

COMMITTEE SUBSTITUTE

FOR

**H. B. 2969**

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(BY DELEGATES BOGGS, CAPUTO, WHITE AND FRAGALE)

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(Originating in the Committee on the Judiciary)  
[February 21, 2011]

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

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

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

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

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

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

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

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

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

32 provided by a distributor or stamping agent as required by  
33 this section regarding the purchases from that manufacturer  
34 upon which tax stamps have been applied and cigarettes sold  
35 in West Virginia.

36 (c) *Verification of qualified escrow fund.* -- The Attorney  
37 General may require at any time from the nonparticipating  
38 manufacturer proof, from the financial institution in which  
39 the manufacturer has established a qualified escrow fund for  
40 the purpose of compliance with article nine-b of this chapter,  
41 of the amount of money in the fund, exclusive of interest, the  
42 amount and date of each deposit to the qualified escrow fund,  
43 and the amount and date of each withdrawal from the fund.

44 (d) *Requests for additional information.* -- In addition to  
45 the information required to be submitted pursuant to this  
46 section, the Attorney General may require a stamping agent,  
47 distributor or tobacco product manufacturer to submit any  
48 additional information including, but not limited to, samples  
49 of the packaging or labeling of each brand family, that is  
50 necessary to enable the Attorney General to determine

51 whether a tobacco product manufacturer is in compliance  
52 with this article.

53 (e) *Quarterly escrow installments.* -- To promote  
54 compliance with the provisions of this article, a tobacco  
55 product manufacturer subject to the requirements of  
56 subdivision (2), subsection (a), section three of this article,  
57 who, in the opinion of the Attorney General, materially  
58 defaults in fully funding its escrow account timely and then  
59 cures the default shall make escrow deposits for the calendar  
60 year during which the default was cured and ensuing  
61 calendar years in quarterly installments during the year in  
62 which the sales covered by such deposits are made. The  
63 Attorney General may require production of information  
64 sufficient to enable the Attorney General to determine the  
65 adequacy of the amount of the installment deposit.