WEST VIRGINIA CODE: §16-9D-9

§16-9D-9. Miscellaneous provisions.

(a) Notice and review of determination. -- A determination of the commissioner or the Attorney General to not include or to remove from the directory a brand family or tobacco product manufacturer is subject to review in the manner prescribed by article ten-a, chapter eleven of this code, by filing a petition for review with the office of tax appeals within thirty days of receipt of the commissioner's written determination to not include or to remove the brand family or tobacco product manufacturer from the directory. A determination not to list in, or to remove from, the directory any brand family or tobacco product manufacturer shall not be stayed during the pendency of appeal procedure.

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

(c) Promulgation of rules. -- The commissioner and the Attorney General may separately promulgate any procedural, interpretive and legislative rules in the manner provided in article three, chapter twenty-nine-a of this code, each considers necessary to effect the purposes of this article.

(d) Recovery of costs and fees by Attorney General. -- In any action brought by the state to enforce this article, the state is entitled to recover the costs of investigation, expert witness fees, costs of the action and reasonable attorney fees.

(e) Disgorgement of profits for violations of this article. -- If a court determines that a person has violated this article, the court shall order any profits, gain, gross receipts or other benefit from the violation to be disgorged and paid to the State Treasurer for deposit in the "tobacco control special fund", which is created in the State Treasury. Expenditures from the fund are to be made in accordance with appropriation by the Legislature and in accordance with the provisions of article three, chapter twelve of this code and upon the fulfillment of the provisions set forth in article two, chapter five-a of this code. Unless otherwise expressly provided, the remedies or penalties provided by this article are cumulative to each other and to the remedies or penalties available under all other laws of this state.

(f) Construction and severability. --

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

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

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

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