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OFFICE WEST VIRGINIA
SECRETARY OF STATE

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**

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COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 116

(SENATORS TOMBLIN, MR. PRESIDENT, AND SPROUSE,
BY REQUEST OF THE EXECUTIVE)

[Passed April 13, 2001; in effect ninety 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.* –

7 (1) "Cigarette" means:

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

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

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

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

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

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

36 (6) "Other tobacco product" or "tobacco products other
37 than cigarettes" means snuff and chewing tobacco and any
38 other tobacco product that is intended by the seller to be
39 consumed by means other than smoking and any cigar,
40 pipe tobacco or other tobacco product other than ciga-
41 rettes.

42 (7) "Package" means the individual package, box or
43 other container in or from which retail sales of tobacco
44 products are normally made or intended to be made.

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

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

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

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

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

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

74 (14) "Stamp" or "meter impression" means any cigarette
75 stamp or any meter or ink impression or other indicia

76 authorized by the tax commissioner to serve as a stamp
77 and shall be of the design and color as prescribed by the
78 tax commissioner.

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

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

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

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

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

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

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

105 (22) "Unstamped cigarettes" means that the stamp or
106 impression as required by this article has not been affixed
107 to the bottom of the package of cigarettes.

108 (23) "Vending machine operator" means any person
109 operating one or more vending machines for the sale of
110 tobacco products. The sale of tobacco products through a
111 vending machine will be construed as sales at retail and
112 subjects the vending machine operator to this article and
113 rules pertaining to retail dealers.

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

120 (24) "Wholesale price" means the gross invoice price,
121 including all federal excise taxes, at which the manufac-
122 turer of the tobacco product sells the tobacco product to
123 unaffiliated distributors, excluding all trade discounts and
124 other reductions in the manufacturer's price. If the
125 taxpayer buys from other than a manufacturer, "wholesale
126 price" means the gross invoice price, including all federal
127 excise taxes and excluding all trade discounts and other
128 similar reductions in price.

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

§11-17-3. Levy of tax; ratio; dedication of proceeds.

1 (a) *Tax on cigarettes.* — For the purpose of providing
2 revenue for the general revenue fund of the state, an excise
3 tax is hereby continued on sales of cigarettes at the rate of
4 seventeen cents on each twenty cigarettes or in like ratio
5 on any part thereof. Only one sale of the same article shall
6 be used in computing the amount of tax due under this
7 subsection.

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

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

1 (a) Notwithstanding other provisions of this article, it is
2 hereby declared to be the intent of the Legislature that one
3 rate of excise tax is applicable to all quantities of cigarettes and another rate of excise tax is applicable to all
4 tobacco products other than cigarettes in this state on and
5 after the first day of July, two thousand one, under the
6 provisions of this article. Any tobacco products, on hand
7 or in inventory, on the effective date of any rate change
8 are hereby considered to have been purchased or received
9 on the effective date of the change in rate.
10

11 (b) Every wholesaler, subjobber, subjobber dealer, retail
12 dealer and vending machine operator who, on the effective
13 date of any rate change, has, on hand or in inventory, any
14 tobacco products, upon which the tax or any portion of the
15 tax has been previously paid, shall take a physical inven-

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 (c) Imposition of the tax on tobacco products other than
24 cigarettes shall be treated as a change in rate on the
25 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 (b) The tax imposed by this article on tobacco products
4 other than cigarettes shall be paid using an invoice method
5 prescribed by the tax commissioner.

6 (c) Payment for stamps purchased from the commis-
7 sioner shall be made by cash, money order, bank draft,
8 certified check or by noncertified check. However, in the
9 event a noncertified check is returned unpaid by its bank,
10 then it shall be considered that payment has not been
11 made for the taxes due.

12 (d) A stamp, as required by this article, as described in
13 the rules promulgated under this article by the tax com-
14 missioner in accordance with article three, chapter
15 twenty-nine-a of this code, shall be affixed to or impressed

16 upon each package of cigarettes of an aggregate value of
17 not less than the amount of tax upon the contents of the
18 package. The stamp or impression that is affixed is prima
19 facie evidence of payment of the tax imposed by this
20 article. Stamps or meter impressions shall be purchased
21 from the commissioner or his or her deputy, by, and paid
22 for by, wholesalers.

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

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

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

45 (h) Whenever any tobacco products other than cigarettes
46 are found in the place of business of any retail dealer or
47 subjobber and there is no evidence that the tax imposed by
48 this article has been paid on the tobacco products other
49 than cigarettes, it shall be presumed that the tobacco
50 products other than cigarettes are kept on the premises in
51 violation of this article.

52 (i) If the tax commissioner determines that it is practica-
53 ble to stamp packages of cigarettes by impression by
54 means of a metering device, then the commissioner shall
55 provide that the metering device and its impression may be
56 used in lieu of the stamps otherwise required by law. The
57 tax commissioner may authorize any wholesaler purchas-
58 ing tobacco products, who holds a valid business registra-
59 tion certificate, as required by article twelve of this
60 chapter, to use any metering device approved by the
61 commissioner after the device has been sealed by the
62 commissioner or a deputy, or agent, authorized by the
63 commissioner. A metering device shall be used only in
64 accordance with the rules prescribed by the commissioner.

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

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

1 (a) *Due date.* — On or before the fifteenth day of each
2 month, manufacturers, importers, common carriers,
3 wholesalers, subjobbers, retail dealers and agents or
4 vending machine operators shall, when required by this
5 article, or the tax commissioner, file a report covering the
6 business transacted in the previous month providing any
7 information the commissioner determines necessary for the
8 ascertainment or assessment of the taxes imposed by this
9 article. Reports shall be signed under penalty of perjury
10 and be in a form prescribed by as the tax commissioner.
11 The amount of tax shown to be due on the monthly report,
12 if any, shall be remitted by the due date of the monthly
13 report, determined without regard to any authorized
14 extension of time for filing the report.

15 (b) *Reports required.* — The reports prescribed in this
16 article are required, although a tax might not be due or no
17 business transacted, for the period covered by the report.

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

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

43 (e) *Inspection of tobacco products inventory.* — In
44 addition to the tax commissioner's powers set forth in
45 section five, article ten of this chapter, the tax commis-
46 sioner, or a deputy or agent authorized by the commis-
47 sioner, may inspect or examine the stock of tobacco
48 products kept in and upon the premises of any person
49 where tobacco products are placed, stored or sold and
50 shall inspect or examine the records, books, papers and
51 any equipment or records of manufacturers, importers,

52 cigarette stamping agents, wholesalers, subjobbers, retail
53 dealers, common carriers or any other person for the
54 purpose of determining the quantity and value of tobacco
55 products acquired or disbursed to verify the truth and
56 accuracy of any statement or report and to ascertain
57 whether the tax imposed by this article has been properly
58 paid.

59 (f) *Examination of witnesses and records.* — In addition
60 to the tax commissioner's powers set forth in section five,
61 article ten of this chapter, and as a further means of
62 obtaining the records, books and papers of a manufac-
63 turer, importer, common carrier, wholesaler, subjobber or
64 retailer or any other person and ascertaining the amount
65 of taxes and reports due under this article, the commis-
66 sioner and any duly appointed agent may examine wit-
67 nesses under oath; and if the witness fail or refuse at the
68 request of the tax commissioner or any duly appointed
69 agent to grant access to the books, records or papers, the
70 tax commissioner or the agent shall certify the facts and
71 names to the circuit court of the county having jurisdiction
72 of the party and court shall thereupon issue summons to
73 the party to appear before the tax commissioner or any
74 duly appointed agent, at a place designated within the
75 jurisdiction of the court, on a day fixed, to be continued as
76 the occasion may require for good cause shown and give
77 evidence and lay open for inspection any books and papers
78 that may be required for the purpose of ascertaining the
79 amount of tax and reports due, if any.

§11-17-13. Preservation of rules.

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

§11-17-19. Penalty for failure to file report when no tax due.

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

§11-17-19a. Criminal penalties.

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

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

11 (2) The person with intent to evade the tax imposed by
12 this article, presents any false entry upon an invoice,
13 package or container of tobacco products for the inspec-
14 tion of the commissioner or the commissioner's authorized
15 deputy, agent or employee;

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

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

24 (5) The person sells cigarettes in this state without there
25 having been first affixed to each individual package of
26 cigarettes the stamp or meter impression required to be
27 affixed to the package by this article;

28 (6) The person sells other tax-not-paid tobacco products
29 in this state to a subjobber, retail dealer or consumer in
30 this state;

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

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

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

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

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

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

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

58 (14) A person who is not a wholesaler of tobacco prod-
59 ucts, as defined in this article, has in his or her possession
60 within this state more than twenty packages of cigarettes,
61 that do not bear cigarette tax paid indicia of this state,

62 stamps or meter impressions, or other tax-not-paid
63 tobacco products, if the retail value of the tobacco prod-
64 ucts is more than thirty dollars for all tax-not-paid
65 tobacco products. The possession shall be presumed to be
66 for the purpose of evading the payment of the taxes
67 imposed or due on the tobacco products;

68 (15) The person violates any of the provisions of this
69 article or any lawful rule promulgated by the commis-
70 sioner under authority of article ten of this code.

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

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

82 (2) The person knowingly and willfully makes, causes to
83 be made, purchases, receives or has in his or her posses-
84 sion, any device for forging or counterfeiting any stamp or
85 meter impression;

86 (3) The person has in his or her possession any stamps
87 not properly issued by the commissioner, or the commis-
88 sioner's authorized employee, agent or deputy;

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

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

94 (c) *Deposit of penalties.* — All penalties collected under
95 the provisions of this section shall be paid into the general
96 revenue fund.

§11-17-19b. Certain tax-not-paid tobacco products declared contraband.

1 (a) Whenever the commissioner or any of the commis-
2 sioner's authorized deputies, agents or employees, or any
3 law-enforcement officer in this state, discovers any
4 tobacco products subject to tax, as provided by this article,
5 and upon which the tax has not been paid, as required by
6 this article, the tobacco products shall thereupon be
7 considered to be contraband, and the commissioner, or the
8 commissioner's authorized deputy, agent or employee, or
9 any law-enforcement officer in this state, may immedi-
10 ately seize and take possession of the tobacco products
11 without a warrant, and the tobacco products and related
12 property shall be forfeited to the state as provided in
13 article seven, chapter sixty-a of this code.

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

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

1 Magistrates have concurrent jurisdiction with any other
2 courts having jurisdiction for the trial of all misdemeanors
3 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-
2 paid tobacco products upon the public highways, water-
3 ways, airways, roads or streets of this state shall have in
4 his or her actual possession invoices or delivery tickets for
5 the tobacco products.

6 (b) *Contents of delivery tickets.* — Delivery tickets shall
7 show: (1) The true name and the complete and exact
8 address of the consignor or seller; (2) the true name and

9 complete and exact address of the consignee or purchaser;
10 (3) the quantity and brands of the tobacco products
11 transported; and (4) the true name and complete and exact
12 address of the person who has or shall assume payment of
13 the West Virginia taxes imposed by this article, or the tax,
14 if any, of the state or foreign country at the point of
15 ultimate destination: *Provided*, That any common carrier
16 which has issued a bill of lading for a shipment of tobacco
17 products and is without notice to itself or to any of its
18 agents or employees that the cigarettes are not stamped as
19 required by this article, or that the tax imposed by this
20 article on tobacco products other than cigarettes has not
21 been paid, shall be considered to have complied with this
22 article and the vehicle or vessel in which the tax-not-paid
23 tobacco products are being transported is not subject to
24 confiscation under this section or article seven, chapter
25 sixty-a of this code.

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

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

1 Any person who transports tax-not-paid tobacco
2 products in violation of section twenty of this article is
3 guilty of a misdemeanor and, upon conviction thereof,
4 shall be fined not less than three hundred dollars nor more
5 than five thousand dollars, or imprisoned in the regional
6 or county jail not more than one year, or both fined and
7 imprisoned.

§11-17-20b. Vending machines; presence of tax-not-paid tobacco products.

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

11 (b) Seizure and sale of the contraband shall not relieve
12 the owner of the property from any action by the commis-
13 sioner for violations of any other sections of this article.

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

1 (a) The tax commissioner and the commissioner of the
2 bureau of employment programs shall conduct a study to
3 analyze the impact of the provisions of this article on the
4 manufacturers and distributors of tobacco products other
5 than cigarettes and their employees. This study shall
6 include an analysis of the results of taxation of tobacco
7 products other than cigarettes, as provided in this article,
8 as they affect employment, costs of operation and the
9 overall economic impact upon manufacturers and distribu-
10 tors and their employees.

11 (b) The commissioners shall report the results of the
12 study to the governor and the joint committee on govern-
13 ment and finance no later than the first day of February,
14 two thousand three, and shall submit recommendations on
15 how to ameliorate any negative impact upon manufactur-
16 ers, distributors or employees through proposed tax
17 credits, job training programs, extension of unemployment
18 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.**

1 (a) The following are subject to forfeiture:

2 (1) All controlled substances which have been manufac-
3 tured, distributed, dispensed or possessed in violation of
4 this chapter;

5 (2) All raw materials, products and equipment of any
6 kind which are used, or intended for use, in manufactur-
7 ing, compounding, processing, delivering, importing or
8 exporting any controlled substance in violation of this
9 chapter;

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

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

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

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

27 (ii) A conveyance shall not be forfeited under the
28 provisions of this article if the person owning the convey-

29 ance establishes that he or she neither knew, nor had
30 reason to know, that the conveyance was being employed
31 or was likely to be employed in a violation of this chapter;
32 and

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

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

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

56 (8) All real property, including any right, title and
57 interest in any lot or tract of land, and any appurtenances
58 or improvements, which are used, or have been used, or are
59 intended to be used, in any manner or part, to commit or
60 to facilitate the commission of a violation of this chapter
61 punishable by more than one year imprisonment: *Pro-*
62 *vided*, That no property may be forfeited under this
63 subdivision, to the extent of an interest of an owner, by
64 reason of any act or omission established by that owner to

65 have been committed or omitted without his or her
66 knowledge or consent.

67 The requirements of this subsection pertaining to the
68 removal of seized property are not mandatory in the case
69 of real property and the appurtenances to the real prop-
70 erty.

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

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

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

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

97 (f) Notwithstanding any provision of this article to the
98 contrary, controlled substances listed in article two of this
99 chapter and species of plants from which controlled

100 substances may be derived shall either be destroyed or
101 used only for investigative or prosecutorial purposes.

102 (g) Notwithstanding any other provisions of this article
103 to the contrary, any items of real property or any items of
104 tangible personal property sold to a bona fide purchaser
105 are not subject to forfeiture unless the state establishes by
106 clear and convincing proof that the bona fide purchaser
107 knew or should have known that the property had in the
108 previous three years next preceding the sale been used in
109 violation of this chapter or that the property is a con-
110 trolled substance.

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 Senate.

In 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 *is approved* this the *26th*
Day of *April*, 2001.

[Signature]
.....
Governor

PRESENTED TO THE

GOVERNOR

Date 4/19/01

Time 5:04 pm