WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1974

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ENROLLED

HOUSE BILL No. 708

(By Mr. Seibert)

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PASSED February 20, 1974

In Effect 90 days from Passage

C 641
AN ACT to amend and reenact sections twelve, seventeen, nineteen and twenty, article seventeen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to cigarette taxes; giving the tax commissioner the right to inspect stocks of cigarettes; requiring peace officers to assist the commissioner to enforce the articles changing the interest rate on unpaid taxes; allowing a meter impression to be affixed to individual packages; declaring cigarettes upon which the tax has not been paid to be contraband and forfeited to the state; adding airways to list of ways of transporting unstamped cigarettes under certain conditions; making illegal transportation of cigarettes a misdemeanor and providing penalties.

Be it enacted by the Legislature of West Virginia:

That sections twelve, seventeen, nineteen and twenty, article seventeen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 17. CIGARETTE TAX ACT.

§11-17-12. Reports required; due date; records to be kept; inspection of records and stocks; examination of witnesses, summons, etc.

1 On or before the fifteenth day of each month common carriers, wholesalers, subjobbers, retail dealers, and agents, or
vending machine operators shall, when required by this article, or the tax commissioner, file a report covering the business transacted in the previous month covering such information as the commissioner may deem necessary for the ascertainment or assessment of the tax imposed by this article; and shall be signed under penalty of perjury on such forms as the tax commissioner may prescribe and shall at this time remit any taxes owed or due, if any.

The reports imposed by this section shall be deemed as having been timely filed for the purpose of avoiding penalties only if the postmark date thereon is clearly within the said due date of the calendar month, or is received within such period. If the due date falls on a Saturday or Sunday, or a day which is a legal holiday in the state of West Virginia, filing will be considered timely if it is done on the next succeeding secular day which is not a legal holiday.

The reports prescribed herein are required although a tax might not be due, or no business transacted, for the period covered by the report.

Each person required to file a report under this article shall make and keep such records as shall be prescribed by the tax commissioner that are necessary to substantiate the returns required by this article including but not limited to, inventories, receipts, disbursements and sales, for a period of time not less than five years.

Unless otherwise permitted, in writing, by authority of the tax commissioner, each delivery ticket or invoice for each purchase or sale of cigarettes must be recorded upon a serially numbered invoice showing the name and address of the seller and the purchasers, point of delivery, the date, quantity, price of product, and the tax must be set out separate or the invoice must indicate whether or not the West Virginia cigarette excise tax is included in the total price and such other reasonable information as the tax commissioner may require. However, those invoicing requirements do not apply to cash sales, and a person making such sales must maintain such records as may be reasonably necessary to substantiate his return.

The tax commissioner or his deputy or agent authorized by him shall have authority to inspect or examine the stock of
cigarettes kept in and upon the premises of any person where cigarettes are placed, stored or sold and shall inspect or examine the records, books, papers and any equipment or records of manufacturers, cigarette stamping agents, wholesalers, sub-jobbers, retail dealers, common carriers, or any other person for the purpose of determining the quantity of cigarettes acquired or distributed to verify the truth and accuracy of any statement or report or to ascertain that the tax imposed by this article has been properly paid.

As a further means of obtaining the records, books and papers of a manufacturer, common carrier, wholesaler, sub-jobber, or retailer or any other person ascertaining the amount of taxes and reports due under this article the commissioner and his duly appointed agent, shall have the power to examine witnesses under oath; and if the witness shall fail or refuse at the request of the tax commissioner or his duly appointed agent to grant access to the books, records, or papers, the tax commissioner or such agent shall certify the facts and names to the circuit court of the county having jurisdiction of the party and such court shall thereupon issue summons to such party to appear before the tax commissioner or his agent, at a place designated within the jurisdiction of such court, on a day fixed, to be continued as the occasion may require for good cause shown and give such evidence and lay open for inspection such books and papers as may be required for the purpose of ascertaining the amount of tax and reports due, if any.

§11-17-17. Forms, rules and regulations; enforcement powers.

The tax commissioner is hereby invested with full power and authority and it is hereby made his duty to prescribe the necessary forms and to promulgate necessary and needful rules and regulations to ascertain, assess and collect the taxes imposed by this article and to enforce the provisions thereof.

Any employee or agent of the tax commissioner, so designated by the tax commissioner, shall have all the lawful powers delegated to members of the department of public safety to enforce the provisions of this article, in any county, or municipality in this state.

Such employee shall execute a bond with security in the
sum of thirty-five hundred dollars, payable to the state of West Virginia conditioned for the faithful performance of his duties, as such, and such bond shall be approved as to form by the attorney general, and the same shall be filed with the secretary of state and preserved in his office.

The state department of public safety or any county sheriff or his deputies is, upon request of the commissioner, hereby authorized and required to assist in the enforcement of the provisions of this article.

§11-17-19. Interest; additions to tax; penalties; crimes.

(1) If any person:

(a) Fails to pay the taxes imposed by this article when due, said taxes shall bear interest at the rate of six percent per annum prorated for each month or fraction thereof from the due date of the tax, each assessment made by the tax commissioner shall bear interest for failure to timely pay the taxes imposed by this article, or

(b) Fails to make or file a return whenever the full amount of the tax on any portion or deficiency thereof has not been paid in the time required by this article, unless it be shown that such failure was due to reasonable cause and not due to willful neglect, there may be added to the tax a penalty of five percent per month, with an additional five percent for each additional month or fraction thereof during which failure shall continue, not to exceed twenty-five percent in the aggregate. If no tax is due, the penalty will be twenty-five dollars per month or fraction thereof for failure to file a tax return: Provided, That in all cases of delinquency in the payment of taxes due, interest shall be assessed.

(2) If any person:

Files a false or fraudulent return with intent to evade the tax imposed by this article, or in the case of a willful failure to file a return with intent to evade the tax, or file a false claim for credit or refund there shall be added to the tax due an amount equal to one hundred percent of the tax due. The burden of proving fraud, willfulness, or intent to evade tax shall be upon the commissioner.
(3) If any person:

(a) 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, or

(b) 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, or

(c) Sells cigarettes in this state without there having been first affixed to each individual package thereof the stamp or meter impression required to be affixed thereto by this article, or

(d) Being a retail dealer or subjobber in this state, has in his possession packages of cigarettes not bearing the stamps or meter impression herein required to be affixed thereto 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, or

(e) If any wholesale dealer shall sell cigarettes to any person in this state other than to another wholesaler, subjobber, or retail dealer and no person in this state other than a wholesaler, or subjobber, shall sell cigarettes to a retail dealer. It shall be unlawful and a violation of this article for any retail cigarette dealer to purchase or acquire cigarettes from any person other than a wholesaler or subjobber. The original wholesaler who purchases unstamped cigarettes from the manufacturer is liable for the excise tax and the affixing of the required stamps or meter impression, or

(f) If any person, firm or corporation, who is not a wholesaler of tobacco products, as provided by this article, shall have in his possession within the state more than twenty packages of cigarettes not bearing cigarette tax paid indicia of this state,
stamps or meter impressions, such possession shall be presumed to be for the purpose of evading the payment of the taxes imposed or due thereon, or

(g) Whoever violates any of the provisions of section nineteen, subsection (2) (a) through section nineteen, subsection (3) (f) or any lawful rule or regulation promulgated by the commissioner under authority of this article shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than three hundred dollars nor more than five thousand dollars, or imprisoned in the county jail for not more than one year, or both, in the discretion of the court.

(4) Whoever falsely or fraudulently makes, forges, alters or counterfeits any stamp or meter impression prescribed, or defined, by the provisions of this article, or its related rules and regulations, and any person who knowingly and wilfully makes, causes to be made, purchases, receives or has in his possession, any device for forging or counterfeiting any stamp or meter impression, or has in his possession, any stamps not properly issued by the commissioner or his agent or deputy or tampers with or alters any stamping device authorized by the commissioner or uses more than once any stamp or meter impression 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 sentenced to pay a fine of not less than five thousand dollars nor more than ten thousand dollars and imprisoned in the penitentiary for a term of not less than one year nor more than five years.

(5) Whenever the commissioner or any of his deputies or employees authorized by him or any peace officer of this state 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, such cigarettes shall thereupon be deemed to be contraband, and the commissioner, or such deputy or employee or any peace officer of this state is hereby authorized and empowered forthwith to seize and take possession of such cigarettes, without a warrant, and such cigarettes shall be forfeited to the state, and the commissioner shall within a reasonable time thereafter sell such forfeited cigarettes: Provided, That such seizure and sale shall not be deemed to
relieve any person from fine or imprisonment as provided here-
in for violation of any provisions of this article. Such sale may
be made in any county the tax commissioner deems most con-
venient and economical. Notice of such sale shall be published
as Class I legal advertisement in compliance with the provisions
of article three, chapter fifty-nine of this code, and the publi-
cation area for such publication shall be the county wherein
such seizure was made and the county wherein the sale is to
take place. Notice shall be published at least five days prior
to the sale. All taxes and penalties collected under the pro-
visions of this section shall be paid into the state treasury and
treated as other taxes collected under this article.

(6) Justices of the peace shall have concurrent jurisdiction
with any other courts having jurisdiction for the trial of all
misdemeanors arising under this article.

§11-17-20. Transportation of unstamped cigarettes; unstamped
cigarettes in vending machines; forfeitures and sales
of cigarettes and equipment; criminal sanctions.

Every person who shall transport cigarettes not stamped
as required by this article upon the public highways, water-
ways, airways, 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 the 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 com-
mon 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 article shall be deemed to have complied
with this article 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
22 cigarettes are being transported and any paraphernalia or
devices used in connection with the unstamped cigarettes,
24 are declared to be contraband goods and may be seized by
25 the commissioner, his agents or employees or by any peace
26 officer of the state without a warrant.
27 If any person transports unstamped cigarettes in violation
28 of this section he shall be guilty of a misdemeanor, and
29 upon conviction thereof, shall be fined not less than three
30 hundred dollars nor more than five thousand dollars, or
31 imprisoned in the county jail not more than one year, or
32 both fined and imprisoned.
33 If unstamped cigarettes are found in any vending machine,
34 both the cigarettes and the vending machine shall be contra-
35 band goods and may be seized by the commissioner, at the
36 discretion of the commissioner, his agents or employees or
37 any peace officer of this state, without a warrant.
38 Cigarettes and vending machines seized under this section
39 shall be forthwith sold in the manner provided hereinafter
40 in this section and such sale shall not relieve the owner of
41 the sold personal property of any action by the commissioner
42 for violations of any other sections of this article.
43 The commissioners shall immediately, after any seizure made
44 pursuant to this section, institute a proceeding for the con-
45 fiscation thereof in the circuit court of the county in which
46 the seizure is made. The court may proceed in a summary
47 manner and may direct confiscation to the commissioner:
48 Provided, That any person claiming to be the holder of
49 security interest in any vehicle or vessel, or vending machine,
50 the disposition of which is provided for above may present
51 his petition so alleging and be heard, and in the event it
52 appears to the court that the property was unlawfully used
53 by a person other than such claimant, and if the said
54 claimant acquired his security interest in good faith and
55 without knowledge that the vehicle or vessel or vending
56 machine, was going to be so used, the court shall either
57 waive forfeiture in favor of such claimant and order the
58 vehicle or vessel or vending machine returned or delivered
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.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

[Signature]
Chairman Senate Committee

[Signature]
Chairman House Committee

Originated in the House.
Takes effect ninety days from passage.

[Signature]
Clerk of the Senate

[Signature]
Clerk of the House of Delegates

[Signature]
President of the Senate

[Signature]
Speaker House of Delegates

The within approved this the 22nd day of February, 1974.

[Signature]
Governor
PRESENTED TO THE
GOVERNOR

Date 2/22/14
Time 3:05 p.m.