

H. B. 2119

(By Delegate Azinger)

[Introduced February 13, 2013; referred to the  
Committee on Finance.]

A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §11-18-1, §11-18-2, §11-18-3, §11-18-4, §11-18-5, §11-18-6, §11-18-7, §11-18-8, §11-18-9 and §11-18-10, all relating to imposing an excise tax on the sale or rental of obscene materials; defining terms; setting forth requirements; setting forth liabilities; establishing record keeping requirements; and establishing that the tax be deposited in the General Revenue Fund.

*Be it enacted by the Legislature of West Virginia:*

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §11-18-1, §11-18-2, §11-18-3, §11-18-4, §11-18-5, §11-18-6, §11-18-7, §11-18-8, §11-18-9 and §11-18-10, all to read as follows:

**ARTICLE 18. OBSCENE MATERIALS TAX ACT.**

**§11-18-1. Definitions.**

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

(b) Definitions. —

(1) "Obscene material" means material, in whatever form it may exist and by whatever manner it may be published,

that:

(A) An average person, applying contemporary adult community standards, would find, taken as a whole, appeals to the prurient interest, is intended to appeal to the prurient interest, or is pandered to a prurient interest;

(B) An average person, applying contemporary adult community standards, would find, depicts or describes, in a patently offensive way, sexually explicit conduct consisting of an ultimate sexual act, normal or perverted, actual or simulated, an excretory function, masturbation, lewd exhibition of the genitals or sadomasochistic sexual abuse; and

(C) A reasonable person would find that the material, taken as a whole, lacks literary, artistic, political or scientific value.

(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 the possession of obscene material.

(4) "Person" means and includes any individual, firm, association, company or other legal entity.

(5) "Rental" means and includes transferring the possession, or the right to possession, for a definite or indefinite period of time.

(6) "Sale," "sales" or "selling" includes any transfer of the possession or ownership of tangible personal property for a consideration, including a lease or rental, when the transfer or delivery is made in the ordinary course of the transferor's business and is made to the transferee or his or her agent for use or any other purpose.

(7) "Taxpayer" means any person liable for the tax imposed by this article.

(8) "Vendor" means any person engaged in this state in making sales or rentals of obscene materials.

#### **§11-18-2. Levy of tax; dedication of proceeds.**

For the purpose of providing revenue for the General Revenue Fund of the state, an excise tax is hereby imposed upon the sale or rental of obscene materials at the rate of \$1 on each and every separate piece or article.

**§11-18-3. Purchaser to pay; accounting by vendor.**

The purchaser shall pay to the vendor the amount of tax levied by this article which shall be added to and constitute a part of the sales price, and shall be collectible as such by the vendor who shall account to the state for all tax paid by the purchaser. The vendor shall keep the amount of tax paid separate from the proceeds of sale exclusive of the tax unless authorized in writing by the Tax Commissioner to keep the amount of tax in a different manner. Where that authorization is given, the state's claim shall be enforceable against and shall take precedence over all other claims against the moneys commingled.

**§11-18-4. Failure to collect tax; liability of vendor.**

If any vendor fails to collect the tax imposed by section three of this article, he or she shall be personally liable for the amount he or she failed to collect.

**§11-18-5. Liability of purchaser; assessment and collection.**

If any purchaser refuses or otherwise does not pay to the vendor the tax imposed by section three of this article, he or she shall be personally liable for the amount of the tax applicable to the transaction or transactions: *Provided*, That nothing herein relieves any purchaser who owes the tax and who has not paid the tax imposed under section three of this article from liability therefor.

**§11-18-6. Quarterly and annual returns.**

(a) When the total obscene materials tax remittance for which a person is liable does not exceed an average monthly amount over the taxable year of \$250, he or she may pay the tax and make a quarterly return on or before the fifteenth day of the first month in the next succeeding quarter in lieu of monthly returns: *Provided*, That the Tax Commissioner may, by nonemergency legislative rules promulgated pursuant to article three, chapter twenty-nine-a of this code, change the minimum amount established in this subsection.

(b) When the total obscene materials tax remittance for which a person is liable does not in the aggregate exceed \$600 for the taxable year, he or she may pay the tax and make an annual return on or before the fifteenth day of the first month next succeeding the end of his or her taxable year: *Provided*, That the Tax Commissioner may, by nonemergency legislative rules promulgated pursuant to article three, chapter twenty-nine-a of this code, change the minimum amount established in this subsection.

**§11-18-7. Annual return; extension of time.**

(a) *Date due.* -- On or before thirty days after the end of the tax year, each person liable for the payment of any tax due under this article shall make and file an annual return in such form as may be required by the Tax Commissioner, showing:

(1) Total number of pieces or articles of obscene material sold by his or her business for preceding tax year;

(2) Gross proceeds upon which the tax for that year was computed; and

(3) Any other information necessary in the computation or collection of the tax that the Tax Commissioner may require.

(b) *Supporting schedule for consolidated return.* -- Whenever a person operates two or more places of business and files a consolidated monthly return, a schedule shall be attached to the consolidated annual return showing, for each place of business, the total number of sales of pieces or articles subject to the obscene material tax and the total sum of tax collections.

(c) *Payment.* -- After deducting the amount of prior payments during the tax year, the taxpayer shall forward the annual return along with payment of any remaining tax, due for the preceding tax year, to the Tax Commissioner. The taxpayer or his or her duly authorized agent shall verify the return under oath.

(d) *Extension of time.* -- The Tax Commissioner for good cause shown, may, on written application of a taxpayer, extend the time for making any return required by the provisions of this article.

**§11-18-8. Consolidated returns.**

A person operating two or more places of business of like character from which obscene materials are sold or rented and are

taxable hereunder shall file consolidated returns covering all those sales.

**§11-18-9. Keeping and preservation of records.**

Each taxpayer shall keep complete and accurate records of taxable sales and of charges, together with a record of the tax collected thereon, and shall keep all invoices, bills of lading and such other pertinent documents in such form as the Tax Commissioner may by rule require. These records and other documents shall be preserved for a period of time not less than three years, unless the Tax Commissioner shall consent in writing to their destruction within that period or by order require that they be kept longer.

**§11-18-10. Proceeds of tax; appropriation of certain revenues.**

The proceeds of the tax imposed by this article shall be deposited in the General Revenue Fund of the state.

NOTE: The purpose of this bill is to tax the sale or rental of obscene materials. The bill defines terms and sets forth collection and record keeping requirements. The bill also sets forth liabilities and establishes that the tax be deposited in the General Revenue Fund.

This article is new; therefore, it has been completely underscored.