

# WEST VIRGINIA CODE: §16-9A-7

## **§16-9A-7. Enforcement of youth smoking laws and youth nicotine restrictions; inspection of retail outlets where tobacco, tobacco products, vapor products or alternative nicotine products are sold; use of minors in inspections; annual reports; penalties; defenses.**

(a) The Commissioner of the West Virginia Alcohol Beverage Control Administration, the Superintendent of the West Virginia State Police, the sheriffs of the counties of this state and the chiefs of police of municipalities of this state, may periodically conduct unannounced inspections at locations where tobacco products or tobacco-derived products, are sold or distributed to ensure compliance with the provisions of sections two and three of this article and in such manner as to conform with applicable federal and state laws, rules and regulations. Persons under the age of eighteen years may be enlisted by such commissioner, superintendent, sheriffs or chiefs of police or employees or agents thereof to test compliance with these sections: *Provided*, That the minors may be used to test compliance only if the testing is conducted under the direct supervision of the commissioner, superintendent, sheriffs or chiefs of police or employees or agents thereof and written consent of the parent or guardian of such person is first obtained and such minors shall not be in violation of section three of this article and chapter when acting under the direct supervision of the commissioner, superintendent, sheriffs or chiefs of police or employees or agents thereof and with the written consent of the parent or guardian. It is unlawful for any person to use persons under the age of eighteen years to test compliance in any manner not set forth herein and the person so using a minor is guilty of a misdemeanor and, upon conviction thereof, shall be fined the same amounts as set forth in section two of this article.

(b) A person charged with a violation of section two or three of this article as the result of an inspection under subsection (a) of this section has a complete defense if, at the time the cigarette, other tobacco product or tobacco-derived product, or cigarette wrapper, was sold, delivered, bartered, furnished or given:

- (1) The buyer or recipient falsely evidenced that he or she was eighteen years of age or older;
- (2) The appearance of the buyer or recipient was such that a prudent person would believe the buyer or recipient to be eighteen years of age or older; and
- (3) Such person carefully checked a driver's license or an identification card issued by this state or another state of the United States, a passport or a United States armed services identification card presented by the buyer or recipient and acted in good faith and in reliance upon the representation and appearance of the buyer or recipient in the belief that the buyer or recipient was eighteen years of age or older.

(c) Any fine collected after a conviction of violating section two of this article shall be paid to

the clerk of the court in which the conviction was obtained: *Provided*, That the clerk of the court upon receiving the fine shall promptly notify the Commissioner of the West Virginia Alcohol Beverage Control Administration of the conviction and the collection of the fine: *Provided, however*, That any community service penalty imposed after a conviction of violating section three of this article shall be recorded by the clerk of the court in which the conviction was obtained: *Provided further*, That the clerk of the court upon being advised that community service obligations have been fulfilled shall promptly notify the Commissioner of the West Virginia Alcohol Beverage Control Administration of the conviction and the satisfaction of imposed community service penalty.

(d) The Commissioner of the West Virginia Alcohol Beverage Control Administration or his or her designee shall prepare and submit to the Governor on the last day of September of each year a report of the enforcement and compliance activities undertaken pursuant to this section and the results of the same, with a copy to the Secretary of the Department of Health. The report shall be in the form and substance that the Governor shall submit to the applicable state and federal programs.