

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

N I N E T I E T H L E G I S L A T U R E

Legislative Document

No. 125

H. P. 323.

House of Representatives, January 21, 1941.

Referred to the Committee on Taxation and 1,000 copies ordered printed.
Sent up for concurrence.

HARVEY R. PEASE, Clerk.

Presented by Mr. Good of Monticello.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
FORTY-ONE

AN ACT Levying a Tax on Soft Drinks.

Emergency preamble. Whereas, the state, under present revenue measures, is not able to pay pensions for the aged according to the law; and

Whereas, unless revenue is immediately provided for, many old people will lack the necessities of life; and

Whereas, in the judgment of the legislature these facts create an emergency within the meaning of section 16 of Article XXXI of the constitution of the state of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health, and safety; now, therefore,

Be it enacted by the People of the State of Maine, as follows:

Sec. 1. Definitions. (a) The term "dealer" shall include every person, firm, corporation or association of persons who manufacture any bottled soft drinks or soft drink syrup as herein defined for distribution, sale, use, or consumption in the state of Maine.

The term "dealer" is further defined to mean any person, firm, corporation or association of persons who imports any bottled soft drinks or soft

drink syrup as herein defined from any state or foreign country for distribution, sale, use or consumption in the state of Maine.

(b) The term "wholesale dealer" as used herein shall include only those dealers who shall sell any bottled soft drinks or soft drink syrup as herein defined to licensed retail dealers for the purpose of resale.

(c) The phrase "retail dealer" as used herein shall include every dealer other than a "wholesale dealer" as defined above, who shall sell or offer for sale said taxable articles irrespective of quantity or amount or the number of sales.

(d) The term "dealer" is further defined to mean any person, firm, corporation or association of persons who sells, offers for sale, or has in his possession for sale, use, consumption or distribution, any bottled soft drinks or soft drink syrup as herein defined who cannot prove that the tax levied by this act has been previously paid on the said bottled soft drinks or soft drink syrup as herein defined, or that the payment of said tax has been guaranteed by bond which has been furnished and accepted.

(e) The term "assessor" as used in this act shall mean the state tax assessor or his duly authorized assistants.

(f) The phrase "retail selling price" as used herein shall mean the ordinary, customary or usual price paid by the consumer for each taxable article sold at retail before the tax levied by this act has been paid.

(g) "Syrup or syrups" shall be defined as being the compound mixture or basic ingredient used in the making, mixing or compounding of soft drinks at soda fountains by the mixing with same of carbonated or plain water, ice, fruit, milk or any other product suitable to make a soft drink, among such syrups being such products as coca-cola syrup, chero-cola syrup, lemon syrup, vanilla syrup, cherry smash syrup, rock candy syrup, simple syrup, nu-grape syrup, Dr. Pepper syrup, or all prepared syrups sold or used for the purpose of mixing soft drinks at soda fountains.

Simple syrup is further defined to mean any syrup made, mixed, compounded or manufactured by dissolving sugar and water or any other mixture that will create what is commonly referred to as "simple syrup" for use at soda fountains.

(h) The term "stamp" as herein used shall mean the stamp or stamps by the use of which the tax levied hereunder is paid.

(i) The term "crown" as herein used shall mean the crown or crowns by the use of which the tax levied hereunder is paid.

(j) Bottled soft drinks as referred to in this act, shall include any and all beverages whether carbonated or not, such as soda water, ginger ale,

nu-grape, coca-cola, lime-cola, pepsi-cola, Dr. Pepper, fruit juice, milk drinks when any flavoring or syrup is added, cider, cordial, bottled carbonated water, or any and all bottled preparations commonly referred to as soft drinks of whatsoever kind and description. Soft drinks are further defined to include any and all beverages commonly referred to as soft drinks which are manufactured without the use of any syrup. Provided that the provisions of this act shall not apply to unadulterated fruit juices in original state used in hospitals.

Sec. 2. Levying tax on bottled soft drinks and soft drink syrup. There is hereby levied a tax upon the sale, use, consumption, handling or distribution of all bottled soft drinks as herein defined and all soft drink syrup within the state of Maine, as follows:

(a) On bottled soft drinks a tax of $\frac{1}{2}c$ on each 5c or fractional part thereof of the retail selling price thereof.

(b) On syrups a tax of 20c per gallon and a like or proportionate rate on more or less than a gallon.

No stamp or crown evidencing the tax herein levied shall be of a denomination less than $\frac{1}{2}c$.

Sec. 3. Stamps to be furnished by assessor. In order to enforce the collection of said tax hereby levied, the assessor is authorized and required to design and have printed stamps of such size and denominations as may be determined by the assessor, so manufactured as to render said stamps easy to be glued and attached to containers of taxable articles subject to tax according to this act; that said stamps shall be affixed by the dealer on the smallest containers that will be handled, sold, used, consumed or distributed to the consumer, to permit the said assessor to readily ascertain by an inspection of any dealer's stock on hand whether or not said tax has been paid as provided in this act.

Stamps required to be affixed by the provisions of this act shall be fixed in such manner that their removal will require continued application of steam or water and shall be cancelled by placing thereon the permit number of said dealer.

All soft drink tax stamps shall be purchased from and sold by the assessor. Any person, firm, corporation, or association of persons other than the assessor who sells soft drink tax stamps, not affixed to taxable articles, whether the said stamps be genuine or counterfeit, shall be guilty of a felony and punishable as set out in section 9 of this act.

In order to further enforce the collection of said tax hereby levied the assessor is hereby empowered and directed to authorize the manufacture of

Maine soft drink tax crowns, and to promulgate rules and regulations governing the purchase, sale and distribution of Maine soft drink tax crowns, with which to seal said bottled soft drinks. Said crowns shall carry a design approved by the assessor, the use of which crowns shall be evidence of the payment of taxes provided for in this act. Manufacturers or distributors of crowns shall be required to furnish bond satisfactory to the assessor to insure faithful compliance with such regulations, and meet all requirements as set forth by the assessor. All purchasers of crowns shall be required to purchase crowns in accordance with rules and regulations promulgated by the assessor. The price to be paid by purchasers of crowns shall be the manufacturers' price, plus all transportation charges to consignee at destination, and in addition thereto, shall be $\frac{1}{2}c$ per crown, when to be used upon bottled drinks retailing for 5c each or less; 1c per crown when to be used upon bottled drinks retailing for more than 5c each but not more than 10c each, $1\frac{1}{2}c$ per crown when to be used upon bottled drinks retailing for more than 10c each, but not more than 15c each, so that the tax will equal $\frac{1}{2}c$ for each 5c or fractional part thereof of the retail selling price so as to comply with the soft drink license tax herein required.

Provided, further, that said stamps and crowns, which are provided for in this act, shall be supplied by the assessor to all licensed soft drink dealers.

That all crowns shall be purchased through and upon order approved by the assessor. Any person, firm, corporation or association of persons who sells or purchases crowns or otherwise handles soft drink tax crowns except as above provided, whether the crowns be genuine or counterfeit, shall be guilty of a felony and punishable as set out in section 9 of this act.

Sec. 4. Intention of act. It is the intent and purpose of this act to require all manufacturers and dealers in bottled soft drinks to affix either soft drink tax stamps or soft drink tax crowns to each individual bottle of soft drinks sold, used, consumed, handled or distributed, and when the said stamps or crowns are so affixed they shall be evidence of the payment of the tax provided herein. That in the event the manufacturers of bottled drinks either within or without the state of Maine shall use the soft drink tax crown as herein provided for, then and in such event, said manufacturer shall be relieved of the duty of stamping each individual bottle.

It is further the intent and purpose of this act that evidence of the payment of the tax herein levied on all bottled soft drinks that are manufactured in this state to be sold for not more than 10c per bottle shall be by the use of soft drink tax crowns, as provided in this act and this provision

is hereby made obligatory and compulsory on all manufacturers in this state who may engage in the manufacture, sale, consignment, handling or distribution of the said bottled soft drinks that are manufactured in this state.

It is further the intent and purpose of this act that milk drinks sold direct to school children on school premises, or sold through a school organization to school children on school premises, shall be exempt from the tax levied by this act.

It is the intent and purpose of this act to levy an excise tax on all bottled soft drinks and syrup, as defined in this act, when sold, used, consumed, handled or distributed in this state and to collect same from the dealer who first distributes, sells, uses, consumes or handles the same in the state of Maine.

It is further the intent and purpose of this act that where a dealer gives away bottled soft drinks or syrup for advertising or any other purpose whatsoever the same shall be taxed in the same manner as if it were sold, used, consumed, handled or distributed in this state.

Sec. 5. Permits for dealers issued by assessor. Every person, firm, corporation or association of persons in this state who sells or is about to engage in the business of either a retail dealer or wholesale dealer in any or all of the article or articles taxed hereunder shall first apply to and obtain from the assessor a permit or permits to engage in the business of wholesale dealer or retail dealer, as the case may be, and shall obtain a separate permit for each place of business of such dealer; and shall pay to the assessor a fee of 50c for each permit. "Place of business" as used in this section is construed to include the place where orders are received, or where articles taxed under this act are sold, or if sold upon a railroad train or on or from any other vehicle, the vehicle on which or from which such taxable articles are sold shall constitute a place of business.

Applications for permits must be subscribed and sworn to by the person owning the business or having an ownership interest therein. If the applicant is a corporation, a duly authorized agent shall execute the application. The application shall be made on blanks to be provided and furnished by the assessor, and shall, in addition to such other information as the said assessor may require, show the name of such dealer, and in case of partnerships the name of each partner thereof, the dealer's post office address, whether the application is for a permit as a wholesale dealer or as a retail dealer and a statement giving the location of the place of business as to which the permit shall apply; and in case of retail dealers the nature of any businesses, (such as drug store, hotel, general store, etc.), carried on

at the same place. Permits shall expire with the current year in which they are issued, but may be renewed on like application. If the business changes hands during the period the permit runs, a new permit must be applied for and paid for. Should the place of business be changed during the period the permits run, the permit must be sent to the assessor so that proper change may be noted thereon. A permit cannot be transferred from one dealer to another. The permit shall at all times be publicly displayed by the dealer in his place of business so as to be easily seen by the public. Permits may be refused to any dealer previously convicted for having been involved in any violation of this act.

The assessor, after notice and opportunity to be heard, under regulations to be made by him, shall have jurisdiction, power and authority to revoke the permits of any wholesale dealer or any retail dealer for violation of this law, or for wilful or persistent violation of regulations made under this law. No new permit shall be issued to anyone whose permit has been revoked, except in the discretion of the assessor.

Sec. 6. Duty of wholesale dealer to affix stamps and crowns; records; reports. Every wholesale dealer in this state shall immediately after receipt of any unstamped syrup or any bottled soft drinks, unless sooner offered for sale, cause the same to have the requisite denominations and amount of stamp or stamps to represent the tax affixed as stated herein, and to cause same to be cancelled by writing or stamping across the face of each stamp the permit number of such wholesale dealer. The stamping of said unstamped syrup or bottled soft drinks shall actually begin within 2 hours after receipt of syrup or bottled soft drinks in the premises of the wholesale dealer, and said stamping shall be continued with reasonable diligence by the wholesale dealer until all of the unstamped taxable articles have been stamped and the stamps cancelled as provided by law.

The assessor is empowered and authorized to promulgate rules and regulations pertaining to the replacement of the tax paid on taxable articles shipped beyond the borders of the state.

Every wholesale dealer shall at the time of shipping or delivering any articles taxable under this act make a true duplicate invoice of the same which shall show full and complete details of the sale or delivery of the taxable article, and said dealer shall retain the same subject to the use and inspection of the assessor for a period of 2 years. Wholesale dealers shall also keep a record of purchases of all articles taxable under this act purchased by them, and hold all books, records and memoranda pertaining to the purchase and sale of such articles open to the inspection of the assessor for a period of 2 years.

Every wholesale dealer shall furnish to the assessor a semi-monthly report on the 1st and 15th of each respective calendar month of all orders for articles taxable under this act purchased through said wholesale dealer from without this state on a drop shipment and consigned direct to the person, firm, corporation or association of persons ordering such taxable articles from without this state through such wholesale dealer.

After and upon examination of invoices of the dealer, as defined in this act, should the assessor find that any of the taxable articles have been sold, used, consumed, handled or distributed without stamps or tax crowns affixed, as the case may be, required in this act, he shall have the power to require such person, firm, corporation or association of persons to pay into the state treasury through him a sum equal to not less than twice the amount of the tax due. If upon examination of invoices the dealer, as defined in this act, is unable to furnish evidence to the assessor of sufficient stamp or tax crown purchases to cover unstamped taxable articles purchased by him, the prima facie presumption shall arise that such taxable articles were sold, used, consumed, handled or distributed without the proper stamps or tax crowns affixed thereto. The refusal or failure to comply with these provisions shall be deemed a misdemeanor and punishable as set out in section 10 of this act.

Provided, further, that the assessor may promulgate rules and regulations setting forth the manner and method for the cancellation of tax stamps.

Sec. 7. Duty of retail dealer to affix stamps. Every retail dealer shall, except in the case of syrup and soft drinks on which the tax has been paid by the proper affixing of crowns and stamps and the cancellation of stamp or stamps by a wholesale dealer, as provided for herein, affix the stamp or stamps for the denominations and amount necessary to represent the tax on each individual article and cancel the same by stamping his permit number across the face of each stamp, in the manner required by this act, the same to be done, in all cases, immediately upon receipt by the retail dealer of the unstamped taxable articles.

If and whenever any of the articles taxed in this act are found in the possession of any retail dealer or any other person, firm, corporation or association of persons, without the stamps affixed and cancelled, except as may be provided by rules and regulations, the prima facie presumption shall be that such articles are kept in violation of the provisions of this act. Retail dealers shall keep a record of purchases of all syrups and bottled soft drinks purchased by them and all simple syrup made, compounded or manufactured by him, and shall hold all books, records and memoranda

pertaining to purchase, sale or manufacture of such taxable articles open to the inspection of the assessor or his duly authorized agents, for a period of 2 years.

Sec. 8. Duty of assessor, to collect tax; powers and authority. It is hereby made the duty of the assessor to collect, supervise and enforce the collection of all taxes and penalties that may be due under the provisions of this act, and to that end the said assessor is hereby vested with all the power and authority conferred by this act.

The assessor is further authorized and empowered to promulgate rules and regulations to provide for the collection of the amount of tax due on all bottled soft drinks and syrup taxable under the provisions of this act in possession of dealers, on the effective date of this act, so as to prevent any bottled soft drinks and syrup being sold within this state, without the tax herein provided for being paid.

The assessor may promulgate rules and regulations providing for the replacement to dealer for the cost of stamps and the amount of tax paid on soft drink tax crowns affixed to goods which, by reason of damage, become unfit for sale and are destroyed by dealer or returned to manufacturer or jobber. The replacement herein referred to shall be made only on a proper showing and authentic proof by the dealer satisfactory to the assessor.

The assessor is further authorized and empowered to promulgate rules and regulations for the refund to dealer for unused tax stamps and tax value of unused tax crowns. Said assessor shall have the power to make and publish reasonable rules and regulations, not inconsistent with this act or the other laws or the constitution of this state or of the United States, for the enforcement of the provisions of this act and the collection of revenues hereunder.

Sec. 9. Acts declared to be felony; penalty. Each of the following acts is hereby declared to be a felony and punishable by imprisonment in the state prison for not less than 1 nor more than 4 years, viz.:

(a) To forge or counterfeit any stamp or crown of the kind herein provided for.

(b) To use knowingly and intentionally any such forged or counterfeited stamp or crown.

(c) To have in possession knowingly and intentionally any such forged or counterfeit stamp or crown.

(d) For any person or persons other than the assessor to sell tax stamps or crowns, not affixed to taxable articles, whether the said stamps be genuine or counterfeit, except as is provided for herein.

(e) For any person or persons to purchase from other than the assessor soft drink tax stamps or for any person or persons to purchase, other than through the assessor, soft drink tax crowns not affixed to taxable article whether the stamp or crown be genuine or counterfeit except as provided for herein.

Sec. 10. Acts declared to be misdemeanor; penalty. Each of the following acts is declared to be a misdemeanor.

(a) To sell or offer for sale at wholesale or at retail any of the articles herein taxed without first having procured a permit as a wholesale or retail dealer, accordingly as the case may be; provided, nevertheless, that in the case of purchases of stocks in bulk, the purchaser may operate under the permit of the seller for 10 days, pending the application for and the granting of a permit to such buyer, and that in case of the dissolution of a partnership by death, the surviving partner may operate under the permit of the partnership until the time of its expiration, and the heirs, legal representatives of deceased persons and receivers and trustees in bankruptcy appointed by any competent authority may operate under the permit of the person, firm, corporation or association of persons so succeeded in possession by such heir, representative, receiver or trustees in bankruptcy.

(b) To sell, except as a licensed wholesale dealer engaged in interstate commerce as to articles herein taxed sold in interstate commerce, any of the articles taxed herein without the stamp or stamps or crowns herein provided for first being affixed and cancelled as herein provided.

(c) To violate any lawful rule and regulation made and published by the assessor hereunder.

(d) To use any stamp or crown more than once, or to have in one's possession tax stamps or crowns that have been used.

(e) To remove, erase, alter or deface the cancellation mark or marks on any stamp, or to have in possession any stamp on which the cancellation mark has been removed, erased, altered or defaced.

(f) To refuse to allow, on demand, the assessor or any officer or agent of the said assessor of this state to make a full inspection of any place of business where any of the articles herein taxed are sold or in any otherwise to hinder or prevent such inspection.

(g) To use any artful device or deceptive practice to conceal any violation of this act or to mislead the said assessor or any agent of said assessor in the enforcement of this act, or to defraud the state of its revenue.

(h) For any person, firm, corporation or association of persons to have

in possession any of the articles herein taxed, unless the same shall have the proper stamps or crowns attached.

Whoever commits any of the acts set forth in this section shall be punished by a fine of not less than \$25 nor more than \$500, or by imprisonment for not more than 11 months.

All agents, employees, and others who aid, abet or otherwise participate in any wise in the violation of this act or in any of the offenses hereunder punishable shall be guilty and punishable as principals to the same extent as any wholesale dealer or retail dealer violating the act might be.

Sec. 11. Power and authority of assessor to search and seize property.

The assessor is hereby given the power and authority to search and examine any warehouse, boat, store, storeroom, automobile, truck, conveyance, vehicle or any and all places of storage, or any and all means of transportation, where there is probable cause to believe that the terms of this act have been or are being violated. Provided, that any automobile, truck, boat, conveyance, vehicle or other means of transportation, other than a common carrier, caught or detected transporting any of the articles taxed by this act, without the tax herein provided for being paid as herein provided, or a bond furnished to guarantee the payment of the said tax, may be seized by the assessor in order to secure the same as evidence in a trial brought under the provisions of this act.

Sec. 12. Illegal transportation. (a) The transportation, carriage, or movement from point to point in this state by any automobile, truck, boat, conveyance, vehicle or other means of transportation of any article or articles on which the tax is levied by this act, upon which article or articles the tax as levied by this act has not been paid, is hereby prohibited, and the said automobile, truck, boat, conveyance, vehicle or other means of transportation so transporting any said article or articles shall be subject to seizure by the assessor and forfeiture and sale in the manner provided for in this section.

(b) The assessor is hereby authorized in a summary proceeding, or by an action against the owner or operator of any automobile, truck, boat, conveyance, vehicle or other means of transportation, other than a common carrier, used in the transportation of any article or articles on which a tax is levied by this act and on which said tax has not been paid in the manner provided in this act, demanding the forfeiture and sale of the said automobile, truck, boat, conveyance, vehicle or other means of transportation used in the said illegal transportation and in violation of this act.

(c) In all cases where it is made to appear by affidavit, that the resi-

dence of the owner of the said automobile, truck, boat, conveyance, vehicle or other means of transportation is out of the state, or is unknown to the assessor, the court having jurisdiction of the proceeding shall appoint an attorney at law to represent the said absent owner, against whom the said rule shall be tried contradictorily within 10 days after the filing of the same. The said affidavit may be made by the assessor or one of his assistants or by the attorney representing the assessor, if it be not convenient to obtain the affidavit from the assessor. The attorney so appointed to represent the absent owner may waive service and citation of the petition or rule, but shall not waive time nor any legal defense. If upon the trial of the said proceeding it is established by satisfactory proof that the said automobile, truck, boat, conveyance, vehicle, or other means of transportation has been used to transport any article or articles on which a tax is levied by this act and upon which said tax has not been paid, then the court shall render judgment accordingly, declaring the forfeiture of said automobile, truck, boat, conveyance, vehicle or other means of transportation, and ordering the sale thereof after 10 days notice by advertisement in a paper published in the county where the seizure is made by the sheriff of the county in which the seizure herein provided for is made, at public auction at the courthouse to the highest bidder for cash and without appraisal; it being the intent and purpose of these proceedings to afford the owner of said automobile, truck, boat, conveyance, vehicle or other means of transportation a fair opportunity for hearing in a court of competent jurisdiction. It is further the intent and purpose of these proceedings that the forfeiture and sale of the said automobile, truck, boat, conveyance, vehicle or other means of transportation shall be and operate as a penalty for the violation of this act by illegal transportation; and the payment of the tax due on the article upon which a tax is levied by this act at the moment of seizure or thereafter shall not operate to prevent, abate, discontinue, or defeat the said forfeiture and sale of the said property. All funds collected from the said seized and forfeited property shall be paid into the state treasury and credited to the old age assistance fund in the same manner as provided for the tax herein levied. The court shall fix the fee of the attorney representing the owner when appointed by the court, at a nominal sum not to exceed 10%, to be taxed as costs and to be paid out of the proceeds of the sale of said property.

Sec. 13. Invoice to show date of purchase, etc. All purchases of taxable articles by any retail dealer shall be evidenced by an invoice from the seller correctly showing the date of the purchase and the quantity of each of said articles bought by said retail dealer.

Sec. 14. Violation of act. It shall be unlawful for any person, firm, corporation or association of persons to receive in this state any shipment of taxable articles when the same are not stamped, for the purpose and intention of violating the provisions of this act and to avoid payment of the taxes, and such person, firm, corporation or association of persons shall be guilty of a misdemeanor, and upon conviction thereof, shall be punished as set out in section 10 of this act.

Sec. 15. Penalty for failure to affix stamps. Any dealer, required by this act to affix the stamps and crowns, as provided, who shall fail to properly affix or cancel the stamps within the time limit prescribed by law, shall in addition to the taxable articles being subject to seizure, be required to pay as a part of the tax imposed hereunder a penalty of not less than \$20 nor more than \$100 to be assessed and collected by the assessor as other taxes levied by this act are collected. Each article or container not having the proper stamps affixed thereto as herein required, shall be deemed a separate offense. The assessor may compromise in a civil case arising under the provisions of this act and any collections made by him on such compromise shall be handled in the same manner as the collections of tax are handled. When any case is compromised, the assessor shall keep a complete record of the transaction on file in his office.

Sec. 16. Right of assessor to seize taxable articles. All taxable articles on which taxes are imposed by this act, which shall be found in possession or custody or within the control of any person, firm, corporation or association of persons, for the purpose of being sold, or removed by him in violation of the provisions of this act, or with the design to avoid payment of said taxes, may be seized by the assessor, or his agent, in order to secure the same for trial, and the same shall be forfeited to the state of Maine. The said assessor or his agent making the seizure shall appraise the value of the same according to his best judgment, and the usual and ordinary retail price of the article seized and shall deliver to the person, firm, corporation or association of persons, if any, found in possession of the same, a receipt showing the fact of seizure, stating from whom seized, the place of seizure, and description of the goods, and appraised value; and a duplicate of said receipt shall be filed in the office of the assessor and shall be open to public inspection.

The proceeding to enforce such forfeiture shall be by rule and shall be in the nature of a proceeding in rem in a court of competent jurisdiction where such seizure is made. The proceeding shall be filed by the assessor or his assistant on behalf of the state of Maine, and the same shall be sum-

mary, and it may be tried out of term time and in chambers, and shall always be tried by preference. Whenever the petition for rule shall be sworn to by the assessor, or an assistant, that the facts contained in said petition are true, and accompanied with a duplicate copy of the notice of seizure, the same shall constitute a prima facie case, but may be rebutted by the defendant. The proceeding shall be directed against the owner of the article seized, demanding the forfeiture and sale of said property, as a penalty for the violation of this act. Service of said proceeding shall be made upon the owner of the seized articles if he is a resident of this state, or his residence is known to the p'aintiff in rule. In all cases where it is made to appear by affidavit that the residence of the owner of the seized article is out of the state or is unknown to the assessor or his assistants, an attorney at law shall be appointed by the court, which has jurisdiction of the proceedings, to represent the said owner, against whom the said rule shall be tried contradictorily within 10 days from the date of the filing of the same. The said affidavit may be made by the assessor, or one of his assistants, or by the attorney, if it be not convenient to obtain the affidavit of the assessor or one of his assistants. The attorney so appointed to represent the owner of the seized articles may waive service and citation of the petition or rule, but he shall not waive time nor any legal defense. Upon the trial of said proceedings if it is established or satisfactory proof that with respect to the articles under seizure that this act has been violated in any respect, then the court shall render judgment accordingly maintaining the seizure, declaring the forfeiture of said seized property, and ordering the sale thereof after 10 days' notice of advertisement at least twice in a daily newspaper published in the county where seizure is made of the taxable articles by the sheriff at public auction; it being the intent and purpose of this proceeding to afford the owner of said seized articles a fair opportunity of hearing in a court of competent jurisdiction. It is further the intent and purpose of this proceeding that the forfeiture and sale of said seized property shall be and operate as a penalty for the violation of this act as aforesaid, and payment of the tax due on said seized articles at the moment of seizure or thereafter, shall not operate to prevent, abate, or discontinue, or defeat the said forfeiture and sale of the said property. The court may fix the fee of the attorney appointed by the court to represent the owner of the seized articles at a nominal sum to be taxed as costs and to be paid out of the proceeds of the sale of said property.

It is further provided that, in cases where in the opinion of the trial judge the value of the seized taxable articles is so small as not to justify the expense of advertising and selling at public auction the seized com-

modities as hereinabove provided, the court may in any such case, in rendering judgment maintaining the seizure and declaring the forfeiture of the seized property, direct that the seized property be sold by the assessor at private sale without advertisement, but shall direct that the seized property be not thus sold for a price less than a minimum figure to be fixed by the court in its judgment.

Sec. 17. Right of owner to claim seized property; surety bond. Any person, firm, corporation or association of persons who claims title to the said seized taxable property or any lien existing thereon prior to the date of seizure, and who did not in any respect participate in the violation of this act, may file with the assessor, under oath, a detailed statement of his claim, and the further fact that the claimant did not in any way participate in the violation of this act, and thereafter the said taxable property may be released by the assessor and delivered to him; provided that the said claimant shall furnish to the assessor a good and solvent surety bond, in a penal sum not less than double the appraised value of the goods seized, and in no event less than \$50, which said bond shall be conditioned to pay to the assessor of this state the appraised value of the goods, and all costs in the event the claimant does not prosecute his claim to successful judgment. In the event it is not practical to make service upon the claimant to the seized property, or in case the claimant is a non-resident, the proceeding outlined in section 16 of this act may be used in order that the issue may be presented in a court of competent jurisdiction, thereby affording the claimant a fair opportunity to be heard. In the event bond has been furnished by the claimant and the property has been released to him, the judgment of the court if the contention of the assessor is sustained, shall be directed against both the claimant and the surety on the bond together with all costs from the beginning of the seizure up to the final disposition and settlement of the case.

If the claimant does not furnish bond as above provided, then the assessor or his agent may proceed contradictorily against the claimant as set forth in section 16 of this act. In no event shall the property be seized and sold without first affording the claimant a fair opportunity of being heard in a court of competent jurisdiction.

Sec. 18. Private counsel. The assessor is hereby authorized to employ private counsel to represent him in any proceeding under this act that he may deem advisable.

Sec. 19. Waiver of forfeiture proceedings and compromise. Jurisdiction is hereby conferred upon the assessor to waive any proceedings for the

forfeiture of the seized taxable articles or any part thereof in the event he shall find that the violation of the law for which the goods were seized, was unintentional or without intention to defraud the state of its revenue, provided that the offender shall first affix to all of the seized taxable articles twice the amount and value of the stamps necessary to represent the tax, and shall cancel the same. The said assessor may make a compromise with any claimant, before or after the claim is filed in court, and any and all collections made on such compromise shall be handled in the same manner as the collections of the tax are handled. When any case is compromised the assessor shall keep a complete record of the transaction on file in his office.

Sec. 20. Records to be kept. (a) Every person, firm, association of persons or corporation engaged in the business of making, mixing or compounding any of the bottled soft drinks enumerated in this act, shall keep a distinct, legible and permanent record of all extracts, flavorings, sugar syrup and other ingredients, except water, received by him, them or it, that may be useful for making, mixing or compounding soft drinks. That said record shall show the amount or quantity of each of said commodities received, the date of receipt thereof, and the name of the person or corporation from whom the same was secured or received, and the said record shall be open at all times for inspection by the assessor, or any of his duly authorized agents.

(b) Every person, firm, association of persons or corporation engaged in the manufacture, sale or distribution of soft drinks, is hereby required to keep an accurate account of all daily sales, sales slips, bills, invoices, delivery slips, statements, bills of lading, freight bills, credit memoranda, etc., for a period of not less than 2 years from the date shown thereon. All such records shall at any time be open to inspection by the assessor.

Sec. 21. Collections settled monthly to credit of old age assistance fund. Monies collected under the provisions of this act, less such commissions and discounts which may be allowed as authorized herein, shall be paid to the treasurer of state on or before the 10th day of each month and credited to the old age assistance fund.

Sec. 22. Penalty for violations. Any person who shall violate any provision of this act in cases not covered by any other section of this act, shall be guilty of a misdemeanor, and, upon conviction for the first violation, shall be punished by a fine of not less than \$25 nor more than \$100, or by imprisonment for not less than 30 days, nor more than 90 days, or by both such fine and imprisonment, at the discretion of the court; and for the

second or any subsequent violation, the penalties fixed by this section shall be doubled.

Sec. 23. Constitutionality. If any clause, sentence, paragraph or part of this act shall, for any reason, be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder of this act, but shall be confined in its operation to the clause, sentence, paragraph or any part thereof, directly involved in the controversy in which such judgment has been rendered.

Sec. 24. Repealing clause. All acts or parts of acts inconsistent herewith are hereby repealed or amended to conform with the provisions hereof.

Emergency clause. In view of the emergency cited in the preamble, this act shall take effect when approved.