WEST VIRGINIA LEGISLATURE
SECOND REGULAR SESSION, 1998

ENROLLED

House Bill No. 2395
(By Delegates Manuel, Doyle, Douglas, Amores and C. White)

Passed March 14, 1998
In Effect Ninety Days from Passage
AN ACT to amend article ten, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section five-t; to amend article twelve of said chapter by adding thereto a new section, designated section four-a; and to amend and reenact sections two, three and seven, article nine-a, chapter sixteen of said code, all relating to disclosures of persons making retail sales of tobacco products; requiring certain agencies to compile, distribute, report and make available lists of those who intend to sell tobacco products; requiring retailers of tobacco products to provide additional information upon business registration and annual renewals; modifying the penalty for minors found to possess or use tobacco products; modifying the penalty for businesses and individuals who sell or give tobacco or tobacco products to minors; providing legal protection for minors who participate in inspection; authorizing the commissioner of the alcohol beverage control commission, the state police, sheriffs and local police to assist in the enforcement of youth smoking laws and to use minors in the inspection of retailers who sell tobacco products; requiring clerks of courts to record certain convictions and to notify the commissioner of the alcohol beverage control administration of payment of fines and
Enr. Com. Sub. for H. B. 2395] 2

satisfaction of community service penalties.

Be it enacted by the Legislature of West Virginia:

That article ten, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section five-t; that article twelve of said chapter be amended by adding thereto a new section, designated section four-a; and that sections two, three and seven, article nine-a, chapter sixteen of said code, be amended and reenacted, all to read as follows:

CHAPTER 11. TAXATION.

ARTICLE 10. PROCEDURE AND ADMINISTRATION.

§11-10-5t. Disclosure of persons making retail sales of tobacco products.

Notwithstanding any provision of this article to the contrary, the tax commissioner shall, at least semi-annually, provide to the commissioner of the West Virginia alcohol beverage control administration, the superintendent of the West Virginia state police and the secretary of the West Virginia department of health and human resources by the first day of April and October of each year, a list of the names and business locations of each person who indicates on a new application for a business registration certificate or on a current application for renewal of a business registration certificate that the person sells or intends to sell cigarettes or other tobacco products to consumers: Provided, That when available, the tax commissioner will provide the name of the business owner, county of location, and the business description code: Provided, however, That the tax commissioner may also file a copy of the list provided to the commissioner of the West Virginia alcohol beverage control administration, the superintendent of the West Virginia state police, and the secretary of the West Virginia department of health and human resources in the state register maintained by the secretary of state, who shall make the list available for inspection and copying: Provided further, That the results of the inspections of retail establishments which sell tobacco products may be reported to the federal
government by the commissioner of the West Virginia
alcohol beverage control administration.

ARTICLE 12. BUSINESS REGISTRATION TAX.

§11-12-4a. Retailers of tobacco products to provide additional
information.

For registration years beginning on or after the first
day of July, one thousand nine hundred ninety-eight, each
person applying for a business registration certificate and
each person applying for renewal of a business
registration certificate shall indicate in the application for
a business registration certificate or for the renewal of a
business registration certificate whether the person is
selling or intends to sell cigarettes or other tobacco
products to consumers during the registration period.

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 9A. TOBACCO USAGE RESTRICTIONS.

§16-9A-2. Sale or gift of cigarette, cigarette paper, pipe,
cigar, snuff, or chewing tobacco to persons
under eighteen; penalty.

No person or business entity may sell, give or furnish,
or cause to be sold, given or furnished, to any person
under the age of eighteen years:

(a) Any cigarette, cigarette paper or any other paper
prepared, manufactured or made for the purpose of
smoking any tobacco or tobacco product; or,

(b) Any cigar, pipe, snuff, chewing tobacco or tobacco
product, in any form.

Any firm or corporation which violates any of the
provisions of subdivision (a) or (b) of this section is guilty
of a misdemeanor, and, upon conviction thereof, shall be
fined twenty-five dollars for the first offense. Upon any
subsequent violation by that firm or corporation at the
same location or operating unit, the firm or corporation
shall be fined as follows: At least fifty dollars but not
more than one hundred dollars for the second offense, if it
occurs within two years of the first conviction; at least fifty
dolars but not more than two hundred dollars for the third offense, if it occurs within two years of the first conviction; at least one hundred dollars but not more than three hundred dollars for the fourth offense, if it occurs within five years of the first conviction; and at least one hundred dollars but not more than three hundred fifty dollars for the fifth and any subsequent offenses, if the fifth or subsequent offense occurs within five years of the first conviction. Any person who violates any provision of subdivision (a) or (b) of this section is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than ten nor more than twenty-five dollars.

§16-9A-3. Use or possession of tobacco or tobacco products by persons under the age of eighteen years; penalty.

No person under the age of eighteen years shall have on or about his or her person or premises or use any cigarette, or cigarette paper or any other paper prepared, manufactured or made for the purpose of smoking any tobacco products, in any form; or, any pipe, snuff, chewing tobacco or tobacco product: Provided, That minors participating in the inspection of locations where tobacco products are sold or distributed pursuant to section seven of this article and chapter shall not be deemed to violate the provisions of this section: Provided, however, That any person violating the provisions of this section is punishable by eight hours of community service: Provided further, That notwithstanding the provisions of section two, article five, chapter forty-nine, the magistrate court shall have concurrent jurisdiction.

§16-9A-7. Enforcement of youth smoking laws; retail tobacco outlet inspections; 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 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 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 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 West Virginia department of health and human resources. The report shall be in the form and substance that the governor shall submit to the applicable state and federal programs.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within approved this the 1st day of April, 1998.

Governor