

# WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1967

## ENROLLED

SENATE BILL NO. 326

(By Mr. Carson, Mr. President)

PASSED March 11, 1967

In Effect July 1, 1967 ~~Passage~~

FILED IN THE OFFICE  
ROBERT D. BAILEY  
SECRETARY OF STATE  
THIS DATE 3-21-67

# 326

**ENROLLED**

**Senate Bill No. 326**

(By MR. CARSON, MR. PRESIDENT)

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[Passed March 11, 1967; in effect July 1, 1967.]

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

*Be it enacted by the Legislature of West Virginia:*

That sections one, four, five, six, seven, eight nine, ten, eleven, thirteen, fourteen, fifteen, sixteen, seventeen, eighteen, twenty-

six and twenty-seven, article seventeen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that said article seventeen be further amended by adding thereto seven new sections, designated sections seven-a, seven-b, nine-a, ten-a, ten-b, seventeen-a and twenty-eight, all to read as follows:

**ARTICLE 17. EXCISE TAX ON SALE OF CIGARETTES.**

**§11-17-1. Definitions.**

When used in this article the following words, terms and phrases and any variations thereof required by the context, shall be the meaning ascribed to them in this article, except where the context indicates a different meaning.

(a) "Person" shall mean and include any individual, firm, association, company, partnership, corporation, joint stock company, club, agency, syndicate, municipal corporation or other political subdivision of this state, trust, receiver, trustee, fiduciary or conservator.

(b) "Wholesaler" or "Wholesale Dealer" shall include any person who purchases unstamped cigarettes directly from the manufacturer.

14 (b-1) "Sub-Jobber" or "Sub-Jobber Dealer" shall in-  
15 clude any person who purchases stamped cigarettes from  
16 any other person who purchases from the manufacturer  
17 when such other person is located in any state which  
18 levies an excise tax on cigarettes and who purchases such  
19 cigarettes solely for the purpose of bona fide resale to  
20 retail dealers.

21 (c) "Retail Dealer" includes every person in this state,  
22 other than a wholesaler or sub-jobber, engaged in the  
23 selling of cigarettes at retail to a consumer or to any per-  
24 son for any purpose other than resale.

25 Nothing contained herein shall prevent a person from  
26 qualifying in different capacities as both a "wholesaler"  
27 and "retailer" under the applicable provisions of this  
28 article.

29 (d) "Vending Machine Operator" is any person oper-  
30 ating one or more cigarette vending machines.

31 (e) "Sale by Wholesaler or Retailer" shall mean and  
32 include any bona fide transfer of title to cigarettes by a  
33 wholesaler or retailer for a valuable consideration, made  
34 in the ordinary course of trade or in the usual conduct  
35 of the wholesaler's or retailer's business.

36 (f) "Cigarette" means:

37 1. Any roll of tobacco wrapped in paper or in sub-  
38 stance not containing tobacco, and

39 2. Any roll of tobacco wrapped in any substance  
40 containing tobacco which, because of its appearance, the  
41 type of tobacco used in the filler, or its packaging and  
42 labeling, is likely to be offered to, or purchased by, con-  
43 sumers as a cigarette described in paragraph (1).

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

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

50 (i) "Commissioner" means the state tax commissioner  
51 and where the meaning of the context requires, all depu-  
52 ties, and employees duly authorized by him.

53 (j) "Code" shall mean the code of West Virginia, one  
54 thousand nine hundred thirty-one, as amended.

55 (k) "Retail Sale" or "Sale at Retail" means a sale to a

56 consumer or to any person for any purpose other than re-  
57 sale.

58 (1) "Sale" means selling, exchange, transfer of title,  
59 barter, gift, offer for sale or distribution.

60 (m) "Consumer" means a person who receives or in  
61 any way comes into possession of cigarettes for the pur-  
62 pose of consuming them, giving them away or disposing  
63 of them in any way other than by sale, barter or exchange.

64 (n) "Rules and Regulations" mean those made and  
65 promulgated by the state tax commissioner.

66 (o) "Stamped Cigarettes" means that the stamp or  
67 impression as required by this article has been affixed to  
68 the bottom of the package of cigarettes.

69 (p) "Unstamped Cigarettes" means that no stamp or  
70 impression, as required by this article, has been affixed.

**§11-17-4. How tax paid; stamps; how affixed; violations.**

The tax hereby imposed shall be paid by the purchase  
2 of stamps as provided in this article. Payment for stamps  
3 purchased from the commissioner shall be made by cash,  
4 money order, bank draft, certified check or by non-certi-  
5 fied check. However, in the event a non-certified **check**

6 is returned unpaid by its bank, then the license of the  
7 maker of the check shall be, and without notice of hear-  
8 ing, and in the discretion of the commissioner, subject to  
9 suspension or revocation and such suspension or revoca-  
10 tion shall in no manner prevent action by the commis-  
11 sioner against the dealer's surety bonding company to  
12 recover moneys in the amount of the unpaid check.

13 A stamp as described in the cigarette rules and regu-  
14 lations shall be affixed to, or impressed upon each package  
15 of cigarettes of an aggregate value of not less than the  
16 amount of the tax upon the contents thereof. The stamp  
17 or impression, so affixed, shall be prima facie evidence of  
18 payment of the tax imposed by this article. Stamps or  
19 meter impressions shall be purchased from the commis-  
20 sioner by and paid for by properly licensed wholesalers.  
21 Except as may be otherwise provided in the rules and  
22 regulations prescribed by the commissioner under au-  
23 thority of this article, and unless such stamps have been  
24 previously affixed, they shall be so affixed by each whole-  
25 sale dealer who must be licensed by this state and prior  
26 to the sale or delivery of any cigarettes to any retail  
27 dealer or sub-jobber in this state.

28 Whenever any cigarettes are found in the place of  
29 business of any retail dealer or sub-jobber without the  
30 stamps so affixed, the prima facie presumption shall arise  
31 that such cigarettes are kept therein in violation of the  
32 provisions of this article.

**§11-17-5. Ultimate incidence for tax.**

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

**§11-17-6. Dealer's records.**

From and after the effective date hereof and at the time  
2 of delivering cigarettes to any person, each wholesale  
3 dealer and sub-jobber in this state shall make a true  
4 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  
9 of the tax commissioner.



10 Each wholesaler, sub-jobber and retail dealer in this  
11 state shall procure and retain as a part of his records,  
12 invoices showing the amount and value of each shipment  
13 of cigarettes received by him, the date thereof and the  
14 name of the shipper, and shall retain the same for a  
15 period of two years subject to the use and inspection of  
16 the commissioner. The commissioner, in his discretion,  
17 may require reports from all dealers pertaining to the  
18 sale of cigarettes.

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

**§11-17-7. Cigarette retail dealer's license required; suspension  
or revocation.**

No person shall engage in selling cigarettes at retail  
2 within this state without having first secured an annual  
3 cigarette retail dealer's license, which shall be issued by  
4 the state tax commissioner without charge. Cigarette

5 retail dealer's license will be subject to suspension or  
6 revocation, in the discretion of the commissioner, for vio-  
7 lation of any laws or for other good causes or rules and  
8 regulations of chapter eleven, article seventeen, of the  
9 code.

**§11-17-7a. Wholesaler's and sub-jobber's license required;  
suspension or revocation.**

No person shall engage in selling cigarettes as a whole-  
2 saler or sub-jobber without having first secured a whole-  
3 saler's or sub-jobber's license as required by article  
4 twelve of this chapter and having complied with the pro-  
5 visions of section seven-b of this article. Wholesaler's  
6 and sub-jobber's licenses will be subject to suspension or  
7 revocation, in the discretion of the commissioner, for vio-  
8 lation of any laws or for other good causes or rules and  
9 regulations of chapter eleven, article twelve or article  
10 seventeen, of the code.

**§11-17-7b. Conditions precedent to issuance of licenses; bond.**

Application for a wholesale cigarette dealer's license  
2 shall be accompanied by payment of the proper license  
3 fee together with a letter from at least three of the major

4 cigarette manufacturers indicating that they will sell to  
5 the applicant on a direct basis in the event a proper  
6 license is issued by this state. For the purpose of this  
7 section, major cigarette manufacturers will be those man-  
8 ufacturers who are among the six companies showing the  
9 largest taxable cigarette removals during the previous  
10 calendar year, as indicated by the records of the tobacco  
11 tax branch of the United States internal revenue service.  
12 This section shall not apply to applications for renewal  
13 of licenses provided the applicant is, at the time of apply-  
14 ing for renewal, purchasing from at least three of the  
15 major cigarette manufacturers.

16 Each application for a wholesale cigarette license shall  
17 have attached thereto a surety bond in such amount as  
18 the commissioner may designate, but in no event shall  
19 the bond be less than one thousand dollars nor more  
20 than ten thousand dollars, conditioned upon the payment  
21 of the tax due upon the cigarettes stamped by the whole-  
22 saler. This surety bond will not be required from per-  
23 sons who have filed a surety bond for the purpose of

24 purchasing stamps on credit as provided for in section  
25 eleven of this article.

26 Wholesale or sub-jobber's licenses shall be issued only  
27 to persons, except corporations, of good moral character,  
28 who are not less than twenty-one years of age. No whole-  
29 sale or sub-jobber's licenses shall be issued to any person  
30 who has been convicted within the past five years of any  
31 offense against the cigarette laws of this state or who has  
32 been convicted in this state, or any state of the United  
33 States, during the past five years of any offense designated  
34 as a felony by such state or the United States, or to a  
35 corporation, any of whose officers have been so convicted.  
36 The term "conviction" shall include the adjudication of  
37 guilt on a plea of nolo contendere, or the forfeiture of a  
38 bond when charged with a crime. The commissioner may  
39 refuse to issue any license provided for under this sec-  
40 tion to any person, firm or corporation whose license  
41 under the cigarette law has been suspended or revoked  
42 or to any corporation, an officer of which has had his  
43 cigarette license suspended or revoked, or to any person  
44 who is or has been an officer of a corporation whose cig-  
45 arette license has been suspended or revoked.

**§11-17-8. Cigarette vending machine operators; licenses.**

A cigarette vending machine operator is any person  
2 owning and operating one or more cigarette vending  
3 machines. Cigarette vending machine operators who pur-  
4 chase cigarettes directly from the manufacturer are re-  
5 quired to secure a wholesaler's license; however, for the  
6 purposes of this article, the sale of cigarettes through a  
7 vending machine will be construed as sales at retail and  
8 will subject the cigarette vending machine operator to  
9 the cigarette law and rules and regulations pertaining to  
10 cigarette retail dealers. Cigarette vending machines are  
11 licensed under the general license law, chapter eleven,  
12 article twelve, section three of the code.

**§11-17-9. Sales by licensed wholesale dealers; liability for tax;  
sale of unstamped cigarettes prohibited; penalties.**

No wholesale dealer shall sell cigarettes to any person  
2 in this state other than to another licensed wholesaler,  
3 licensed sub-jobber or licensed retail dealer and no per-  
4 son in this state other than a licensed wholesaler, or  
5 licensed sub-jobber, shall sell cigarettes to a licensed re-  
6 tail dealer. It shall be unlawful and a violation of this

7 article for any licensed retail cigarette dealer to purchase  
8 or acquire cigarettes from any person other than a li-  
9 censed wholesaler or licensed sub-jobber. The original  
10 wholesaler who purchases unstamped cigarettes from the  
11 manufacturer is liable for the excise tax and the affixing  
12 of the required stamps, and the sale of unstamped cig-  
13 arettes in this state is hereby expressly prohibited and  
14 any sale of unstamped cigarettes shall be a violation of  
15 this article and any person violating this section shall be  
16 guilty of a misdemeanor and, upon conviction thereof,  
17 shall be fined not less than five hundred dollars nor more  
18 than five thousand dollars, or imprisoned in the county  
19 jail for not more than six months, or both, in the discre-  
20 tion of the court.

§11-17-9a. **To operate as both wholesaler and retailer; separate  
places of business.**

No person in this state shall sell any cigarettes both as  
2 a wholesale dealer and a retail dealer at the same place  
3 of business. However, one person may operate as both a  
4 wholesale dealer and a retail dealer: *Provided*, That the  
5 two said operations are completely set apart by walls or

6 partitions, or an entirely different address, and the stocks  
7 of cigarettes are not intermingled and separate and com-  
8 plete records are maintained which may be inspected dur-  
9 ing regular business hours by agents of the commissioner.

§11-17-10. **Power of tax commissioner; rules and regulations;  
records by wholesalers, sub-jobbers and retailers;  
metering in lieu of stamping; agents for metering; levy  
to collect tax.**

The tax commissioner shall have power and authority  
2 to enforce and administer the provisions of this article.  
3 The tax commissioner shall have authority to promulgate  
4 in accordance with the provisions of this article such rules  
5 and regulations as he may deem necessary to carry out  
6 its provisions, and may adopt different detailed regula-  
7 tions applicable to diverse methods and conditions of sale  
8 of cigarettes in this state.

9 All books, papers, invoices and records of any whole-  
10 saler, sub-jobber or retail dealer in this state shall at all  
11 times, during the usual business hours of the day, be open  
12 for the inspection of the tax commissioner, or his au-  
13 thorized agent, for such purposes; and the tax commis-

14 sioner or a deputy shall have power to investigate the  
15 stock of cigarettes in and upon the premises where the  
16 same are placed, stored, or sold, for the purpose of de-  
17 termining compliance by the dealers with the provisions  
18 of this article.

19 The tax commissioner, if he shall determine that it is  
20 practicable to stamp packages of cigarettes by impression  
21 by means of a metering device, shall provide that such  
22 metering device and its impression may be used in lieu  
23 of the stamps otherwise required by law. The tax com-  
24 missioner may authorize any wholesaler purchasing un-  
25 stamped cigarettes and holding the licenses herein re-  
26 quired, to use any metering device approved by the com-  
27 missioner, such devices to be sealed by the commissioner  
28 or a deputy, or agent, authorized by the commissioner,  
29 before being used, which device shall be used only in  
30 accordance with the regulations prescribed by the com-  
31 missioner.

32 Any wholesaler authorized by the tax commissioner  
33 to affix stamps to packages of cigarettes by means of a  
34 metering device shall file with the tax commissioner a



35 bond in such amount as the tax commissioner may des-  
36 ignate, conditioned upon the payment of the tax upon  
37 the cigarettes so stamped.

38 Wholesalers licensed to use said device shall make a  
39 monthly return to the commissioner and remit monthly  
40 the amounts of tax due the state: *Provided, however,*  
41 That a wholesaler may elect to pay the tax in advance  
42 where a metering device is used, in which event such  
43 dealer shall deliver the metering device to the commis-  
44 sioner, or his agent authorized for the purpose, who shall  
45 seal the meter in accordance with the prepayment so  
46 made. The commissioner may designate and authorize  
47 any bank or trust company with banking offices in any  
48 county of this state, to act as his deputy or agent for the  
49 purpose of performing his duties with respect to sealing  
50 of metering devices or the selling of stamps in such  
51 county, and may require bond, and the action of any such  
52 deputy by its duly authorized officer or employees shall  
53 be as valid as though performed by the commissioner.

54 The commissioner shall have power to make an assess-  
55 ment, against any wholesaler who fails to return or makes

56 a false or erroneous return. The commissioner may col-  
57 lect such assessment by levy, action at law, distraint, or  
58 any other method of enforcing taxes which may be pro-  
59 vided by law and shall have the right to file liens there-  
60 for in any county.

**§11-17-10a. Jeopardy assessments.**

If the tax commissioner believes that the collection of  
2 any tax which he is required to administer will be  
3 jeopardized by delay, he shall thereupon make an assess-  
4 ment of the tax, noting that fact upon the assessment.  
5 The amount assessed shall be immediately due and pay-  
6 able. Unless the taxpayer against whom a jeopardy as-  
7 sessment is made petitions for reassessment within twenty  
8 days after service of notice of the jeopardy assessment,  
9 such an assessment becomes final.

10 A petition for reassessment by a person against whom  
11 a jeopardy assessment has been made must be accompa-  
12 nied by such security as the tax commissioner may deem  
13 necessary to insure compliance with this article.

**§11-17-10b. Notice of assessment; petition for reassessment;  
hearing.**

The tax commissioner shall give to the taxpayer writ-

2 ten notice of any assessment made pursuant to this ar-  
3 ticle. Unless the taxpayer to whom a notice of assess-  
4 ment is directed, shall, within thirty days after service  
5 thereof (except in the case of jeopardy assessments),  
6 either personally or by certified mail, file with the tax  
7 commissioner a petition in writing, verified under oath  
8 by said taxpayer or his duly authorized agent, having  
9 knowledge of the facts, setting forth with definiteness and  
10 particularity the items of the assessment objected to, to-  
11 gether with the reason for such objections, said assess-  
12 ments shall become and be deemed conclusive and the  
13 amount thereof shall be payable at the end of the thirty-  
14 day period. In every case where a petition for reassess-  
15 ment as above described is filed, the tax commissioner  
16 shall assign a time and place for the hearing of same and  
17 shall notify the petitioner of such hearing by written  
18 notice at least twenty days in advance thereof and such  
19 hearing shall be held within sixty days from the filing  
20 of the petition for reassessment unless continued by  
21 agreement or by the tax commissioner for good cause.  
22 The hearing shall be informal and may be conducted by

23 an examiner designated by the tax commissioner. At  
24 such hearing evidence may be offered to support the as-  
25 sessment or to prove that it is incorrect. After such hear-  
26 ing the tax commissioner shall, within a reasonable time,  
27 give notice in writing of the decision. Unless an appeal  
28 is taken within thirty days from service of this notice,  
29 the tax commissioner's decision shall be final.

**§11-17-11. Form of stamps; custody; discounts; security for  
payments.**

The commissioner shall design and procure stamps to  
2 be used as herein provided for, affixed and attached to  
3 containers, packages or receptacle of whatever kind that  
4 may be used for containing cigarettes. In the preparing  
5 of said stamp or stamps the same shall have printed or  
6 impressed thereon the words "State of West Virginia—  
7 Cigarette Tax Stamp" and such other words and figures  
8 as he may deem proper to show the value and denomina-  
9 tion of the stamp or stamps. He shall also prescribe the  
10 form of impression to be placed upon any package or con-  
11 tainer of cigarettes by any metering device. The state tax

12 commissioner shall collect the taxes provided for by this  
13 article.

14 Such stamps shall be kept in the custody of the state  
15 tax commissioner or such deputies as he may designate to  
16 sell the same. Such stamps shall be sold and accounted for  
17 at the face value thereof except that the tax commissioner  
18 may authorize sale thereof, or sell to wholesalers in this  
19 state, or to wholesalers outside of this state such stamps  
20 at a discount of four per cent of the face value of such  
21 stamps, the same to be allowed as a commission for affix-  
22 ing the stamps and prepaying the cigarette tax; and ex-  
23 cepting further that the tax commissioner may, by like  
24 regulation so certified, authorize the delivery of stamps to  
25 wholesalers in this state, or to wholesalers outside of this  
26 state on credit, allowing the same discount as when sold  
27 for cash, if and when the purchaser shall file with the tax  
28 commissioner a bond made payable to the state of West  
29 Virginia, in such form and amount as the commissioner  
30 shall prescribe, and with surety or sureties to the satis-  
31 faction of the commissioner, conditioned as he may re-  
32 quire, to guarantee payment within thirty days for stamps

33 so delivered within such period of time and by making  
34 of such reports and settlement as the commissioner may  
35 require. The commissioner may, by further regulations,  
36 provide for cancelling, renewing or increasing such bond  
37 or for the substitution of the surety thereon. The com-  
38 missioner shall redeem any unused or mutilated, but iden-  
39 tifiable, stamps, that any licensed wholesaler or retail  
40 dealer may present for redemption, on written verified  
41 requests made by the purchaser, his administrators, ex-  
42 ecutors, successors, or assigns, and refund therefor, ninety-  
43 five per cent of the face value of said stamps, less any  
44 discounts allowed on the purchase of said stamps. The  
45 commissioner shall pay on a like basis for stamps de-  
46 stroyed by fire or flood upon presentation of proof of such  
47 loss satisfactory to him. Such payments shall for the pur-  
48 poses hereof be deemed to be refunds of taxes improperly  
49 collected and shall be allowed and paid as part of the cost  
50 of administration of this article as in this article provided.

**§11-17-13. Possession of unstamped cigarettes; failure to pro-  
duce invoices; penalty.**

Whoever, being a retail dealer in this state, has in his

2 possession packages of cigarettes not bearing the stamps  
3 herein required to be affixed thereto or, whoever fails to  
4 produce on demand by the commissioner invoices of all  
5 cigarettes purchased or received by him within two years  
6 prior to such demand, unless upon satisfactory proof it is  
7 shown that such nonproduction is due to providential or  
8 other causes beyond his control, shall be guilty of a mis-  
9 demeanor, and, upon conviction thereof, shall be fined not  
10 less than one hundred dollars nor more than one thousand  
11 dollars, or imprisoned in the county jail not more than  
12 ninety days, or both, in the discretion of the court.

13 If unstamped cigarettes be found in any vending ma-  
14 chine, both the cigarettes and the vending machine shall  
15 be contraband goods and may be seized by the commis-  
16 sioner, his agents or employees or by any peace officer of  
17 the state at the discretion of the commissioner, his agents  
18 or employees, without a warrant.

19 Cigarettes and vending machines seized under this sec-  
20 tion shall be forthwith sold in the manner provided by law  
21 for the sale of personal property for taxes and such sale  
22 shall not relieve the owner of the sold personal property

23 of any action by the commissioner for violations of any  
24 sections of this article.

**§11-17-14. False records; penalties.**

Whoever makes any false entry upon an invoice, pack-  
2 age or container of cigarettes required to be made under  
3 the provisions of this article, or with intent to evade the  
4 tax imposed by this article, presents any such false entry  
5 for the inspection of the commissioner, shall be guilty of  
6 a misdemeanor, and, upon conviction thereof, shall be  
7 fined not less than one hundred dollars nor more than  
8 one thousand dollars, or imprisoned in the county jail not  
9 more than ninety days, or both, in the discretion of the  
10 court.

**§11-17-15. Preventing inspections; penalties.**

Whoever prevents or hinders the commissioner or his  
2 deputy from making a full inspection of any place where  
3 cigarettes subject to the tax imposed by this state are sold  
4 or stored, or prevents or hinders the full inspection of in-  
5 voices, books, records, or papers required to be kept under  
6 the provisions of this article, shall be guilty of a misde-  
7 meanor, and, upon conviction thereof, shall be fined not



8 less than one hundred dollars nor more than one thousand  
9 dollars, or imprisoned in the county jail not more than  
10 ninety days, or both, in the discretion of the court.

**§11-17-16. Sales or possession without affixing stamps; penalties.**

Whoever sells cigarettes in this state without there hav-  
2 ing been first affixed to each individual package thereof  
3 the stamp or stamps required to be affixed thereto by this  
4 article, shall be guilty of a misdemeanor, and, upon con-  
5 viction thereof, shall be fined not less than two dollars and  
6 fifty cents per package of cigarettes or imprisoned in the  
7 county jail not more than ninety days, or both, in the  
8 discretion of the court.

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

**§11-17-17. Altering or counterfeiting stamps; penalties.**

Whoever falsely or fraudulently makes, forges, alters,  
2 or counterfeits any stamp prescribed by the commissioner  
3 under the provisions of this article and cigarette tax rules  
4 and regulations, and any person who knowingly and wil-  
5 fully makes, causes to be made, purchases, receives or has  
6 in his possession, any device for forging or counterfeiting  
7 any stamp, or uses more than once any stamp provided for  
8 and required by this article for the purpose of evading the  
9 tax hereby imposed, shall be guilty of a felony and, upon  
10 conviction thereof, shall be sentenced to pay a fine of not  
11 less than five thousand dollars nor more than ten thousand  
12 dollars and imprisoned in the penitentiary for a term of  
13 not less than one year nor more than five years. For the  
14 purpose of this section, the words "stamp provided for and  
15 required by this article" shall include a stamp or imprint  
16 made by a metering machine to evidence the payment of  
17 the excise tax on cigarettes as required by this article and  
18 the stamps and metering device as described in the West  
19 Virginia administrative regulations pertaining to the ex-  
20 cise tax on cigarettes.

**§11-17-17a. Enforcement; assistance of department of public safety.**

Any employee of the cigarette tax division so designated  
2 by the tax commissioner, shall have all the lawful powers  
3 delegated to members of the department of public safety  
4 to enforce the provisions of this article in any county or  
5 city of this state, and such employee shall, before entering  
6 upon the discharge of his duties, execute a bond with  
7 security in the sum of thirty-five hundred dollars, payable  
8 to the state of West Virginia, conditioned for the faithful  
9 performance of his duties as such, and such bond shall be  
10 approved as to form by the attorney general, and as to  
11 sufficiency by the board of public works, and the same  
12 shall be filed with the secretary of state and preserved in  
13 his office.

14 The state department of public safety is hereby author-  
15 ized and may be requested, to assist in the enforcement of  
16 the provisions of this article as directed by the tax com-  
17 missioner or his agents.

**§11-17-18. Penalties.**

Whoever violates any of the provisions of this article or  
2 any lawful rule or regulation promulgated by the com-

3 missioner under authority of this article for the violation  
4 of which no penalty is provided by law, shall be guilty of  
5 a misdemeanor, and, upon conviction thereof, shall be  
6 fined not less than one hundred dollars nor more than five  
7 hundred dollars, or imprisoned in the county jail not more  
8 than ninety days, or both, in the discretion of the court.

**§11-17-26. Expiration and renewal of license.**

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

13 Each new license issued prior to the first day of January  
14 of any year shall be charged for at the full rate and each

15 license issued on or after the first day of January shall be  
16 charged for at one half of the full rate, as prescribed in  
17 section six-a, article twelve, chapter eleven of the code.

**§11-17-27. Transportation of unstamped cigarettes; forfeitures  
and sales of cigarettes and equipment.**

Every person who shall transport cigarettes not stamped  
2 as required by this article upon the public highways,  
3 waterways, roads or streets of this state shall have in his  
4 actual possession invoices or delivery tickets for such ciga-  
5 rettes which shall show the true name and complete and  
6 exact address of the consignor or seller, the true name  
7 and complete and exact address of the consignee, or pur-  
8 chaser, the quantity and brands of the cigarettes trans-  
9 ported and the true name and complete and exact address  
10 of the person who has or shall assume payment of the  
11 West Virginia state tax, or the tax, if any, of the state or  
12 foreign country at the point of ultimate destination:  
13 *Provided*, That any common carrier which has issued a  
14 bill of lading for a shipment of cigarettes and is without  
15 notice to itself or to any of its agents or employees that  
16 said cigarettes are not stamped as required by this article

17 shall be deemed to have complied with this article and the  
18 vehicle or vessel in which said cigarettes are being trans-  
19 ported shall not be subject to confiscation hereunder. In  
20 the absence of such invoices, delivery tickets or bills of  
21 lading, as the case may be, the cigarettes so transported,  
22 the vehicle or vessel in which the cigarettes are being  
23 transported and any paraphernalia or devices used in con-  
24 nection with the unstamped cigarettes, are declared to be  
25 contraband goods and may be seized by the commissioner,  
26 his agents or employees or by any peace officer of the state  
27 when directed by the commissioner, his agents or em-  
28 ployees so to do without a warrant.

29 The person or persons transporting unstamped ciga-  
30 rettes in violation of this section shall be guilty of a mis-  
31 demeanor, and upon conviction thereof, shall be fined not  
32 less than three hundred dollars nor more than five thou-  
33 sand dollars, or imprisoned in the county jail not more  
34 than one year, or both, in the discretion of the court.

35 The commissioner shall immediately, after any seizure  
36 made pursuant to this section, institute a proceeding for  
37 the confiscation thereof in the circuit court of the county

38 in which the seizure is made. The court may proceed in a  
39 summary manner and may direct confiscation to the com-  
40 missioner: *Provided, however,* That anything to the con-  
41 trary notwithstanding that any person claiming to be the  
42 holder of a mortgage, conditional sales contract or other  
43 security interest in any vehicle or vessel, the disposition of  
44 which is provided for above, may present his petition so  
45 alleging and be heard, and in the event it appears to the  
46 court that the property was unlawfully used by a person  
47 other than such claimant, and if the said claimant acquired  
48 his security interest in good faith and without knowledge  
49 that the vehicle or vessel was going to be so used, the court  
50 shall either waive forfeiture in favor of such settlement  
51 and order the vehicle or vessel returned or delivered to  
52 such claimant or if it is found that the value thereof ex-  
53 ceeds the amount of the claim, the court shall order pay-  
54 ment of the amount of the claim out of the proceeds of the  
55 sale.

**§11-17-28. Separability of provisions of act.**

The various provisions of the several sections of article  
2 seventeen, contained in this act, shall be deemed to be

3 separable insofar as they or their meaning is not insepara-  
4 bly connected, and if any provisions of this act shall be  
5 held unconstitutional, such holding shall not affect any of  
6 the other provisions of this act not inseparably connected  
7 in meaning and effect with such part so held unconstitu-  
8 tional.



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

*William Tomper*  
Chairman Senate Committee

*Clayton C. Davidson*  
Chairman House Committee

Originated in the Senate.

To take effect July 1, 1967.

*Thomas H. ...*  
Clerk of the Senate

*W. Blankenship*  
Clerk of the House of Delegates

*Howard W. Carr*  
President of the Senate

*H. Laban White*  
Speaker House of Delegates

The within *approved* this the *21*  
day of *March*, 1967.

*Walter C. Smith*  
Governor

PRESENTED TO THE  
GOVERNOR

Date

3/21/67

Time

2:30pm