

1 **ENROLLED**

2 COMMITTEE SUBSTITUTE

3 FOR

4 **H. B. 2969**

5  
6 (By Delegates Boggs, Caputo, White and Fragale)

7  
8 [Passed March 11, 2011; in effect ninety days from passage.]

9  
10 AN ACT to amend and reenact §16-9D-6 of the Code of West Virginia,  
11 1931, as amended, relating to enforcement of statutes  
12 implementing tobacco master settlement agreement; reporting of  
13 information; and requiring the Tax Commissioner to disclose,  
14 at the request of a nonparticipating tobacco product  
15 manufacturer, the branding information, sales, stamping and  
16 other information that is reported to the Tax Commissioner by  
17 distributors and stamping agents for products obtained from  
18 that nonparticipating manufacturer.

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

20 That §16-9D-6 of the Code of West Virginia, 1931, as amended,  
21 be amended and reenacted to read as follows:

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

24 **§16-9D-6. Reporting of information; escrow installments.**

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

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

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

17 (b) *Disclosure of information.* -- The commissioner may  
18 disclose to the Attorney General of this state any information  
19 received under this article and requested by the Attorney General  
20 for purposes of determining compliance with and enforcing the  
21 provisions of this article. The commissioner and the Attorney  
22 General shall share with each other the information received under  
23 this article, and may share the information with other federal,  
24 state or local agencies only for purposes of enforcement of this  
25 article, article nine-b of this chapter, or corresponding laws of  
26 other states. The commissioner is further directed, upon request

1 of a nonparticipating manufacturer, to disclose to that  
2 nonparticipating manufacturer any information that has been  
3 provided by a distributor or stamping agent as required by this  
4 section regarding the purchases from that manufacturer upon which  
5 tax stamps have been applied and cigarettes sold in West Virginia.

6 (c) *Verification of qualified escrow fund.* -- The Attorney  
7 General may require at any time from the nonparticipating  
8 manufacturer proof, from the financial institution in which the  
9 manufacturer has established a qualified escrow fund for the  
10 purpose of compliance with article nine-b of this chapter, of the  
11 amount of money in the fund, exclusive of interest, the amount and  
12 date of each deposit to the qualified escrow fund, and the amount  
13 and date of each withdrawal from the fund.

14 (d) *Requests for additional information.* -- In addition to the  
15 information required to be submitted pursuant to this section, the  
16 Attorney General may require a stamping agent, distributor or  
17 tobacco product manufacturer to submit any additional information  
18 including, but not limited to, samples of the packaging or labeling  
19 of each brand family, that is necessary to enable the Attorney  
20 General to determine whether a tobacco product manufacturer is in  
21 compliance with this article.

22 (e) *Quarterly escrow installments.* -- To promote compliance  
23 with the provisions of this article, a tobacco product manufacturer  
24 subject to the requirements of subdivision (2), subsection (a),  
25 section three of this article, who, in the opinion of the Attorney  
26 General, materially defaults in fully funding its escrow account

1 timely and then cures the default shall make escrow deposits for  
2 the calendar year during which the default was cured and ensuing  
3 calendar years in quarterly installments during the year in which  
4 the sales covered by such deposits are made. The Attorney General  
5 may require production of information sufficient to enable the  
6 Attorney General to determine the adequacy of the amount of the  
7 installment deposit.