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OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

FIRST REGULAR SESSION, 2003



ENROLLED

**COMMITTEE SUBSTITUTE
FOR**

House Bill No. 3046

(By Mr. Speaker, Mr. Kiss)



Passed March 7, 2003

In Effect Ninety Days from Passage

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E N R O L L E D

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FOR

H. B. 3046

(BY MR. SPEAKER, MR. KISS)

[Passed March 7, 2003; in effect ninety days from passage.]

AN ACT to amend chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article nine-d, all relating generally to facilitating and enforcing compliance with tobacco master settlement agreement and with laws implementing that agreement; imposing civil and criminal penalties for failure to comply; and specifying internal effective dates.

Be it enacted by the Legislature of West Virginia:

That chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article nine-d, all to read as follows:

ARTICLE 9D. ENFORCEMENT OF STATUTES IMPLEMENTING TOBACCO MASTER SETTLEMENT AGREEMENT.

§16-9D-1. Findings & Purpose.

1 The Legislature finds that violations of article nine-b of this
2 chapter threaten the integrity of the tobacco master settlement
3 agreement, the fiscal soundness of the state, and the public
4 health. The Legislature finds that enacting procedural enhance-
5 ments will help prevent violations and aid enforcement of
6 article nine-b of this chapter and thereby safeguard the master
7 settlement agreement, the fiscal soundness of the state, and the
8 public health.

§16-9D-2. Definitions.

1 (a) “Brand Family” means all styles of cigarettes sold under
2 the same trade mark and differentiated from one another by
3 means of additional modifiers or descriptors, including, but not
4 limited to, “menthol,” “lights,” “kings,” and “100s” and
5 includes any brand name (alone or in conjunction with any
6 other word), trademark, logo, symbol, motto, selling message,
7 recognizable pattern of colors, or any other indicia of product
8 identification identical or similar to, or identifiable with, a
9 previously known brand of cigarettes.

10 (b) “Cigarette” has the same meaning as in section two,
11 article nine-b of this chapter.

12 (c) “Commissioner” means the duly appointed head of the
13 agency responsible for collection of the excise tax on cigarettes.

14 (d) “Distributor” means a person, wherever resident or
15 located, who purchases nontax-paid cigarettes and stores, sells,
16 or otherwise disposes of the cigarettes.

17 (e) “Master tobacco settlement agreement” has the same
18 meaning as that term is defined in section two, article nine-b of
19 this chapter.

20 (f) “Nonparticipating manufacturer” means any tobacco
21 product manufacturer that is not a participating manufacturer.

22 (g) “Participating manufacturer” has the meaning given that
23 term in section II(jj) of the master settlement agreement and all
24 amendments to the master settlement.

25 (h) “Qualified escrow fund” has the same meaning as that
26 term is defined in section two, article nine-b of this chapter.

27 (i) “Stamping agent” includes any distributor or other
28 person that is authorized to affix tax stamps to packages or
29 other containers of cigarettes under article seventeen, chapter
30 eleven of this code, or any person that is required to pay the
31 excise tax imposed on cigarettes pursuant to article seventeen
32 of said chapter eleven.

33 (j) “Tobacco product manufacturer” has the same meaning
34 as that term is defined in section two, article nine-b of this
35 chapter.

36 (k) “Units sold” has the same meaning as that term is
37 defined in section two, article nine-b of this chapter.

§16-9D-3. Certifications; directory; tax stamps.

1 (a) *Certification.* – Every tobacco product manufacturer
2 whose cigarettes are sold in this state, whether directly or
3 through a distributor, retailer or similar intermediary or
4 intermediaries, shall execute and deliver in the manner pre-
5 scribed by the commissioner a certification to the commissioner
6 and the attorney general, no later than the thirtieth day of April
7 each year, certifying under penalty of perjury that, as of the date
8 of the certification, the tobacco product manufacturer either is
9 a participating manufacturer or is in full compliance with article
10 nine-b of this chapter, including payment of all quarterly
11 installment payments required by section six of this article.

12 (1) A participating manufacturer shall include in its
13 certification a list of its brand families. The participating
14 manufacturer shall update the list thirty calendar days prior to
15 any addition to or modification of its brand families by execut-
16 ing and delivering a supplemental certification to the commis-
17 sioner and the attorney general.

18 (2) A nonparticipating manufacturer shall include in its
19 certification:

20 (A) A list of all of its brand families and the number of
21 units sold for each brand family that were sold in this state
22 during the preceding calendar year;

23 (B) A list of all of its brand families that have been sold in
24 this state at any time during the current calendar year, indicat-
25 ing, by an asterisk, any brand family sold in this state during the
26 preceding calendar year that is no longer being sold in this state
27 as of the date of the certification; and

28 (C) Identification, by name and address, of any other
29 manufacturer of the brand families in the preceding calendar
30 year. The nonparticipating manufacturer shall update the list
31 thirty calendar days prior to any addition to or modification of
32 its brand families by executing and delivering a supplemental
33 certification to the commissioner and the attorney general.

34 (3) In the case of a nonparticipating manufacturer, the
35 certification shall further certify:

36 (A) That the nonparticipating manufacturer is registered to
37 do business in this state or has appointed a resident agent for
38 service of process and provided notice thereof as required by
39 section four of this article;

40 (B) That the nonparticipating manufacturer has (i) estab-
41 lished and continues to maintain a qualified escrow fund, and
42 (ii) has executed a qualified escrow agreement that has been
43 reviewed and approved by the attorney general and that governs
44 the qualified escrow fund;

45 (C) That the nonparticipating manufacturer is in full
46 compliance with article nine-b of this chapter and this article,
47 and any rules promulgated pursuant to either article; and

48 (D) The name, address and telephone number of the
49 financial institution where the nonparticipating manufacturer
50 has established the qualified escrow fund required by article
51 nine-b of this chapter and all rules promulgated thereto, and:

52 (i) The account number of the qualified escrow fund and
53 sub-account number for the state of West Virginia;

54 (ii) The amount the nonparticipating manufacturer placed
55 in escrow fund for cigarettes sold in this state during the
56 preceding calendar year, the date and amount of each deposit,
57 and any evidence or verification considered necessary by the
58 attorney general to confirm the information certified under this
59 paragraph; and

60 (iii) The amount and date of any withdrawal or transfer of
61 funds the nonparticipating manufacturer made at any time from
62 the qualified escrow fund or from any other qualified escrow
63 fund into which it ever made escrow payments pursuant to
64 article nine-b of this chapter and all rules promulgated thereto.

65 (4) A tobacco product manufacturer may not include a
66 brand family in its certification unless:

67 (A) In the case of a participating manufacturer, the partici-
68 pating manufacturer affirms that the brand family is to be
69 considered to be its cigarettes for purposes of calculating its

70 payments under the master settlement agreement for the
71 relevant year, in the volume and shares determined pursuant to
72 the master settlement agreement; and

73 (B) In the case of a nonparticipating manufacturer, the
74 nonparticipating manufacturer affirms that the brand family is
75 to be considered to be its cigarettes for purposes of article nine-
76 b of this chapter. Nothing in this section shall be construed as
77 limiting or otherwise affecting this state's right to maintain that
78 a brand family constitutes cigarettes of a different tobacco
79 product manufacturer for purposes of calculating payments
80 under the master settlement agreement or for purposes of article
81 nine-b of this chapter.

82 (5) Tobacco product manufacturers shall maintain all
83 invoices and documentation of sales and any other information
84 relied upon for the certification for a period of five years, unless
85 otherwise required by law to maintain them for a greater period
86 of time.

87 (b) *Directory of cigarettes approved for stamping and sale.*
88 – The commissioner shall develop and publish on the tax
89 division's website a directory listing all tobacco product
90 manufacturers that have provided current and accurate certifica-
91 tions conforming to the requirements of subsection (a) of this
92 section and all brand families that are listed in the certifications,
93 except as provided in subdivisions (1) and (2) of this subsec-
94 tion.

95 (1) The commissioner shall not include or retain in the
96 directory the name or brand families of any nonparticipating
97 manufacturer that has failed to provide the required certification
98 or whose certification the commissioner or the attorney general
99 determines is not in compliance with subdivisions (2) and (3),
100 subsection (a) of this section, unless the commissioner has

101 determined that the violation has been cured to the satisfaction
102 of the commissioner and the attorney general.

103 (2) Neither a tobacco product manufacturer nor brand
104 family shall be included or retained in the directory if the
105 attorney general concludes in the case of a nonparticipating
106 manufacturer, that:

107 (A) Any escrow payment required pursuant to article nine-b
108 of this chapter for any period for any brand family, whether or
109 not listed by the nonparticipating manufacturer, has not been
110 fully paid into a qualified escrow fund governed by a qualified
111 escrow agreement that has been approved by the attorney
112 general of this state, or

113 (B) Any outstanding final judgment, including interest on
114 the judgment, for violations of article nine-b of this chapter has
115 not been fully satisfied for the brand family and the nonpartici-
116 pating manufacturer.

117 (3) The tax commissioner shall update the directory as
118 necessary in order to correct mistakes and to add or remove a
119 tobacco product manufacturer or brand family.

120 (A) The commissioner may not remove any manufacturer
121 or brand family from the directory unless the manufacturer and
122 all distributors and other stamping agents registered under
123 article twelve, chapter eleven of this code, have been given at
124 least seven days' prior notice of the intended removal by
125 electronic mail or first class mail the notices shall be e-mailed
126 or posted to the addresses provided by the manufacturers,
127 distributors or other stamping agents for this purpose.

128 (B) The commissioner shall transmit by email or other
129 practicable means to each distributor or other stamping agent
130 registered under article twelve, chapter eleven of this code, to
131 affix West Virginia tax stamps to cigarettes notice of any

132 addition to or removal from the directory of any tobacco
133 product manufacturer or brand family.

134 (C) Failure of a manufacturer, distributor or other stamping
135 agent to receive notice under paragraph (A) or (B), subdivision
136 (3), subsection (b) of this section, or failure of the state to
137 provide notice of any addition to or removal from the directory
138 shall not relieve the distributor or other stamping agent of its
139 obligations under this article.

140 (4) Every tobacco product manufacturer selling cigarettes
141 in this state and every distributor or other stamping agent
142 affixing West Virginia tax stamps to packages of cigarettes for
143 sale in this state shall provide and update as necessary an
144 electronic mail address to the commissioner for the purpose of
145 receiving any notifications required by this article.

146 (c) *Prohibition against stamping or sale of cigarettes not on*
147 *the directory.* – It is unlawful for any person:

148 (1) To affix a stamp to a package or other container of
149 cigarettes of a tobacco product manufacturer or brand family
150 not included in the directory; or

151 (2) To sell, offer, or possess for sale in this state, cigarettes
152 of a tobacco product manufacturer or brand family not included
153 in the directory, except as follows:

154 (A) This subsection shall not prohibit a distributor or other
155 stamping agent from possessing unstamped containers of
156 cigarettes held in inventory for delivery to, or for sale in,
157 another state; and

158 (B) A person purchasing cigarettes for resale shall not be in
159 violation of this subsection if, at the time the cigarettes were
160 purchased, the manufacturer and brand families of the cigarettes
161 are included in the directory maintained by the tax commis-

162 sioner and the cigarettes are otherwise lawfully stamped and
163 sold within thirty days after the date of the notice provided
164 under paragraph (A), subdivision (3), subsection (b) of this
165 section.

**§16-9D-4. Certification of tobacco product manufacturer wanting
to sell product in this state for the first time.**

1 (a) A tobacco product manufacturer whose cigarettes have
2 not previously been sold in this state, whether directly or
3 through a distributor, retailer or similar intermediary or
4 intermediaries, shall, at least thirty calendar days before
5 beginning to sell its cigarettes in this state, make the certifica-
6 tion required by section three of this article. In addition to the
7 information required by section three, the manufacturer shall
8 include the following information in its certification:

9 (1) If the tobacco product manufacturer is a partnership,
10 limited liability company, corporation, association or other
11 business entity, the following where applicable:

12 (A) The names and addresses of every partner, member,
13 officer, resident agent, director or person performing a function
14 similar to a director;

15 (B) The names and addresses of any person owning of
16 record a ten percent or greater equity interest in the tobacco
17 product manufacturer; and

18 (C) A list of all names under which the tobacco manufac-
19 turer, or any partner, member, officer, resident agent, director,
20 or person owning a ten percent or greater equity interest in the
21 tobacco manufacturer, previously did business as a tobacco
22 product manufacturer in the United States within the five-year
23 period preceding the date of submission of the certification; and

24 (2) A statement of whether the tobacco product manufac-
25 turer, or any partner, member, officer, resident agent, director,
26 or person owning a ten percent or greater equity interest in the
27 tobacco manufacturer, or in any subsidiary, affiliate or persons
28 controlled by or under common control with the tobacco
29 manufacturer, has ever been an officer, partner, director or
30 person owning a ten percent or greater equity interest in a
31 tobacco product manufacturer that ever defaulted in fully
32 funding the escrow account required by article nine-b of this
33 chapter in the five-year period prior to the date of submission
34 of the certification under this section and, if so, a brief explana-
35 tion of the facts involved.

§16-9D-5. Agent for service of process.

1 (a) *Requirement for agent for service of process.*

2 (1) Any nonresident or foreign nonparticipating manufac-
3 turer that has not registered to do business in this state as a
4 foreign corporation or business entity shall, as a condition
5 precedent to having its brand families included or retained in
6 the directory, appoint and continually engage without interrup-
7 tion the services of an agent in this state, or in the United States,
8 to act as agent for the service of process on whom all process,
9 and any action or proceeding against it concerning or arising
10 out of the enforcement of this article and article nine-b of this
11 chapter, may be served in any manner authorized by law. The
12 service constitutes legal and valid service of process on the
13 nonparticipating manufacturer. The nonparticipating manufac-
14 turer shall provide the name, address, phone number and proof
15 of the appointment and availability of the agent to the satisfac-
16 tion of the commissioner and the attorney general.

17 (2) Any nonresident stamping agent authorized to affix
18 stamps to packages of cigarettes evidencing payment of the tax
19 levied by article seventeen, chapter eleven of this code, on

20 cigarettes to be sold in this state that has not registered to do
21 business in this state as a foreign corporation or business entity
22 shall, as a condition precedent to being authorized to affix West
23 Virginia tax stamps, appoint and continually engage without
24 interruption the services of an agent in this state, or in the
25 United States, to act as agent for the service of process on
26 whom all process, and any action or proceeding against it
27 concerning or arising out of the enforcement of this article and
28 article nine-b of this chapter, may be served in any manner
29 authorized by law. The service constitutes legal and valid
30 service of process on the nonresident stamping agent. The
31 nonresident stamping agent shall provide the name, address,
32 phone number and proof of the appointment and availability of
33 the agent to the satisfaction of the commissioner and the
34 attorney general.

35 (b) The nonparticipating manufacturer or the nonresident
36 stamping agent shall provide written notice to the commissioner
37 and the attorney general thirty calendar days prior to termina-
38 tion of the authority of an agent and shall further provide proof
39 to the satisfaction of the attorney general of the appointment of
40 a new agent no less than five calendar days prior to the termina-
41 tion of an existing agent appointment. In the event an agent
42 terminates an agency appointment, the nonparticipating
43 manufacturer, or nonresident stamping agent, as the case may
44 be, shall notify the commissioner and attorney general in
45 writing of the termination within five calendar days and shall
46 include proof to the satisfaction of the attorney general of the
47 appointment of a new agent.

48 (c) Any nonparticipating manufacturer and any non-
49 resident stamping agent whose cigarettes are sold in this state,
50 who has not appointed and engaged an agent as required by this
51 section, shall be considered to have appointed the secretary of
52 state of West Virginia as the agent and may be proceeded
53 against in the courts of this state by service of process upon the

54 secretary of state: *Provided*, That the appointment of the
55 secretary of state as the agent of the manufacturer or the
56 nonresident stamping agent shall not satisfy the condition
57 precedent for having the brand families of the nonparticipating
58 manufacturer included or retained in the directory.

§16-9D-6. Reporting of information; escrow installments.

1 (a) *Reporting by distributors and other stamping agents.*--

2 (1) Not later than twenty calendar days after the end of each
3 calendar quarter, and more frequently if directed by the
4 commissioner, each distributor or stamping agent shall submit
5 information required by the commissioner to facilitate compli-
6 ance with this article, including, but not limited to, a list by
7 brand family of the total number of cigarettes of nonparticipat-
8 ing manufacturers, or in the case of roll your own, the equiva-
9 lent stick count, for which the distributor or other stamping
10 agent affixed West Virginia stamps and sold in West Virginia
11 during the previous calendar quarter or otherwise paid the tax
12 due for the cigarettes.

13 (2) The distributor or stamping agent shall maintain, and
14 make available to the commissioner, all invoices and documen-
15 tation of sales of all nonparticipating manufacturer cigarettes
16 sold in West Virginia and any other information relied upon in
17 reporting to the commissioner for a period of five years.

18 (b) *Disclosure of information.* – The commissioner may
19 disclose to the attorney general of this state any information
20 received under this article and requested by the attorney general
21 for purposes of determining compliance with and enforcing the
22 provisions of this article. The commissioner and the attorney
23 general shall share with each other the information received
24 under this article, and may share the information with other
25 federal, state or local agencies only for purposes of enforcement

26 of this article, article nine-b of this chapter, or corresponding
27 laws of other states.

28 (c) *Verification of qualified escrow fund.* – The attorney
29 general may require at any time from the nonparticipating
30 manufacturer proof, from the financial institution in which the
31 manufacturer has established a qualified escrow fund for the
32 purpose of compliance with article nine-b of this chapter, of the
33 amount of money in the fund, exclusive of interest, the amount
34 and date of each deposit to the qualified escrow fund, and the
35 amount and date of each withdrawal from the fund.

36 (d) *Requests for additional information.* – In addition to the
37 information required to be submitted pursuant to this section,
38 the attorney general may require a stamping agent, distributor
39 or tobacco product manufacturer to submit any additional
40 information including, but not limited to, samples of the
41 packaging or labeling of each brand family, that is necessary to
42 enable the attorney general to determine whether a tobacco
43 product manufacturer is in compliance with this article.

44 (e) *Quarterly escrow installments.* – To promote compli-
45 ance with the provisions of this article, a tobacco product
46 manufacturer subject to the requirements of subdivision (2),
47 subsection (a), section three of this article, who, in the opinion
48 of the attorney general, materially defaults in fully funding its
49 escrow account timely and then cures the default shall make
50 escrow deposits for the calendar year during which the default
51 was cured and ensuing calendar years in quarterly installments
52 during the year in which the sales covered by such deposits are
53 made. The attorney general may require production of informa-
54 tion sufficient to enable the attorney general to determine the
55 adequacy of the amount of the installment deposit.

§16-9D-7. Electronic filing of quarterly reports.

1 (a) *Electronic filing required.* - After the first day of
2 September, two thousand three, the quarterly reports required
3 by section six of this article from distributors and stamping
4 agents shall be electronically filed with the tax commissioner.

5 (b) *“Filed Electronically” defined.* - For purposes of this
6 section, “filing electronically” means the filing of a report or
7 other document by any electronic medium acceptable to the tax
8 commissioner including, but not limited to, the filing of reports
9 and other documents by electronic data interchange, or by use
10 of the Internet for web-based filing or other technology
11 specified by the tax commissioner by a procedural rule promul-
12 gated as provided in article three, chapter twenty-nine-a of this
13 code.

14 (c) *Signature requirements.* - The signature requirement for
15 all reports required to be filed under this article will be met if
16 the submission is made pursuant to the tax commissioner’s
17 procedural rule.

18 (d) *Standards.* - The tax commissioner shall give due regard
19 to developing uniform standards for formats as adopted by the
20 American National Standards Institute for encryption and filer
21 authentication to ensure that the report information is kept
22 confidential.

§16-9D-8. Penalties and other remedies.

1 (a) *Revocation of business registration certificate and civil*
2 *money penalty.* – In addition to or in lieu of any other civil or
3 criminal remedy provided by law, upon a determination that a
4 distributor, stamping agent or any other person has violated
5 subsection (c), section three of this article, or any rule adopted
6 pursuant thereto, the commissioner may revoke or suspend the
7 business registration certificate of the distributor, stamping
8 agent or other person in the manner provided by article twelve,

9 chapter eleven of this code. Each stamp affixed and each sale or
10 offer to sell cigarettes in violation of subsection (c), section
11 three of this article constitutes a separate violation. The
12 commissioner may also impose a civil penalty in an amount not
13 to exceed the greater of five hundred percent of the retail value
14 of the cigarettes or five thousand dollars upon a determination
15 of violation of subsection (c), section three of this article or any
16 rules adopted pursuant thereto. The penalty shall be imposed
17 and collected in the manner that tax is assessed and collected
18 under article ten, chapter eleven of this code. The amount of
19 penalty collected shall be deposited in the tobacco control
20 special fund created in section nine of this article.

21 (b) *Contraband and seizure.* – Any cigarettes that have
22 been sold, offered for sale, or possessed for sale, in this state, in
23 violation of subsection (c), section three of this article, shall be
24 considered contraband under article seventeen, chapter eleven
25 of this code and the cigarettes are subject to seizure and
26 forfeiture as provided in article seventeen, and all cigarettes
27 seized and forfeited shall be destroyed and not resold: *Provided,*
28 That this subsection shall not prohibit a stamping agent or
29 distributor from possessing unstamped containers of cigarettes
30 held in inventory for delivery to, or for sale in, another state.

31 (c) *Injunction.* – The attorney general, on behalf of the
32 commissioner, may seek an injunction to restrain a threatened
33 or actual violation of subsection (c), section three of this article,
34 subsection (a), section five of this article, or subsection (d) of
35 said section five, by a distributor, stamping agent or other
36 person and to compel the distributor, stamping agent or other
37 person to comply with these subsections: *Provided,* That this
38 subsection shall not prohibit a stamping agent or distributor
39 from possessing unstamped containers of cigarettes held in
40 inventory for delivery to, or for sale in, another state. In any
41 action brought pursuant to this section, the state is entitled to

42 recover the costs of investigation, costs of the action and
43 reasonable attorney fees.

44 (d) *Unlawful sale and distribution.* – It is unlawful for a
45 person to:

46 (1) sell or distribute cigarettes; or

47 (2) acquire, hold, own, possess, transport, import, or cause
48 to be imported cigarettes that the person knows or should know
49 are intended for distribution or sale in this state in violation of
50 subsection (c), section three of this article. A violation of this
51 subsection shall be a misdemeanor punishable as provided in
52 section nineteen-a, article seventeen, chapter eleven of this
53 code.

54 (e) *Unfair trade practice.* – A person who violates subsec-
55 tion (c), section three of this article, engages in an unfair and
56 deceptive trade practice in violation of article six, chapter forty-
57 six-a of this code.

§16-9D-9. Miscellaneous provisions.

1 (a) *Notice and review of determination.* – A determination
2 of the commissioner or the attorney general to not include or to
3 remove from the directory a brand family or tobacco product
4 manufacturer is subject to review in the manner prescribed by
5 article ten-a, chapter eleven of this code, by filing a petition for
6 review with the office of tax appeals within thirty days of
7 receipt of the commissioner's written determination to not
8 include or to remove the brand family or tobacco product
9 manufacturer from the directory. A determination not to list in,
10 or to remove from, the directory any brand family or tobacco
11 product manufacturer shall not be stayed during the pendency
12 of appeal procedure.

13 (b) *Applicants for business registration certificate.* – No
14 person shall be issued a business registration certificate under
15 article twelve, chapter eleven of this code or granted a renewal
16 of its business registration certificate to act as a distributor or
17 stamping agent unless the person has certified in writing, under
18 penalty of perjury, that the person will comply fully with this
19 article.

20 (c) *Promulgation of rules.* – The commissioner and the
21 attorney general may separately promulgate any procedural,
22 interpretive and legislative rules in the manner provided in
23 article three, chapter twenty-nine-a of this code, each considers
24 necessary to effect the purposes of this article.

25 (d) *Recovery of costs and fees by attorney general.* – In any
26 action brought by the state to enforce this article, the state is
27 entitled to recover the costs of investigation, expert witness
28 fees, costs of the action and reasonable attorney fees.

29 (e) *Disgorgement of profits for violations of this article.* –
30 If a court determines that a person has violated this article, the
31 court shall order any profits, gain, gross receipts or other
32 benefit from the violation to be disgorged and paid to the state
33 treasurer for deposit in the “tobacco control special fund”,
34 which is created in the state treasury. Expenditures from the
35 fund are to be made in accordance with appropriation by the
36 Legislature and in accordance with the provisions of article
37 three, chapter twelve of this code and upon the fulfillment of
38 the provisions set forth in article two, chapter five-a of this
39 code. Unless otherwise expressly provided, the remedies or
40 penalties provided by this article are cumulative to each other
41 and to the remedies or penalties available under all other laws
42 of this state.

43 (f) *Construction and severability.*

44 (A) If a court of competent jurisdiction finds that the
45 provisions of this article and of article nine-b of this chapter
46 conflict and cannot be harmonized, then the provisions of
47 article nine-b control.

48 (B) If any section, subsection, subdivision, paragraph,
49 sentence, clause or phrase of this article causes article nine-b of
50 this chapter to no longer constitute a qualifying or model
51 statute, as those terms are defined in the master settlement
52 agreement, then that portion of this article is not valid.

53 (C) If any section, subsection, subdivision, paragraph,
54 sentence, clause or phrase of this article is for any reason held
55 to be invalid, unlawful or unconstitutional, that decision shall
56 not affect the validity of the remaining portions of this article
57 or any part thereof.

§16-9D-10. Effective date; implementation.

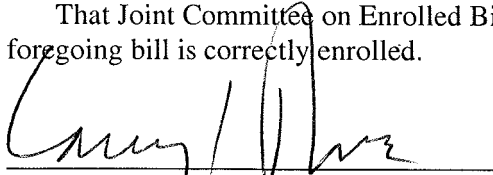
1 If this act of the Legislature takes effect ninety days from
2 passage, the first certification by a tobacco product manufac-
3 turer described in subsection (a), section three of this article,
4 shall be due the first day of July, two thousand three, covering
5 the two thousand two calendar year, and the additional informa-
6 tion required by section three for the current calendar year up
7 to the date of the certification; and the directory described in
8 subsection (b), section three of this article, is published in the
9 state register by the fifteenth day of August, two thousand three,
10 and made available on the tax commissioner's web page by the
11 fifteenth day of October, two thousand three.

12 (b) If this act of the Legislature is in effect from passage,
13 the first certification by a tobacco product manufacturer
14 described in subsection (a), section three of this article, is due
15 the first day of May, two thousand three, covering the two
16 thousand two calendar year, and the additional information

17 required by section three for the current calendar year up to the
18 date of the certification; and the directory described in subsec-
19 tion (b), section three of this article, shall be published in the
20 state register by the fifteenth day of June, two thousand three,
21 and made available on the tax commissioner's web page by the
22 fifteenth day of August, two thousand three.

23 (c) If this act of the Legislature takes effect the first day of
24 July, two thousand three, the first certification by a tobacco
25 product manufacturer described in subsection (a), section three
26 of this article, is due the first day of July, two thousand three,
27 covering the two thousand two calendar year, and the additional
28 information required by section three for the current calendar
29 year up to the date of the certification; and the directory
30 described in subsection (b), section three of this article, shall be
31 published in the state register by the fifteenth day of August,
32 two thousand three, and made available on the tax commis-
33 sioner's web page by the fifteenth day of October, two thousand
34 three.

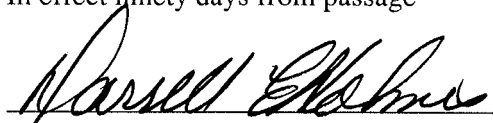
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

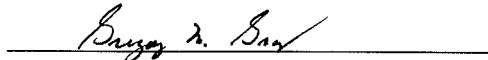

Chairman Senate Committee

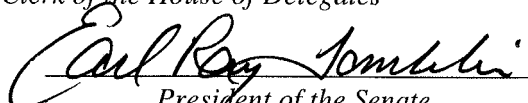

Chairman House Committee

Originating in the House.

In effect ninety days from passage

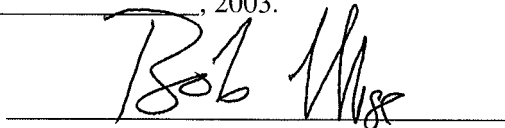

Clerk of the Senate


Clerk of the House of Delegates


President of the Senate


Speaker of the House of Delegates

The within is approved this the 21st
day of March, 2003.


Governor

PRESENTED TO THE
GOVERNOR

Date 3-15-03

Time 10:45AM