

# **WEST VIRGINIA LEGISLATURE**

**2016 REGULAR SESSION**

**Engrossed**

**Committee Substitute**

**for**

**Senate Bill 420**

BY SENATOR KESSLER

(BY REQUEST OF THE EXECUTIVE)

[Originating in the Committee on Finance;

reported on February 19, 2016.]



1 A BILL to amend and reenact §11-17-3 and §11-17-4 the Code of West Virginia, 1931, as  
2 amended; and to amend said code by adding thereto a new section, designated §11-17-  
3 4b, all relating to increasing tax rate on cigarettes and tobacco products; dedicating one  
4 million dollars to tobacco cessation programs; dedicating a portion of proceeds to Public  
5 Employees Insurance Agency; requiring physical inventory of tax stamps and tobacco  
6 products and e-cigarette liquids upon the effective date of tax imposition or tax rate  
7 increase; applying tax rate changes to inventories; requiring a report of such inventory be  
8 filed sixty days after the effective date of the tax imposition or tax rate change; levying the  
9 excise tax on e-cigarette liquid; defining terms; providing for administration of the tax on  
10 e-cigarette liquid; specifying penalty for failure to file required reports; specifying criminal  
11 sanctions; and specifying effective date.

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

1 That §11-17-3 and §11-17-4 of the Code of West Virginia, 1931, as amended, be amended  
2 and reenacted; and that said code be amended by adding thereto a new section, designated §11-  
3 17-4b, all to read as follows:

**ARTICLE 17. TOBACCO PRODUCTS EXCISE TAX ACT.**

**§11-17-3. Levy of tax; rate and ratio; dedication of proceeds; intent of the Legislature.**

1 (a) Tax on cigarettes and tobacco products other than cigarettes. — For the purpose of  
2 providing revenue for the ~~General Revenue Fund of the state~~, an excise tax is hereby levied and  
3 imposed on sales of cigarettes ~~at the rate of fifty-five cents on each twenty cigarettes or in like~~  
4 ~~ratio on any part thereof. Only one sale of the same article shall be used in computing the amount~~  
5 ~~of tax due under this subsection~~ and tobacco products other than cigarettes.

6 (b) Tax rate on cigarettes. — Effective May 1, 2003, the excise tax rate levied and imposed  
7 on the sale of cigarettes is fifty-five cents on each twenty cigarettes or in like ratio on any part  
8 thereof: *Provided*, That on and after April 1, 2016, the excise tax rate levied and imposed on the  
9 sale of cigarettes is \$1.55 on each twenty cigarettes or in like ratio on any part thereof. Only one  
10 sale of the same article shall be used in computing the amount of tax due under this subsection.

11           ~~(b)~~ (c) Tax on tobacco products other than cigarettes. — Effective January 1, 2002, ~~an~~ the  
12 excise tax ~~is hereby~~ levied and imposed on the ~~sale~~ sales or use of, tobacco products other than  
13 cigarettes, ~~tobacco products is~~ at a the rate equal to seven percent of the wholesale price of each  
14 article or item of tobacco product other than cigarettes sold by the wholesaler or subjobber dealer,  
15 whether or not sold at wholesale, or if not sold, then at the same rate upon the use by the  
16 wholesaler or dealer: Provided, That on and after April 1, 2016, the excise tax rate levied and  
17 imposed on the sale of tobacco products other than cigarettes is at the rate equal to twelve percent  
18 of the wholesale price of each article or item of tobacco products other than cigarettes sold by the  
19 wholesaler or subjobber dealer, whether or not sold at wholesale, or if not sold, then at the same  
20 rate upon the use by the wholesaler or dealer. Only one sale of the same article shall be used in  
21 computing the amount of tax due under this subsection. ~~Revenues received from this tax shall be~~  
22 ~~deposited into the General Revenue Fund.~~

23           ~~(c) Effective date. — The changes set forth herein to this section and section four of this~~  
24 ~~article shall become effective the first day of May, two thousand three.~~

25           (d) Beginning July 1, 2017, fifty-five cents of the \$1.55 tax imposed and collected under  
26 this section shall be dedicated as follows:

27           (1) One million dollars shall be deposited in the Tobacco Education Program in the State  
28 Treasury. Expenditures from the fund are to be made in accordance with the provisions of article  
29 three, chapter twelve of this code and used for the purpose of providing tobacco cessation  
30 programs; and

31           (2) The remaining balance of the revenues collected under this subsection shall be  
32 deposited in the State Treasury to the credit of the Public Employees Insurance Agency.

33           (e) Effective date of amendments. — Amendments to this section enacted in the year 2003  
34 apply in determining tax imposed under this article from May 1, 2003, to March 31, 2016.  
35 Amendments to this section enacted in the year 2016 apply in determining tax imposed under this  
36 article on and after April 1, 2016.

**§11-17-4. Effect of rate changes; cigarette tax stamps and tobacco products on hand or in inventory; report; discount; effective date.**

1           (a) ~~Notwithstanding other provisions of this article, it is hereby declared to be the intent of~~  
2 ~~the Legislature that one rate of excise tax is applicable to all quantities of cigarettes and another~~  
3 ~~rate of excise tax is applicable to all tobacco products other than cigarettes in this state on and~~  
4 ~~after the first day of July, two thousand one, under the provisions of this article~~ Any cigarette tax  
5 stamps on hand or in inventory on the effective date of a rate change, whether affixed to the  
6 cigarette package, on hand but not affixed to the cigarette package, or stamps purchased to be  
7 affixed by a meter, are considered to have been purchased or received on the effective date of  
8 the change in rate. Any tobacco products other than cigarettes, on hand or in inventory, on the  
9 effective date of any rate change are hereby considered to have been purchased or received on  
10 the effective date of the change in rate.

11           (b) Every wholesaler, subjobber, subjobber dealer, retail dealer and vending machine  
12 operator who, on the effective date of any rate change, has, on hand or in inventory, any tobacco  
13 products or cigarette tax stamps, whether affixed to the cigarette package, on hand but not affixed  
14 to the cigarette package, or stamps purchased to be affixed by a meter, and upon which the tax  
15 has not been paid or upon which the tax or any portion of the tax has been previously paid, shall  
16 take a physical inventory and shall file a report of the inventory with the Tax Commissioner, in the  
17 format required by the Tax Commissioner, and shall file the inventory within thirty sixty days after  
18 the ~~inventory~~ effective date of the rate change and shall pay to the Tax Commissioner any  
19 additional tax due under an increased rate within sixty days after the effective date of the rate  
20 change. ~~in accordance with the following schedule:~~

- 21           ~~(1) One-third at the time of filing the report;~~  
22           ~~(2) One-third not later than sixty days after the effective date of the rate change; and~~  
23           ~~(3) One-third not later than ninety days after the effective date of the rate change.~~

24 A discount of four percent shall be allowed on all tax due for persons who pay additional  
25 tax under this section.

26 (c) Imposition of the tax on tobacco products other than cigarettes shall be treated as a  
27 change in rate on the effective date of the tax.

28 (d) Effective date. — The amendments to this section enacted in the year 2016 shall be  
29 effective on and after April 1, 2016.

**§11-17-4b. Levy of tax on e-cigarette liquid; definitions; rate; inventory; report; payment;**  
**authority of the Tax Commissioner to inspect and examine witnesses;**  
**presumption; bond.**

1 (a) Definitions. — When used in this section, words, terms and phrases defined in this  
2 subsection, and any variations thereof required by the context, have the meaning ascribed to  
3 them in this subsection, except where the context indicates a different meaning is intended.

4 (1) “E-cigarette” means an electrical or electronic device that provides a smoke, vapor,  
5 fog, mist, gas or aerosol suspension of nicotine or another substance that, when used or inhaled,  
6 simulates the activity of smoking. The term “e-cigarette” includes, but is not limited to, a device  
7 that is composed of a heating element, battery, or electrical or electronic circuit, or a combination  
8 of heating element, battery, and electrical or electronic circuit, which works in combination with e-  
9 liquid to produce an inhalable product. The term “e-cigarette” includes, but is not limited to, any  
10 so designed, or similarly designed, product that is manufactured, distributed, marketed, or sold  
11 as an e-cigarette, e-cigar, e-pipe, or under any other name or descriptor. The term “simulates the  
12 activity of smoking”, in the context of this definition, means replicating, mimicking or reproducing  
13 an experience similar to inhaling, or otherwise drawing into the mouth or nose, or exhaling, the  
14 smoke or combustion product of burning tobacco or any other product or material that can be  
15 used in a similar fashion.

16 (2) “E-cigarette liquid” means any of the liquids or liquid mixtures used in e-cigarettes, and  
17 is also known as e-juice, or e-fluid, or e-liquid or e-liquid product. E-cigarette liquid includes e-

18 cigarette liquid mixing kits and e-cigarette liquid mixing kit components. When used in, or with, an  
19 e-cigarette, e-cigarette liquid is vaporized, or otherwise converted into an inhalable product. E-  
20 cigarette liquid may or may not include, without limitation, propylene glycol, vegetable glycerin,  
21 nicotine from any source, or flavorings.

22 (b) Levy of tax; rate. —

23 (1) On and after April 1, 2016, an excise tax is levied and imposed on sales of e-cigarette  
24 liquid at the rate of 7.5 cents per milliliter or fraction thereof, or if not sold, then at the same rate  
25 upon the use by the wholesaler or dealer. For purposes of this article, any distributor, dealer,  
26 subjobber, subjobber dealer, retailer or any other person that imports or transports e-cigarette  
27 liquids into this state, or that causes e-cigarette liquids to be imported or transported into this  
28 state, is hereby deemed to be a wholesaler for purposes of this section, and is liable for the tax  
29 imposed under this article. No wholesaler or other person may purchase e-cigarette liquids from  
30 any seller not approved by the Tax Commissioner. E-cigarette liquid mixing kits and e-cigarette  
31 liquid mixing kit components shall be taxed in accordance with the amount of e-cigarette liquid, in  
32 milliliters, that can be produced by or from the kit or components thereof, as determined by the  
33 Tax Commissioner

34 (2) Only one sale of e-cigarette liquid shall be used in computing the amount of tax due  
35 under this section.

36 (c) E-cigarette liquid on hand or in inventory; effect of rate changes; inventory; report. —

37 On April 1, 2016, and on the effective date of any rate change thereafter, every place of  
38 business as defined in this article, retail dealer, subjobber, vending machine operator or wholesale  
39 dealer who has on hand or in inventory any e-cigarette liquid, shall take a physical inventory  
40 thereof, and shall file a report of the inventory with the Tax Commissioner, in the format required  
41 by the Tax Commissioner, and shall file the report of the inventory, and pay the tax due within  
42 sixty days after the effective date of the rate imposition or rate change. Imposition of the tax on  
43 sales of e-cigarette liquid shall be treated as a change in rate on the effective date of the tax.

44 (d) How tax paid; invoice required; reports required; due date; records to be kept. —

45 (1) The tax imposed in this section on e-cigarette liquid shall be paid using an invoice  
46 method prescribed by the Tax Commissioner.

47 (2) Contents of delivery ticket or invoice. — Unless otherwise permitted, in writing, by  
48 authority of the Tax Commissioner, each delivery ticket or invoice for each purchase or sale of e-  
49 cigarette liquid must be recorded upon a serially numbered invoice showing:

50 (A) The name and address of the seller and the purchaser;

51 (B) The point of delivery;

52 (C) The date, quantity in milliliters, and price of each e-cigarette liquid in a cartridge,  
53 apparatus, container or other device delivered in this state, or, if sold outside of a cartridge or  
54 other device or container, the total quantity in milliliters of e-cigarette liquid not in cartridges,  
55 apparatus or other device or container delivered in this state;

56 (D) The amount of tax imposed by this article. The invoice must either set out the amount  
57 of tax imposed by this article separately on the invoice, or the invoice may instead indicate that  
58 the tax imposed under this article is included in the total price; and

59 (E) Any other information required by the Tax Commissioner.

60 (3) Reports and payments due date. — On or before the fifteenth day of each month,  
61 manufacturers, importers, every place of business as defined in this article, retail dealers,  
62 subjobbers, vending machine operators and wholesale dealers and their agents, shall file a report  
63 covering the business transacted in the previous month providing any information the Tax  
64 Commissioner determines necessary for the ascertainment or assessment of the taxes imposed  
65 by this article. Reports shall be signed under penalty of perjury and be in a form as prescribed by  
66 the Tax Commissioner. The amount of tax shown to be due on the monthly report, if any, shall be  
67 remitted on or before the due date of the monthly report.

68 (4) Reports required. — The reports prescribed in this article are required, although a tax  
69 may not be due or no business transacted, for the period covered by the report. In the case of



70 any failure to file a report on the date prescribed for filing when no tax is due, unless it is shown  
71 that the failure was due to reasonable cause, there is hereby imposed a penalty of \$25 for each  
72 month or fraction of a month that such report is delinquent, until the report is filed, in addition to  
73 any penalties imposed under section nineteen-a of this article.

74 (5) Records. — Each person required to file a report shall make and keep the records  
75 necessary to substantiate the accuracy of the reports required by this section, including, but not  
76 limited to, records of inventories, receipts, disbursements and sales. Records shall be retained  
77 for a period of time not less than three years from the time the report is due or the time when the  
78 report is filed, whichever is later.

79 (e) Inspection of records and stocks; examination of witnesses; registration of e-cigarette  
80 sellers; presumption of nontax paid. —

81 (1) The Tax Commissioner has the authority to inspect or examine the records, books,  
82 and papers, and any equipment or e-cigarette apparatus, and any stock of e-cigarette liquid kept  
83 in or upon the premises of persons who sell, possess or store e-cigarette liquid, for the purpose  
84 of determining the quantity and value of e-cigarette liquid acquired, on hand or disbursed, to verify  
85 the truth and accuracy of any statement, return, form, or report, and to ascertain whether the tax  
86 imposed by this article has been properly paid.

87 (2) In addition to the Tax Commissioner's powers set forth in article ten of this chapter,  
88 the Tax Commissioner or the Tax Commissioner's agent may examine witnesses under oath in  
89 order to ascertain the amount of taxes and reports due under this article. If a witness or person  
90 fails or refuses to testify or grant access to records, books, papers, equipment or e-cigarette  
91 apparatus, or any stock of e-cigarette liquid, necessary or useful to ascertain the amount of taxes  
92 and reports due under this article, the Tax Commissioner shall certify the facts and names to the  
93 circuit court of the county having jurisdiction of the party, and the court shall issue a summons to  
94 the party to appear before the Tax Commissioner at a place designated within the jurisdiction of  
95 the court, on a day fixed, to be continued as the occasion may require for good cause shown, to

96 testify and give evidence and to produce for inspection any books, records and papers that may  
97 be required and to grant access to records, books, papers, equipment or e-cigarette apparatus,  
98 or any stock of e-cigarette liquid, for the purpose of ascertaining the amount of tax and reports  
99 due, if any.

100 (3) Each wholesale dealer of e-cigarette liquid must register with the Tax Commissioner  
101 and maintain a business registration certificate, showing the wholesale dealer of e-cigarette liquid  
102 to be registered as a seller of tobacco products or seller of both cigarettes and tobacco products  
103 prior to the sale or delivery of e-cigarette liquid to any retail dealer or subjobber this state. A  
104 wholesale dealer may sell tax-paid e-cigarette liquid only to another wholesaler or a retail dealer  
105 or subjobber in this state. No person may purchase nontaxed e-cigarette liquid from any seller  
106 not approved by the Tax Commissioner.

107 (4) Whenever e-cigarette liquid is found in the place of business of any retail dealer,  
108 without evidence that the tax imposed by this section has been paid, it shall be presumed that the  
109 e-cigarette liquid is kept on the premises in violation of this article.

110 (f) Bond. — The Tax Commissioner may require wholesalers, subjobbers or retail dealers  
111 to file a continuous surety bond in an amount to be fixed by the Tax Commissioner but no less  
112 than \$1,000. The bond shall be conditioned upon faithfully complying with the provisions of this  
113 article including the filing of the returns and payment of all taxes prescribed by this article.

114 (g) Administration and enforcement. — The provisions of this article and articles nine and  
115 ten of this chapter apply to administration and enforcement of the excise tax on e-cigarette liquid  
116 in the same manner and to the same extent as they apply to administration and enforcement of  
117 the excise tax on tobacco products, as imposed under this article.

118 (h) Criminal sanctions. — The criminal sanctions imposed in section nineteen-a of this  
119 article are hereby imposed with equal force and application with relation to actions, transactions  
120 and responsibilities prescribed under this section and under this article. For the purpose of  
121 applying and interpreting the provisions of section nineteen-a of this article, the words “container

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122 of tobacco products” shall be interpreted to mean and include the words “container of tobacco  
123 products or e-cigarette liquid”.