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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1994



ENROLLED

Committee Substitute for
SENATE BILL NO. 408

(By Senator Burdette, Mr. President, et al)



PASSED March 11, 1994
In Effect 90 days from Passage

E N R O L L E D
COMMITTEE SUBSTITUTE
FOR
Senate Bill No. 408

(SENATORS BURDETTE, MR. PRESIDENT, WOOTON,
SHARPE, CHAFIN, MINARD AND WHITLOW,
original sponsors)

[Passed March 11, 1994; in effect ninety days from passage.]

AN ACT to amend article nine-a, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section seven, relating to enforcement of statutes preventing the possession or use of tobacco products by minors; duties of division of public safety; use of minors by law-enforcement authorities with parental consent; defenses; duties of court clerks upon convictions; providing annual reports on enforcement and compliance activities; providing that form of reports conform with federal law; and criminal penalties.

Be it enacted by the Legislature of West Virginia:

That article nine-a, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended,

be amended by adding thereto a new section, designated section seven, to read as follows:

ARTICLE 9A. TOBACCO USAGE RESTRICTIONS.

§16-9A-7. Enforcement of youth smoking laws; random inspections; use of minors in inspections; annual reports; penalties defenses.

1 (a) The division of public safety, acting with and
2 through the sheriffs of the counties of this state and the
3 chiefs of police of municipalities of this state, shall
4 annually conduct random, unannounced inspections at
5 locations where tobacco products are sold or distributed
6 to ensure compliance with the provisions of sections two
7 and three of this article and in such manner as to
8 conform with Section 1926 of the Public Health Services
9 Act and applicable rules. Persons under the age of
10 eighteen years may be enlisted by such superintendent,
11 sheriffs or chiefs of police or employees thereof to test
12 compliance with these sections: *Provided*, That the
13 minors may be used to test compliance only if the testing
14 is conducted under the direct supervision of the
15 superintendent, sheriffs or chiefs of police or employees
16 thereof and written consent of the parent or guardian of
17 such person is first obtained. It is unlawful for any
18 person to use persons under the age of eighteen years to
19 test compliance in any manner not set forth herein and
20 the person so using a minor is guilty of a misdemeanor,
21 and, upon conviction thereof, shall be fined the same
22 amounts as set forth in section two of this article.

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

29 (1) the buyer or recipient falsely evidenced that he was
30 eighteen years of age or older;

31 (2) The appearance of the buyer or recipient was such

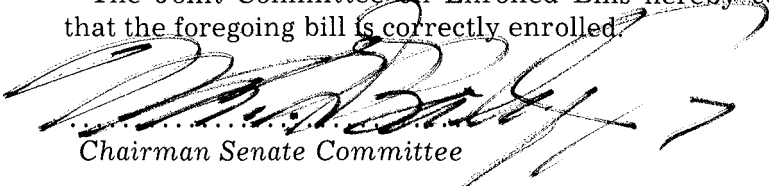
32 that a prudent person would believe the buyer or
33 recipient to be eighteen years of age or older; and

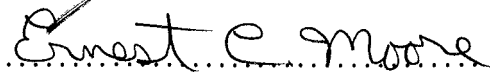
34 (3) Such person carefully checked a driver's license or
35 an identification card issued by this state or another
36 state of the United States, a passport or a United States
37 armed services identification card presented by the
38 buyer or recipient and acted in good faith and in reliance
39 upon the representation and appearance of the buyer or
40 recipient in the belief that the buyer or recipient was
41 eighteen years of age or older.

42 (c) Any fine collected after a conviction of violating
43 either section two or three of this article shall be paid to
44 the clerk of the court in which the conviction was
45 obtained. The clerk of the court upon receiving the fine
46 shall promptly notify the superintendent of the division
47 of public safety of the conviction and the collection of
48 the fine.

49 (d) The superintendent of the division of public safety
50 shall prepare and submit to the governor on the first day
51 of May of each year a report of the enforcement and
52 compliance activities undertaken pursuant to this
53 section and the results of the same. The report shall be in
54 the form and substance that the governor shall submit
55 to the secretary of the United States department of
56 health and human services, in compliance with Section
57 1926, Subpart I, Part B, Title XIX of the federal Public
58 Health Service Act (42 U.S.C. 300x-26).

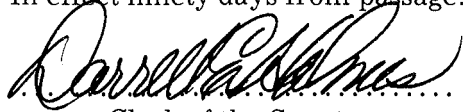
The Joint Committee on Enrolled Bills hereby certifies
that the foregoing bill is correctly enrolled.

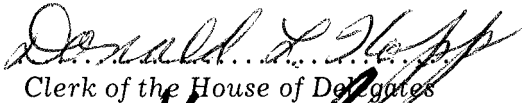

Chairman Senate Committee

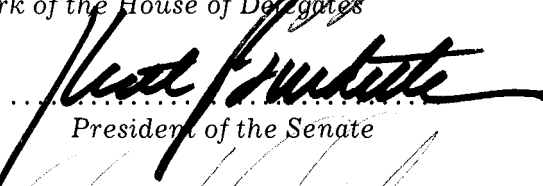

Chairman House Committee

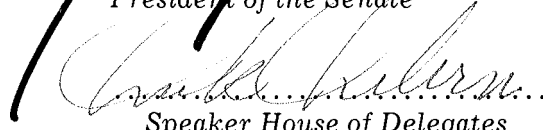
Originated in the Senate.

In effect ninety days from passage.


Clerk of the Senate


Clerk of the House of Delegates


President of the Senate


Speaker House of Delegates

The within  approved this the 

day of , 1994.


Governor

PRESENTED TO THE

GOVERNOR

Date 3/30/94

Time 1:08 pm