

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1967

ENROLLED

SENATE BILL NO. 324

(By Mr. Cason, Mr. Pendergast, and
Mr. McComb)

PASSED March 11, 1967

In Effect from Passage

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

#324

ENROLLED

Senate Bill No. 324

(By MR. CARSON, MR. PRESIDENT, and MR. McCOURT)

[Passed March 11, 1967; in effect from passage.]

AN ACT to repeal section six-b, article twelve, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, and to amend and reenact section six-a of article twelve, relating to cigarette licenses and to allocation of funds to be used for enforcement of cigarette sales act.

Be it enacted by the Legislature of West Virginia:

That section six-b, article twelve, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed, and that section six-a of article twelve, be amended and reenacted to read as follows:

ARTICLE 12. LICENSE TAXES.**§11-12-6a. Wholesale or sub-jobber dealers in cigarettes; definitions; licenses.**

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.

(b-1) "Sub-Jobber" or "Sub-Jobber Dealer" shall include any person who purchases stamped cigarettes from any other person who purchases from the manufacturer when such other person is located in any state which levies an excise tax on cigarettes and who purchases such

19 cigarettes solely for the purpose of bona fide resale to
20 retail dealers or to other wholesalers.

21 (c) "Retail Dealer" includes every person in this state,
22 other than a wholesaler, engaged in the selling of ciga-
23 rettes to a consumer or to any person for any purpose
24 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 Sub-Jobber" shall mean
32 and include any bona fide transfer of title to cigarettes
33 by a wholesaler or sub-jobber for a valuable considera-
34 tion, made in the ordinary course of trade or in the usual
35 conduct of the wholesaler's business.

36 (f) "Cigarette" means:

37 1. Any roll of tobacco wrapped in paper or in any
38 substance 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 au-
49 thorized by the tax commissioner to serve as such stamp.

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

55 (m) "Retail Sale" or "Sale at Retail" means a sale to a
56 consumer or to any person for any purpose other than
57 resale.

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

60 (o) "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
64 exchange.

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

67 (q) "Stamped Cigarettes" means that the stamp or im-
68 pression as required by article seventeen has been affixed
69 to the bottom of the package of cigarettes.

70 (r) "Unstamped Cigarettes" means that no stamp or
71 impression, as required by article seventeen, has been
72 affixed.

73 After the effective date of this section, no person shall
74 engage in, or conduct the business of purchasing, selling,
75 consigning or distributing cigarettes as defined herein,
76 in the state without having first obtained the appropriate
77 license for that purpose as prescribed in this section. The
78 annual license fee as a wholesaler or sub-jobber dealer
79 to sell cigarettes as defined herein shall be divided into
80 three classes as follows: (1) Class A—all dealers who

81 sell annually up to seven hundred fifty thousand pack-
82 ages of cigarettes, one hundred dollars; (2) Class B—all
83 dealers who sell annually from seven hundred fifty thou-
84 sand packages of cigarettes to one million five hundred
85 thousand packages, two hundred dollars; (3) Class C—all
86 dealers who sell annually more than one million five
87 hundred thousand packages of cigarettes, three hundred
88 fifty dollars, plus a fee of fifty cents for each license issued.

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

William Temples
Chairman Senate Committee

Clayton C. Davidson
Chairman House Committee

Originated in the Senate.

To take effect from passage.

William Temples
Clerk of the Senate

A. B. Blankenship
Clerk of the House of Delegates

Howard E. Caram
President of the Senate

H. Laban White
Speaker House of Delegates

The within approved this the 17
day of March, 1967.

Herbert C. Smith
Governor



**PRESENTED TO THE
GOVERNOR**

Date 3/12/67
Time 3:45 P.m.