



WV Wholesalers Association Joins with OMEGA WV to Have September Proclaimed We Card Month

The WV Wholesalers Association joined with OMEGA WV in September requesting that Governor Tomblin proclaim West Virginia as We Card Month, which he did. The proclamation said:

Whereas, West Virginia law prohibits the sale of tobacco and other age-restricted products to persons under the age of 18; and

Whereas, the West Virginia Oil Marketers and Grocers Association and the West Virginia Wholesalers Association will participate in "We Card" Awareness Month, a retail education and training effort to boost West Virginia retailers' awareness of and participation in responsible retailing efforts to comply with federal, state and local laws and identify, prevent and deny tobacco and other age-restricted product sales to minors; and

Whereas, the national non-profit organization, The "We Card" Program, Inc., is designed to provide training and education to the retail community to help retailers comply with age-restricted product laws and serve their communities as responsible retailers; and

Whereas, through The "We Card" Program Inc., in-store training and education materials, online training programs, and the mystery shopping service "ID Check-Up" are available to all West Virginia retailers on We Card's website, www.wecard.org; The "We Card" Program, Inc., is also endorsed by the West Virginia Oil Marketers and Grocers Association and the West Virginia Wholesalers Association; and

Whereas, if we work together, West Virginia will benefit from responsible retailing community that successfully prevents tobacco and other age-restricted product sales to minors.

Now, Therefore, Be it Resolved that I, Earl Ray Tomblin, Governor of the Great State of West Virginia, do hereby proclaim September 2014, as:

"We Card" Awareness Month

in the Mountain State and encourage all retailers to participate by letting their customers know that "In West Virginia, we don't sell tobacco and other age-restricted products to kids,"

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From the Director

We are excited to bring you this quarterly edition of the WVVA Newsletter! A lot is going on in WV!

We are thrilled about our activities for We Card month. Not only did Governor Tomblin declare September We Card

Month in West Virginia, we held an event on the 24th in Beckley at the Little General Store's manager meeting. We highlighted the importance of carding to the 125 managers present and urged them to stress the importance of keeping tobacco products out of the hands of minors to their employees and to use the We Card training materials in their stores. On hand we representatives from the WV State Police and the Beckley City Police; as well as Senators Mike Green and Daniel Hall. All three TV stations and the *Beckley Register-Herald* covered this event. In addition, we hired The Media Center, to promote We Card statewide and their feed was picked up by WTAP, WDTV, WHSV, WTRF, WBOY, WVNS, WCHS and WOWK. We are very pleased with the coverage and our message that "We do not tolerate selling to minors."

The Election is at the forefront for all West Virginians! Don't forget to vote on November 4th. - *Jan*

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In Witness Whereof, I have hereunto set my hand and caused the Great Seal of the State of West Virginia to be affixed.

Done at the Capitol, City of Charleston, State of West Virginia, this the twelfth day of September, in the year of our Lord, Two Thousand Fourteen, and in the One Hundred Fifty-Second year of the State.



Latest WV Poll Reveals Changing Trends in the Mountain State

Veteran West Virginia pollster Rex Repass provided Poll highlights at the WV Business Summit, which included:

- Shelley Moore Capito's lead over challenger Natalie Tennant has increased from 11 percent in May to 17 percent in late August in the race for West Virginia's soon-to-be vacant U. S. Senate seat. (Capito has gained 2 percent since this poll.)
- When looking at West Virginia's "political brand" it is clear the state is more "steadfast conservative" than the nation and less "solid liberal" than the rest of the country.
- By a margin of 41 percent to 39 percent, those polled favored a Republican controlled West Virginia Legislature, rather than one that has been controlled by Democrats for over 80 years
- Over the past 14 years, West Virginia and Arkansas are the two states that have become more Republican.

Election projections at www.voiceshot.com shows:

- 1st Congressional District has Republican Incumbent David McKinley holding his seat over challenger Democrat Glen Gainer.
- 2nd Congressional District has Republican Alex Mooney up 5.6 percent over Democrat Nick Casey, Jr.
- 3rd Congressional District shows Democrat Nick J. Rahall with a "weak hold" (under 5 percent) over Republican Evan Jenkins.

In West Virginia at the State level there are 17 Senate seats (1/2 of the total 34 seats) on the ballot and all 100 House of Delegate seats. Very little polling has been done on these state races. Many of the races are very continuous and really too close to call. The West Virginia House of Delegates is one of 20 state legislative chambers noted by Ballotpedia staff as being a battleground chamber. We will likely see many changes in Charleston come January.

If you would like to discuss a race in your district or a candidate, please feel free to give Jan Vineyard a call.

Governor Tomblin Announces Tenth Consecutive Reduction in Workers' Comp Rates: West Virginia Employers to Save \$32 Million this Year

Gov. Earl Ray Tomblin recently announced West Virginia employers will see a projected \$32 million in workers' compensation premium reductions in the coming year, and have seen a savings of more than \$280 million since the program was privatized in 2005. Recently the National Council on Compensation Insurance (NCCI) filed a proposed reduction in workers' compensation loss cost rates with the Offices of the West Virginia Insurance Commissioner - the tenth consecutive reduction in 10 years.

"We've worked hard in West Virginia to create a business climate that encourages companies to innovate, expand and create new jobs," Gov. Tomblin said. "With this rate reduction, our businesses are reaping the rewards of both lower taxes and lower workers' compensation insurance premiums. The new rates are an excellent sign that our state continues to move in the right direction for continued job growth."

NCCI, West Virginia's rating agent, has proposed an overall 9.1 percent loss cost rate decrease with the West Virginia Insurance Commissioner. The new loss cost rate is effective November 1, 2014.

"West Virginia is reaping the fruits of our labor from the reforms of the state's workers' compensation program," said U.S. Senator Joe Manchin. "Privatizing workers' compensation in West Virginia was one of my most rewarding achievements and impactful issues my administration addressed when I first arrived in the governor's office. I thank Governor Tomblin for his courageous efforts at the time as Senate president to help accomplish these reforms in 2005, and I truly appreciate his continued commitment and hard work as Governor. Now, our state has gotten its financial house in order, and we are living within our means, enjoying a steady revenue stream, and have once again become competitive in West Virginia and around the country."

This reduction serves as the tenth consecutive decrease in loss costs since privatization and accounts for a cumulative decrease of 58.7 percent from pre-reform levels.

"This rate reduction, and the related premium savings to employers, is a positive indication of the progress that has been made in our market," said Insurance Commissioner Michael D. Riley. "We are encouraged that our workers' compensation market continues to move in a positive direction for our businesses and their employees."

Governor Tomblin Named Chair of National Governors Association Standing Committee

Gov. Earl Ray Tomblin has been appointed chair of the National Governors Association (NGA) Economic Development and Commerce Committee by NGA Chair Colorado Gov. John Hickenlooper and Vice Chair Utah Gov. Gary Herbert. The committee is one of five standing NGA committees for 2014-2015.

"It's a privilege to be part of the NGA leadership team and I look forward to working with governors from across the country to serve the people of our states," Gov. Tomblin said. "NGA provides an invaluable opportunity for leaders from both parties to sit down and share new ideas and best practices to move our states forward."

The Economic Development and Commerce Committee oversees a variety of issues affecting states across the country including transportation infrastructure, telecommunications, international trade promotion and science and technology development.

Fed Data Shows Mixed Bag for W.Va.

Charleston Daily Mail, 9/7/14

The Federal Reserve Bank of Richmond issued its latest monthly snapshot of the state's economy recently and the results were a mixed bag.

The data, which covers the month of July, found good news for the state's housing market, but some negative news on the jobs front.

Payroll employment fell 0.4 percent in July, with 2,900 net jobs lost. The state's unemployment rate ticked up to 6.3 percent in the month.

"For the second straight month, the government sector, which shed 2,800 jobs (1.8 percent) in July, cut the most positions in absolute terms," the report said. "In the private sector, the only industries to add jobs were education and health services, financial services, and manufacturing."

State employment has grown 1 percent from last July, with almost every industry reporting growth. The only job losses were observed in the construction (down 5.8 percent), government (down 1.4 percent), and trade, transportation, and utilities (down 0.6 percent).

The state's professional and business services sector has seen the biggest employment jump in the last year, growing 7.1 percent. It was followed in second by the financial activities sector, which saw payrolls increase 6.7 percent in the last year. The news was not so good for the Charleston area.

The Federal Reserve bank said the city's metro area shed 1,400 jobs, or 1 percent, in July, the largest single decline since the Fed began tracking metro data in 1990.

While the construction sector saw the greatest percentage of job losses in the past year, there was encouraging news on the state's housing front. There were 204 residential building permits issued in the state in July, up 15.9 percent from June and 11.5 percent since last July. Housing starts totaled 2,300 in July, up 37.2 percent from June and 26.4 percent more than last July.

Home prices in every state metro area except Charleston (which declined 2.76 percent) increased during the month, with the average increase for the state coming in at 0.65 percent. The Parkersburg area saw the largest year-over-year home price increase, with houses in that market increasing an average of 6.1 percent.

The state performed better than the national level when it came to mortgage delinquencies, a trend that's continued since mid-2007. During the second quarter, 1.98 of mortgages in the state were delinquent for more than 90-days, less than the national rate of 2.31 percent.

There were 926 non-business bankruptcies in the state during the second quarter, down about 6.6 percent from the second quarter of last year.

Meanwhile, the Federal Reserve bank also issued new state-level data on consumer spending. West Virginia's personal consumption expenditures increased 3.2 percent between 2011 and 2012, the latest data available from the Fed. Per capita spending in West Virginia was \$30,620 in 2012, 44th among all states. Consumers spent \$6,361 on health care services during 2012, up 6 percent from the year before. They spent \$4,532 on housing and utilities, up 2.1 percent; \$2,598 on food and beverages, an increase of 0.4 percent; and \$1,601 on gasoline and energy, an increase of half a percent.

Economic Forecast Calls for Continued Growth in Mountain State

An economist at West Virginia University uses the phrase "going gangbusters" to describe the current rate of growth for West Virginia's economy.

"We've had five months of very consistent and very healthy growth," said John Deskins, director of the Bureau of Business and Economic Research, of the latest Mountain State Business Index for August.

"Up until May of this year, we had six months of a flat index, which wasn't good, but since May it's been growing very healthfully and it seems to be pointing to, at the very least, stability in our economy and probably an acceleration in growth."

The Mountain State Business Index (MSBI), which takes into account several economic indicators like building permits, coal and gas production and the value of the U.S. dollar, is designed to be an up-to-date gauge of West Virginia's economy.

For August, it showed statewide economic activity increased 0.5 percent compared with July.

Overall, the index is up 2.3 percent compared with the same time period last year and has risen 4.7 percent on an annualized basis in just the last six months—suggesting an acceleration of growth in the near future.

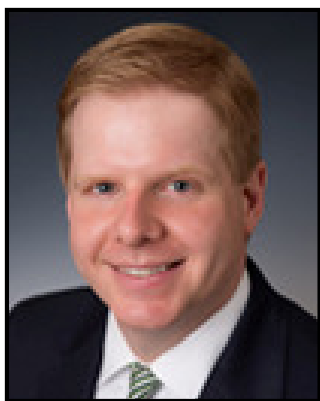
The current pace of growth, according to Deskins, could continue into early 2015.

Even with those numbers and data that showed West Virginia's gross domestic product or GDP was one of the three fastest growing in the United States last year, Deskins said the full economic picture for West Virginia is not ideal.

"Output from oil and gas has really started to take off and that's, by far, the largest driving force behind that big GDP growth," he said.

That means economic improvements have been concentrated in the areas in northern West Virginia that are rich with natural gas from the Marcellus shale.

"Despite that growth that we saw in output and despite that we saw a lot of new jobs being added in oil and gas, we actually lost jobs overall (last year)," Deskins said. "Matter of fact, we lost about 2,600 jobs last year which is actually far more than I anticipated or far more than I think anybody anticipated. Of course, the losses are coming from coal."



Know Your Officials, Rules of Engagement When Seeking Government Help

By Rob Alsop, Bowles Rice LLP

Almost every aspect of business requires interactions with one, if not multiple, governmental agencies. On most days, those interactions are seamless – we pay taxes, we abide by the applicable rules and regulations, and we get the services that our governments have been tasked with providing. There are instances, however, when an action taken by a government official causes significant consequences on our businesses, our families and our friends. Or there may be instances when our livelihood is dependent upon a potential course of action that

a government official is contemplating.

During my tenures with West Virginia Governors Earl Ray Tomblin and Joe Manchin, I saw firsthand how agencies respond to criticism, pressure and requests for help. In some cases, there are simply no methods or tactics that will help resolve a situation. But in those cases where a potential path to success is attainable, there are rules of engagement that can put you in the best position to achieve your goals.

Respecting and being courteous to government employees will pay off in the long term. Most government employees want to do their job well. And most employees are conscientious, with high standards of integrity. Government employees also feel like they are overworked and underpaid (and a lot of them are). Many are in agencies with limited budgets and resources – making their tasks all the more difficult. Government employees are creatures of habit – they want to go to work, do their jobs, get compensated and enjoy their lives. Many people fail to realize these simple facts. If you treat officials with respect, they are much more likely to go out of their way to help when you need it.

The risk of over-playing your hand by exaggerating is not worth it. As many have said over the years, "If you tell the truth, it becomes a part of your past; if you lie, it becomes a part of your future." If government employees trust what you do and what you say, then you are ahead of the game. So be forthright and do not exaggerate. In fact, it would not be uncommon for government employees to have experienced a similar situation before. If the government employee sees through an exaggeration, your credibility will be ruined and getting help will be all the more difficult.

Know the rules and know the facts. When a business or citizen complains about an action, the first thing a director or manager does is investigate the situation. And the first thing you will likely face when you have a problem is questions about your issue. There was nothing more frustrating than sitting in a meeting and within five minutes being faced with a constituent who was unable to answer the most basic questions about an issue. To achieve results, know the facts of the matter at hand. When relaying those facts, state your case in terms of how the official will likely view it. If an official understands where you are coming from, it will be easier to take them where you want to go.

Be a problem-solver, not a complainer. Government employees, like most of us, tune out when they are lectured. And you can completely lose them if you do nothing but complain. Because government employees are creatures of habit and often do not have the time (or will not take the time) to find a creative solution, the burden is on you. If you want relief from the government, the best scenario is to develop a game plan that allows a government employee to follow the path of least resistance to reach your favored result. The average government employee wants to do his or her job. You, on the other hand, want a particular outcome. So make it easy for the government employee to reach that outcome.

Listen. Then facilitate a dialogue. Sometimes government employees will fail to recognize a particular fact situation or a unique set of circumstances that should lead to a different result. Ask questions, and learn by listening. By asking the right questions, you can often lead to a constructive dialogue and creative solutions.

Give governmental officials a chance to help before leveraging pressure from elected officials. Oftentimes many citizens would seek help from the Governor before giving an agency a chance to address an issue. This causes two problems. First, it makes agency staff mad for not providing them with the opportunity to fix the situation in the first place. Second, the first thing the Governor's office is going to do is ask the agency to look into the issue. If you want an agency to trust you, then you need to reciprocate that trust by giving an agency the opportunity to fix the issue. If an agency has declined to resolve an issue, then it may be necessary and appropriate to seek help from other parties.

There are, of course, times when push comes to shove and you must take appropriate action, even by way of judicial proceedings, when an agency takes an inappropriate action. Some situations cannot be amicably resolved. In most instances, however, keeping the above rules of engagement in mind when dealing with government officials will help you achieve the desired outcome.

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WV Unemployment Rate Higher Than The National Rate For Second Straight Month

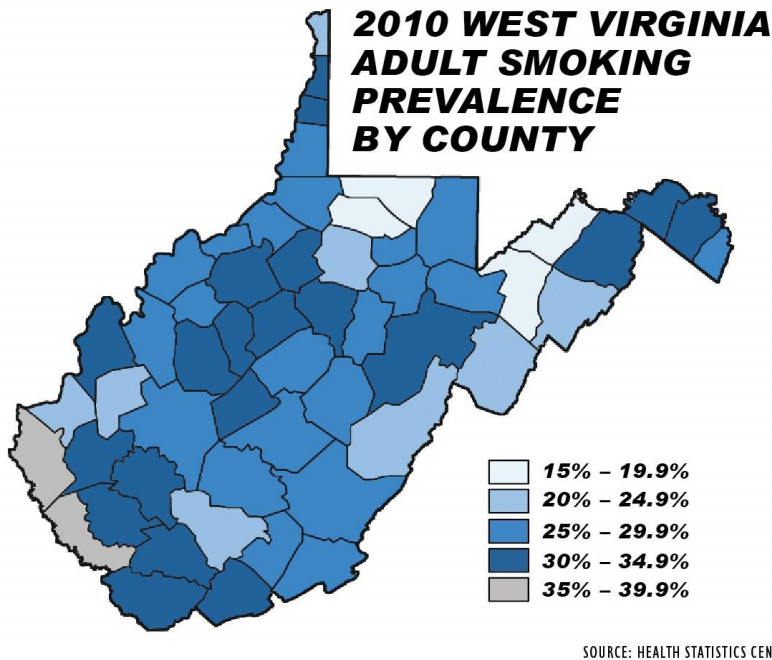
Unemployment in the Mountain State raised a tenth of a percent in July to 6.3 percent. According to WorkForce WV, total employment in the state fell by 3,900 with 800 people losing their jobs and 3,100 state residents deciding to stop looking for employment. The national unemployment rate also went up one-tenth of a percent in July to 6.2 percent. This is the second month in a row the state's rate has exceeded the national rate. June and July mark the first time West Virginia's unemployment rate has exceeded the national rate since October 2006.

Health Report: W.Va.'s Anti-Smoking Policies Must Be Stricter

The Charleston Gazette 8/17/14

West Virginia will need to see drastic changes in policy and community engagement if the state hopes to reduce smoking rates that have remained stagnant, according to a study published by local health officials.

The study, "Comprehensive Tobacco Control Policies in West Virginia — Going from Intersection to Integration," appeared in the July-August issue of the West Virginia Medical Journal. The study, which compared West Virginia and neighboring states, found that the Mountain State's adult smoking rate has not declined significantly in nearly two decades, despite a marked decline in surrounding states and across the nation.



"As Appalachia, we wanted to look at it from not just a county but a state perspective and see if we have certain funding and certain smoking rates, and you look at states around us, their funding and their tobacco rates, whether our programs are as effective," said Dr. Rahul Gupta, chief health officer of the Kanawha-Charleston Health Department and a co-author of the study. "Are the policies we have working, or can they be better tweaked?"

Between 1995 and 2010, the daily smoking rates of adults in Kentucky, Ohio and Tennessee dropped to below 20 percent of the population, and below 15 percent of the population in Virginia and Pennsylvania. West Virginia's rate never fell below 20 percent during that period, and even increased between 2005 and 2010 to nearly the level recorded in 1995.

The national smoking rate declined from 20 percent to 12.3 percent of the population between 1995 and 2010; West Virginia's smoking rate in 1995 was 23.7 percent, and decreased slightly in 2005, to 21.3, before returning to roughly 23 percent in 2010.

According to Gupta, the difference between West Virginia and many other states lies in aggressive anti-smoking marketing and comprehensive smoking-cessation campaigns.

Nearly 4,000 West Virginians die each year from diseases caused by tobacco, according to the state's Department of Health and Human Resources. Tobacco use is estimated to cost the state \$2 billion annually in lost productivity and health-care costs.

Bruce Adkins, director of the Division of Tobacco Prevention for the West Virginia Bureau for Public Health, said all 55 of West Virginia's counties have some form of Clean Indoor Air Act, but only 27 county policies are considered "comprehensive," meaning that they ban smoking inside all public facilities. The state does not have its own indoor air laws, Adkins said.

According to Adkins, the state's smokeless-tobacco use rate among adult males is 12 percent, and about 7 percent of the population is considered "dual-use" tobacco users, meaning that they smoke and use smokeless tobacco on a regular basis.

The CDC's Best Practices guidelines for 2014 recommend funding for West Virginia's tobacco prevention and control efforts total roughly \$27.4 million annually. Currently, funding for these programs totals less than a quarter of that — not quite \$6.3 million.

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West Virginia contributes nearly \$5 million of the smoking-cessation funding from its general fund; the rest comes from the CDC. In fiscal year 2014, which spanned July 1, 2013, to June 30 of this year, the state collected more than \$101 million in taxes on tobacco products, according to the State Budget Office.

West Virginia has the second-lowest tobacco taxation rate of the states studied. The lowest, Virginia, allows municipalities to create their own additional tobacco taxes, resulting in much higher taxes for most than the state rate would indicate, Adkins said.

The State Journal focused a weekly edition in Mid-September on smoking, which included the following articles:

- *Twenty-eight percent of State's Adults Smoke*
- *Son Prompts Couple to Quit*
- *State Says Tobacco Use Costs Employers Dearly*
- *Anti-Tobacco Effort Strapped for Funds Despite Millions in Revenues*
- *Opinion - Brooks McCabe: Public Health Has Budgetary Implications*
- *Smokers, Coal Workers Experience Similar Complications*
- *W.Va's Tobacco Industry is Wiped Out*

We chose three of these articles to include in this newsletter:

State Says Tobacco Use Costs Employers Dearly

Each employee who uses tobacco products directly impacts a business' bottom line by \$4,700, according to a memo to business owners by the West Virginia Division of Tobacco Prevention.

The one-page fact sheet says:

- Smoking and smoking-related illnesses annually cost West Virginia employers \$1,865 in excess medical expenses and \$2,811 in lost productivity per smoker.
- Tobacco users, on average, cost company pharmaceutical plans twice as much as non-users.
- Absenteeism is 50 percent higher for smokers than for nonsmokers; employees who smoke have almost twice as much lost production time per week.
- Businesses pay an average of \$2,189 in workers' compensation costs for smokers, compared with \$176 for nonsmokers.

"Smoking and tobacco use cessation interventions are the single most cost-effective health benefit you can provide to your employees," the division says. "Consider a work site tobacco cessation program to help your employees quit."

Bruce Adkins, director of the Division of Tobacco Prevention, which is under the West Virginia Department of Health and Human Resources, said the agency first distributed the fact sheet about a year ago.

It has been mainly distributed at local meetings, by the division's regional tobacco coordinators and other stakeholders, and at the division's website, he said.



18.1 percent
U. S. adults who smoke

Costs over 30 years:

According to the WV Health Statistics Center and the WV Division of Tobacco Prevention, the average adult smoker in the state would have spent about \$31,000 on cigarettes look back on a lifetime of smoking (1980 - 2009). If that money had been invested (and compounded annually) at 6 percent, that pot of money would have been worth about \$64,000 today.



Anti-Tobacco Effort Strapped for Funds Despite Millions in Revenues

West Virginia received \$807.5 million in 2007 when it sold bonds backed by its rights to future tobacco settlement payments and it collects about \$100 million annually in tobacco taxes. You might think it is awash in money to spend on anti-tobacco efforts. You would be wrong. All of the proceeds from the tobacco settlement bonds went to help pay down the state Teachers Retirement System's unfunded liability. All of the money received each year from the settlement goes toward paying off those bonds. Annual tax revenues go to the state's General Revenue Fund.

West Virginia and 45 other states reached a settlement agreement in 1998 with the country's four largest cigarette makers to recover money spent treating tobacco-related health problems. The Mountain State is not unique in spending most of its tobacco money on needs unrelated to tobacco. In a report titled, "Broken Promises to Our Children," the Campaign for Tobacco-Free Kids, a nonprofit that fights to reduce tobacco use, said, "Fifteen years after the tobacco settlement, our latest report finds that states are continuing to spend only a miniscule portion of their tobacco revenues to fight tobacco use. The states have failed to reverse deep cuts to tobacco prevention and cessation programs that have undermined the nation's efforts to reduce tobacco use."

The campaign said the states will collect \$25 billion in revenue from the tobacco settlement and tobacco taxes in fiscal year 2014 "but will spend only 1.9 percent of it — \$481.2 million — on programs to prevent kids from smoking and help smokers quit. West Virginia spends about \$6.3 million on anti-tobacco programs annually. Of that amount, about \$5.1 million comes from the state's General Revenue Fund and \$1.2 comes from a federal grant.

The federal Centers for Disease Control and Prevention, or CDC, recommends West Virginia spend \$27.4 million annually on tobacco prevention and control. The recommendations for surrounding states and the actual amount of state money spent in fiscal year 2014 are:

- Ohio, \$132 million recommended, \$1.5 million spent;
- Pennsylvania, \$140 million recommended, \$5 million spent;
- Maryland, \$48 million recommended, \$8.5 million spent;
- Virginia, \$91.6 million recommended, \$9.5 million spent; and
- Kentucky, \$56.4 million recommended, \$2.1 million spent.

Tobacco Industry is Wiped Out

West Virginia once was a producer of burley tobacco, one of several varieties blended to make cigarettes. It was a cash crop that helped farmers get through the winter. But changes in markets and federal price supports wiped out the industry and the millions of dollars the state's growers earned.

Tobacco production was concentrated in four counties — Cabell, Lincoln, Mason and Putnam — with small amounts grown in other counties. Growers sold their product at auction at the Huntington Pride in Tobacco Market. When that market closed in 1998, growers had nowhere in the state to sell their product, so they had to drive an hour or more to markets at Morehead, Kentucky, or even longer to Ripley, Ohio, or Maysville, Kentucky.

That, along with the end of federal price support and production quota programs in 2004, devastated production.

In 1994, 2,000 acres were in production. Farmers produced about 3.55 million pounds, selling for \$6.46 million. That marked the high point of production in recent years. As late as 2003, about 1,200 acres in West Virginia were used to grow burley tobacco. The 1,200 acres produced 1.56 million pounds and sold for \$3.06 million. In 2005, only 400 acres were in production and the U.S. Department of Agriculture ceased collecting tobacco statistics for West Virginia.

Federal Update

FDA Increases Maximum Retail Violation Fine

The FDA has revised its schedule of fines imposed on retailers that violate the agency's federal tobacco regulations, including the sale of cigarettes, roll-your-own tobacco, or smokeless tobacco to a minor. Under the Tobacco Control Act, there are six levels of violations and respective FDA fines. Recently, the FDA increased the fine for a sixth violation as allowed by the Federal Civil Penalties Inflation Adjustment Act, a federal law that allows a federal agency to increase fines based on the inflation rate with a maximum 10% increase in a fine.

The current fine structure used by the FDA for retail violations is as follows:

- First Violation: No fine, but a warning letter is issued.
- Second Violation within a 12-month period: \$250 fine.
- Third Violation within a 24-month period: \$500 fine.
- Fourth Violation within a 24-month period: \$2,000 fine.
- Fifth Violation within a 36-month period: \$5,000 fine.
- Sixth Violation within a 48-month period: \$11,000 fine (originally \$10,000, but raised \$1,000).

The FDA uses the schedule above to determine the amount of fine that the FDA will seek to impose on a retailer that violates the federal tobacco regulations. On a first inspection, regardless of the number of violations, the FDA issues a warning letter to the retailer detailing the violations, but does not assess a fine. There can be more than one violation per inspection. For example, if a retailer sells a tobacco product to an undercover minor and does not request and check a proper photo identification, this equals two violations.

For additional inspections, the FDA counts only one violation from the first inspection and then adds on each violation from a second or subsequent inspection to determine the level of fine to seek. For example, if a retail receives a warning letter from a first inspection during which two violations occurred (e.g., failure to check ID and a sale to a minor), and on a second inspection the same retail store is cited with two more violations (e.g., failure to check ID and a sale to a minor), the FDA's policy is to count one violation from the first inspection and two violations from the second inspection for a total of three violations.

As of the end of August, FDA has conducted more than 335,000 compliance checks, issued 18,568 warning letters and pursued 1,877 civil money penalties since the fall of 2010. The overall FFY 2014 average violation rate for both types of inspections (involving minors or adult-only inspections with no minors) is 7.42%. The We Card Coalition has put together an analysis of the available FDA enforcement data, including state compliance statistics.

In West Virginia there were 2,765 compliance checks with a total of 2,523 in compliance. There were 227 warning letters sent and 15 civil money penalties. The violation rate for West Virginia in FFY 2014 was 8.75%.

Tobacco Advertising Letter from FDA

According to the National Association of Tobacco Outlets (NATO), the FDA has issued a letter reminding tobacco retailers, wholesalers and manufacturers that they are required to file a notice with the agency if they advertise tobacco products. Specifically mentioned is advertising of cigarettes, roll-your-own tobacco, or smokeless tobacco in or on websites, television, blogs, e-mails sent to consumers, microblogs (e.g., Twitter), social media (e.g., Facebook, LinkedIn, My Space, etc.), podcasts, smart phones, video sharing (e.g., YouTube, Blip TV), Wikipedia, window gadgets, applications for smart phones and tablet computers, text messages, instant messages, pop up or roll over ads on websites, and on-line banner ads.

A notice needs to be filed with the FDA for each advertising medium listed above at least 30 days before the use of the medium. The FDA's letter goes on to state that if a retailer, wholesaler or manufacturer currently uses any of these advertising medium and have not yet filed the required notice, then the notice should be filed promptly with the FDA.

GAO Reports on Revenue Impact of Tax Increase

Large federal excise tax disparities among smoking tobacco products, which resulted from the Children's Health Insurance Program Reauthorization Act (CHIPRA) of 2009, created opportunities for tax avoidance and led to significant market shifts toward lower-taxed products by manufacturers, importers and price-sensitive consumers. From fiscal year 2008, the last year for CHIPRA, to fiscal year 2013, annual sales of domestic and imported pipe tobacco increased from about 5.2 million pounds to 43.7 million pounds, while sales of domestic and imported roll-your-own tobacco declined from 21.3 million pounds to 3.8 million pounds. Over the same period, annual sales of domestic and imported large cigars increased from about 5.8 billion sticks to 12.4 billion sticks. According to government, industry and nongovernmental organization representatives, many roll-your-own tobacco and small cigar manufacturers shifted to the lower-taxed products after CHIPRA to avoid paying higher taxes.

While revenue collected for domestic and imported smoking tobacco products, including cigarettes, from April 2009 through February 2014, amounted to about \$77 billion, GAO estimates that federal revenue losses due to market shifts from roll-your-own to pipe tobacco and from small to large cigars range from about \$2.6 to \$3.7 billion for the same period. GAO found that the Department of Treasury has limited options to respond to these market shifts. Differentiating between roll-your-own and pipe tobacco for tax collection purposes presents challenges to Treasury because the definitions of the two products in the Internal Revenue Code do not specify distinguishing physical characteristics and are based on such factors as the use for which the products are suited and their packaging and labeling. GAO also found that Treasury continues to have limited options to address the market shift from small cigars to large cigars - which are differentiated in the Internal Revenue Code only by weight - and faces added complexity in monitoring and enforcing tax payments due to the change in large cigar tax rates.

Federal Judge Bars Use of Menthol Report

Three years after an advisory panel to the Food and Drug Administration (FDA) issued its report on menthol in cigarettes, a federal judge has barred the agency from using the report. On July 21, the U.S. District Court Judge Richard Leon also ordered FDA to reconstitute the tobacco panel.

The ruling affects the report by the FDA's Tobacco Product Scientific Advisory Committee (TPSAC), which issued its menthol findings in March 2011. TPSAC in its report recommended that removing menthol cigarettes from market would benefit public health.

Lorillard and Reynolds American sued the agency in 2011, alleging conflicts of interest and bias by several members of the panel tasked with advising the FDA on tobacco-related issues, the news agency reported. The companies argued that TPSAC failed to meet the federal requirements that committee members should be fairly balanced and not inappropriately influenced by any special interest. The lawsuit specifically alleged that some committee members had conflicts of interest because they served as paid expert witnesses in anti-tobacco lawsuits and had financial ties to pharmaceutical companies that make smoking-cessation products.

In his order, Leon said the FDA erred in determining that the members didn't have conflicts of interest and therefore, the agency's appointment of those members was "arbitrary and capricious," and detained both the panel and its work.

DOL: Proposed Overtime Rule Should Hit by November

The Department of Labor states that it plans to issue, by November, its proposed rule revising the categories of workers that are entitled to overtime pay when they work more than 40 hours a week. The DOL and White House have indicated that among the groups the department will be scrutinizing very closely are employees who gas stations owners classify as managers that are exempt from overtime pay protection. The White House has suggested that many of those workers should either make higher salaries or get overtime pay when they work overtime.

Lawmakers Exit Washington to Campaign

House Majority Leader Kevin McCarthy's (R-Calif.) office announced September 18th, that, in a departure from the original schedule, the House would not be in session the week of Sept. 29.

Senators were in just as much of a hurry to leave Washington as soon as they cleared a stopgap funding bill to avoid a government shutdown on Oct. 1 with an authorization to arm Syrian rebels to fight Islamic extremists. With little other "must-do" legislation left on the agenda, both chambers of Congress closed the brief, yet intense, September session.

The recess between now and the week after the Nov. 4 elections will last seven weeks, which is even longer than the five-week August break.

Those seven weeks will be the last critical stretch of campaigning for incumbent lawmakers, especially Senate Democrats trying to keep control of the upper chamber.

House Republicans are not expected to lose their majority in this year's elections, but members in a handful of competitive districts were hard-pressed to wrap up work in Washington.

House Democratic leaders called a press conference Thursday designed specifically to chide GOP leaders for leaving Washington this week — nearly two months ahead of the Nov. 4 elections.

Rep. Steve Israel (D-N.Y.), the chairman of the Democratic Congressional Campaign Committee, further piled onto House Republicans for leaving town as soon as members passed a measure to prevent another government shutdown.

Still, some House Republicans wouldn't object to Congress being in session for more days before the elections.

Rep. John Mica (R-Fla.) said he still plans to return to Washington the week of Sept. 29 to conduct a House Oversight subcommittee hearing on wasteful spending at the Department of Homeland Security.

Mica maintained that he works long hours regardless of whether he's in Washington or his district.

There is precedent for Congress to cut the fall session short so members can hit the campaign trail earlier. In 2012, the House was in session for eight legislative days. GOP leaders ultimately canceled the session scheduled for the first week of October.

National Labor Relations Board Joint Employer Decision

Recently the NLRB's General Counsel decided to issue multiple complaints against McDonald's USA related to employment decisions made by some of its franchisees. This means the NLRB's General Counsel has decided to prosecute complaints before administrative law judges. This is a significant and deeply troubling reversal of long established precedent, and it has major implications for franchisees, franchisors and many other similar business models. We have no doubt the cases will eventually be brought before the Board itself.

What the Supreme Court Hobby Lobby Case Means to Employers

In a 5 to 4 decision the U.S. Supreme Court has ruled that certain privately held corporations do not have to comply with some of the Affordable Care Act's (ACA) contraception coverage requirements if they violate the owner's religious views. The decision opens the door for companies that meet the IRS definition of a "closely held corporation" to opt-out of providing certain contraception coverage in their employer sponsored group health plan.

Background - The ACA requires non-grandfathered group health plans to offer a broad set of preventive health services with no cost-sharing to plan participants. Coverage for some forms of contraception is included in this preventive care requirement. Previous regulations provided an exception to this requirement for religious organizations and most non-profit entities. Qualified organizations wishing to take advantage of this exemption were subject to certification and participant notification requirements. The exemption also required non-profits to arrange for their insurance carrier or administrator to provide the contraceptive coverage directly to employees who want it, outside the term of the employer's plan. This exemption, however, has not been available to for-profit companies.

Impact of the Court Decision on Employer Plans - The court specifically limited its decision to "closely held corporations." The IRS defines a closely held corporation as a corporation that:

- ◆ Has more than 50% of the value of its outstanding stock owned (directly or indirectly) by 5 or fewer individuals at any time during the last half of the tax year; and
- ◆ Is not a personal service corporation.

The court case does not automatically mean that the current IRS definition will be controlling. However, based on this definition, it seems likely that the exception will not be granted to larger organizations, publicly held companies, or even closely held companies with a larger number of owners. The court also suggested that employers who do qualify for the exception will be subject to the existing rules applicable to non-profit entities (as described above). It is expected that the regulatory agencies will issue new guidance regarding this process.

Summary - Employers interested in taking advantage of the exception should study the rules in place for non-profit entities, and also watch for new guidance expected soon from the regulatory agencies. Additional guidance on exactly which companies can take advantage of the exemption is of particular importance.

Cigarette Sales Volume Drops 3.5% in C-Stores in Q2 2014

A midyear survey of tobacco retailers and wholesales, including contacts representing more than 30,000 convenience stores, shows industry cigarette volume declines held steady during the second quarter of 2014 as the competitive environment eased. Wells Fargo Securities' Tobacco Talk survey shows "the competitive environment moderated slightly in Q2 with 53% of respondents indicating a slightly more competitive environment (down from 63% in Q1), despite dollar stores starting to become a greater threat to c-stores." Overall cigarette sales volume was reported down about 3.5% for the quarter, however. Below are the survey's volume results for each of eight major cigarette brands in convenience stores.

Soda Tax Bill Introduced in Congress

Legislation was recently introduced in the U.S. House of Representatives that would establish a tax on soda and other sugar-sweetened drinks, reinvigorating a national debate over the government's role in shaping the diets of Americans.

The bill, known as the Sugar-Sweetened Beverages Tax or "SWEET" Act of 2014, was authored by Rep. Rosa DeLauro (D-CT) and would amend the Internal Revenue Code to establish an excise tax on sweetened beverages. It would impose a 1% tax per every 4.2 grams of caloric sweetener added to beverages, and would apply to manufacturers, producers and importers of the products. The revenue would be used toward prevention, treatment and related public health research. Previous local efforts to regulate sweetened drinks have failed, largely due to legal rulings that that such efforts are an overreach on the part of the government.

Other State News

Pennsylvania Passes Bill Authorizing Cities to Approve a 10-Cent Per Cigarette Local Excise Tax

Recently the Pennsylvania legislature passed and Governor Tom Corbett signed into law House Bill 1177 that authorizes cities of the first class to approve a 10-cent per cigarette local excise tax to fund school district operations. Philadelphia is the only first class city in Pennsylvania. Pursuant to this new taxing authority, the City of Philadelphia enacted a local ordinance to assess the 10-cent per cigarette tax to partially fund the Philadelphia school district operations. The Pennsylvania Department of Revenue has informed NATO that the 10-cent per cigarette or \$2.00 per pack local cigarette tax for Philadelphia will go into effect on October 1, 2014. There is a floor stocks tax being assessed on retailers and vending machine operators. The floor stocks tax needs to be paid by each retail store on or before October 1, 2014. A letter is being mailed today to all retailers by the Pennsylvania Department of Revenue explaining the new Philadelphia local cigarette tax and the floor stocks tax. Each retail store needs to conduct an inventory of cigarettes on hand on October 1, 2014 and pay the floor stocks tax with a separate check for each store. The floor stocks tax needs to be paid to the Pennsylvania Department of Revenue by October 31, 2014.

New York City Sugared Beverage Ban Loses Last Appeal

June 26, 2014 New York's highest court - the New York State Court of Appeals - upheld a lower court's decision to block a New York City ban on certain sweetened beverages from going into effect. The New York City Department of Health and Mental Hygiene had passed a proposal preventing a food service establishment within New York City from selling a sugary drink in a cup or container that is able to hold more than 16 fluid ounces. (NY City Health Code [24 RCNY] § 81.53 [b], [c]). Read the Court decision [here](#). New York City Department of Health and Mental Hygiene Commissioner Mary T. Bassett, MD, said in a statement posted on the DHMH website: "Today's ruling does not change the fact that sugary drink consumption is a key driver of the obesity epidemic, and we will continue to look for ways to stem the twin epidemics of obesity and type 2 diabetes by seeking to limit the pernicious effects of aggressive and predatory marketing of sugary drinks and unhealthy foods."

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Member News

Rob Sincavich Named Chairman of AWMA at Summit in Orlando

2014 AWMA Chairman Mark Davenport opened the AWMA Summit in Orlando on September 9th, outlining some of the association's achievements over the past year and introducing 2015 Chairman Rob Sincavich of Team Sledd, who was presented the gavel and the traditional green jacket worn by all AWMA chairmen.

"I promise to do what I can to carry forward the standards and traditions of this organization," said Sincavich in accepting his jacket.

Following Davenport's address at the Summit opening breakfast sponsored by Kraft Foods, AWMA's Hall of Fame Award was presented to long-time industry and AWMA supporter Tom Joyce, vice president of global customer and industry affairs at The Hershey Co.

Then, the Summit's keynote address was presented by Juliet Funt, owner and founder of Whitespace at Work, who encouraged attendees to pause, take time to think-to create "whitespace" in their lives, both business and personal. The Hershey Co. was the sponsor of the Tuesday Summit program.

"This is our way of supporting AWMA at the highest level because we believe that speakers like Ms. Funt help us go back to our businesses with new ideas and tools that can be very useful and helpful," said Brent Cotten, director, customer and industry affairs at Hershey.

Congratulations Rob! Your West Virginia team is proud of you!



Membership Directory

We will soon be working on a membership directory for 2015. We will send each member a copy of the information we have for your company. Please take the time to make any necessary changes and get them to us.

Also, we will once again be asking members to advertise in this publication. This is a great way to keep your company's name in front of the membership throughout the year!

Election Reminder

2014 General Election Early Voting October 22 - November 1

Early Voting is open during regular business hours at each county courthouse or courthouse annex. Early Voting is also available each Saturday from 9:00am to 5:00pm.

General Election Day
Tuesday, November 4, 2014
Polls are open 6:30am through 7:30pm.

West Virginia Wholesalers Association



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