WEST VIRGINIA LEGISLATURE
Regular Session, 2001

ENROLLED
Committee Substitute for
SENATE BILL NO. 116

(By Senators Tomblin, Mr. President, and Sprouse, By Request of the Executive)

PASSED April 13, 2001

In Effect 90 days from Passage
AN ACT to amend and reenact sections one, two, three, four, four-a, five, twelve, nineteen and twenty, article seventeen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to further amend said article by adding thereto seven new sections, designated sections thirteen, nineteen-a, nineteen-b, nineteen-c, twenty-a, twenty-b and twenty-three; and to amend and reenact section seven hundred three, article seven, chapter sixty-a of said code, all relating to imposing, administering, collecting and enforcing excise tax on sale and use of cigarettes and other tobacco products; renaming the cigarette tax act as the tobacco products excise tax act; defining terms; applying existing provisions, procedures, requirements and rules to all tobacco products; requiring use of
invoice method for the payment of tax on tobacco products other than cigarettes; imposing excise tax on tobacco products other than cigarettes based on a fixed percentage of the wholesale price; dedicating proceeds of tax to general revenue fund; establishing money penalties; imposing certain criminal penalties; declaring certain nontaxed tobacco products to be contraband; providing for seizure and disposition of contraband property and distribution of proceeds; requiring of special study on impact of tax on tobacco products other than cigarettes; and providing effective date of tax on tobacco products other than cigarettes.

Be it enacted by the Legislature of West Virginia:

That sections one, two, three, four, four-a, five, twelve, 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; that said article be further amended by adding thereto seven new sections, designated sections thirteen, nineteen-a, nineteen-b, nineteen-c, twenty-a, twenty-b and twenty-three; and that section seven hundred three, article seven, chapter sixty-a of said code be amended and reenacted, all to read as follows:

CHAPTER 11. TAXATION.

ARTICLE 17. TOBACCO PRODUCTS EXCISE TAX ACT.

§11-17-1. Short title.

1 This article shall be known, and may be cited, as the 2 “Tobacco Products Excise Tax Act”.

§11-17-2. Definitions.

1 (a) When used in this article, words, terms and phrases 2 defined in subsection (b) of this section, and any variations 3 thereof required by the context, have the meaning ascribed 4 to them in this section, except where the context indicates 5 a different meaning is intended.

6 (b) Definitions. –
(1) "Cigarette" means:

(A) Any roll for smoking made, wholly or in part, of tobacco, irrespective of size or shape and whether or not the tobacco is flavored, adulterated or mixed with any ingredient, the wrapping or cover of which is made of paper or any substance or material, except tobacco.

(B) Any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packing and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in paragraph (A) of this subdivision.

(2) "Commissioner" means the state tax commissioner and, where the meaning of the context requires, all deputies or agents and employees duly authorized by him or her.

(3) "Consumer" means a person who receives or in any way comes into possession of tobacco products for the purpose of consuming or giving them away or disposing of them in any way other than by sale, barter or exchange.

(4) "Counterfeit stamp" means any stamp, label or print, indicium or character, that evidences, or purports to evidence, the payment of any tax levied under this article and that has not been printed, manufactured or made by authority of the commissioner, as provided in this article, and has not been issued, sold or circulated by the commissioner.

(5) "Manufacturer" means a person who manufactures or produces a tobacco product.

(6) "Other tobacco product" or "tobacco products other than cigarettes" means snuff and chewing tobacco and any other tobacco product that is intended by the seller to be consumed by means other than smoking and any cigar, pipe tobacco or other tobacco product other than cigarettes.
(7) "Package" means the individual package, box or other container in or from which retail sales of tobacco products are normally made or intended to be made.

(8) "Person" means and includes any individual, firm, association, company, partnership, corporation, joint-stock company, club, agency, syndicate, limited liability company, other legal entity, municipal corporation or other political subdivision of this state, trust, receiver, trustee, fiduciary or conservator, and when used in connection with any penalties imposed by this article, means and includes officers, directors, trustees or members of any firm, copartnership, association, corporation, trust or any other unit acting as a group.

(9) "Place of business" means a place where a tobacco product is sold or where a tobacco product is brought or kept for the purpose of sale or consumption, including a vessel, airplane, train or vending machine.

(10) "Retail dealer" includes every person in this state, other than a wholesaler or subjobber, engaged in the selling of tobacco products at retail to a consumer or to any person for any purpose other than resale.

(11) "Sale" means selling, exchange, transfer of title, barter, gift, offer for sale or distribution or disposition of cigarettes or other tobacco products.

(12) "Sale at retail" or "retail sale" means a sale to a consumer or to any person for any purpose other than resale.

(13) "Sale by wholesaler" means and includes any bona fide transfer of title to tobacco products by a wholesaler for a valuable consideration, made in the ordinary course of trade or in the usual conduct of the wholesaler's business.

(14) "Stamp" or "meter impression" means any cigarette stamp or any meter or ink impression or other indicia
authorized by the tax commissioner to serve as a stamp
and shall be of the design and color as prescribed by the
tax commissioner.

(15) "Stamped cigarettes" means that the stamp or
meter impression, as required by this article, has been
affixed to the bottom of the package of cigarettes.

(16) "Subjobber" or "subjobber dealer" includes any
person who purchases stamped cigarettes or tax-paid
tobacco products from a wholesaler or from any other
person who purchases from the manufacturer or importer
and who purchases the tax-paid tobacco products solely
for the purpose of bona fide resale to retail dealers.

(17) "Tax-not-paid tobacco product" means a tobacco
product upon which the tax imposed by this article has not
been paid.

(18) "Tax-paid tobacco products" means a tobacco
product upon which the tax imposed by this article has
been paid.

(19) "Tobacco product" includes cigarettes and any
other tobacco product.

(20) "Transportation company" means a person operat-
ing or supplying to common carriers, cars, boats or other
vehicles for the transportation or accommodation of
passengers and engaged in the sale of a tobacco product at
retail.

(21) "Transporter" means a person importing or trans-
porting into this state a tobacco product obtained from a
source located outside this state or transporting within
this state tobacco products belonging to another person.

(22) "Unstamped cigarettes" means that the stamp or
impression as required by this article has not been affixed
to the bottom of the package of cigarettes.
(23) "Vending machine operator" means any person operating one or more vending machines for the sale of tobacco products. The sale of tobacco products through a vending machine will be construed as sales at retail and subjects the vending machine operator to this article and rules pertaining to retail dealers.

Whenever any tobacco products vending machine operator purchases tax-not-paid tobacco products directly from the manufacturer or any other person, the vending machine operator shall be considered to be a wholesaler and is liable for payment of the excise tax imposed by this article and the affixing of the required stamps.

(24) "Wholesale price" means the gross invoice price, including all federal excise taxes, at which the manufacturer of the tobacco product sells the tobacco product to unaffiliated distributors, excluding all trade discounts and other reductions in the manufacturer's price. If the taxpayer buys from other than a manufacturer, "wholesale price" means the gross invoice price, including all federal excise taxes and excluding all trade discounts and other similar reductions in price.

(25) "Wholesaler" or "wholesale dealer" includes any person in this state who purchases tax-not-paid tobacco products directly from the manufacturer, or such other seller as may be approved by the tax commissioner. Any distributor, dealer, subjobber, subjobber dealer, retailer or any other person that imports or transports tax-not-paid tobacco products into this state, or that causes tax-not-paid tobacco products to be imported or transported into this state is a wholesaler liable for the tax imposed under this article and, in the case of cigarettes purchased, is liable for affixing tax indicia in accordance with the requirements of this article. No wholesaler or other person may purchase tax-not-paid tobacco products from any seller not approved by the tax commissioner.

§11-17-3. Levy of tax; ratio; dedication of proceeds.
(a) *Tax on cigarettes.* — For the purpose of providing revenue for the general revenue fund of the state, an excise tax is hereby continued on sales of cigarettes at the rate of seventeen cents on each twenty cigarettes or in like ratio on any part thereof. Only one sale of the same article shall be used in computing the amount of tax due under this subsection.

(b) *Tax on tobacco products other than cigarettes.* — Effective the first day of January, two thousand two, an excise tax is hereby levied and imposed on the sale or use of other than cigarettes tobacco products at a rate equal to seven percent of the wholesale price of each article or item of tobacco product other than cigarettes sold by the wholesaler or subjobber dealer, whether or not sold at wholesale, or if not sold, then at the same rate upon the use by the wholesaler or dealer. Only one sale of the same article shall be used in computing the amount of tax due under this subsection. Revenues received from this tax shall be deposited into the general revenue fund.

§11-17-4. Effect of rate changes; cigarettes on hand or in inventory; report; discount.

(a) Notwithstanding other provisions of this article, it is hereby declared to be the intent of the Legislature that one rate of excise tax is applicable to all quantities of cigarettes and another rate of excise tax is applicable to all tobacco products other than cigarettes in this state on and after the first day of July, two thousand one, under the provisions of this article. Any tobacco products, on hand or in inventory, on the effective date of any rate change are hereby considered to have been purchased or received on the effective date of the change in rate.

(b) Every wholesaler, subjobber, subjobber dealer, retail dealer and vending machine operator who, on the effective date of any rate change, has, on hand or in inventory, any tobacco products, upon which the tax or any portion of the tax has been previously paid, shall take a physical inven-
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16 tory and shall file a report of the inventory with the tax
17 commissioner, in the format required by the tax commis-
18 sioner, within thirty days after the inventory, and shall
19 pay to the tax commissioner, at the time of filing the
20 report, any additional tax due under an increased rate. A
21 discount of four percent shall be allowed on all tax due for
22 persons who pay additional tax under this section.
23
24 (c) Imposition of the tax on tobacco products other than
25 cigarettes shall be treated as a change in rate on the
effective date of the tax.

§11-17-4a. No tobacco products tax by municipalities or other
governmental subdivisions.

1 No municipality or governmental subdivision shall levy
2 any excise or other tax on any tobacco product, or require
3 cigarettes or other tobacco products to be stamped, or
4 require licenses for sale thereof, other than licenses which
5 may be required in accordance with section four, article
6 twelve of this chapter.

§11-17-5. How tax paid; stamps; how affixed; violations.

1 (a) The tax imposed by this article on cigarettes shall be
2 paid by the purchase of stamps as provided in this article.
3
4 (b) The tax imposed by this article on tobacco products
5 other than cigarettes shall be paid using an invoice method
6 prescribed by the tax commissioner.
7
8 (c) Payment for stamps purchased from the commis-
9 sioner shall be made by cash, money order, bank draft,
10 certified check or by noncertified check. However, in the
11 event a noncertified check is returned unpaid by its bank,
12 then it shall be considered that payment has not been
13 made for the taxes due.
14
15 (d) A stamp, as required by this article, as described in
16 the rules promulgated under this article by the tax com-
17 missioner in accordance with article three, chapter
18 twenty-nine-a of this code, shall be affixed to or impressed
upon each package of cigarettes of an aggregate value of
not less than the amount of tax upon the contents of the
package. The stamp or impression that is affixed is prima
facie evidence of payment of the tax imposed by this
article. Stamps or meter impressions shall be purchased
from the commissioner or his or her deputy, by, and paid
for by, wholesalers.

(e) Except as may be otherwise provided in the rules
prescribed by the commissioner, under authority of this
article and article ten of this chapter, and unless the
stamps have been previously affixed, they shall be affixed
by each wholesale dealer who must be authorized to do
business in this state prior to the sale or delivery of any
cigarettes to any retail dealer or subjobber in this state.

(f) Except as may be otherwise provided in the rules
prescribed by the commissioner, each wholesale dealer
tobacco products shall be authorized to do business in this
state prior to the sale or delivery of any tobacco products
to any retail dealer or subjobber in this state. A wholesale
dealer may sell tax-paid tobacco products only to another
wholesaler or a retail dealer or subjobber in this state. No
wholesaler or other person may purchase tax-not-paid
tobacco products from any seller not approved by the tax
commissioner.

(g) Whenever any cigarettes are found in the place of
business of any retail dealer or subjobber without the
stamps affixed, the prima facie presumption shall arise
that the cigarettes are kept in the place of business in
violation of the provisions of this article.

(h) Whenever any tobacco products other than cigarettes
are found in the place of business of any retail dealer or
subjobber and there is no evidence that the tax imposed by
this article has been paid on the tobacco products other
than cigarettes, it shall be presumed that the tobacco
products other than cigarettes are kept on the premises in
violation of this article.
(i) If the tax commissioner determines that it is practicable to stamp packages of cigarettes by impression by means of a metering device, then the commissioner shall provide that the metering device and its impression may be used in lieu of the stamps otherwise required by law. The tax commissioner may authorize any wholesaler purchasing tobacco products, who holds a valid business registration certificate, as required by article twelve of this chapter, to use any metering device approved by the commissioner after the device has been sealed by the commissioner or a deputy, or agent, authorized by the commissioner. A metering device shall be used only in accordance with the rules prescribed by the commissioner.

(j) A wholesaler may elect to pay the tax in advance when a metering device is used, in which event the wholesaler shall deliver the metering device to the commissioner, or his or her agent authorized for that purpose, who shall seal the meter in accordance with the prepayment that was made.

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

(a) Due date. — On or before the fifteenth day of each month, manufacturers, importers, 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 providing any information the commissioner determines necessary for the ascertainment or assessment of the taxes imposed by this article. Reports shall be signed under penalty of perjury and be in a form prescribed by as the tax commissioner. The amount of tax shown to be due on the monthly report, if any, shall be remitted by the due date of the monthly report, determined without regard to any authorized extension of time for filing the report.
(b) Reports required. — The reports prescribed in this article are required, although a tax might not be due or no business transacted, for the period covered by the report.

(c) Records. — Each person required to file a report under this article shall make and keep the records necessary to substantiate the accuracy of the reports required by this article, including, but not limited to, records of inventories, receipts, disbursements and sales. Records shall be retained for a period of time not less than three years, unless the tax commissioner, gives written consent to their earlier destruction.

(d) Contents of delivery ticket or invoice. — Unless otherwise permitted, in writing, by authority of the tax commissioner, each delivery ticket or invoice for each purchase or sale of tobacco products must be recorded upon a serially numbered invoice showing: (1) The name and address of the seller and the purchaser; (2) the point of delivery; (3) the date, quantity and price of each tobacco product delivered in this state; (4) the amount of tax imposed by this article, which must be set out separately or the invoice must indicate whether or not the West Virginia tobacco products excise tax is included in the total price; and (5) any other reasonable information required by the tax commissioner. However, these invoicing requirements do not apply to cash sales: Provided, That the person making the cash sales shall maintain the records reasonably necessary to substantiate the accuracy of his or her monthly report.

(e) Inspection of tobacco products inventory. — In addition to the tax commissioner's powers set forth in section five, article ten of this chapter, the tax commissioner, or a deputy or agent authorized by the commissioner, may inspect or examine the stock of tobacco products kept in and upon the premises of any person where tobacco products are placed, stored or sold and shall inspect or examine the records, books, papers and any equipment or records of manufacturers, importers,
cigarette stamping agents, wholesalers, subjobbers, retail dealers, common carriers or any other person for the purpose of determining the quantity and value of tobacco products acquired or disbursed to verify the truth and accuracy of any statement or report and to ascertain whether the tax imposed by this article has been properly paid.

(f) Examination of witnesses and records. — In addition to the tax commissioner's powers set forth in section five, article ten of this chapter, and as a further means of obtaining the records, books and papers of a manufacturer, importer, common carrier, wholesaler, subjobber or retailer or any other person and ascertaining the amount of taxes and reports due under this article, the commissioner and any duly appointed agent may examine witnesses under oath; and if the witness fail or refuse at the request of the tax commissioner or any duly appointed agent to grant access to the books, records or papers, the tax commissioner or the agent shall certify the facts and names to the circuit court of the county having jurisdiction of the party and court shall thereupon issue summons to the party to appear before the tax commissioner or any duly appointed agent, at a place designated within the jurisdiction of the court, on a day fixed, to be continued as the occasion may require for good cause shown and give evidence and lay open for inspection any books and papers that may be required for the purpose of ascertaining the amount of tax and reports due, if any.


All rules for the cigarette tax act previously promulgated by the commissioner, as provided in this article, article ten of this chapter and article three, chapter twenty-nine-a of this code, remain in effect until they are amended or repealed by the commissioner or superceded by operation of law.

§11-17-19. Penalty for failure to file report when no tax due.
In the case of any failure to make or file a report when no tax is due, as required by this article on the date prescribed for filing, unless it be shown that the failure was due to reasonable cause and not due to willful neglect, there shall be collected a penalty of twenty-five dollars for each month of the failure or fraction of a month.

§11-17-19a. Criminal penalties.

(a) Misdemeanor penalties. — If any person commits any act set forth in this subsection, the person shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than one thousand dollars nor more than twenty-five thousand dollars, or imprisoned in a county or regional jail for not more than one year, or both fined and imprisoned. Each act constitutes a separate misdemeanor:

(1) The person makes any false entry upon an invoice, package or container of tobacco products that is required to be made under the provisions of this article;

(2) The person with intent to evade the tax imposed by this article, presents any false entry upon an invoice, package or container of tobacco products for the inspection of the commissioner or the commissioner’s authorized deputy, agent or employee;

(3) The person prevents or hinders the commissioner or the commissioner’s authorized deputy, agent or employee from making a full inspection of any place where tobacco products subject to the tax imposed by this state are sold or stored;

(4) The person prevents or hinders the full inspection of invoices, books, records or papers required to be kept under the provisions of this article;

(5) The person sells cigarettes in this state without there having been first affixed to each individual package of cigarettes the stamp or meter impression required to be affixed to the package by this article;
(6) The person sells other tax-not-paid tobacco products in this state to a subjobber, retail dealer or consumer in this state;

(7) The person, being a retail dealer or subjobber in this state, has in his or her possession packages of cigarettes not bearing the stamps or meter impression required to be affixed to the package by this article;

(8) The person, being a retail dealer or subjobber in this state, has in his or her possession tax not paid packages of other tobacco products;

(9) The person fails to produce on demand by the commissioner, or the commissioner's authorized deputy, agent or employee, invoices of all tobacco products purchased or received by him or her within two years prior to the date of the demand, unless upon satisfactory proof it is shown that the nonproduction is due to providential or other causes beyond his or her control;

(10) The person being a wholesale dealer sells tobacco products to any person in this state other than to another wholesaler, or to a subjobber or retail dealer;

(11) A person who is not a wholesaler or subjobber in this state sells tobacco products to a retail dealer;

(12) A person being a retail dealer purchases or acquires tobacco products from any person other than a person who is a wholesaler or subjobber in this state;

(13) The original wholesaler who purchases unstamped cigarettes or tax not paid other tobacco products from a manufacturer or other person fails to pay the excise tax imposed by this article and fails to affix the required stamps or meter impressions;

(14) A person who is not a wholesaler of tobacco products, as defined in this article, has in his or her possession within this state more than twenty packages of cigarettes, that do not bear cigarette tax paid indicia of this state,
stamps or meter impressions, or other tax-not-paid tobacco products, if the retail value of the tobacco products is more than thirty dollars for all tax-not-paid tobacco products. The possession shall be presumed to be for the purpose of evading the payment of the taxes imposed or due on the tobacco products;

(15) The person violates any of the provisions of this article or any lawful rule promulgated by the commissioner under authority of article ten of this code.

(b) Felony penalties. — If any person commits any act set forth in this subsection, the person shall be guilty of a felony and, upon conviction thereof, shall be fined not less than twenty-five thousand dollars nor more than fifty thousand dollars, and imprisoned in a state correctional facility for a term of not less than one year nor more than five years. Each constitutes a separate felony:

(1) The person falsely or fraudulently makes, forges, alters or counterfeits any stamps or meter impressions prescribed, or defined, by the provisions of this article, or its related rules;

(2) The person knowingly and willfully makes, causes to be made, purchases, receives or has in his or her possession, any device for forging or counterfeiting any stamp or meter impression;

(3) The person has in his or her possession any stamps not properly issued by the commissioner, or the commissioner’s authorized employee, agent or deputy;

(4) The person tampers with or alters any stamping device authorized by the commissioner; or

(5) The person uses more than once any stamp or meter impression provided for and required by this article for the purpose of evading the tax imposed by this article.

(c) Deposit of penalties. — All penalties collected under the provisions of this section shall be paid into the general revenue fund.
§11-17-19b. Certain tax-not-paid tobacco products declared contraband.

1 (a) Whenever the commissioner or any of the commissioner's authorized deputies, agents or employees, or any law-enforcement officer in this state, discovers any tobacco products subject to tax, as provided by this article, and upon which the tax has not been paid, as required by this article, the tobacco products shall thereupon be considered to be contraband, and the commissioner, or the commissioner's authorized deputy, agent or employee, or any law-enforcement officer in this state, may immediately seize and take possession of the tobacco products without a warrant, and the tobacco products and related property shall be forfeited to the state as provided in article seven, chapter sixty-a of this code.

(b) Seizure of contraband shall not be considered to relieve any person from fine or imprisonment, as provided in section nineteen-a of this article, for any of the offenses set forth in said section.

§11-17-19c. Magistrate courts have concurrent jurisdiction.

1 Magistrates 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 or tax-not-paid tobacco products; forfeitures and sales of cigarettes and equipment.

1 (a) In general. — Every person who transports tax-not-paid tobacco products upon the public highways, waterways, airways, roads or streets of this state shall have in his or her actual possession invoices or delivery tickets for the tobacco products.

(b) Contents of delivery tickets. — Delivery tickets shall show: (1) The true name and the complete and exact address of the consignor or seller; (2) the true name and
complete and exact address of the consignee or purchaser;
(3) the quantity and brands of the tobacco products
transported; and (4) the true name and complete and exact
address of the person who has or shall assume payment of
the West Virginia taxes imposed by this article, or the tax,
if any, of the state or foreign country at the point of
ultimate destination: Provided, That any common carrier
which has issued a bill of lading for a shipment of tobacco
products and is without notice to itself or to any of its
agents or employees that the cigarettes are not stamped as
required by this article, or that the tax imposed by this
article on tobacco products other than cigarettes has not
been paid, shall be considered to have complied with this
article and the vehicle or vessel in which the tax-not-paid
tobacco products are being transported is not subject to
confiscation under this section or article seven, chapter
sixty-a of this code.

(c) In the absence of invoices, delivery tickets or bills of
lading, as the case may be, that meet the requirements of
subsections (a) and (b) of this section, the tobacco prod-
ucts, the vehicle or vessel in which the tobacco products
are being transported and any paraphernalia or devices
used in connection with the tax-not-paid tobacco products
are declared to be contraband goods and may be seized by
the commissioner, or the commissioner’s authorized
deputies, agents or employees, or by any law-enforcement
officer of the state, without a warrant and shall be for-
feited to the state as provided in article seven, chapter
sixty-a of this code.

§11-17-20a. Criminal penalty for unlawful transportation of
tax-not-paid tobacco products.

Any person who transports tax-not-paid tobacco
products in violation of section twenty of this article is
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 regional
or county jail not more than one year, or both fined and
imprisoned.
§11-17-20b. Vending machines; presence of tax-not-paid tobacco products.

(a) If tax-not-paid tobacco products are found in any vending machine, both the tax-not-paid tobacco products and the vending machine are contraband goods within the meaning of article seven, chapter sixty-a of this code, and may be seized by the commissioner, at the discretion of the commissioner, or the commissioner's authorized deputies, agents or employees, or any law-enforcement officer in this state, without a warrant. The provision of article seven, chapter sixty-a of this code apply to the seizure and disposition of the contraband.

(b) Seizure and sale of the contraband shall not relieve the owner of the property from any action by the commissioner for violations of any other sections of this article.

§11-17-23. Special study on impact of tax on tobacco products other than cigarettes.

(a) The tax commissioner and the commissioner of the bureau of employment programs shall conduct a study to analyze the impact of the provisions of this article on the manufacturers and distributors of tobacco products other than cigarettes and their employees. This study shall include an analysis of the results of taxation of tobacco products other than cigarettes, as provided in this article, as they affect employment, costs of operation and the overall economic impact upon manufacturers and distributors and their employees.

(b) The commissioners shall report the results of the study to the governor and the joint committee on government and finance no later than the first day of February, two thousand three, and shall submit recommendations on how to ameliorate any negative impact upon manufacturers, distributors or employees through proposed tax credits, job training programs, extension of unemployment or other benefits, incentives or other similar solutions.
CHAPTER 60A. UNIFORM CONTROLLED SUBSTANCES ACT.

ARTICLE 7. WEST VIRGINIA CONTRABAND FORFEITURE ACT.

§60A-7-703. Items subject to forfeiture; persons authorized to seize property subject to forfeiture.

(a) The following are subject to forfeiture:

(1) All controlled substances which have been manufactured, distributed, dispensed or possessed in violation of this chapter;

(2) All raw materials, products and equipment of any kind which are used, or intended for use, in manufacturing, compounding, processing, delivering, importing or exporting any controlled substance in violation of this chapter;

(3) All tax-not-paid tobacco products, as that term is defined in section two, article seventeen, chapter eleven of this code, declared to be contraband under said article;

(4) All property which is used, or has been used, or is intended for use, as a container for property described in subdivision (1), (2) or (3) of this subsection;

(5) All conveyances, including aircraft, vehicles or vessels, which are used, have been used, or are intended for use, to transport, or in any manner to facilitate the transportation, sale, receipt, possession or concealment of property described in subdivision (1), (2) or (3) of this subsection, except that:

(i) A conveyance used by any person as a common carrier in the transaction of business as a common carrier shall not be forfeited under this section unless it appears that the person owning the conveyance is a consenting party or privy to a violation of this chapter;

(ii) A conveyance shall not be forfeited under the provisions of this article if the person owning the convey-
ance establishes that he or she neither knew, nor had
reason to know, that the conveyance was being employed
or was likely to be employed in a violation of this chapter;
and

(iii) A bona fide security interest or other valid lien in
any conveyance shall not be forfeited under the provisions
of this article, unless the state proves by a preponderance
of the evidence that the holder of the security interest or
lien either knew, or had reason to know, that the convey-
ance was being used or was likely to be used in a violation
of this chapter;

(6) All books, records, research products and materials,
including formulas, microfilm, tapes and data which are
used, or have been used, or are intended for use, in viola-
tion of this chapter;

(7) All moneys, negotiable instruments, securities or
other things of value furnished or intended to be furnished
in violation of this chapter by any person in exchange for
a controlled substance, all proceeds traceable to the
exchange and all moneys, negotiable instruments and
securities used, or which have been used, or which are
intended to be used to facilitate any violation of this
chapter: Provided, That no property may be forfeited
under this subdivision, to the extent of the interest of an
owner, by reason of any act or omission established by that
owner to have been committed or omitted without his or
her knowledge or consent; and

(8) All real property, including any right, title and
interest in any lot or tract of land, and any appurtenances
or improvements, which are used, or have been used, or are
intended to be used, in any manner or part, to commit or
to facilitate the commission of a violation of this chapter
punishable by more than one year imprisonment: Pro-
vided, That no property may be forfeited under this
subdivision, to the extent of an interest of an owner, by
reason of any act or omission established by that owner to
have been committed or omitted without his or her knowledge or consent.

The requirements of this subsection pertaining to the removal of seized property are not mandatory in the case of real property and the appurtenances to the real property.

(b) Property subject to forfeiture under this article may be seized by any person granted enforcement powers in section five hundred one, article five of this chapter (hereinafter referred to as the “appropriate person” in this article).

(c) Controlled substances listed in article two of this chapter which are manufactured, possessed, transferred, sold or offered for sale in violation of this chapter are contraband and shall be seized and summarily forfeited to the state. Controlled substances which are seized or come into the possession of the state, the owners of which are unknown, are contraband and shall be summarily forfeited to the state upon the seizure of the controlled substances.

(d) Species of plant from which controlled substances may be derived which have been planted or cultivated in violation of the provisions of this chapter, or of which the owners or cultivators are unknown, or which are wild growths may be seized and summarily forfeited to the state upon the seizure of the plants.

(e) The failure, upon demand by the appropriate person, or his or her authorized agent, of the person in occupancy or in control of land or premises upon which the species of plants are growing or being stored, to produce an appropriate registration, or proof that he or she is the holder of an appropriate registration, constitutes authority for the seizure and forfeiture of the plants.

(f) Notwithstanding any provision of this article to the contrary, controlled substances listed in article two of this chapter and species of plants from which controlled
substances may be derived shall either be destroyed or
used only for investigative or prosecutorial purposes.

(g) Notwithstanding any other provisions of this article
to the contrary, any items of real property or any items of
tangible personal property sold to a bona fide purchaser
are not subject to forfeiture unless the state establishes by
clear and convincing proof that the bona fide purchaser
knew or should have known that the property had in the
previous three years next preceding the sale been used in
violation of this chapter or that the property is a con-
trolled substance.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within... approved... this the... 26th
Day of... April... 2001.

Governor
PRESENTED TO THE
GOVERNOR
Date 4/19/01
Time 5:04pm