tobacco is flavored, adul-
32 terated or mixed with any other ingredient, the wrapper
33 or cover of which is made of paper or any other material
34 excepting tobacco.

35 (g) "Package" means the individual package, box or
36 other container in or from which retail sales of cigarettes
37 are normally made or intended to be made.

38 (h) "Stamp" shall mean any cigarette stamps required
39 under this article, or any meter or ink impression author-
40 ized by the tax commissioner to serve as such stamp.

41 (i) "Commissioner" means the state tax commissioner
42 and where the meaning of the context requires, all dep-
43 uties, and employees duly authorized by him.

Sec. 3. Money Received Paid into General Revenue

2 **Fund.**—All moneys received by the state tax commissioner
3 from the excise tax on sales of cigarettes under this article,
4 less deductions therefrom allowed for the cost of admin-
5 istration and operation, and refunds provided in section
6 eleven hereunder, shall be paid into the general revenue
7 fund of the state and expended therefrom in satisfaction
8 of appropriations.

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

2 **celled; Violations.**—The tax hereby imposed shall be paid
3 by the purchase of stamps as provided in this article. A
4 stamp or stamps shall be affixed to or printed on each
5 package of an aggregate denomination of not less than
6 the amount of the tax upon the contents thereof. The
7 stamp or stamps, so affixed shall be prima facie evidence
8 of payment of the tax imposed by this article. Except as
9 may be otherwise provided in the rules and regulations
10 prescribed by the commissioner under authority of this
11 article, and unless such stamps have been previously af-
12 fixed, they shall be so affixed by each wholesale dealer in
13 this state, and cancelled, by writing across the face thereof
14 the name of such wholesale dealer and the date of cancel-
15 lation, or cancelled by methods prescribed by the tax
16 commissioner, prior to the delivery of any cigarettes to
17 any retail dealer in this state.

18 Each retail dealer, authorized to deal in unstamped cig-
19 arettes, who receives, brings or causes to be brought into
20 this state unstamped cigarettes, shall immediately upon
21 receipt of such unstamped cigarettes at his place of busi-

22 ness, so affix such stamp to each package and shall cancel
23 the same by writing or stamping his name and the date
24 of cancellation across the face thereof, or as otherwise di-
25 rected by regulation of the commissioner, or shall immedi-
26 ately mark in ink on each unopened box, carton or
27 other container of such cigarettes the word "Received"
28 and the month, day and hour of such receipt and shall af-
29 fix his signature thereto or as otherwise directed by reg-
30 ulation of the commissioner. He shall in any event open
31 such box, carton or other container and so affix such
32 stamps to each package therein, and cancel the same in
33 the manner herein designated, within twenty-four hours
34 after such receipt and prior to the sale of such cigarettes
35 to any other person.

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

Sec. 5. Ultimate Liability for Tax.—Any person who
2 advances or pays the tax imposed by this article through
3 the purchase of such stamps shall add the amount of the
4 tax so advanced or paid to the price of the cigarettes when
5 sold by such person, it being intended that the ultimate
6 incidence of and the liability for the tax shall be upon the
7 ultimate consumer or user.

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

10 Each wholesale and retail dealer in this state shall pro-
11 cure and retain as a part of his records, invoices showing
12 the amount and value of each shipment of cigarettes re-
13 ceived by him, the date thereof and the name of the ship-
14 per and shall retain the same for a period of two years

15 subject to the use and inspection of the commissioner.
16 The commissioner, in his discretion, may require reports
17 from all dealers pertaining to the sale of cigarettes.
18 In each case in which cigarettes are shipped into the
19 state of West Virginia by common carrier, such common
20 carrier transporting any shipment thereof shall file with
21 the commissioner a copy of the freight bill within ten days
22 after delivery in this state of each shipment when re-
23 quested so to do by the tax commissioner.

Sec. 7. Tobacco License Required.—No person shall
2 engage in the business of selling cigarettes at retail within
3 this state without having first secured an annual cigarette
4 retail dealers license, which shall be issued by the state
5 tax commissioner without charge. Cigarette retail dealers
6 license will be subject to suspension or revocation for vio-
7 lation of any laws or rules and regulations pertaining to
8 the sale, possession, use or storage of cigarettes. Common
9 carriers maintaining or operating equipment or facilities
10 upon which cigarettes are sold shall comply with the re-
11 quirements of this article with respect to the imposition
12 of cigarette tax and affixing stamps to packages in which
13 the same are sold in the state of West Virginia.

Sec. 8. Cigarette Vending Machine Operators.—A

2 cigarette vending machine operator is any person opera-
3 ting one or more cigarette vending machines. For the pur-
4 poses of this article, a vending machine operator will be
5 considered as a retail dealer. Cigarette vending machines
6 are licensed under the general license law.

Sec. 9. Wholesale Dealers.—No wholesale dealer shall

2 sell cigarettes to any person in this state other than to a
3 licensed wholesaler or retail dealer, and no person in this
4 state other than a licensed wholesale dealer shall sell
5 cigarettes to a licensed retail dealer.

Sec. 10. Power of Tax Commissioner; Rules and Regu-

2 lations; Records by Wholesalers and Retailers; Metering
3 in Lieu of Stamping; Agents for Metering; Levy to Collect
4 Tax.—The tax commissioner shall have power and author-
5 ity to enforce and administer the provisions of this ar-
6 ticle. The tax commissioner shall have authority to pro-
7 mulgate in accordance with the provisions of this article
8 such rules and regulations as he may deem necessary to
9 carry out its provisions, and may adopt different detailed
10 regulations applicable to diverse methods and conditions

11 of sale of cigarettes in this state, prescribing in each class
12 of cases upon whom, as between the wholesale dealer and
13 the retail dealer, the primary duty of affixing stamps shall
14 rest and the manner in which the stamps are to be af-
15 fixed. Each licensed dealer shall be furnished a copy of
16 such regulations upon request. Any such rule or regula-
17 tion so furnished, excusing a wholesale dealer from affix-
18 ing stamps under the circumstances of the particular case,
19 shall be a defense in the prosecution of such dealer for
20 violation of section seventeen of this article.

21 All books, papers, invoices and records of any wholesale
22 or retail dealer in this state, whether or not required un-
23 der the provisions of this article to be kept by him, show-
24 ing his sales, receipts and purchases of cigarettes, shall at
25 all times, during the usual business hours of the day, be
26 open for the inspection of the tax commissioner, or his
27 authorized agent, for such purposes; and the tax commis-
28 sioner or a deputy shall have power to investigate and
29 examine the stock of cigarettes in and upon the premises
30 where the same are placed, stored, or sold, for the purpose
31 of determining whether or not the provisions of this ar-
32 ticle are being obeyed.

33 The tax commissioner, if he shall determine that it is
34 practicable to stamp packages of cigarettes by impression
35 by means of a metering device, shall provide that such
36 metering device and its impression may be used in lieu of
37 the stamps otherwise required by law. The tax commis-
38 sioner may authorize any wholesale or retail dealer pur-
39 chasing unstamped cigarettes and holding the licenses
40 herein required, to use any metering device approved by
41 the commissioner, such device to be sealed by the com-
42 missioner or a deputy, or agent, authorized by the com-
43 missioner, before being used, and which device shall be
44 used only in accordance with the regulations prescribed
45 by the commissioner.

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

52 Wholesale and retail dealers licensed to use said device
53 shall make a monthly return to the commissioner and re-

54 mit monthly the amounts of tax due the state: *Provided,*
55 *however,* That a wholesale or retail dealer may elect to
56 pay the tax in advance where a metering device is used,
57 in which event such dealer shall deliver the metering de-
58 vice to the commissioner, or his agent authorized for the
59 purpose, who shall seal the meter in accordance with the
60 prepayment so made. The commissioner may designate
61 and authorize any bank or trust company with banking
62 offices in any county of this state, to act as his deputy or
63 agent for the purpose of performing his duties with re-
64 spect to sealing of metering devices or the selling of
65 stamps in such county, and may require bond, and the
66 action of any such deputy by its duly authorized officer
67 or employees shall be as valid as though performed by
68 the commissioner.

69 The commissioner shall have power to make an assess-
70 ment, against any retail or wholesale dealer who fails to
71 return or makes a false or erroneous return. The commis-
72 sioner may collect such assessment by levy, action at law,
73 distraint or any other method of enforcing taxes which

74 may be provided by law and shall have the right to file
75 liens therefor in any county.

Sec. 11. 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 cigarettes.
6 In the preparing of said stamp or stamps the same shall
7 have printed or impressed thereon the words “State of
8 West Virginia—Cigarette Tax Stamp” and such other
9 words and figures as he may deem proper to show the
10 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
13 metering device. The state tax commissioner shall col-
14 lect the 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
17 to 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 wholesale

20 or retail dealers in this state, or to wholesalers outside
21 of this state such stamps at a discount of four per cent
22 of the face value of such stamps, the same to be allowed
23 as a commission for affixing and cancelling such stamps;
24 and excepting further that the tax commissioner may,
25 by like regulation so certified, authorize the delivery
26 of stamps to wholesale or retail dealers in this state, or
27 to wholesale dealers outside of this state on credit, allow-
28 ing the same discount as when sold for cash, if when the
29 purchaser shall file with the tax commissioner a bond
30 made payable to the state of West Virginia, in such
31 form and amount as the commissioner shall prescribe,
32 and with surety or sureties to the satisfaction of the
33 commissioner, conditioned as he may require, to guar-
34 antee payment within thirty days for stamps so de-
35 livered within such period of time and by making of
36 such reports and settlement as the commissioner may
37 require. The commissioner may, by further regulations,
38 provide for cancelling, renewing or increasing such bond
39 or for the substitution of the surety thereon. The com-
40 missioner shall redeem any unused or mutilated, but

41 identifiable stamps, that any licensed wholesale dealer
42 or retail dealer may present for redemption, on written
43 verified requests made by the purchaser, his administra-
44 tors, executors, successors, or assigns, and refund there-
45 for, ninety-five per cent of the face value of said stamps,
46 less any discounts allowed on the purchase of said stamps.
47 The commissioner shall pay on a like basis for stamps
48 destroyed by fire or flood upon presentation of proof of
49 such loss satisfactory to him. Such payments shall for
50 the purposes hereof be deemed to be refunds of taxes
51 improperly collected and shall be allowed and paid as
52 part of the cost of administration of this article as in
53 this article provided.

Sec. 12. Sales by Deputies; Fees; Reports of Deputies.

2 —The tax commissioner may appoint, subject to such
3 conditions as he shall deem to the best interests of the
4 state, any bank or trust company authorized to do busi-
5 ness, in and doing business in this state, as his deputy
6 for the purpose of selling such stamps, excepting that no
7 such deputy shall be thereby authorized to sell the same
8 at a discount or on credit, without prior written author-

9 ity by the tax commissioner and excepting, further, that
10 provisions hereof relating to sale of stamps shall not
11 prevent any bank or trust company from acting as the
12 commissioner's deputy for purposes of checking and seal-
13 ing meters under other provisions of this article. The
14 tax commissioner is hereby authorized to allow such
15 deputy, authorized to sell stamps hereunder, a fee of
16 one-eighth of one percent of the face value of all stamps
17 sold by such deputy and charge the same as a part of
18 the costs of administration of this article. The state tax
19 commissioner shall be responsible for the delivery of
20 stamps to any deputy so appointed, and may prescribe
21 such regulations and forms of receipts and reports as he
22 may deem necessary and advisable for the transaction of
23 the business of selling such stamps. Each such deputy
24 shall remit monthly or oftener as requested, to the tax
25 commissioner all moneys arising from the sale of such
26 stamps by him, together with a report showing the names
27 of the purchasers and the number of each denomination
28 and the aggregate face value sold by each such deputy.
29 The tax commissioner may sell stamps at his office.

Sec. 13. Possession of Unstamped Cigarettes; Failure to

2 Produce Invoices; Penalty.—Whoever, being a retail
3 dealer in this state has in his possession packages of
4 cigarettes not bearing the stamps herein required to be
5 affixed thereto, unless such packages shall be in un-
6 broken containers marked, pursuant to section four of
7 this article, as received within the preceding twenty-four
8 hours, or, whoever fails to produce on demand by the
9 commissioner invoices of all cigarettes purchased or re-
10 ceived by him within two years prior to such demand,
11 unless upon satisfactory proof it is shown that such
12 nonproduction is due to providential or other causes be-
13 yond his control, shall be guilty of a misdemeanor and
14 upon conviction thereof shall be fined not less than
15 twenty-five dollars nor more than five hundred dollars,
16 or imprisoned in the county jail not more than ninety
17 days, or both in the discretion of the court.

Sec. 14. False Records; Penalties.—Whoever makes any

2 false entry upon an invoice, package or container of
3 cigarettes required to be made under the provisions of
4 this article, or with intent to evade the tax imposed by

5 this article, presents any such false entry for the in-
6 spection of the commissioner, shall be guilty of a mis-
7 demeanor and upon conviction thereof shall be fined not
8 less than twenty-five dollars nor more than five hundred
9 dollars, or imprisoned in the county jail not more than
10 ninety days, or both in the discretion of the court.

Sec. 15. Preventing Inspections; Penalties.—Whoever
2 prevents or hinders the commissioner or his deputy from
3 making a full inspection of any place where cigarettes
4 subject to the tax imposed by this state are sold or
5 stored, or prevents or hinders the full inspection of in-
6 voices, books, records, or papers required to be kept
7 under the provisions of this article, shall be guilty of a
8 misdemeanor and upon conviction thereof shall be fined
9 not less than twenty-five dollars nor more than five
10 hundred dollars, or imprisoned in the county jail not
11 more than ninety days, or both in the discretion of the
12 court.

Sec. 16. Sales or Possession Without Affixing
2 **Stamps; Penalties.**—Whoever sells cigarettes in this state
3 without there having been first affixed to each individual

4 package thereof the stamp or stamps required to be
5 affixed thereto by this article, shall be guilty of a mis-
6 demeanor and upon conviction thereof shall be fined not
7 less than twenty-five dollars nor more than five hundred
8 dollars, or imprisoned in the county jail not more than
9 ninety days, or both in the discretion of the court.

10 If a person, firm or corporation, who is not a regularly
11 licensed dealer in tobacco products, as provided by this
12 article, shall have in his possession within the state more
13 than ten packages of cigarettes not bearing cigarette tax
14 paid indicia of this state, such possession shall be pre-
15 sumed to be for the purpose of evading the payment of
16 the taxes due thereon and shall be subject to the pen-
17 alties as outlined in this section.

Sec. 17. Altering or Counterfeiting Stamps; Penalties.

2 —Whoever falsely or fraudulently makes, forges, alters,
3 or counterfeits any stamp prescribed by the commissioner
4 under the provisions of this article, or causes or procures
5 to be falsely or fraudulently made, forged, altered or
6 counterfeited any such stamps or knowingly or wilfully
7 utters, publishes, passes or tenders as true, any such

8 false, altered, forged or counterfeited stamps, or uses
9 more than once any stamp provided for and required by
10 this article for the purpose of evading the tax hereby
11 imposed shall be guilty of a felony and upon conviction
12 thereof shall be imprisoned in the penitentiary for a
13 term of not less than one year nor more than five years.

Sec. 18. Penalties.—Whoever violates any of the pro-
2 visions of this article or any lawful rule or regulation
3 promulgated by the commissioner under authority of this
4 article for the violation of which no penalty is provided
5 by law, shall be guilty of a misdemeanor and upon con-
6 viction thereof shall be fined not less than twenty-five
7 dollars nor more than one hundred dollars, or imprisoned
8 in the county jail not more than ninety days, or both in
9 the discretion of the court.

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

Sec. 20. Seizure and Sale of Cigarettes by Commis-
2 **sioner; Forfeiture; Collection of Tax.**—Whenever the com-

3 missioner or any of his deputies or employees authorized
4 by him for the purpose shall discover any cigarettes,
5 subject to tax as provided by this article and upon which
6 the tax has not been paid as herein required, the commis-
7 sioner, or such deputy or employee is hereby authorized
8 and empowered forthwith to seize and take possession
9 of such cigarettes which shall thereupon be deemed to be
10 forfeited to the state and the commissioner may within
11 a reasonable time thereafter by a notice posted upon the
12 premises where such seizure was made, or by publication
13 in some newspaper having circulation in the county
14 wherein such seizure is made, at least five days before
15 the day of sale, sell such forfeited cigarettes, and from
16 the proceeds of such sale shall collect the tax due thereon
17 together with a penalty of fifty per centum thereof and
18 all expenses and costs incurred in such proceedings, and
19 deduct and pay any other sums due the tax commissioner
20 by the person in possession of said forfeited cigarettes,
21 and pay the balance, if any to such possessor: *Provided,*
21 *however,* That such seizure and sale shall not be deemed
23 to relieve any person from fine or imprisonment, provided

24 herein for violation of any provision of this article.
25 Such sale may be made in any county the tax commis-
26 sioner deems most convenient and economical. All taxes
27 and penalties collected under the provisions of this sec-
28 tion shall be paid into the state treasury and treated as
29 other taxes collected under this article.

Sec. 21. Issuance of Warrant to Sheriff by Commis-
2 **sioner; Priority of Tax.**—In addition to all other remedies
3 for the collection of any taxes or fees due under the
4 provisions of law, the tax commissioner may issue a
5 warrant directed to the sheriff of any county of the
6 state commanding said sheriff to levy upon and sell the
7 goods and chattels of such dealer, without exemption,
8 found within his jurisdiction, for the payment of the
9 amount of such delinquency with the added penalties
10 and interest and the cost of executing the warrant and
11 to return such warrant to the tax commissioner and to pay
12 him the money collected by virtue thereof within the
13 time to be therein specified which shall not be less than
14 twenty nor more than sixty days from the date of the
15 warrant. The sheriff to whom any such warrant shall

16 be directed shall proceed upon the same in all respects
17 and with like effect and in the same manner as prescribed
18 by law in respect to executions issued against goods and
19 chattels upon judgments by a court of record, and shall be
20 entitled to the same fees for his services in executing the
21 warrant to be collected in the same manner.

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

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

**Sec. 23. Notice of Revocation or Suspension of License;
2 Hearing; Appeal.**—No such revocation or suspension shall

3 be made by the commissioner unless and until a hearing
4 shall have been held after ten days' notice to the licensee
5 of the time and place of such hearing, which notice shall
6 contain a statement or specification of the charges,
7 grounds or reason for such proposed action, and which
8 shall be served upon the licensee as other notices or by
9 registered mail to the licensee at his last known address;
10 at the time and place designated in the notice the licensee
11 shall have the right to appear and produce evidence in
12 his behalf and to be represented by counsel. The com-
13 missioner shall have authority to subpoena witnesses,
14 whose fees shall be the same as those in similar hearings
15 in the courts and which shall be treated as part of the
16 expenses of administration and enforcement.

17 The hearing shall be conducted by the commissioner or
18 by an examiner designated by him, and shall be held in
19 the commissioner's office or at such other place upon
20 which the parties may agree. The commissioner's de-
21 cision shall be rendered within thirty days after the
22 hearing.

23 If at the request of the licensee, or on his motion, the
24 hearing shall be continued and shall not take place on the
25 day fixed by the commissioner, then such licensee's license
26 shall be suspended until the decision of the commis-
27 sioner.

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

31 The action of the commissioner in revoking or sus-
32 pending a license shall be subject to review upon certio-
33 rari by the circuit court of Kanawha county or by the
34 circuit court of the county in which the licensee resides,
35 when such licensee shall be aggrieved by such revoca-
36 tion or suspension. Petition for review upon certiorari
37 shall be filed with such court within thirty days from the
38 date of revocation or suspension by the commissioner,
39 and the granting of certiorari shall be within the sound
40 discretion of the court. The licensee shall pay the costs
41 and fees incident to transcribing, certifying and trans-
42 mitting the records to the circuit court.

43 If aggrieved by the final order of the circuit court,

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

Sec. 24. Amounts Allowed for Administration.—The
2 state tax commissioner, in the administration and enforce-
3 ment of this article, shall be allowed to expend out of the
4 taxes collected thereunder, or proceeds of sales of stamps,
5 a sum of not to exceed one and one-half per centum of the
6 tax collected or stamps sold, and in addition to said one
7 and one-half per centum all refunds allowed by this
8 article and discounts allowed and commissions paid to
9 deputies for the sales of stamps shall be charged as a
10 part of the expense of administration. The tax com-
11 missioner is authorized to draw his warrants for any
12 costs of administration authorized by this article upon
13 the proper officer of the state in the manner provided by
14 law.

Sec. 25. No Cigarette Tax by Municipalities or Other
2 **Governmental Subdivisions.**—No municipality or govern-
3 mental subdivision shall levy any excise or other tax re-

4 quiring cigarettes to be stamped, or requiring licenses for
5 sale thereof other than licenses which may be imposed as
6 a result of licenses provided for in article twelve of this
7 chapter.

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

Sec. 27. Transportation of Unstamped Cigarettes; Un-
2 **stamped Cigarettes in Vending Machine; Forfeitures and**
3 **Sales of Cigarettes and Equipment.**—Every person who
4 shall transport cigarettes not stamped as required by this

5 article upon the public highways, waterways, roads or
6 streets of this state shall have in his actual possession in-
7 voices or delivery tickets for such cigarettes which shall
8 show the true name and complete and exact address of the
9 consignor or seller, the true name and complete and exact
10 address of the consignee, or purchaser, the quantity and
11 brands of the cigarettes transported and the true name
12 and complete and exact address of the person who has or
13 shall assume payment of the West Virginia state tax, or
14 the tax, if any, of the state or foreign country at the point
15 of ultimate destination: *Provided*, That any common car-
16 rier which has issued a bill of lading for a shipment of
17 cigarettes and is without notice to itself or to any of its
18 agents or employees that said cigarettes are not stamped
19 as required by this act shall be deemed to have complied
20 with this act and the vehicle or vessel in which said ciga-
21 rettes are being transported shall not be subject to confis-
22 cation hereunder. In the absence of such invoices, deliv-
23 ery tickets or bills of lading, as the case may be, the ciga-
24 rettes so transported, the vehicle or vessel in which the
25 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

47 claimant and order the vehicle or vessel returned or de-
48 livered to such claimant or if it is found that the value
49 thereof exceeds the amount of the claim, the court shall
50 order payment of the amount of the claim out of the
51 proceeds of the sale.

52 If unstamped cigarettes be found in any vending
53 machine, both the cigarettes and the vending machine
54 shall be contraband goods and may be seized by the com-
55 missioner, his agents or employees or by any peace
56 officer of the state at the direction of the commissioner,
57 his agents or employees, without a warrant.

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

O. Ray Parker

Chairman Senate Committee

Edel L. Crandall

Chairman House Committee

Originated in the House.

Takes effect *July 1, 1963* ~~passage~~.

Thomas Thyelee

Clerk of the Senate

C. A. Blankenship

Clerk of the House of Delegates

Howard W. Carson

President of the Senate

Julius W. Singleton Jr.

Speaker House of Delegates

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

W. W. Banton

Governor

