

WEST VIRGINIA LEGISLATURE

FIRST REGULAR SESSION, 2011



ENROLLED

**COMMITTEE SUBSTITUTE
FOR**

House Bill No. 2969

(By Delegates Boggs, Caputo, White and Fragale)



Passed March 11, 2011

In Effect Ninety Days From Passage

E N R O L L E D

COMMITTEE SUBSTITUTE

FOR

H. B. 2969

(BY DELEGATES BOGGS, CAPUTO, WHITE AND FRAGALE)

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

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

Be it enacted by the Legislature of West Virginia:

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

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

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

1 (a) *Reporting by distributors and other stamping agents.*
2 --

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

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

20 (b) *Disclosure of information.* -- The commissioner may
21 disclose to the Attorney General of this state any information
22 received under this article and requested by the Attorney
23 General for purposes of determining compliance with and
24 enforcing the provisions of this article. The commissioner
25 and the Attorney General shall share with each other the
26 information received under this article, and may share the

27 information with other federal, state or local agencies only
28 for purposes of enforcement of this article, article nine-b of
29 this chapter, or corresponding laws of other states. The
30 commissioner is further directed, upon request of a
31 nonparticipating manufacturer, to disclose to that
32 nonparticipating manufacturer any information that has been
33 provided by a distributor or stamping agent as required by
34 this section regarding the purchases from that manufacturer
35 upon which tax stamps have been applied and cigarettes sold
36 in West Virginia.

37 (c) *Verification of qualified escrow fund.* -- The Attorney
38 General may require at any time from the nonparticipating
39 manufacturer proof, from the financial institution in which
40 the manufacturer has established a qualified escrow fund for
41 the purpose of compliance with article nine-b of this chapter,
42 of the amount of money in the fund, exclusive of interest, the
43 amount and date of each deposit to the qualified escrow fund,
44 and the amount and date of each withdrawal from the fund.

45 (d) *Requests for additional information.* -- In addition to
46 the information required to be submitted pursuant to this
47 section, the Attorney General may require a stamping agent,
48 distributor or tobacco product manufacturer to submit any
49 additional information including, but not limited to, samples
50 of the packaging or labeling of each brand family, that is
51 necessary to enable the Attorney General to determine
52 whether a tobacco product manufacturer is in compliance
53 with this article.

54 (e) *Quarterly escrow installments.* -- To promote
55 compliance with the provisions of this article, a tobacco
56 product manufacturer subject to the requirements of
57 subdivision (2), subsection (a), section three of this article,
58 who, in the opinion of the Attorney General, materially
59 defaults in fully funding its escrow account timely and then

60 cures the default shall make escrow deposits for the calendar
61 year during which the default was cured and ensuing calendar
62 years in quarterly installments during the year in which the
63 sales covered by such deposits are made. The Attorney
64 General may require production of information sufficient to
65 enable the Attorney General to determine the adequacy of the
66 amount of the installment deposit.

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

Chairman, House Committee

Chairman, Senate Committee

Originating in the House.

To take effect ninety days from passage.

Clerk of the House of Delegates

Clerk of the Senate

Speaker of the House of Delegates

President of the Senate

The within _____ this the _____
day of _____, 2011.

Governor