

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1974

ENROLLED

HOUSE BILL No. 708

(By Mr. Seibert)

PASSED February 20 1974

In Effect Nine Days From Passage



FILED IN THE OFFICE  
BROOK L. NEISHELL III  
SECRETARY OF STATE  
THIS DATE 2-25-74

**ENROLLED**

**H. B. 708**

(By MR. SEIBERT)

[Passed February 20, 1974; in effect ninety days from passage.]

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 car-  
2     riers, wholesalers, subjobbers, retail dealers, and agents, or

3 vending machine operators shall, when required by this article,  
4 or the tax commissioner, file a report covering the business  
5 transacted in the previous month covering such information as  
6 the commissioner may deem necessary for the ascertainment or  
7 assessment of the tax imposed by this article; and shall be  
8 signed under penalty of perjury on such forms as the tax com-  
9 missioner may prescribe and shall at this time remit any taxes  
10 owed or due, if any.

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

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

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

28 Unless otherwise permitted, in writing, by authority of the  
29 tax commissioner, each delivery ticket or invoice for each pur-  
30 chase or sale of cigarettes must be recorded upon a serially  
31 numbered invoice showing the name and address of the seller  
32 and the purchasers, point of delivery, the date, quantity, price  
33 of product, and the tax must be set out separate or the in-  
34 voice must indicate whether or not the West Virginia cigarette  
35 excise tax is included in the total price and such other reason-  
36 able information as the tax commissioner may require. How-  
37 ever, those invoicing requirements do not apply to cash sales,  
38 and a person making such sales must maintain such records as  
39 may be reasonably necessary to substantiate his return.

40 The tax commissioner or his deputy or agent authorized by  
41 him shall have authority to inspect or examine the stock of

42 cigarettes kept in and upon the premises of any person where  
43 cigarettes are placed, stored or sold and shall inspect or exam-  
44 ine the records, books, papers and any equipment or records  
45 of manufacturers, cigarette stamping agents, wholesalers, sub-  
46 jobbers, retail dealers, common carriers, or any other person  
47 for the purpose of determining the quantity of cigarettes ac-  
48 quired or distributed to verify the truth and accuracy of any  
49 statement or report or to ascertain that the tax imposed by  
50 this article has been properly paid.

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

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

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

6 Any employee or agent of the tax commissioner, so desig-  
7 nated by the tax commissioner, shall have all the lawful powers  
8 delegated to members of the department of public safety to  
9 enforce the provisions of this article, in any county, or muni-  
10 cipality in this state.

11 Such employee shall execute a bond with security in the

12 sum of thirty-five hundred dollars, payable to the state of West  
13 Virginia conditioned for the faithful performance of his duties,  
14 as such, and such bond shall be approved as to form by the  
15 attorney general, and the same shall be filed with the secretary  
16 of state and preserved in his office.

17 The state department of public safety or any county sheriff  
18 or his deputies is, upon request of the commissioner, here-  
19 by authorized and required to assist in the enforcement of the  
20 provisions of this article.

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

1 (1) If any person:

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

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

20 (2) If any person:

21 Files a false or fraudulent return with intent to evade the  
22 tax imposed by this article, or in the case of a willful failure  
23 to file a return with intent to evade the tax, or file a false  
24 claim for credit or refund there shall be added to the tax due  
25 an amount equal to one hundred percent of the tax due. The  
26 burden of proving fraud, willfulness, or intent to evade tax  
27 shall be upon the commissioner.

28     (3) If any person:

29       (a) Makes any false entry upon an invoice, package or con-  
30     tainer of cigarettes required to be made under the provisions  
31     of this article, or with intent to evade the tax imposed by this  
32     article, presents any such false entry for the inspection of the  
33     commissioner, or

34       (b) Prevents or hinders the commissioner or his deputy  
35     from making a full inspection of any place where cigarettes  
36     subject to the tax imposed by this state are sold or stored, or  
37     prevents or hinders the full inspection of invoices, books, re-  
38     cords, or papers required to be kept under the provisions of  
39     this article, or

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

44       (d) Being a retail dealer or subjobber in this state, has in his  
45     possession packages of cigarettes not bearing the stamps or  
46     meter impression herein required to be affixed thereto or,  
47     whoever fails to produce on demand by the commissioner in-  
48     voices of all cigarettes purchased or received by him within two  
49     years prior to such demand, unless upon satisfactory proof it  
50     is shown that such nonproduction is due to providential or  
51     other causes beyond his control, or

52       (e) If any wholesale dealer shall sell cigarettes to any per-  
53     son in this state other than to another wholesales, subjobber,  
54     or retail dealer and no person in this state other than a whole-  
55     saler, or subjobber, shall sell cigarettes to a retail dealer. It  
56     shall be unlawful and a violation of this article for any retail  
57     cigarette dealer to purchase or acquire cigarettes from any per-  
58     son other than a wholesaler or subjobber. The original whole-  
59     saler who purchases unstamped cigarettes from the manufac-  
60     turer is liable for the excise tax and the affixing of the re-  
61     quired stamps or meter impression, or

62       (f) If any person, firm or corporation, who is not a whole-  
63     saler of tobacco products, as provided by this article, shall have  
64     in his possession within the state more than twenty packages of  
65     cigarettes not bearing cigarette tax paid indicia of this state,

66 stamps or meter impressions, such possession shall be pre-  
67 sumed to be for the purpose of evading the payment of the  
68 taxes imposed or due thereon, or

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

77 (4) Whoever falsely or fraudulently makes, forges, alters or  
78 counterfeits any stamp or meter impression prescribed, or de-  
79 fined, by the provisions of this article, or its related rules and  
80 regulations, and any person who knowingly and wilfully makes,  
81 causes to be made, purchases, receives or has in his possession,  
82 any device for forging or counterfeiting any stamp or meter  
83 impression, or has in his possession, any stamps not properly  
84 issued by the commissioner or his agent or deputy or tampers  
85 with or alters any stamping device authorized by the com-  
86 missioner or uses more than once any stamp or meter impres-  
87 sion provided for and required by this article for the purpose  
88 of evading the tax hereby imposed, shall be guilty of a felony,  
89 and, upon conviction thereof, shall be sentenced to pay a fine  
90 of not less than five thousand dollars nor more than ten thou-  
91 sand dollars and imprisoned in the penitentiary for a term of  
92 not less than one year nor more than five years.

93 (5) Whenever the commissioner or any of his deputies or  
94 employees authorized by him or any peace officer of this state  
95 for the purpose shall discover any cigarettes subject to tax as  
96 provided by this article and upon which the tax has not been  
97 paid as herein required, such cigarettes shall thereupon be  
98 deemed to be contraband, and the commissioner, or such de-  
99 puty or employee or any peace officer of this state is hereby  
100 authorized and empowered forthwith to seize and take posses-  
101 sion of such cigarettes, without a warrant, and such cigarettes  
102 shall be forfeited to the state, and the commissioner shall with-  
103 in a reasonable time thereafter sell such forfeited cigarettes:  
104 *Provided*, That such seizure and sale shall not be deemed to

105 relieve any person from fine or imprisonment as provided here-  
106 in for violation of any provisions of this article. Such sale may  
107 be made in any county the tax commissioner deems most con-  
108 venient and economical. Notice of such sale shall be published  
109 as Class I legal advertisement in compliance with the provisions  
110 of article three, chapter fifty-nine of this code, and the publi-  
111 cation area for such publication shall be the county wherein  
112 such seizure was made and the county wherein the sale is to  
113 take place. Notice shall be published at least five days prior  
114 to the sale. All taxes and penalties collected under the pro-  
115 visions of this section shall be paid into the state treasury and  
116 treated as other taxes collected under this article.

117 (6) Justices of the peace shall have concurrent jurisdiction  
118 with any other courts having jurisdiction for the trial of all  
119 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.**

1 Every person who shall transport cigarettes not stamped  
2 as required by this article upon the public highways, water-  
3 ways, airways, roads or streets of this state shall have in  
4 his actual possession invoices or delivery tickets for such  
5 cigarettes which shall show the true name and the complete  
6 and exact address of the consignor or seller, the true name  
7 and complete and exact address of the consignee, or purchaser,  
8 the quantity and brands of the cigarettes transported and the  
9 true name and complete and exact address of the person  
10 who has or shall assume payment of the West Virginia state  
11 tax, or the tax, if any, of the state or foreign country at  
12 the point of ultimate destination: *Provided*, That any com-  
13 mon carrier which has issued a bill of lading for a shipment  
14 of cigarettes and is without notice to itself or to any of its  
15 agents or employees that said cigarettes are not stamped  
16 as required by this article shall be deemed to have complied  
17 with this article and the vehicle or vessel in which said  
18 cigarettes are being transported shall not be subject to  
19 confiscation hereunder. In the absence of such invoices,  
20 delivery tickets or bills of lading, as the case may be, the



21 cigarettes so transported, the vehicle or vessel in which the  
22 cigarettes are being transported and any paraphernalia or  
23 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

59 to such claimant or if it is found that the value thereof  
60 exceeds the amount of the claim, the court shall order pay-  
61 ment of the amount of the claim out of the proceeds of the  
62 sale.

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

H. Harrel Hardy  
Chairman Senate Committee

Clarence C. Thurston  
Chairman House Committee

Originated in the House.

Takes effect ninety days from passage.

Howard W. Gibson  
Clerk of the Senate

C. A. Blankenship  
Clerk of the House of Delegates

W. T. Brotherton Jr.  
President of the Senate

Lewis H. H. Hanes  
Speaker House of Delegates

The within approved this the 22<sup>nd</sup>  
day of February, 1974.

Arch A. Hanes Jr.  
Governor

PRESENTED TO THE  
GOVERNOR

Date 2/22/14

Time 3:05 p.m.