

1 COMMITTEE SUBSTITUTE

2 FOR

3 **H. B. 2969**

4
5 (By Delegates Boggs, Caputo, White and Fragale)

6 (Originating in the Committee on the Judiciary)

7
8 [February 21, 2011]

9
10 A BILL to amend and reenact §16-9D-6 of the Code of West Virginia,
11 1931, as amended, relating to enforcement of statutes
12 implementing tobacco master settlement agreement; reporting of
13 information; and requiring the Tax Commissioner to disclose,
14 at the request of a nonparticipating tobacco product
15 manufacturer, the branding information, sales, stamping and
16 other information that is reported to the Tax Commissioner by
17 distributors and stamping agents for products obtained from
18 that nonparticipating manufacturer.

19 *Be it enacted by the Legislature of West Virginia:*

20 That §16-9D-6 of the Code of West Virginia, 1931, as amended,
21 be amended and reenacted to read as follows:

22 **ARTICLE 9D. ENFORCEMENT OF STATUTES IMPLEMENTING TOBACCO MASTER**
23 **SETTLEMENT AGREEMENT.**

24 **§16-9D-6. Reporting of information; escrow installments.**

25 (a) *Reporting by distributors and other stamping agents. --*

1 (1) Not later than twenty calendar days after the end of each
2 calendar quarter, and more frequently if directed by the
3 commissioner, each distributor or stamping agent shall submit
4 information required by the commissioner to facilitate compliance
5 with this article, including, but not limited to, a list by brand
6 family of the total number of cigarettes of nonparticipating
7 manufacturers, or in the case of roll your own, the equivalent
8 stick count, for which the distributor or other stamping agent
9 affixed West Virginia stamps and sold in West Virginia during the
10 previous calendar quarter or otherwise paid the tax due for the
11 cigarettes.

12 (2) The distributor or stamping agent shall maintain, and make
13 available to the commissioner, all invoices and documentation of
14 sales of all nonparticipating manufacturer cigarettes sold in West
15 Virginia and any other information relied upon in reporting to the
16 commissioner for a period of five years.

17 (b) *Disclosure of information.* -- The commissioner may
18 disclose to the Attorney General of this state any information
19 received under this article and requested by the Attorney General
20 for purposes of determining compliance with and enforcing the
21 provisions of this article. The commissioner and the Attorney
22 General shall share with each other the information received under
23 this article, and may share the information with other federal,
24 state or local agencies only for purposes of enforcement of this
25 article, article nine-b of this chapter, or corresponding laws of
26 other states. The commissioner is further directed, upon request

1 of a nonparticipating manufacturer, to disclose to that
2 nonparticipating manufacturer any information that has been
3 provided by a distributor or stamping agent as required by this
4 section regarding the purchases from that manufacturer upon which
5 tax stamps have been applied and cigarettes sold in West Virginia.

6 (c) *Verification of qualified escrow fund.* -- The Attorney
7 General may require at any time from the nonparticipating
8 manufacturer proof, from the financial institution in which the
9 manufacturer has established a qualified escrow fund for the
10 purpose of compliance with article nine-b of this chapter, of the
11 amount of money in the fund, exclusive of interest, the amount and
12 date of each deposit to the qualified escrow fund, and the amount
13 and date of each withdrawal from the fund.

14 (d) *Requests for additional information.* -- In addition to the
15 information required to be submitted pursuant to this section, the
16 Attorney General may require a stamping agent, distributor or
17 tobacco product manufacturer to submit any additional information
18 including, but not limited to, samples of the packaging or labeling
19 of each brand family, that is necessary to enable the Attorney
20 General to determine whether a tobacco product manufacturer is in
21 compliance with this article.

22 (e) *Quarterly escrow installments.* -- To promote compliance
23 with the provisions of this article, a tobacco product manufacturer
24 subject to the requirements of subdivision (2), subsection (a),
25 section three of this article, who, in the opinion of the Attorney
26 General, materially defaults in fully funding its escrow account

1 timely and then cures the default shall make escrow deposits for
2 the calendar year during which the default was cured and ensuing
3 calendar years in quarterly installments during the year in which
4 the sales covered by such deposits are made. The Attorney General
5 may require production of information sufficient to enable the
6 Attorney General to determine the adequacy of the amount of the
7 installment deposit.