WEST VIRGINIA CODE: §16-9A-7

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

(a) The Bureau for Behavioral Health of the Department of Human Services, 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 are sold or distributed to ensure compliance with the provisions of §16-9A-3 of this code and in such manner as to conform with applicable federal and state laws, rules, and regulations. Persons younger than 21 years of age may be enlisted by the commissioner, superintendent, sheriffs or chiefs of police or employees or agents thereof, to test compliance with these sections: *Provided*, That a person younger than 18 years of age 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 his or her parent or guardian. It is unlawful for any person to use persons younger than the age of 21 to test compliance in any manner not set forth in this subsection and the person using a minor is guilty of a misdemeanor and, upon conviction thereof, shall be fined the same amounts as set forth in §16-9A-3 of this code.

(b) A person charged with a violation of §16-9A-3 of this code, as the result of an inspection under subsection (a) of this section has a complete defense if, at the time the tobacco product was sold, delivered, bartered, furnished, or given, the 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 21 years of age or older.

(c) Any fine collected after a conviction of violating §16-9A-3 of this code, 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 non-criminal, non-monetary penalty imposed on an employee of a retail outlet where tobacco products are sold who violated §16-9A-3 of this code shall be recorded by the clerk of the court in which the violation occurred: *Provided further*, That the clerk of the court, upon being advised that non-criminal, non-monetary obligations have been fulfilled, shall promptly notify the Commissioner of the West Virginia Alcohol Beverage Control Administration of the violation and the satisfaction of imposed non-criminal, non-monetary penalty.

(d) The Commissioner of the Bureau for Behavioral Health 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 activities. The report shall be in the form and substance that the Governor shall submit to the applicable state and federal programs.

WV Legislature