

RECEIVED
98 APR - 2 PM 3:38
OFFICE OF THE CLERK
SECRETARY OF STATE

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

RECEIVED

98 APR -2 PM 3:33

OFFICE OF THE CLERK
SENATE OF WEST VIRGINIA

ENROLLED

COMMITTEE SUBSTITUTE

FOR

H. B. 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

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.

1 Notwithstanding any provision of this article to the
2 contrary, the tax commissioner shall, at least semi-
3 annually, provide to the commissioner of the West
4 Virginia alcohol beverage control administration, the
5 superintendent of the West Virginia state police and the
6 secretary of the West Virginia department of health and
7 human resources by the first day of April and October of
8 each year, a list of the names and business locations of
9 each person who indicates on a new application for a
10 business registration certificate or on a current application
11 for renewal of a business registration certificate that the
12 person sells or intends to sell cigarettes or other tobacco
13 products to consumers: *Provided*, That when available, the
14 tax commissioner will provide the name of the business
15 owner, county of location, and the business description
16 code: *Provided, however*, That the tax commissioner may
17 also file a copy of the list provided to the commissioner of
18 the West Virginia alcohol beverage control administration,
19 the superintendent of the West Virginia state police, and
20 the secretary of the West Virginia department of health
21 and human resources in the state register maintained by
22 the secretary of state, who shall make the list available for
23 inspection and copying: *Provided further*, That the results
24 of the inspections of retail establishments which sell
25 tobacco products may be reported to the federal

26 government by the commissioner of the West Virginia
27 alcohol beverage control administration.

ARTICLE 12. BUSINESS REGISTRATION TAX.

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

1 For registration years beginning on or after the first
2 day of July, one thousand nine hundred ninety-eight, each
3 person applying for a business registration certificate and
4 each person applying for renewal of a business
5 registration certificate shall indicate in the application for
6 a business registration certificate or for the renewal of a
7 business registration certificate whether the person is
8 selling or intends to sell cigarettes or other tobacco
9 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.

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

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

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

9 Any firm or corporation which violates any of the
10 provisions of subdivision (a) or (b) of this section is guilty
11 of a misdemeanor, and, upon conviction thereof, shall be
12 fined twenty-five dollars for the first offense. Upon any
13 subsequent violation by that firm or corporation at the
14 same location or operating unit, the firm or corporation
15 shall be fined as follows: At least fifty dollars but not
16 more than one hundred dollars for the second offense, if it
17 occurs within two years of the first conviction; at least fifty

18 dollars but not more than two hundred dollars for the
19 third offense, if it occurs within two years of the first
20 conviction; at least one hundred dollars but not more than
21 three hundred dollars for the fourth offense, if it occurs
22 within five years of the first conviction; and at least one
23 hundred dollars but not more than three hundred fifty
24 dollars for the fifth and any subsequent offenses, if the
25 fifth or subsequent offense occurs within five years of the
26 first conviction. Any person who violates any provision of
27 subdivision (a) or (b) of this section is guilty of a
28 misdemeanor, and, upon conviction thereof, shall be fined
29 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.**

1 No person under the age of eighteen years shall have
2 on or about his or her person or premises or use any
3 cigarette, or cigarette paper or any other paper prepared,
4 manufactured or made for the purpose of smoking any
5 tobacco products, in any form; or, any pipe, snuff,
6 chewing tobacco or tobacco product: *Provided*, That
7 minors participating in the inspection of locations where
8 tobacco products are sold or distributed pursuant to
9 section seven of this article and chapter shall not be
10 deemed to violate the provisions of this section: *Provided*,
11 *however*, That any person violating the provisions of this
12 section is punishable by eight hours of community
13 service: *Provided further*, That notwithstanding the
14 provisions of section two, article five, chapter forty-nine,
15 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.**

1 (a) The commissioner of the West Virginia alcohol
2 beverage control administration, the superintendent of the
3 West Virginia state police, the sheriffs of the counties of
4 this state and the chiefs of police of municipalities of this
5 state, may periodically conduct unannounced inspections
6 at locations where tobacco products are sold or distributed
7 to ensure compliance with the provisions of sections two

8 and three of this article and in such manner as to conform
 9 with applicable federal and state laws, rules and
 10 regulations. Persons under the age of eighteen years may
 11 be enlisted by such commissioner, superintendent, sheriffs
 12 or chiefs of police or employees or agents thereof to test
 13 compliance with these sections: *Provided*, That the minors
 14 may be used to test compliance only if the testing is
 15 conducted under the direct supervision of the
 16 commissioner, superintendent, sheriffs or chiefs of police
 17 or employees or agents thereof and written consent of the
 18 parent or guardian of such person is first obtained and
 19 such minors shall not be in violation of section three of
 20 this article and chapter when acting under the direct
 21 supervision of the commissioner, superintendent, sheriffs
 22 or chiefs of police or employees or agents thereof and
 23 with the written consent of the parent or guardian. It is
 24 unlawful for any person to use persons under the age of
 25 eighteen years to test compliance in any manner not set
 26 forth herein and the person so using a minor is guilty of a
 27 misdemeanor, and, upon conviction thereof, shall be fined
 28 the same amounts as set forth in section two of this article.

29 (b) A person charged with a violation of section two
 30 or three of this article as the result of an inspection under
 31 subsection (a) of this section has a complete defense if, at
 32 the time the cigarette or other tobacco product or cigarette
 33 wrapper was sold, delivered, bartered, furnished or given:

34 (1) The buyer or recipient falsely evidenced that he
 35 was eighteen years of age or older;

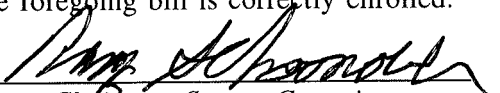
36 (2) The appearance of the buyer or recipient was such
 37 that a prudent person would believe the buyer or recipient
 38 to be eighteen years of age or older; and

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

47 (c) Any fine collected after a conviction of violating
48 section two of this article shall be paid to the clerk of the
49 court in which the conviction was obtained: *Provided*,
50 That the clerk of the court upon receiving the fine shall
51 promptly notify the commissioner of the West Virginia
52 alcohol beverage control administration of the conviction
53 and the collection of the fine: *Provided, however*, That
54 any community service penalty imposed after a conviction
55 of violating section three of this article shall be recorded
56 by the clerk of the court in which the conviction was
57 obtained: *Provided further*, That the clerk of the court
58 upon being advised that community service obligations
59 have been fulfilled shall promptly notify the
60 commissioner of the West Virginia alcohol beverage
61 control administration of the conviction and the
62 satisfaction of imposed community service penalty.

63 (d) The commissioner of the West Virginia alcohol
64 beverage control administration or his or her designee
65 shall prepare and submit to the governor on the last day of
66 September of each year a report of the enforcement and
67 compliance activities undertaken pursuant to this section
68 and the results of the same, with a copy to the secretary of
69 the West Virginia department of health and human
70 resources. The report shall be in the form and substance
71 that the governor shall submit to the applicable state and
72 federal programs.

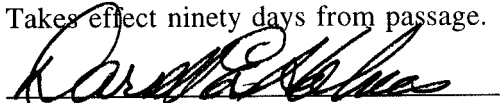
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

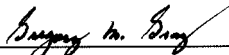

Chairman Senate Committee

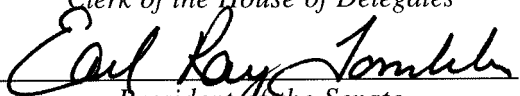

Chairman House Committee


Originating in the House.

Takes effect ninety days from passage.

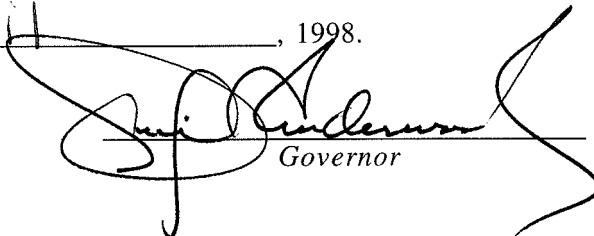

Clerk of the Senate


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

PRESENTED TO THE

GOVERNOR

Date 3/31/98

Time 11:00 am