WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1994

ENROLLED
Committee Substitute for
SENATE BILL NO. 408

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

PASSED March 11, 1994
In Effect 90 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.

(a) The division of public safety, acting with and through the sheriffs of the counties of this state and the chiefs of police of municipalities of this state, shall annually conduct random, unannounced inspections at locations where tobacco 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 Section 1926 of the Public Health Services Act and applicable rules. Persons under the age of eighteen years may be enlisted by such superintendent, sheriffs or chiefs of police or employees 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 superintendent, sheriffs or chiefs of police or employees thereof and written consent of the parent or guardian of such person is first obtained. 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 a random inspection under subsection (a) of this section has a complete defense if, at the time the cigarette or other tobacco product or cigarette wrapper was sold, delivered, bartered, furnished or given:

(1) the buyer or recipient falsely evidenced that he 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 either section two or three of this article shall be paid to the clerk of the court in which the conviction was obtained. The clerk of the court upon receiving the fine shall promptly notify the superintendent of the division of public safety of the conviction and the collection of the fine.

(d) The superintendent of the division of public safety shall prepare and submit to the governor on the first day of May of each year a report of the enforcement and compliance activities undertaken pursuant to this section and the results of the same. The report shall be in the form and substance that the governor shall submit to the secretary of the United States department of health and human services, in compliance with Section 1926, Subpart I, Part B, Title XIX of the federal Public 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 bill is passed this the ___________ day of ___________, 1994.

Governor